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**Institutionalism, Rawls, and Political Development:
Theorizing about the Ideal of Institution building**

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ABSTRACT

Philosophers usually seek for and justify moral and political orders by two methodologies. Rationalism claims that social organization of human beings should fit with human nature, and believes that a predefined conception of human nature, defined in terms of human capacities for the exercise of reason, can be established as the independent criterion for choosing and justifying the proper moral and political order. Institutionalism, on the other hand, believes that human nature is at least significantly shaped by the actual construction of moral and political orders by human beings, and by internalizing the social institutions in which they live, they create themselves.

In this essay, I argue that rationalism is not a good methodology because it does not reflect the correct relationship between human beings and their institutional life. I will develop a philosophical theory of institutionalism, and argue that an institutionalist justification of the ideal of liberal democracy will encourage a political development towards liberalization and democratization. I will also argue that Rawls's justification of liberal democracy is such an institutionalist justification, and although it might seem to suggest otherwise, it not only speaks to citizens of western democracies, but also speaks to all moral persons from all other societies.

The political development towards liberalization and democratization is a normative demand for any human society, if such a society strives to be a well-ordered society with long term legitimacy and stability. The exact degree of liberalization and democratization for any particular society will depend on the available means of communication and organization, but the normative demand for such a political development is present in every human society.

Institutionalism represents human freedom in human beings' creation and justification of social institutions, which are man-made rules and norms aimed at guaranteeing social order among interacting human agents. As a "liberalism of freedom," institutionalism is therefore committed to a highest ideal of human institution building: institutions of a society should be justified to, and be obeyed by, all the members of this society, so that such a society is a political autonomy.

In these terms, Rawls's justification of liberal democracy, although dependent on a public political culture of modern western democracies, is nevertheless not limited to this context. As an instantiation of institutionalism, Rawls's theory has a dimension of universalism. Ultimately, Rawls's justification of liberal democracy encourages every other human society on this earth to develop towards the ideal of liberal democracy.

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Abbreviations for the Works of John Rawls:

TJ: *A Theory of Justice*, revised edition, Harvard University Press, 1999 (Sometimes the first edition of 1971 will also be quoted, as indicated).

PL: *Political Liberalism*, revised edition, Columbia University Press, 1996.

CP: *Collected Papers*, edited by Samuel Freeman, Harvard University Press, 1999.

LP: *The Law of Peoples*, Harvard University Press, 1999.

MP: *Lectures on the History of Moral Philosophy*, edited by Barbara Herman, Harvard University Press, 2000.

JF: *Justice as Fairness: A Restatement*, edited by Erin Kelly, Harvard University Press, 2001.

PP: *Lectures on the History of Political Philosophy*, edited by Samuel Freeman, Harvard University Press, 2007.

Introduction

During the last three decades, John Rawls has been arguably the most famous defender of liberal democracy in philosophy. Compared with previous generations of philosophers, Rawls, perhaps due to more historical experience with democracy behind him and modern philosophical achievements he has absorbed, has lifted our understanding of liberal democracy to a new level. In a time when liberal democracy is expanding its stage to the whole world, Rawls's work deserves serious reflection, especially reflection from the perspective of democratic theory. Nevertheless, Rawls's major arguments for liberal democracy appear to be highly dependent upon a public political culture already committed to certain liberal and democratic values; Rawls seems to be more concerned with the survival of liberal democracy in already democratized countries than with its creation and expansion in other places. For people from non-liberal and non-democratic cultures, reading Rawls is therefore both exciting and perplexing.

For both academic and practical reasons, I set out to find the universal tone in Rawls's dialect. I argue that Rawls's justification of liberal democracy encourages a political development towards liberalization and democratization, both inside his own society and in other societies. For this purpose, I need to explain why Rawls chooses to speak only from a specific tradition, and why this local preaching can have universal implications.

I begin with an interesting feature of Rawls's system, that is, unlike traditional political philosophers, Rawls doesn't try to establish the superiority of his ideal political order with a systematic comparison of different forms of political order. This

feature cannot be explained by taking Rawls as presupposing the superiority of liberal democracy, since that will simply make Rawls's whole system a vicious circle.

So I ask: what is the criterion based on which traditional political philosophers can compare different forms of political order, and why Rawls does not use the same kind of criterion to argue for the superiority of his favored form of political order?

Here I discover a common trait of all or most traditional political philosophies: they first establish a theory of human nature, and then look for a political order that best suits this nature. When we look at Rawls, we cannot find this kind of theory about human nature; indeed some commentators even take Rawls's lacking of such a theory as a proof that Rawls's political philosophy deserves no serious scholarship. A sympathetic reading of Rawls needs to find out why Rawls doesn't have such a theory, and why he doesn't lay his theory of justice on the foundation of such a theory of human nature.

My answer to this challenge can be put straightforwardly like this: Rawls doesn't need such a theory of human nature to be the foundation of his political philosophy because he has a totally new methodology for doing political philosophy. I call Rawls's new methodology "institutionalism," and the traditional methodology of political philosophy "rationalism." Rationalism has a closed conception of human nature as the fundamental criterion for good political order, while institutionalism believes that the nature of human beings is open to their free engagement with institutions, and their self creation thereof.

Rawls's own words confirm this institutionalist interpretation in many places, although he never uses the word "institutionalism" to describe his own system. I will quote Rawls to confirm our interpretation whenever doing so is appropriate. Here I

quote one long paragraph. When Rawls discusses Locke's theory of natural law, he observes that

Locke's conception of natural law provides us with an example of an independent order of moral and political values by reference to which our political judgments of justice and the common good are to be assessed. Correct or sound judgments are true of, or accurate with respect to, this order, the content of which is in large part specified by the fundamental law of nature as God's law. Thus Locke's view contains a conception of justification distinct from the conception of public justification in justice as fairness as a form of political liberalism. However, justice as fairness neither asserts nor denies the idea of such an independent order, or justification as showing moral and political judgments to be true by reference to this order.¹

In the above paragraph, Rawls clearly distances his major methodology, a public justification of a public conception of justice, from a Lockean justification from natural law, which presupposes an order of values that is "independent" from our own efforts of institution building. Rawls's method of public justification, according to himself, doesn't need to assert or deny such an assumption.

My interpretation will further explain why this is so. Institutionalism believes that to establish and to secure a social order, a common system of social institutions needs to be established, and to be followed by all or most members of this society. To reach this goal, this system of institutions, or the basic principles of justice supporting this system, needs to be justified to, and therefore to be internalized by, all or most members of this society. This is what Rawls calls a public justification of a public conception of justice. Understood as such, a public justification is always an "internal" justification; it must address the reason of the members of the society, and as such it must address it from these members' points of view, or rather, from the viewpoint of their "common" reason or public reason—not from the viewpoint of a "reason" regarded as the possession of human beings as such independently of the

¹ See p. 112 of PP.

actual social and political context in which they are called to exercise it. If we interpret Rawls's public justification as an institutionalist justification, we can see that Rawls's justification of his own principles of justice is a public justification addressed from an internal point of view, and by resorting to basic political ideas latent in the public political culture of his own society, he does not call his own philosophy into question. Rawls is writing as a citizen of a modern liberal democracy; he addresses his co-community members as a citizen, not as an external observer or a philosopher king, so to speak.

Moreover, institutionalism believes that *any* justification of *any* type of social order, at least so long as it aims to be effective, should be understood as an institutionalist justification. Even a rationalist justification, if it really works, must be working on the basis of public justification. A natural law theory can work to justify a social order, for example, only when the audience can accept, or can be tricked into believing, the conception of natural law. More generally, a rationalist justification can work only when its audience shares the rationalist belief, namely, that there is a pre-determined human nature, as a fact or as an ideal, which constitutes as the criterion for social arrangement. The justification of a monarchy, for example, usually relies on rationalism. For thousands of years, most human beings living on the earth did not see the possibility of having social order without a heritable kingship. The belief in such a kingship may first caught people's minds as a matter of fact, the reorganization of which might be an achievement priced with long term suffering and heavy loss of human lives. Such a belief would then develop into a political ideal, with heritable king and other heritable offices ideally acting as the guardians of the social order and the public good. When such an ideal is coherently followed, social order can be

secured; when this ideal is systematically violated, on the other hand, such a society will sooner or later lapse into chaos.²

On this account, institutionalism is both contextual and universal. It is contextual because it resists the temptation of resorting to an external or absolute conception of human nature as the criterion for human institution building; it is universal because it understands all types of societies, and all ideological justifications of social orders, based on the need for a public justification of a public conception of justice. On the other hand, institutionalism neither affirms one single model for public justifications, nor does it encourage the idea that different social orders or different ideologies might be incommensurable. In other words, institutionalism tries to walk a fine line between absolutism and relativism—or at least so I will argue.

To further clarify the universal dimension of institutionalism, we can borrow Aristotle's political theory for a while. In many places, Aristotle suggests that all three major forms of government, namely a government ruled by one, or ruled by few, or ruled by the majority, can all turn out to be the right form, so long as common good or public interest is secured.³ To this interesting theory, we add one more point, and suggest that so long as all or most of the members of a society can understand their society according to a shared conception of justice, and can perceive their social order as protecting and promoting their own interests, they will have good reason to obey the institutions of their society, and as a result social order is maximally assured. This

² This analysis, of course, is only a debatable caricature of our long historical experience with kingship as a form of political order. I do not cite books about history here because merely citing examples would not help much in terms of theoretical induction. Nevertheless, in this essay, I will offer this kind of analysis of our historical experience with different forms of political order whenever such a general analysis is instrumental for constructing our own theory of institutionalism. Although the validity of these analyses should be ultimately tested against the readers' understanding of the history, these analyses mainly perform the function of facilitating theory in this essay, and I will leave them as what they are.

³ This theory is mainly developed in Book III of *Politics*. For examples, see parts III, VI, and VII, in Stephen Everson's edition, Cambridge University Press, 1988.

reasoning, of course, presupposes that most human beings have a sufficient sense of rationality and reasonableness, so that they can conceive and pursue their own interests properly, and can act according to their sense of justice. But this assumption is different from a pre-determined conception of human nature, for according to the theory of institutionalism we will develop in this essay, people's sense of rationality and reasonableness will acquire different contents under different institutional backgrounds. Overall, this essay argues that human social institutions, and the social orders secured by them, are the free constructions of human beings under different social and natural circumstances, not pre-determined by a conception of human nature conceived in any particular way. Human nature, if there is one, is such a free engagement with institutions for the sake of establishing and securing social order, and a happy life above that. The sense of rationality and reasonableness presupposed in institutionalism is only moral powers required by such an engagement; by itself, it doesn't speak for any particular social arrangement.

On the other hand, our institutionalism, based on people's moral sense of rationality and reasonableness, other theoretical considerations internal to institutionalism, and most importantly, our historical experiences with different systems of social institutions, can indeed point to some direction for human institution building across time. This part of our theory of institutionalism goes one step further than what Rawls has explicitly said, but accords with, I believe, Rawls's theory in its whole. The main point of this essay is that by arguing that Rawls's justification of the ideals of liberal democracy is an institutionalist one, and by working out a full version of institutionalism independent from Rawls's own theory of justice, we can prove that human institution building, under different circumstances and across time, does

indeed have a single highest goal to achieve, and the ideal of liberal democracy properly embodies this goal.

The main argument of this essay, therefore, is that an institutionalist justification of the ideals of liberal democracy, such as Rawls's, would not only justify liberal democratic ideals before the citizens of a liberal democracy, but also justify these ideals in front of other peoples of other societies. More particularly, this argument emphasizes two points. First, for any type of society supported by any type of institutional structure, if its social order is to be maintained and refreshed in the long run, this society needs to develop towards the ideals of liberal democracy, namely, the majority of its people needs to be involved more and more in the process of establishing new institutions for newly possible practical actions, revising the old institutions that may become inappropriate in light of new circumstances, and overall, in the process of justifying and internalizing different social institutions, the voluntary obedience to which is essential for securing social order. Second, under modern technological and social conditions, when practical actions and interactions within a society become so complex and so diversified, when more and more communication channels are opened to more and more people, the ideal of liberal democracy is the only justifiable ideal for any human society to pursue. Cultural differences among societies, important as they are, should only be accounted as different avenues to realize this ideal.

When we understand the ideals of liberal democracy according to institutionalism, these ideals will be revealed as dynamic goals for long term institution building, not as a definite set of social institutions or cultural attitudes that can be realized once and for all in any particular society. Up until now, there is no doubt that western societies have approached these ideals closer than most other

societies. But other societies surely can approach the ideals of liberal democracy via their own cultures and traditions, and in doing so they do not need to copy every element, or follow every historical step, of western liberal democracies. Thus, as a dynamic ideal, liberal democracy represents an expanding process, with more liberties and more participation ever increasing, not along a direct line, but undeniable in the long run. To distinguish our institutionalist ideal of liberal democracy from a static ideal of liberal democracy, we will often discuss it as a process of liberalization and democratization.

Institutionalism gives its primary concern to securing social order through construction of social institutions. This may draw to itself a criticism, namely, that institutionalism cares only about social order, not about individual freedom. This is surely a misunderstanding. Ultimately, institutionalism is a “liberalism of freedom.”⁴ It treasures human freedom in two dimensions: we are free to form, revise, and to rationally pursue our conceptions of good, and we are free to form, revise, and to improve our social union through “man-made” institutions. Liberal democracy is justified in institutionalism not simply because liberal democracy is required by the need for long term social order, but also, and more importantly, because liberal democracy is ideal for securing and expanding our freedom in these two dimensions. On this front, Rawls also concurs with institutionalism. His liberty principle, and its priority, will be discussed in due course as this essay moves on.

Although the main ideas of this essay burgeoned in reading Rawls, our theory of institutionalism can be developed independently, and can stand alone in its own right. This relationship between institutionalism and Rawls gives this essay a structure like this. In the first chapter, I will contrast rationalism and institutionalism, clarifying

⁴ Rawls uses this word in the end of LP and in the lecture about Hegel in MP.

both certain more traditional meanings that have been attached to these terms and the meanings to which we will stick in this essay. The second chapter concentrates on illustrating the basic ideas of institutionalism, and develops institutionalism as a theory of agency formation and institution building. The dimension of institutionalism specially bearing on political development will be worked out in the third chapter, with further elements of institutionalism, such as our institutionalist conceptions of liberty and power, unwrapped. In the fourth and the last chapter, we will then finally interpret Rawls's methodology as an instantiation of institutionalism, and argue that Rawls's justification of the ideal of liberal democracy encourages a political development towards liberalization and democratization. For this purpose, Rawls's specific theory of justice will be left aside and special attention rather given to Rawls's method of public justification, his conception of the moral person, and his ideal of liberal democracy.

Chapter I Rationalism and Institutionalism

In this first and preliminary chapter, I compare rationalism and institutionalism as two different methodologies for seeking and justifying moral and political orders. Through this comparison, I will argue that although as “methodologies,” they can both support various moral and political doctrines, institutionalism is actually a better methodology. If we want to justify a political order, such as a democracy, we had better develop an institutionalist justification rather than a rationalist one.

In order to find and justify some moral and political principles to guide our social actions and interactions, rationalism believes that human reason, as our nature, is a self-sufficient and universal guide. Rationalism motivated most moral and political philosophers, especially since the modern age, but it cannot explain the fact that the free use of reason did not yield universal agreement among human beings, especially over moral and political issues. This weakness, I will argue, requires that we deploy another methodology in moral and political philosophy, namely, institutionalism.

Institutionalism understands societies not in the units of human beings, but in the units of human actions. This switch of concentration has enormous consequences. If we start from human beings as the units of human society, we would want to study these units first, and then draw conclusions about how they organize themselves into society, and what they should do to make their social life better. This is what a rationalist has in mind when she gives priority to studying human nature or human reason. If we begin with human actions as the basic units of human societies, however, we can see that human beings carry out practical actions not only from consideration

of rationality, but also from, among other things, consideration of the meanings of their actions as perceived by co-members of their society. This leads us to the study of human institutions, which are to be understood in the broadest sense as rules and norms that give “meanings” to human practical actions. When people act not only according to how they think, but also according to how they understand social institutions, they will to some extent be “defined” by these social institutions. In other words, they are not just human beings, but also human agents, who are capable of carrying out practical actions according to social institutions. In this sense, human beings don’t have a definite or pre-institutional human nature. Rather, human beings construct themselves through practice of social institutions, whereas different social institutions will cultivate different human agents. Institutionalism thus believes that in order to find and justify moral and political principles for a society, we need to understand the internal connection between human agents, human actions, and social institutions.

The discussion of rationalism and institutionalism will proceed in this order: their established meanings will be clarified first, followed by specifications of their more definitive meanings that will be used in this essay. Correspondingly this chapter is divided into four sections. In the first section, I will analyze the meanings of rationalism in modern philosophy. With the help of Oakeshott’s diagnosis of rationalism in politics, I will show, in the second section, the implication and the limit of rationalism in moral and political philosophy. The third section will present the concept of “institutionalism” as it is used in the social sciences, especially in economics, and reveal its strength and limits. In the fourth and the last section, I discuss the concepts of “practical action” and “institution,” which are the central concepts of institutionalism to be presented in the next chapter.

Throughout these sections, rationalism and institutionalism are to be repeatedly compared as two methodologies for justifying moral and political values, but it is important to recognize that rationalism and institutionalism are also methodologies for describing facts. Indeed, on moral and political issues, all justifications have certain elements of description. Some philosophers may oppose deriving normative conclusions from facts; they may resort to objecting to the supposed commitment to the so-called “naturalistic fallacy”⁵ to solidify their position. What we need to notice, though, is that a charge of such fallacy doesn’t really concern people in real life, even though it can in fact have the beneficial effect of encouraging people to be more critical in their deliberation over different normative reactions to facts. In any case, whether or not there is a fallacy in actually *deriving* normative conclusions from facts, people should obviously not be discouraged from making good or reasonable normative decisions based on what they know about facts. Indeed, to get sound conclusions regarding normative matters, we need to get as much information as possible about facts. Enlightened moral or political opinions do not come from innocence in Eden. To have a better future in our moral and political lives, we must admit, in the most serious manner, that there is moral knowledge, and that it is in some way in fact “derived” from both facts and values. As a study of practical philosophy, therefore, this essay will for the most part ignore any further issues raised by charges of such “fallacy”, and clarify certain related issues only when the context makes doing so appropriate. Throughout this essay, correspondingly, I will take

⁵ Opposition to the “naturalistic fallacy” is usually believed to have originated from Hume, yet many interpreters argue that this is not what Hume really means. In fact, Hume never upholds the view that moral doctrines only have emotive subjectivity, or that they have no objectivity whatsoever—which is commonly thought to be his particular view in opposition to that fallacy. For a summary of this later interpretation, see Larry Arnhart, “The New Darwinian Naturalism in Political Theory,” in *American Political Science Review*, Vol. 89, No. 2 (June 1995).

rationalism and institutionalism as both explanations of moral and political phenomena, and justifications of moral and political doctrines.

Rationalism in the Traditional Sense

The word “rationalism” has two connected meanings in modern philosophy.⁶ In general, it means that human reason is reliable and trustworthy in our pursuit of knowledge and moral order. This belief in reason was promoted against the medieval doctrine that men are sinful and weak and therefore should submit their reason to God’s directions, perhaps mainly through the revelations in the Bible. Rationalism in this sense of confidence in human rational capability played a big role in early modern times, but it is not a modern idea by itself. In fact, even in the middle ages, there are philosophers, such as Thomas Aquinas, who believe that human reason is a trustworthy guide to truth.⁷ Most ancient Greek philosophers work under this rationalist belief in human reason too. Nevertheless, in modern philosophy, rationalism in this general sense carries a birth mark of the Renaissance and the Enlightenment movement. Compared with earlier versions of rationalism, modern rationalism gives reason a more definite meaning, a more independent status, and a more prominent place in our search for truth and moral order.

This special enchantment with “reason” can be illustrated with several high cries of enlightenment. Generally speaking, the Enlightenment movement is motivated by a metaphor of ultimate liberation and autonomy of human reason. This

⁶ For general reflections on rationalism, see A. Kenny, *Rationalism, Empiricism and Idealism*, Oxford University Press, 1986.

⁷ Aquinas believes that “nothing prevents the same things from being treated by philosophical studies insofar as they can be cognized by the light of natural reason, and also by another science insofar as they are cognized by the light of divine revelation.” See *Summa theologiae* Ia.1.1, ad 2. I quote this from section 14 of Norman Kretzmann and Eleonore Stump’s entry “Aquinas, Thomas” in *Routledge Encyclopedia of Philosophy*, Edward Craig ed., Routledge, 1998.

belief cried up in Rousseau's condemnation that "Man is born free; and everywhere he is in chains,"⁸ and climaxed in Marx's announcement of an imminent communist revolution, in which "Proletarians have nothing to lose. They have a world to win."⁹ In the same spirit, Kant called for liberation of reason from "self-incurred immaturity."¹⁰ The underlying optimism of the Enlightenment movement reveals itself in all of these claims, that is, once liberated, human beings will be well-guided by the free use of their reason in a rational moral and political order.

The second and narrower sense of "rationalism" in modern philosophy is a particular view in epistemology, which says that reason alone, without seeking help from sense experience, can establish and validate a significant measure of real knowledge concerning the underlying nature or essence of things. Rationalism in this sense refers, paradigmatically, to epistemological doctrines put forward by Descartes,¹¹ Spinoza and Leibniz, among others; on the opposite camp, we have empiricists, such as Locke, Berkeley and Hume, who generally believe that, since our knowledge owes its ultimate source to our sense experience, we are incapable of a significant measure of real knowledge concerning the underlying nature or essence of things. As this categorization goes, Kant then unites the merits of both rationalism and empiricism into a system of transcendental idealism, according to which we are capable of a significant measure of real knowledge concerning the underlying nature or essence of things, but only with respect to the "phenomenal world," not "things in themselves."

⁸ See section 2 of *The Social Contract*, at the beginning, in "*The Social Contract*" and *Other Later Political Writings*, Gourevitch ed., Cambridge University Press, 1997.

⁹ See the end of *The Communist Manifesto*, in *Marx: Later Political Writings*, T. Carver ed., Cambridge University Press, 1996.

¹⁰ See the beginning of "An Answer to the Question: 'What is Enlightenment'," in *Kant: Political Writings*, ed. H. Reiss, trans. H.B. Nisbet, Cambridge University Press, 1991, p. 54.

¹¹ There might be a special connection between Cartesian dualism and rationalism. Descartes established the foundation of modern philosophy by singling out human mind as an independent entity. In this sense, he gives "reason" a prestigious role in our epistemic efforts.

To some extent, we can say that rationalism in the narrow sense is the general sense of modern rationalism applied in epistemology, and what we will discuss in this essay is the general sense of modern rationalism applied in moral and political philosophy. In this arena, a moral or political philosopher is a rationalist if she believes that human reason alone constitutes an independent guide in our search for moral or political order. A rationalist in this sense can either insist, for example with Kant, that the content of human reason can be known through transcendental introspection, or she can also claim that human reason, as the nature of human beings, can be discovered through empirical studies. An example for the latter case can be found in the so-called “science of human nature.” Encouraged by Newtonian scientific revolution, many 18th century philosophers, including Hume, Bentham, La Mettrie, and Condorcet, believe that the same methods used in physics can also be applied to the study of human nature, and once we attain to a sufficient knowledge of human nature, we will be able to know which moral or political order is suitable for human beings.¹²

This sense of rationalism dominated the Enlightenment movement in the 18th century and the early 19th century. In some weakened forms, such as perfectionism and libertarianism, it has stayed influential until today. But there is a fatal limit in rationalism: it cannot account for what Rawls calls “reasonable disagreement.” Rationalism may be right in claiming that without a blind faith in revelations, what can guide our earthly pursuits for knowledge and moral order is only our own rational

¹² See Christopher Berry’s entry “Human Nature, Science of, in the 18th Century” in *Routledge Encyclopedia of Philosophy*, Edward Craig ed., Routledge, 1998. A self claimed rationalist in our own time, Noam Chomsky, also holds the view that there is a definite human nature. More particularly, Chomsky believes that we have innate linguistic capacity, which exists before learning any language, and makes learning language possible in the first place. For a clarification about rationalism and human nature by Chomsky himself, see his dialogue with Foucault, “Human Nature: Justice vs. Power,” in *Foucault and His Interlocutors*, edited by Arnold Davidson, The University of Chicago Press, 1997.

faculty. But in real life, reason can give us different or even conflicting instructions. Despite this fact, rationalism assumes that there is only one correct conclusion if we use our reason properly. Rationalism is therefore a form of universalism. It says that since we all possess human reason that has a common form in its every instantiation, we should ultimately arrive at the same conclusion if we all stay faithful to our reason. According to this logic, there could be only two reasons for people to refuse the rational conclusion: either they are lying or they are dumb.

Usually people exemplify this universalism with the model of natural science, where convergence of opinions is expected for every issue in the long run. But even here philosophers can disagree. Thomas Kuhn, for example, illustrates how this model of convergence is misleading, and how most scientists can do fruitful research only under the dominant methodological scheme of their time, which is to be abandoned and replaced by another scheme after a scientific revolution, once and again.¹³ In the realm of morality, the diversity and disagreements of ideas and doctrines are even more resilient. Here we see our ideas about what is good for human life divided by religious, cultural, generational, and local differences, and the hope of convergence, if it really exists, lies far beyond our reach. These resilient disagreements were not expected by rationalist belief in the universality of human reason, neither could they be explained by that belief.¹⁴

This very limit of rationalism leads people to wonder whether there are alternatives to the rationalist belief. From the late 19th century on, rationalism began to receive criticisms, from Kierkegaard and Nietzsche (among others) at first, then

¹³ For Kuhn's view, see his *The Structure of Scientific Revolutions*, University of Chicago Press, 1962. For a systematic survey of modern philosophers refusing the model of convergence, see Richard Rorty, *Philosophy and the Mirror of Nature*, Princeton University Press, 1979.

¹⁴ It is interesting to notice that Rawls turns to political liberalism because he realizes the resilience of the fact of pluralism. As I will show in footnote 24, this realization helps Rawls get over the elements of rationalism of his earlier philosophy and step forward into a complete version of institutionalism.

from many 20th century continental philosophers, such as Heidegger, Foucault, and Derrida. These philosophers share the same dissatisfaction with rationalism, but after getting rid of rationalism, they usually are unable, and in some cases are reluctant, to give us any sense of direction. “Post-modernism” is perhaps the most appropriate uniform name for their point of view, although as the name speaks for itself, it is mainly a negative claim, not a positive construction. After totally abandoning the universalist element of rationalism, these philosophers found no legitimate positive pursuit besides encouraging diversities.

In this essay, I propose an alternative to rationalism in moral and political philosophy. I call this alternative “institutionalism,” and will define this term in order. But before we proceed further into institutionalism, we need to understand how rationalism works as a normative doctrine and a methodology in moral and political philosophy.

Rationalism in Politics and its Limit

Michael Oakeshott was perhaps the first philosopher to explicitly use the name “rationalism” to criticize a general tendency in moral and political philosophy.¹⁵ In an article written in 1947,¹⁶ right after the Second World War, Oakeshott examined “the most remarkable intellectual fashion of post-Renaissance Europe,” the rationalism in politics. Since Oakeshott’s criticism of rationalism was not influential in his own time, and was not well-received thereafter, I will examine it in detail in this section. We

¹⁵ By this I do not mean he is the only philosopher who has criticized political rationalism. Hayek, for example, also denounces political rationalism represented by French Enlightenment thinkers such as Rousseau, believing that this rationalism leads to “totalitarian democracy.” For Hayek, these thinkers are “deeply imbued with Cartesian rationalism,” while philosophers in English tradition, such as Hume and Burke, are more aware of the importance of institutions. See Hayek, *The Constitution of Liberty*, Routledge, 1960, Chapter 4.

¹⁶ Michael Oakeshott, “Rationalism in Politics,” in *Rationalism in Politics and Other Essays*, Basic Books, 1962.

need to keep in mind, however, that Oakeshott himself is a conservative political philosopher, and his criticism of rationalism is part of his vindication of his conservatism. Our essay here, on the other hand, will not confirm any version of conservatism. Oakeshott's critique of rationalism is therefore discussed here with a clear distance: we partly accept Oakeshott's analysis of rationalism in politics and its origins, but instead of concluding with conservatism, we believe that the reasonable alternative to rationalism is institutionalism.

We begin our discussion of Oakeshott's analysis of rationalism in politics with his definition of rationalism:

The general character and disposition of the Rationalist are, I think, difficult to identify. At bottom he stands (he always stands) for independence of mind on all occasions, for thought free from obligation to any authority save 'the authority of reason.' His circumstances in the modern world have made him contentious: he is the enemy of authority, of prejudice, of the merely traditional, customary or habitual. His mental attitude is at once sceptical and optimistic: sceptical, because there is no opinion, no habit, no belief, nothing so firmly rooted or so widely held that he hesitates to question it and to judge it by what he calls his 'reason'; optimistic, because the Rationalist never doubts the power of his 'reason' (when properly applied) to determine the worth of a thing, the truth of an opinion or the propriety of an action. Moreover, he is fortified by a belief in a 'reason' common to all mankind, a common power of rational consideration, which is the ground and inspiration of argument: set up on his door is the precept of Parmenides—judge by rational argument. But besides this, which gives the Rationalist a touch of intellectual equalitarianism, he is something also of an individualist, finding it difficult to believe that anyone who can think honestly and clearly will think differently from himself.¹⁷

Oakeshott clearly extracts, in the above paragraph, two central claims of rationalism: the self-sufficiency and the universality of the power of "reason." Conjoining them, rationalism claims that human beings everywhere will reach the same conclusion regarding moral and political order if they free themselves from customary bias or cultural traditions, and use their built-in reason properly. The major task of a rationalist, therefore, is to discover the real content of this "reason," through shrewd

¹⁷ "Rationalism in Politics," in *Rationalism in Politics and Other Essays*, Basic Books, 1962, pp. 1-2.

observations of various human experiences or through a priori or transcendental deduction of pure reason. After the true content of the reason is successfully uncovered, the moral and political order that we should pursue will present itself under the sunlight.

According to Oakeshott, the rationalist finds the methodology of skepticism especially helpful in his pursuit of the real content of the reason. Skepticism helps the rationalist to reach beyond the biases and customs covering reason, and to see reason as it is. Oakeshott also believes, in the cited paragraph, that there is an internal connection between skepticism and optimism: the rationalist dares to doubt everything because he believes that the radical doubts will lead him to the real content of reason. Oakeshott seems to suggest that this optimistic belief is nevertheless unfounded; otherwise Oakeshott would have chased this fantasy in his own thinking.

It is not hard to find evidences in modern philosophy to confirm Oakeshott's legitimate observation of the internal connection between rationalism and skepticism. Indeed, there are several stories within the history of rationalism that are particularly indicative of this dilemma of rationalism, that is, on the one hand, rationalism believes that once we get rid of the bias and prejudices imposed by customs and traditions, we will discover the true content of the reason, while on the other hand, the rationalist might find nothing after he peeled off every layer of the petal and reached into the core. Descartes believes that if he "wanted to establish anything at all in the sciences that was stable and likely to last," he must "demolish everything completely and start again right from the foundations."¹⁸ But after a tedious journey of trying to doubt everything, Descartes can only rest his mind in the faith (although he decks it out in

¹⁸ See Meditation I of *Meditations on First Philosophy*, in *The Philosophical Writings of Descartes*, ed. and trans. J. Cottingham, R. Stoothoff, D. Murdoch and A. Kenny, Cambridge University Press, 1984-1991.

the form of what would have to be—if it really deserved the name at all—a viciously circular “proof”) that since a God infinitely good in nature exists, our reason can be trusted. George Berkeley claims that “I do not pin my faith on the sleeve of any great man. I act not out of prejudice & prepossession. I do not adhere to any opinion because it is an old one, a receiv’d one, a fashionable one, or one that I have spent much time in the study and cultivation of.”¹⁹ But after he famously concludes that “to be is to be perceived,” he cannot make peace with the possibility of the continual existence of those things that are not perceived by any actual observer without introducing god as the ultimate guarantee of the persistence of ideas. Hume is also determined to “reject every system...however subtle or ingenious, which is not founded on fact and observation,”²⁰ but in the end, he can only say that “reason is, and ought only to be, the slave of the passions, and can never pretend to any other office than to serve and obey them.”²¹ These examples vividly show that the rationalist’s belief in the true content of the reason is strong yet fragile at the same time.²²

The two central claims of rationalism, the self-sufficiency and the universality of the power of the reason, according to Oakeshott, lead to “two other general characteristics of rationalistic politics”: “politics of perfection” and “politics of uniformity.” Rationalists believe that politics is about rationally solving problems by technically applying rational principles, and once rational solutions of the problems are implemented, a state of perfection would have been achieved. Also, since perfect

¹⁹ George Berkeley, *Philosophical commentaries, generally called the Commonplace book [of] George Berkeley, bishop of Cloyne*, edited by A.A. Luce, Thomas Nelson and Sons, 1944, p. 465.

²⁰ See Hume, *Enquiry concerning the Principles of Morals*, edited by L. A. Selby-Bigge, 3rd edition revised by P. H. Nidditch, Clarendon Press, 1975, p. 173.

²¹ See Book II, Part III, Section III of Hume, *A Treatise of Human Nature: Being an Attempt to introduce the experimental Method of Reasoning into Moral Subjects*, edited by L.A. Selby-Bigge and P.H. Nidditch, Clarendon Press, 1975.

²² Of course, in the case of the “rationalism” of the empiricists Berkeley and Hume, we are returning to the broad sense of “rationalism” to make our point.

solutions are those solutions that suit human reason, rationalists usually do not worry about whether different circumstances require different solutions. Encouraged by these beliefs, rationalists never hesitate in introducing new plans into our political life. They implement different political projects, one wave after another, with no regard to their cultural and political traditions. They have this inexhaustible energy and confidence because they take political practice as a practice of correctly applying rational principles.

Oakeshott believes that rationalism contributes both vices and virtues to modern politics: “Not only are our political vices rationalistic, but so also are our political virtues” (p. 21). As to its origin, Oakeshott traces this rationalist belief to the founders of modern philosophy, especially Francis Bacon and Descartes; rationalism in politics goes back even further to Machiavelli. But overall, for Oakeshott, rationalism was not created by any philosopher; it was the product of the “circumstances,” and “so long as the circumstances which promoted the emergence of rationalistic politics remain, so long must we expect our politics to be rationalist in disposition” (p. 29).

Now what circumstances gave birth to this “unavoidable” trend of rationalistic politics that is based on principles rather than on traditions? Oakeshott doesn’t believe that we owe “our predicament” of rationalistic politics to “the place which the natural sciences and the manner of thinking connected with them has come to take in our civilization” (p. 29). Neither does Oakeshott believe that the demand for technological knowledge, which is recognized by Oakeshott with pity as the major doctrine of rationalism, is “the inevitable result of an industrial civilization” (p. 33, footnote). To make this connection between rationalism and modern sciences and industries, for

Oakeshott, would mistakenly validate the claim that “rationalistic and the scientific points of view necessarily coincide” (p. 29).

The circumstances that prompted the emergence and sustained influence of rationalistic politics, for Oakeshott, is the modern condition of our “lack of political education” (p. 30). That is, rulers in modern politics, unlike rulers in the middle age, come into power usually with no political experience, and as a result, they need some shortcut to know how to handle their job. Rationalism provides such a shortcut by capturing complicated political matters in abstract principles and techniques. This shortcut might give these leaders enough confidence in executing their job, but the confidence is only an illusion. Deep inside, they are still ignorant about politics. The negative influence of rationalism in politics, according to Oakeshott, is that every generation of political leaders tries to build the rational political order freshly anew, only to discover that the traditional bonds of our political society are in ruin once and again.

The main characteristics of rationalism are expounded by Oakeshott very well, but his analysis of the origin of rationalism is questionable. Rationalism rose onto the world stage, and became more and more popular in early modern times, not due to the lack of political education, but mainly due to the growth of scientific knowledge and its application in modern technologies and industries. Indeed, the explosive growth of knowledge and the rationalist belief that we can know the world as it is have been mutually enhancing each other for several centuries. This rationalist belief was then easily simulated in sciences directed at men and their society, which resulted in what Oakeshott calls “rationalism in politics.” The positive side of the rationalist belief is that it has been very helpful in promoting the growth of every branch of knowledge. Without the widespread skepticism about customs and traditions, without the

relentless desire to know what the world really is, innovations of knowledge in the modern times would be unimaginable. Nevertheless, the negative effects of this rationalist belief on modern societies are also obvious: people became so passionate for, and so confident with, this belief that they repeatedly tried to build human society totally anew, and to get rid of the unsatisfactory factors of social life through wholesale solutions.

Another aspect of rationalism may also contribute to the authoritarian tendency of rationalist politics. Since rationalism takes “reason” as the ultimate human nature, the most fundamental human faculty, it is logical to infer that although every human being has the potentiality to use his or her reason up to the universal standard, some members of a society may turn out to be more capable in practice of exercising their rational faculty. When this is the case, it is in the other members’ interests to follow these people’s leadership. Indeed, since a rational moral and political order, as well as true knowledge about the world, is ultimately suitable and good for the rational soul of everybody, there is no reason to refrain from forcing one’s own opinions onto other people—so long as those opinions are really rational discoveries. The hierarchy of rational capability among different people, therefore, constitutes a justification of the hierarchy of decision-making among them. At least in some cases, rationalism allows paternalism to be the justifiable political order.²³

Scholars have long been warning about the danger of building a fascist or communist society based on the rationalist belief that a rational society can be built

²³ Karl Popper made this point when he demonstrated the difference between the rational and the reasonable as early as in 1945. He believes that although as a rational faculty, reason “may be possessed and developed by different men in vastly different degrees,” “we can never excel others in our reasonableness in a way that would establish a claim to authority.” See his *The Open Society and its Enemies*, 5th edition, Routledge, 1966, Chapter 24, p. 499 in 2002 reprint. We should keep in mind, however, that Popper defines “reason” as including both our capability of rationality and our capability of reasonableness. Defined in this way, “rationalism” doesn’t support any authoritarian regime.

once and for all, with every citizen either voluntarily or forced to endorse the same ideology. Arendt's analysis of the origin of totalitarianism clearly identifies this process; Isaiah Berlin famously charges that Hegel's rationalism is the intellectual origin of totalitarianism; Popper's refutation of utopianism is motivated by the awareness of the danger of rationalism; Weber's concept of rationalization also embodies this logic very well, even before any modern form of totalitarianism was seriously practiced.²⁴ Whether the same danger is present when we try to justify democracy with the same rationalist belief, though, is another problem. A rationalist who believes in democracy is usually tempted to believe that when everybody gets enough education, and think for themselves rationally enough, they will come to the same conclusion about what is right and what is just, namely, a democratic social order.²⁵ Just for this reason, this rationalist justification of liberal democracy, I believe, can be as dangerous as other forms of rationalist utopianism.

²⁴ For their different analyses of the connection between intellectual over-confidence and modern totalitarianism, see Hannah Arendt, *The Origins of Totalitarianism*, New York: Harcourt Brace, 2nd edition, enlarged, 1958; Isaiah Berlin, *Four Essays on Liberty*, Oxford: Oxford University Press, 1969; Karl Popper, *The Open Society and its Enemies* (first edition in 1945); and Max Weber, *Wirtschaft und Gesellschaft* (*Economy and Society*, 1922). To be balanced on this issue, we should notice that rationalism could also be used to facilitate a totally different political doctrine: if we follow Leibniz's theodicy and argues that whatever happens in our world must be backed by reason, we may end up promoting a fatalist doctrine, which basically provides no sense of direction. In fact, these two totally opposite doctrines, since they can both be derived from rationalism, can sometimes be combined in certain theories. To some extent, Marxism is such a combination of totalitarianism and fatalism: it claims, with a contradictory yet charming tone, that communism is both the unavoidable historical necessity and the normative goal that we should pursue. Ian Shapiro goes so far as to name the tension between confidence in knowledge and desire for liberties as the basic tension of enlightenment movement. Here is his representation of this tension: "If there are unassailable right answers about political legitimacy that any clearheaded person must affirm, in what sense do people really have the right to decide this for themselves? But if they are free to reject what science reveals on the basis of their own convictions, then what is left of science's claim to priority over other modes of engaging with the world? We will see this tension surface repeatedly in the utilitarian, Marxist, and social contract traditions, without ever being fully resolved." See Shapiro, *The Moral Foundations of Politics*, Yale University Press, 2003, p. 17.

²⁵ Rawls is not an obvious example for this category, but in some sense, Rawls in TJ was tempted to justify liberal democracy based on this rationalist hope, when he claimed that the original position represents a point of view from which we "regard the human situation not only from all social but also from all temporal points of view," and therefore a point of view all "rational persons can adopt within the world." (TJ, the last paragraph.) Originally Rawls tried to frame his arguments from the original position as a rational choice theory; later in PL he dismissed this connection. See footnote 7 on p. 53 of PL; footnote 2, p. 82 of JF.

The deep influence of rationalism on the moral and political arena of modern times is perhaps due to the need for an effective strategy of communication in a mass society, not due to the lack of experience in modern political leaders, as Oakeshott suggests. With the recourse to the absoluteness (self-sufficiency) and the universality of human reason, a rationalist can easily persuade others, and perhaps even himself, of what he is proposing to do in politics. Rationalist belief works in a modern society in this way: certain experts claim that they have found certain doctrines to be rational, and that everybody who deliberates rationally enough would agree to these doctrines; certain politicians are excited by these claims, and organize together to mobilize the mass people to join them in the pursuit of this rationalist social order; after they come into power by populist support, they force these doctrines on everybody in the country; partly due to the pressure of socialization, partly due to their sense of powerlessness as isolated individuals, and partly due to their admiration of power, most people inside that country would more or less voluntarily attach themselves to these doctrines, and to the totalitarian regime.

The alternative to rationalism suggested by Oakeshott, a vague version of conservatism, is also unsatisfactory. He suggests that we don't trust reason as much as the rationalist does, and instead put our trust in tradition, the tried and tested social practice. In every step forward, Oakeshott advises, we should stay suspicious and cautious, with humble admission that we may not understand our social fabric very well and therefore should not adjust it merely according to our wishful thinking.²⁶ Granted this is a suggestion from an old wise man, we still don't know what the positive goal of a conservative is. Obviously conservatives don't want to insist that

²⁶ Oakeshott presents a vivid description of the "conservative temperament" in "On Being Conservative," the main theme of which is a preference of small and slow innovations over big and rapid improvements. See *Rationalism in Politics and Other Essays*, article 7.

the status quo is always automatically justified, given that it is a tradition. In any case, the rapid rhythm of modern life cannot be slowed down, especially when there is an international competition for development going on. The real issue is, therefore, where and how we could proceed from the status quo, not how to preserve the status quo or the tradition. To move forward, we have nothing to rely on besides our rational deliberation. In this sense, conservatism is not an alternative to rationalism, but only a supplementary caution to rationalism. This confirms Hayek's observation that "the decisive objection to any conservatism" is that conservatism "cannot offer an alternative to the direction in which we are moving. It may succeed by its resistance to current tendencies in slowing down undesirable developments, but, since it does not indicate another direction, it cannot prevent their continuance."²⁷

The conservative needs to make some concessions to the rationalist. He must admit that our rational deliberation is necessary for us to proceed from the tradition, and for us to even be able to appreciate the rational merits of the tradition. After this admission, the conservative can then offer his admonition that our rational understandings of the tradition and our rational plans for the future are always fallible, and reformation should be piecemeal in case we make wrong choices. We should show respect for traditional social practices, but this respect is not, as even the conservative would agree, due to some mysterious power of the past. Traditional or past social practices worked well only because they sustained a balance between individual members' personal efforts, their understandings of their society and their anticipations from their society, and the movements of the society in local units and as a whole.²⁸ It is important to be aware of the fact that this kind of balance or

²⁷ See the after word "Why I am not a Conservative," in *The Constitution of Liberty*, Routledge, 1960.

²⁸ This point, as well as other points presented at early stages of this essay, will become clearer as the main arguments for institutionalism are further illustrated.

equilibrium is never stable in stillness, and changes are always happening. The rationalist may put us in danger when he preaches wholesale rational solutions for all social problems, but he is not wrong when he suggests that no social arrangement is automatically justified just because it used to work well. Combining the merits of both the rationalist and the conservative, we say that all social arrangements should be rationally justified and adjusted, not once and for all, but in an endless process of moving forward within old and new traditions.

I believe that we can capture this delicate balance between rationalism and conservatism with a normative stand that I am promoting in this essay, namely, institutionalism. The conservative usually cannot offer the rationalist a satisfactory answer about why the tradition deserves respect; indeed, the conservative can logically admit that he doesn't know the reason, and doesn't need to know. This usually leads the rationalist to charge that the conservative is simply sticking to the tradition irrationally and stubbornly, and therefore doesn't deserve being listened to. To this deadlocked conversation, the institutionalist can contribute a middle-ground reconciliation. The institutionalist admits that human social institutions, including morality and other social and political ideas and structures, are working in a way that is not reducible to individual understandings; but on the other hand, the institutionalist insists that there is nothing wrong when individual members of a society try to make sense of their social surroundings with their tiny brains and hearts, and to initiate social changes with their own understandings and expectations. The priority, for the institutionalist, is to avoid oppression over the free use of reason, whether the oppression is from the conservative imposition of the traditional, or the rationalist indoctrination of a perfect future.

The institutionalist strikes this balance not because he wants to implement a civilized compromise between the rationalist and the conservative. Rather, the institutionalist has his own normative stand, which enables him to stand on the middle-ground, no matter where the conservative and the rationalist stand. In the next two sections, we will present the normative doctrine of institutionalism, beginning with an exploration of the established meaning of institutionalism in the social sciences.

Institutionalism in The social sciences

As we did with rationalism, we will first clarify the traditional meaning of the word “institutionalism,” and then present the theory of institutionalism as it will be used in this essay.

“Institutionalism” is a term widely used in economics, political science, legal theories, sociology, anthropology, among other disciplines. The basic insight of institutionalism is that to understand a social phenomenon, it is not enough to understand the content of human reason expressed by individual “rational” choices, because the institutional mechanisms through which individuals interact with each other, and against which they make their choices, are also important. This insight can be properly captured, I believe, in a philosophical doctrine, an alternative to philosophical rationalism. Before we dwell on this task, however, let’s first see how institutionalism works in the social sciences.

Institutionalism in the social sciences was developed generally as a reaction to rationalist theoretical approaches. As happened in the history of philosophy, modern social sciences had long been working on a rationalist assumption, which states that since social order is good for individual members, it must arise from individuals’

preferences as determined by their separate rational interests. Adam Smith, for example, famously claims that market economy can work in good shape because every individual participant's pursuits of personal interests constitute an "invisible hand," which automatically generates an economic order.²⁹ Earlier than Smith, Hobbes, although he admits that if every individual is left to make his own choice, collectively there wouldn't be any order but chaos of the state of nature, also believes that social order arises from everybody's rational calculation, that is, "fear of violent death and of wounds disposes men the same way, and for the same reason," therefore "desire for ease and sensual delight disposes men to obey a common power."³⁰ This rationalist assumption, again, is about the self-sufficiency and universality of human reason.

Following these founders, modern social scientists had long been working on the basis of this rationalist model, which takes individuals and their interests and preferences as given, and explains social phenomena as aggregations of individual choices. In economics, for example, research had been concentrating on theorizing about individual choices, first in Neoclassical economics, then after Arrow published his "General Possibility Theorem" in 1951,³¹ in Social Choice (also by the name of "rational choice") theories and game theories. For Neoclassical economists, economics is "the science which studies human behaviour as a relationship between

²⁹ Adam Smith (1759), *The Theory of Moral Sentiments*, edited by D.D. Raphael and A.L. Macfie, Oxford University Press, 1976, Part IV, Chapter 1, p. 184. See also Adam Smith (1776), *An Inquiry into the Nature and Causes of the Wealth of Nations*, edited by R. H. Campbell and A. S. Skinner, Clarendon Press, 1976, p. 471.

³⁰ Thomas Hobbes (1651), *Leviathan, or the Matter, Form and Power of Commonwealth, Ecclesiastical and Civil*, edited by Richard Tuck, Cambridge University Press, 1991, Part I, Chapter 11.

³¹ Amartya Sen's lecture upon receiving 1998 Nobel Prize, "The Possibility of Social Choice," published in *The American Economic Review*, Vol. 89, No. 3 (June 1999), pp. 349-378, p. 351. For Kenneth Arrow's theorem, see *Social Choice and Individual Values*, New York: Wiley, 1951.

ends and scarce means which have alternative uses.”³² For social choice theories, the basic challenge is stated in Arrow’s Theorem: when individual members of a society are asked for their preferences among the same basket of items, their choices do not add up to a determinate choice of the society as a whole. The task for different social choice theories and game theories, therefore, is to study the interaction between individual preferences and collective decisions, treating the latter as the aggregation of the former. These studies do not lack of consequential theoretical achievements, but they assume a rationalist conception of human nature. In light of institutionalism, this assumption is defective: it overlooks the mechanisms against which individual choices are made and through which collective interactions are carried out. These mechanisms take care of transaction costs, which “are the economic equivalent of friction in physical systems.”³³ Without studying them, economics, no matter how well it uses the mathematical tools, would still remain at its primitive stage, like the stage of the development of physics before it seriously addressed friction.

To overcome this defect, an institutional understanding of human beings was put forward, first by the “Old” institutional economics around the beginning of the 20th century, then by the “New” institutional economics roughly after 1960, the year in which Ronald Coase published his “The Problem of Social Cost.”³⁴ These two schools have significant differences in styles and emphases, but their institutional

³² Lionel Robbins, *An Essay on the Nature and Significance of Economic Science*, Macmillan, 1935, p. 15.

³³ Oliver Williamson, *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting*, Free Press, 1985, p. 19.

³⁴ See Ronald Coase, “The Problem of Social Cost,” *Journal of Law and Economics*, October 1960. Another contention traces the origin of new institutional economics as early as 1937, when Coase published his famous article “The Nature of the Firm,” in *Economica*, New Series, Vol. 4, No. 16, November 1937, pp. 386-405. For the claim that New Institutional Economics began with this article, see Coase’s own retrospection, “The New Institutional Economics,” *The American Economic Review*, Vol. 88, No. 2 (May 1998), pp. 72-74. For a short yet comprehensive exploration of the movements of old institutional economics and new institutional economics, see Malcolm Rutherford, “Institutional Economics: Then and Now,” *The Journal of Economic Perspectives*, Vol. 15, No. 3 (Summer 2001), pp. 173-194.

understanding of human beings is more or less the same. Thorstein Veblen, one of the founders of the “Old” institutional economics, expresses this understanding very well: “The situation today shapes the institutions of tomorrow through a selective, coercive process, by acting upon men’s habitual view of things, and so altering or fortifying a point of view or a mental attitude handed down from the past.”³⁵ For the new institutional economics, individual choices or rational choices are almost infinitely open and therefore provide no definite direction without “the existence of an imbedded set of institutions that has made it possible for us not to have to think about problems or to make such choices.” That is, “Individuals make choices based on subjectively derived models that diverge among individuals and the information the actors receive is so incomplete that in most cases these divergent subjective models show no tendency to converge.”³⁶ Institutionalism in economics thus broke with the tradition of rationalism in classical and neoclassical economics, which assumes the self-sufficiency and universality of rationality.

Institutionalism in the social sciences may present different versions of this institutional understanding of human beings in different branches of knowledge, but the institutionalist criticism of the traditional approaches is more or less the same. According to institutionalism, social orders among human beings, including their religious, moral, political, legal, and economic orders, are not prescribed by a pre-institutional and universal human nature called “reason;” rather, these orders are framed by different human beings’ practical interaction, and institutional engagement, with each other in local and historical contexts. To quote a famous passage from institutionalism in legal studies, “systems of norms, aims and values are not

³⁵ Veblen (1899), *The Theory of the Leisure Class: An Economic Study of the Evolution of Institutions*, Transaction Publishers, 1989, pp. 190-191.

³⁶ See Douglass North, *Institutions, Institutional Change and Economic Performance*, Cambridge University Press, 1990, p. 23 and p. 17 respectively.

organizing and justificatory forces logically prior to social reality...; rather, they are systems of deliberation and control, which are constituted through social action and interaction.”³⁷ Originated and framed in such a process, social orders everywhere bear marks of local and historical experiences, and thus are contextual; the same beliefs or terms regulating actions may have different meanings, justifications, and effects in different contexts. Social orders lie ultimately at people’s hearts, so to speak, and people’s hearts are framed in different ways by their divergent experiences of dealing with their co-community members. As the late judge Oliver Holmes repeatedly assured us, the life of the law is not logic, but experience, and “an answer cannot be obtained from any general theory.... The grounds of decision are purely practical, and can never be elicited from grammar or from logic.”³⁸

Now, is this contextuality of social orders the alternative to rationalism proposed by institutionalism? Are we to be satisfied with this divergence of social orders? Institutionalism, as we find in the social sciences, does have a good point in its criticism of the self-sufficiency and universality of rationalism, but as a better understanding of human beings, does such institutionalism provide a better approach of research?

For both the proponents and critics of institutional economics, institutionalism in economics seems to provide no alternative other than an emphasis on empirical studies of particular institutions. As one of the new institutional economists says, “the core ideas of institutionalism concern institutions, habits, rules, and their evolution. However, institutionalists do not attempt to build a single, general model on the basis of those ideas. Instead, these ideas facilitate a strong impetus toward specific and

³⁷ See MacCormick and Weinberger, *An Institutional Theory of Law: New Approaches to Legal Positivism*, Dordrecht: D. Reidel Publishing Company, 1986, p. 26.

³⁸ See Oliver Wendell Holmes, Jr., *The Common Law*, Boston, MA: Little, Brown, 1881, p. 264.

historically located approaches to analysis.”³⁹ Or as Herbert Simon complains, new institutional economics “suggests a whole agenda of microeconomic empirical work that must be performed...Until that work has been carried out...the new institutional economics and related approaches are acts of faith, or perhaps of piety.”⁴⁰ More generally, institutionalism in the social sciences, by recognizing the local and historical characteristics of social orders, promotes the awareness of the interconnection between the subject of a particular social science with a much wider social, cultural and historical background. This awareness in turn inspires a more empirical and more realistic study of the respective social phenomenon.

To be sure, this concentration on empirical studies is no small achievement. In economics, for example, before the new institutionalists intervened, neoclassical economics had long been following the model of hypothesis and deduction, namely, to make assumptions in order to simplify the situations, and then to make deductions from these assumptions. The claimed universality of economic science was therefore based on some unrealistic assumptions, such as “the assumptions of perfect competition, perfect information, perfect contract enforcement, and complete markets and contracts...” The “benchmarks” developed under these assumptions “are likely to be misleading in realistic settings.”⁴¹ “There is a lack of empirical work,” as North complains,⁴² and institutional economics provided such an incentive to study concrete economic phenomena under different institutional environments.

³⁹ Geoffrey Hodgson, “The Approach of Institutional Economics,” *Journal of Economic Literature*, Vol. 36, March 1998, p. 168.

⁴⁰ See Herbert Simon, “Organizations and Markets,” *Journal of Public Administration Research and Theory*, Vol. 5, No. 3 (July 1995), p. 275.

⁴¹ See Karla Hoff and Joseph Stiglitz, “Modern Economic Theory and Development,” at the webpage, <http://www.worldbank.org/research/bios/khoff/hoff-stiglitz-frontiers%20of%20dev%20ec.pdf>, p. 427.

⁴² Douglass North, “Understanding Institutions,” in C. Menard ed., *Institutions, Contracts, and Organizations: Perspectives from New Institutional Economics*, Cheltenham, 2000, p. 8.

Nevertheless, understood in this way, institutionalism in the social sciences seems to be a pure negation of the universal model of the rationalist approach it criticizes. Instead of aiming at discovering universal laws of social phenomena, institutionalism in the social sciences seems to satisfy itself with descriptions of details and emphasizes on particularities. As one of the old institutional economists says, “As economics progresses in the direction of a description of economic behavior, serious questions are raised, not only as to the vitality of the older types of economic law, but anything deserving the name ‘economic law’ can survive. Sequences there are, but they are relative to time and space.”⁴³ Institutionalism in the social sciences, in this sense, seems to be unable to revive any element of universalism after it correctly refuses the rationalist assumption of the self-sufficiency and universality of human reason. John Commons, for example, shows serious interest in developing a universal model of institutionalism,⁴⁴ but he refuses to construct a normative theory of institutionalism indicating any direction of development. Commons states his ambition of institutionalist universalism in his famous definition of an institution: “If we endeavor to find a universal circumstance, common to all behavior known as institutional, we may define an institution as collective action in control, liberation and expansion of individual action.” Commons further believes that “from this universal principle of collective action in control, liberation and expansion of individual action arise not only the ethical concepts of rights and duties and the economic concepts of security, conformity, liberty and exposure, but also of assets

⁴³ John Maurice Clark says so in a roundtable discussion, “Institutional Economics,” in *American Economic Review*, Vol. 22, No. 1 (March 1932), p. 106.

⁴⁴ Commons’s positive theory of institutionalism is presented in two books: *Institutional Economics: Its Place in Political Economy* (Macmillan, 1934) and *The Economics of Collective Action* (Macmillan 1950).

and liabilities.”⁴⁵ Nevertheless, when it comes to comparing different institutional systems, he refrains from making a judgment. For example, although he thinks that the “American method of voluntary follow-your-leader capitalism is much more powerful, flexible, and efficient than the legal compulsion of either the cartels of Germany, the Fascism of Italy, or the communism of Russia,” he ultimately believes that “it is doubtful whether, under modern conditions, a decision can be reached as to which is the better public policy—the communism of Russia, the Fascism of Italy, or the Banker Capitalism of the United States.”⁴⁶ On this front, new institutional economics doesn’t fare better than old institutional economics. In general, new institutional economics also emphasizes “the limits of general theory in the social sciences. It favoured approaches that are sensitive to key-differences in socio-economic systems through time and space.”⁴⁷

In contrast to the empirical character of institutionalism in the social sciences, the institutionalism developed in this essay will be theoretical and normative. Before we present our normative theory of institutionalism in the next chapter, however, it is necessary to clarify two central concepts of institutionalism, namely, practical action and institution, in the following section.

Practical Actions and Institutions

A society can be said to consist either of membership persons or of actions carried out by its members. The latter description is more appropriate because actions can be carried out not just by individual persons, but also by various levels of

⁴⁵ See John Commons, “Institutional Economics,” *The American Economic Review*, Vol. 21, No. 4 (December 1931), pp. 649-650.

⁴⁶ John Commons, *Institutional Economics: Its Place in Political Economy*, pp. 896, 903, respectively.

⁴⁷ Geoffrey Hodgson, *The Evolution of Institutional Economics: Agency, Structure and Darwinism in American Institutionalism*, Routledge, 2004, p. xiv.

collective bodies of individual persons, and these collective bodies are usually hard to define in terms of individual persons.⁴⁸ The French population, for example, consisted of the same group of people before and after 14 July 1789, but the French society and the French nation were totally changed on that day. We are tempted to say that this change happened ultimately in each individual Frenchman's actions, but obviously a full explanation of the change cannot be secured unless we also understand this change in terms of these people being parts of the French society and the French nation. This is true especially when we take into consideration the fact that those Frenchmen took actions with their own understandings and expectations about what a good and just French society should look like, not just with their concerns for their individual gains.

Since rationalism is based on a conception of the nature of either human beings as individual persons or human beings as collective bodies, analyzing societies into their membership persons has been a very effective strategy for rationalist moral, social, and political theories. Institutionalism, on the other hand, understands societies in terms of practical actions carried out in these societies, and the rules or institutions regulating these practical actions. Correspondingly, institutionalism analyzes the members of a society not in terms of persons, but in terms of agents. Institutionalism deals with agents at both individual level and different collective levels, and for collective bodies of individuals, we had better call them "agents," not "persons," although the latter name can be appropriate in some contexts. In this section, we

⁴⁸ The English word "person" originated from the Latin word "*persona*," which means a mask worn by characters in classical dramas. Thus The Oxford English Dictionary (online) defines the primary meaning of "person" as "A role or character assumed in real life, or in a play, etc.; a part, function, or office; a persona; a semblance or guise. Hence: any of the characters in a play or story." Thus the word "person" primarily means the role a human being plays, not a human being by herself. In this sense, "person" can be used to refer to agents of any action, either individual actions or collective actions. Nevertheless, due to its more common meaning as "a human being," I will not use the word "person" so often to make the point of institutionalism.

define practical actions and institutions, the two central concepts in institutionalism, to prepare the way for the presentation of institutionalism in the next chapter.

The concepts of practical action and institution can be illustrated, again, with a comparison with the basic concepts of rationalism. Rationalism, as the foundation of modern social sciences after Descartes, is characterized by a sense of distinction between the “inner self” and the “outside world.” Social phenomena, according to rationalism, occur when individual minds meet with each other in a public space called “society.” The fundamental concepts in rationalism are therefore individuals and their society. By contrast, institutionalism doesn’t rely on this dichotomy of individuals and their society, but instead understands human beings and their society in terms of practical actions carried out by individuals and collective bodies of individuals within the society, and the institutions and understandings⁴⁹ guiding these practical actions.

Depending on different weight put on these two concepts, there are two schools or two tendencies inside the camp of rationalism: individualist rationalism generally believes that the society is the tool for individuals to realize their separate and collective goals, while holist rationalism insists that individuals are only of instrumental value for the goals or ends of the society. For individualist rationalism, as is shown in the cases of Hobbes and Adam Smith, individual human beings meet with each other in society with their own personal interests and desires in their bags; the society is valuable for them because it is the place where they can satisfy their innate wants, through competition and cooperation. To use a metaphor, the society is

⁴⁹ I will not go so far as to claim that institutions are the only motivator of practical actions. Obviously people are motivated by many different factors to act, such as their understandings of their rational interests, and their feelings and imaginations. In this essay I will mainly consider two types of motivations, concerns of rationality and concerns of reasonableness. This in no sense limits these two types of motivation as the only working forces behind all practical actions.

a market, where individuals with different interests and desires can find what they want through exchanges. For holist rationalism, as is represented in Hegel's holistic rather than individualistic understanding of reason, the human society as a whole body has its own life or goal, the realizing of which is to be carried out through the efforts of individuals. Here another metaphor is used: the society is a "living organism," which can only function well if its different parts, understood as individuals, are consciously or unconsciously performing their own functions.⁵⁰

For both individualist rationalism and holist rationalism, however, the most important task is the same thing, which is to discover the nature of human beings (the content of reason), either as individuals or as collective bodies (societies). By contrast, institutionalism relies neither on this concept of human nature, nor on individuals and the society as its fundamental concepts. Unlike rationalism, which, following a Cartesian dualism, takes individuals and the society as ultimately two separate existences, institutionalism recognizes the ontological relevance of the society for the very existence of individual persons. Individual persons, for institutionalism, are always viewed as members of a society. This drives home the point that human beings are social animals, that is, without human societies (big or small human communities), there are no human beings. Biologically, an individual human being can perhaps

⁵⁰ Although Hegel may not be a diehard supporter of totalitarianism, as Popper and others contend, there seems to be no doubt that Hegel's holistic theory of the state does not constitute a democratic theory of the state. This point can be demonstrated by a quotation from Hegel: "To hold that every single person should share in deliberating and deciding on political matters of general concern on the ground that all individuals are members of the state, that its concerns are their concerns, and that it is right that what is done should be done with their knowledge and volition, is tantamount to a proposal to put the democratic element without any rational form into the organism of the state, although it is only in virtue of the possession of such a form that the state is an organism at all." Hegel therefore only allows individuals democratic participation to the extent that this participation works for the function of the state as a whole organism. Here I am only using Hegel as an example of holistic rationalism; a comprehensive assessment of Hegel's political philosophy cannot be offered in this short essay. For the quotation, see Hegel, *Philosophy of Right*, translated by T.M. Knox, Clarendon, 1942, p. 200. For Popper's criticism of Hegel, see *The Open Society and its Enemies*, chapter 12. For a defense of Hegel against the charge of totalitarianism, see Walter Kaufmann, "The Hegel Myth and its Method," in Walter Kaufmann, *From Shakespeare to Existentialism: Studies in Poetry, Religion, and Philosophy*, Boston, Mass.: Beacon Press, 1959, pp. 88-119.

survive; but without any exposure to human societies, a human being cannot develop human intelligence and the sense of the human agency.⁵¹ Thus in particular, and most crucially for our considerations, the meaning of individual human choice, “rational” deliberation, and action cannot be assessed apart from its place within a particular society, as an independent variable to be balanced against whatever might be regarded as the demands of that society. As Rawls says when he talks about “the deep social rootedness of people within an established framework of their political and social institutions,” “the concepts of person and society fit together; each requires the other and neither stands alone.”⁵²

The social nature of human beings can be demonstrated very well by the social nature of human languages. It is obvious that for individual human beings to come together and construct a social order, especially a social order on large scales and in high complexities, they must be able to communicate with each other with some forms of natural language. Any natural language, however, due to its complex structure and the arbitrary connections of words, meanings, and references it establishes, must be constructed by generations of individuals living within a linguistic community, not by any individual’s independent design. To some extent, we can say that a human being is a human being only if she can communicate with other human beings by linguistic expressions, including both oral languages and sign (or

⁵¹ There is a powerful hypothesis in anthropology, which proposes that human intelligence of coping with complex situations by complex rational calculations and complex plans of actions is possible only through continuous exposure to a social environment. To some extent, we can say that group intelligence is the pre-condition of individual intelligence. For a general exploration of this hypothesis, see Kummer, Daston, Gigerenzer, and Silk, “The Social Intelligence Hypothesis,” in *Human by Nature: Between Biology and the Social Sciences*, edited by Weingart, Mitchell, Richerson, and Maasen, Lawrence Erlbaum Associates Publishers, 1997. For a philosophical reflection on social intelligence and evolutionary morality, see Valerie Stone, “The Moral Dimensions of Human Social Intelligence,” in *Philosophical Explorations*, Vol. 9, No. 1 (March 2006).

⁵² See MP, p. 366.

gesture) languages. The social nature of language therefore confirms the social nature of human beings.

It was not a small achievement for philosophers of language to accept the social nature of language. At its early stage, philosophy of language tended to fix meaning and reference to empirical verifications, which basically requires only an individual facing the outside world. This approach was deemed attractive perhaps because the major concern for philosophers of language at this stage was the language of the natural sciences, which relies first and foremost on empirical data for its clarification and verification. Later on, when philosophers of language widened their attention to language in general, and particularly to ordinary language, they more or less converged on the thesis that language is first and foremost a social practice based on rules and norms. As Wittgenstein vividly illustrates, even if a lion could talk, we would not be able to understand him anyway,⁵³ since his life and thinking is so alien to ours. To understand each other's language, we need to not only understand the words and the rules of a language, but also attribute to each other a status of rational agency, thinking and speaking as a member of a particular human society, of which we must therefore also have some understanding. In this sense, language is a type of social institution, or rather, one of the most fundamental institutions for any human society.

In an effort to strike a balance between individuals and the society, institutionalism takes "practical action" as one of its fundamental concepts.⁵⁴ A

⁵³ See Wittgenstein, *Philosophical Investigation*, Basil Blackwell, 1953, p. 223.

⁵⁴ Recent philosophical reflections on actions were perhaps initiated by Donald Davidson. See his *Essays on Actions and Events*, Oxford University Press, 1980, in which he proposes that we distinguish actions from merely happening events by the criterion of the presence of intentionality. In social theories, however, actions and agents became important concepts at an earlier stage, perhaps initiated by Max Weber, for whom the interpretation of the "meanings" of social actions is essential for

practical action is an action carried out ultimately by individuals, alone or within a group, but it carries practical considerations or meanings that cannot be comprehended apart from social factors. In this sense, practical actions are places where individual human beings and their society mix together, or the places where individuals express their social nature.

Practical action, as a category, does not include every kind of human action. There are human actions that are only out of organic necessity and usually do not call for practical guidance, such as breathing, eating, and sleeping. These actions can be completely understood with a language of causal relationship. In terms of non-practical actions, we can indeed maintain that a crazy man is not so much different from a man with sanity, for a crazy man usually can handle his organic life activities in pretty normal ways.⁵⁵ By contrast, practical actions cannot be understood merely in terms of physical or spatial movements. In order to make sense of a practical human action, from an observer's point of view or from a perspective internal to the subject of the action, we need to treat the action as backed not just by driving forces or causes, but also by motivational reasons. Driving forces are mainly those forces moving us as biological organisms, the existence of which is more or less independent of our practical considerations. How we are to be moved by these driving forces, how we are

sociological studies. See his *Wirtschaft und Gesellschaft (Economy and Society, 1922)*, trans. G. Roth and C. Wittich, University of California Press, 1978, first chapter.

⁵⁵ Some cases of insanity can be better understood in terms of practical actions rather than in terms of physical damages. That is, some people become insane because they can no longer understand and undertake practical actions in the normal sense. As a result, they cannot interact with other people; in other words, they lost contact with their moral communities. It is usually an exaggeration to say that they totally lose touch with reality, since many of them can still maintain their biological life very well. I would rather say that they lost touch with the moral or practical reality of their society. For them, things have different meanings; they can make sense and carry out practical actions, but they are no longer dealing with real people now, and instead are dealing with imagined practical concerns, such as the horrors and joys in their fantasies. Understood in this way, the distinction between sanity and insanity is really a problem of degrees. Even pretty normal people can have very unrealistic imaginations and reactions to the input from the outside. Our practical actions are really fragile constructions. Insanity perhaps is the necessary price we are paying for directing our social life with practical concerns instead of following our natural instincts.

to steer these forces in our own interests, and how we are to conceive and pursue our needs and interests, are nevertheless dependent upon our practical considerations. For this reason, it is important to realize that practical considerations can be put into place behind any human action. So for example, although we must eat when we are hungry, what we eat and how we eat can be endowed with practical meanings. In ancient times, there were strict rules and rituals for eating, especially under certain socially meaningful circumstances.⁵⁶ A modern vegetarian can advertise against eating meat, out of concerns for health or for moral decency. In any case, practical actions should be the major concern when we study human societies, while cultural differences can be interpreted as only differences in the ways people understand and undertake practical actions.

Generally, people carry out practical actions out of two kinds of practical considerations or reasons (motives): what goals they want to achieve in terms of rational gains and interests, and what kind of persons they want to achieve in themselves, as perceived by their fellow community members, i.e., what roles they want to play in their society.⁵⁷ These two considerations are usually intertwined, but generally we can make a distinction between them as two types of motives or goals. The first type of goals, at least in some cases, can be realized by individuals working alone, but the second type of goals is essentially social, requiring the actual or

⁵⁶ For an interesting survey of manners governing trivial daily actions, such as eating with others, see N. Elias, *The History of Manners*, New York: Pantheon, 1982.

⁵⁷ Colin Campbell calls these two goals of action “instrumental” and “expressive” respectively. He further believes that most human actions include both instrumental and expressive elements. See Campbell, *The Myth of Social Action*, Cambridge University Press, 1996, pp. 115, 118, 131. This distinction of two motives of actions was first put forward by Max Weber. See his *Wirtschaft und Gesellschaft (Economy and Society, 1922)*, trans. G. Roth and C. Wittich, University of California Press, 1978, first chapter. Jurgen Habermas relies on this distinction, or the distinction between “consent-oriented” (or communicative) and “success-oriented” (or purposive-rational) actions, to develop his theory of communicative action. See Habermas, *The Theory of Communicative Action*, Boston, Mass.: Beacon Press, 1984/1987. We still need to remember, though, that there are other human motivations that might not fit very well into this categorization. One good example is our feelings, especially those strong ones that have heavy influence on our actions.

imagined presence of other person(s). To accomplish a goal of the first type, a person needs to rationally work out a way, or a means, to reach that goal. To realize a goal of the second type, however, a person needs to know other people's past and possible future opinions and reactions, and to think in terms of what kind of society they are living in, or what kind of social order they want to realize by their actions. Following Rawls, I will call the first type of motive the consideration of "rationality," while the second, consideration of "reasonableness."

The interrelation between these two considerations can be generally stated as follows: as two types, they are independent, in the sense that neither one is derivable from the other; but when they work together, the consideration of reasonableness is a restriction entering over and above the consideration of rationality. Although the consideration of reasonableness can sometimes be regarded as for the sake of consideration of rationality, in the sense that, for example, good fame or credibility usually works for one's own interests, the consideration of reasonableness cannot be derived from the consideration of rationality. Indeed, considerations of reasonableness are usually guided by rules or norms set out, explicitly or inexplicitly, by communities of persons, not by individuals living alone. Since consideration of rationality usually produces too many options, consideration of reasonableness must be introduced to restrict these options so that a coherent set of decisions about how to carry out practical actions can be made for all the involved individuals.

With regard to these two types of motivations, rationalism picks out consideration of rationality as the more important or more decisive one, while institutionalism believes that, although rational consideration is very important for people's practical actions, it is nevertheless restrained by certain normative rules of the society. For institutionalism, rationality is not an independent or sufficient reason

for human practical actions. People's rational choices give rise to too many options, many of which would bring people into conflict. What people ultimately choose therefore must be restrained by the institutional framework in which they are living. Sometimes people need to follow institutions even if it is against their rational interest to do so. In addition, institutionalism believes that people's rational deliberations are made within an institutional framework in the first place, which in turn partly determines the range of people's rational calculations and rational understandings from the start. Since our institutional framework is an evolving process rather than a determined structure, the concept of rationality, as framed by institutions, is also a historical concept that expands and shrinks as institutions develop, not a concept that "transcends" history.

Some philosophers might still want to ask "what motivates people to create, justify, and follow social norms." The proposed answer is usually that consideration of rationality is the ultimate motivation for people to practice social norms. But if we ask "why should we stop at rationality when we try to find the ultimate motivation," these philosophers usually don't have sufficient answer. In fact, if we really want to find the "ultimate" motivation for people's actions, we must admit that it is our biological instinct that ultimately motivates us into actions, not so-called "rationality." After all, no one can rationally choose what biological instinct she is to have. As MacCormick argues, "the simplest possible type of reason for doing anything is obviously the desire to do that act for the sake of some satisfaction to be obtained in doing it or as a result of doing it. We could have no reason ever to do anything had we not such simple and particular purposes grounded in the 'passions', 'emotions', 'affections' or whatever." Nonetheless, these instinctive motivators are in themselves "non-rational," and "one's life would be mere chaos if one simply responded to every

such prompting of desire as it arose; moreover, in some cases there would be inevitable conflicts if, for example, one had both natural appetites and also a desire for sociable co-existence with other human beings with similar appetites and desires.”⁵⁸

Even if we do arrive at such an “ultimate” motivation, nobody would claim that all of our biological instincts do in fact lead to the fulfillment of our rational interests. Acting from instincts very often lead to our own loss, just like what happens to a fish when it bites a fake worm on a hook. Worse, we cannot even prove that all our biological instincts are directed towards self-interest. As many biologists suggest, we do have a social instinct, which motivates us into actions that sometimes lead to self-sacrifice. In this respect, we are not more rational than those bees who attack the invaders of their honeycomb and die after a desperate sting. Besides, every biological instinct, and every physical mechanism that works as motivator for actions, is potentially self-destructive for us if it is in excessive or in other malfunctioned states. It lacks both logical and empirical reasons, therefore, to assert that consideration of rational interest is the ultimate human motivation.

Even if we agree that the ultimate motivation for people’s actions is really their perceived rational interests, the question “what should we do” in different contexts is still not answered. “What is rational” is always a contested issue, people’s solutions to which can always turn out to be wrong, or to be against the “real” rational interests that are supposed to be maximized. People in a disorganized society may be forced to interpret their rational interests in very narrow, very selfish, and socially very counterproductive ways, but according to this theory of ultimate motivation, these people are as rational as the people in a better organized, more just and more

⁵⁸ See MacCormick and Weinberger, *An Institutional Theory of Law: New Approaches to Legal Positivism*, Dordrecht: D. Reidel Publishing Company, 1986, p. 195.

efficient society. To prove that the ultimate motivation for human action is rationality, therefore, is off the point at best. Our major problem is always about how to promote our rational *interests*, individually and collectively. To harvest this benefit, we need to propose, justify, and implement normative solutions beyond mere appeals to what is “rational.”

To some extent, philosophers who try to reduce all motivations for human actions to rationality are motivated by the same intention that motivates those philosophers who want to reduce all human activities to physical or material activities of human body. Intuitively, since all we’ve got is our body, and all of our actions are ultimately dependent upon the fact that we have a body, it is very tempting to explain human activity in a language simply referring to the human body. But what reductive materialism has proven is that at least in our own time, it is not really possible to describe, let alone to justify, all of our actions in terms of the physical movements in our body. Mental process, although it ultimately relies on our body, does constitute a new set of properties and causal chains, the explanation of which cannot be accomplished by simply referring to the states of the body.⁵⁹ The effort to reduce all human motivations to rationality, in this sense, is similar to the dream of reductive materialism. It is intuitively attractive, but it is a mission impossible, at least at the current stage of our knowledge about human biological nature. It may never be accomplishable if we consider that our mental reactions to the natural and the social environments do have their own causal power and their own logic. A serious look at

⁵⁹ Here I don’t have space to argue against reductive materialism. I will simply point out that causal dualism, as against Cartesian entity dualism, is still a live option for many contemporary philosophers. Here are three examples. David Hodgson argues for a “dualism of causation” in *The Mind Matters: Consciousness and Choice in a Quantum World*, Oxford: Clarendon Press, 1991. See especially chapter 19. David Chalmers develops a dualist theory of consciousness in *The Conscious Mind: In Search of a Fundamental Theory*, Oxford University Press, 1996. Paul M. Pietroski explains in detail how mental events can cause non-mental events in *Causing Actions*, Oxford University Press, 2000.

our biological and social instincts, as mentioned above, reveals both the impossibility and undesirability of such a “motivation reduction.” Such a reduction, I contend, shares the same structural problem that afflicts reductive materialism.

So far I have defined practical actions, and have justified the use of two primary motivations for practical actions. Now let’s look at the other central concept of our institutionalism, namely, institution. In this essay, I define “institution” in its broadest sense as rules or norms guiding and enabling human practical actions. Institutions therefore include both “informal” rules, such as moral and social norms, and “formal” rules, such as laws guiding political, economic, and social behaviors.⁶⁰ This broad sense for the concept “institution” is necessary because we treat “institution” as a concept inextricably paired with that of “practical actions”; instead of being a dichotomy, these two concepts cover the same ground. That is, practical actions can only be understood if we have an institutional background in mind. This is not to say that every practical action is either a case of obedience to an institution or a case of violation of an institution. Gray zone actions do exist, and social norms usually leave a huge space for other motives to fit in, such as considerations out of rationality.⁶¹ Although social institutions define the structure of social positions, exactly which position you will take is usually up to your own choice, chances, and efforts. This is especially true in modern societies, where ideally social positions are

⁶⁰ This distinction has various consequences in different contexts. In a modern society, for example, social norms that of customary nature, such as common dresses for different times and contexts, are usually not up for legislation, while social norms that of legal nature can be effective only when specific laws and specific institutions are created for enforcing them. For another example, religious norms and other ideological norms usually mutate in different ways from customary and other types of social norms, namely, more slowly and more resistant to change. For the most time in this essay, using “institution” in its widest sense without making these distinctions may prove to be the most manageable way, but these distinctions shall be put on the table whenever it is appropriate to do so.

⁶¹ Jon Elster argues that human motivations for actions can be generally categorized into three kinds: rationality, emotions, and social norms. I intend to think that emotion as a motivation is a mixture of both rationality and reasonableness. See Jon Elster, “Rationality, Emotions, and Social Norms,” in *Synthesis*, Vol. 98 (1994), pp. 21-49.

not inheritable and are largely up for anybody's grab. Institutionalism does not claim that human beings are puppets controlled by institutions, or that acting according to social norms (acting out of duty) is the only legitimate motive for practical actions (at least insofar as they have "moral worth"), as Kant might be interpreted to believe.⁶² In the end, what makes human practical actions different from mere actions is that human practical actions cannot be understood without a fair understanding of the related institutional background.

This broad definition of institution, I believe, captures the major concern of institutionalism in the social sciences very well. Those social scientists that develop theories of institutionalism are mainly concerned with the limitation of the rationalist explanations of practical actions. For them, considerations out of rationality are far less than the whole story of human motives. In order to understand practical actions within a broader background against which practical decisions are made, many institutionalists in the social sciences define "institution" as a normative constraint upon rational considerations. Douglass North, for example, writes that "Institutions are the humanly devised constraints that structure political, economic and social interaction. They consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights)."⁶³ This broad definition of institutions, as well as the one listed in the previous section from John Commons, reflect the major concern of institutionalists in the social

⁶² This view is expressed, of course, in Kant's famous categorical imperative: "I ought never to act except in such a way that I could also will that my maxim should become a universal law." Acting from duty therefore is the central doctrine of Kantian ethics. See p. 57 of *Immanuel Kant: Practical Philosophy*, translated and edited by Mary J. Gregor, General Introduction by Allen Wood, Cambridge University Press, 1996. It might be an overstatement, though, to say that acting out of duty is the *only* legitimate motivation, for Kant might acknowledge other motivations as legitimate, such as those motivations that have no moral worth yet are not in opposition to what duty demands.

⁶³ See Douglass North, "Institutions," *The Journal of Economic Perspectives*, Vol. 5, No. 1 (Winter 1991), p. 97.

sciences,⁶⁴ that is, individuals do not make their choices simply from their rational deliberation, but rather make their choices within an institutional background, which sets limits, and gives directions, to the possible rational options.

Institutions in this broad sense create a realm of “institutional facts,” which are different from “brute facts” such as the existence of the moon.⁶⁵ Institutional facts are those facts that cannot be understood without an understanding of the related institutions. The action of marrying someone, for example, cannot be recognized as a fact if one does not have a basic understanding of the related social institution called “marriage,” different as it is in different cultures.

The concept of practical action in this sense is, as emphasized earlier, not necessarily the concept of individual action.⁶⁶ Although individual persons are the natural units of agency to carry out non-practical actions, practical actions can be carried out either by individuals or by collective bodies of individuals. Indeed, social and political actions, such as rituals and customs, elections and wars, are usually carried out by collective bodies of individuals, and in the name of collective bodies of individuals. Even moral rules guiding individual actions cannot reside only within a single individual; they must reside within a moral community, so to speak.⁶⁷

⁶⁴ Karl Popper also defines “institutions” in broad terms: “...we are inclined to speak of institutions wherever a (changing) body of people observe a set of norms or fulfill certain *prima facie* social functions (such as teaching, policing, or selling groceries) which serve certain *prima facie* social purposes (such as the propagation of knowledge, or protection from violence or starvation)...” See Popper (1962), *Conjectures and Refutations: the Growth of Scientific Knowledge*, New York: Harper & Row, 1968, p. 133.

⁶⁵ “Brute facts” is a concept first conceived by G.E.M. Anscombe. See “On Brute Facts,” *Analysis*, Vol. 18 (1958), pp. 69-72. John Searle systematically explores the realm of “institutional facts” in *Speech Acts: An Essay in the Philosophy of Language*, Cambridge University Press, 1969.

⁶⁶ For a recent discussion about the possibility of collective agency, see David Copp, “On the Agency of Certain Collective Entities: An Argument from ‘Normative Autonomy’,” *Midwest Studies in Philosophy*, Vol. xxx (2006), Blackwell, pp. 194-221.

⁶⁷ Wittgenstein presents a famous argument against the possibility of a private language, the gist of which is that rules cannot be followed privately. Despite of the various controversies this argument has stimulated, it is obviously valid when it is applied to moral rules. For Wittgenstein’s private language argument and his arguments about rule-following, see *Philosophical Investigations*, 3rd edition, Blackwell, 1967, sections 142-315.

Individuals follow moral rules with the understanding, conscious or sub-conscious, that other people are watching, and they need to explain their actions in terms of moral rules when an explanation is called for. Indeed, moral rules are learned and internalized not through rational deliberation or introspection, but through a process of socialization. Little children usually act with no regards to even the most basic moral rules, yet with their parents' cultivation through persuasions, disciplines, and exemplars, they will gradually acquire these moral rules and internalize them as their own principles, to various degrees.⁶⁸

Neither are institutions in this broad sense necessarily "restrictive" over people's freedom. As Commons nicely puts it in a previous quotation, institutions are about the "control, liberation, and expansion of individual action." Without normative rules guiding people's practical actions, people will unavoidably run into each other, therefore deprive everybody of reliable freedom. Modern economic and political institutions make it possible for a person to travel around the globe without owning a plane or worrying about being shot down randomly. Indeed, we can safely claim that institutions were created in the first place because those creators wanted to expedite their actions, at least for themselves, if not for everybody involved. Thus John Searle says, "The essential role of human institutions and the purpose of having institutions is not to constrain people as such but, rather, to create new sorts of power relationships. Human institutions are, above all, *enabling*, because they create power, but it is a special kind of power. It is the power that is marked by such terms as:

⁶⁸ Rawls discusses moral education and moral socialization in Chapter VIII of TJ. Following Rawls, we are dealing with moral education and moral socialization not as an empirical study of any specific society, but as an analysis of "the general facts of moral psychology." (p. 405)

rights, duties, obligations, authorizations, permissions, empowerments, requirements, and certifications.”⁶⁹

Even with this clarification regarding the liberating effect of institutions, however, there may still be a legitimate concern about whether this institutional understanding of human beings would make us mere puppets of institutions. Our presentation of institutionalism so far may alarm some readers to the worry that although at first we did create and comply to institutions in order to avoid conflicts and to facilitate cooperation, we nevertheless end up being strangled by institutions.

To ease this worry, we need to look at the *justification* of social institutions. The justification of institutions is needed in all contexts of human institutional practice: the creation of new institutions, the implementation of institutions, and the revision of institutions. When we propose certain social norms to our co-community members, we need to explain to them why such norms are necessary, and what projected benefits these institutions can bring to us. When a social norm is already in existence, perhaps as a part of the inheritance from our ancestors, we need to justify them in order to make sure that the norm does enjoy compliance from the relevant community members. Compliance can also be secured by sheer force, and in many cases enforcement of social institutions does require coercive means. Nevertheless, even the coercive enforcement of institutions requires acceptable justifications, if it is to be sustainable in the long run. Finally, when we find some social norms no longer convenient in most circumstances, we need to engage with each other in public deliberation, and justify to each other some alternative social norms. In all these situations, the need for justification testifies to the active roles of human beings with

⁶⁹ John Searle, “What is an Institution,” *Journal of Institutional Economics*, Vol. 1, No. 1 (2005), pp. 1-22, p. 10.

regard to their relationship with institutions. Even though sometimes people need to internalize the norms of their societies to the extent that institutions become social habits, people nevertheless can always deliberate or even challenge the merits of any social institution. Social institutions do not work as programs, the running of which only requires arithmetical or mechanical compliance.

In the institutionalism we are about to present, we give institutions as defined above a certain priority over rationality. This is not to disregard rationality as a legitimate motivation for practical actions, but rather to recognize the fact that rationality alone doesn't constitute sufficient motivation for practical actions.

Correspondingly, we give social order a certain priority over individual and collective rational deliberations. This is so because we take the central task of moral and political philosophy as constructing and justifying moral and political orders.

Individual and collective rational deliberations may take the relevant rational interests as the primary targets, but before these deliberations bear fruits in practical actions, a certain moral and political order needs to be secured so that these practical actions can be appropriately carried out. This internal connection between practical actions and institutions will in turn have a profound influence on our rational deliberation, or for that matter, even enhance our capability for rational deliberation. In the long run, I will argue, more complex and more reliable institutions make it possible for us to deliberate over and carry through more complex and more fruitful practical actions, both at the individual level and at different collective levels. Free will, interpreted as the human capability for rational deliberation, is not about whether we have such a capability, but about the expansion of human rational capabilities through the building of institutions. In other words, we are responsible for our actions not because we have free will; rather, our free will expands when we can lay more and more

responsibilities upon ourselves and upon each other through institutions. Generally speaking, this means that people who have grown up in an overindulgent environment will experience more difficulties in carrying out “free” deliberations and “free” actions, and are more easily trapped in habits and addictions, whereas cultures with less experiences or exposures to advanced institutions are less susceptible to such effects of modernization.

These clarifications regarding practical actions and institutions, supplement with our comparison between rationalism and institutionalism, lead us to the end of this first and preliminary chapter. We now can positively present institutionalism as a normative theory, which, as I will argue, ultimately supports a political development towards liberalization and democratization.

Chapter II Institutionalism as a Theory

In this chapter, I will present institutionalism as a theory of agency formation and institution building. Institutionalism centers its understanding of human moral and political order on the practical actions carried out by individuals and collective bodies of individuals, and the rules and norms guiding, and in part constituting, these actions. As a consequence of this shift of emphasis from individuals and their society to practical actions and the regulating institutions, human persons are now to be understood in institutionalism as agents carrying out practical actions at individual and different collective levels, guided by corresponding institutions. Cultural differences, for institutionalism, are only different ways of carrying out practical actions, or different ways of agency construction.⁷⁰ Institutionalism, in this sense, is a culturally neutral theory about human practical actions and human institution building.

This theory of institutionalism will be presented step by step. In the first section, I present the theory of agency with the help of the theories of alienation, as developed by Hegel and Marx, although our conception of alienation is different from theirs. Here institutions are understood as the alienation of rational deliberation, in the sense that people rely on social norms rather than on rational deliberation to interact with each other, so that a social order can be achieved and stabilized. In the second section, this theory of agency will be further illustrated as a culturally neutral explanation of human practical actions, both at the individual level and at different

⁷⁰ “Culture” is a broader concept than “institution.” As E. B. Tylor defines, “Culture or civilization, taken in its wide ethnographic sense, is that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society.” This effectively includes every aspect of human activities that is not determined by our physical nature. Institutions, on the other hand, only refer to rules guiding human practical actions, as defined in the previous chapter. For Tylor’s famous definition, see his *Primitive Culture: Researches into the Development of Mythology, Philosophy, Religion, Language, Art, and Custom*, Harper and Row, 1958 (first edition in 1871), p. 1.

collective levels. Our conception of alienation will be expanded into an agency formation process as a process of externalization and internalization of social institutions, understood as social norms in the broadest sense. In the third section, we will use this theory of agency, with the help of reflection on our historical experience with religion and politics, to explain how a political society is possible through agency formation: it is possible because a conception of collective agency can be constructed and implemented by the membership agents, through a system of rules governing the relationship among membership agents and the relationship between the collective agency of the political society and its membership agents.

Agency Formation as a Process of Alienation

In the previous chapter, we have argued that our study of moral and political order should shift its focus to the study of practical actions and the institutions guiding these actions. Correspondingly, when we now talk about persons, we use the concept “agents,” understood as individuals and different levels of collective bodies of individuals capable of carrying out practical actions according to social norms. Agents carry out practical actions, while practical actions constitute social realities. In this section, we look at how the agencies of these agents are constructed in the process of human social evolution.

Our theory of agency can be developed with the help of the conceptions of alienation, as explored by Hegel and Marx. According to them, alienation, and the overcoming of alienation, is the dominant dynamic behind human history. Human beings, in order to conquer the world and make themselves feel at home inside the world, project their own nature to the outside world, through cognitive activities or practical labors; when they finally achieve consciousness that what they have found in

the outside world is indeed their own creation, they overcome the alienation and reach a stage of self-realization. In this section, I will explore this conception of alienation, and utilize this conception of alienation to develop my own theory of agency construction. Hegel's and Marx's conceptions of alienation are limited, however, in that they presuppose a pre-determined human nature, or a pre-determined content of reason, and therefore claim that there is an ultimate overcoming of all forms of alienation.

According to Hegel, the whole history of human beings, and even the whole history of the universe, is mobilized by the self-realization or the self-actualization of Reason. Reason in Hegel's system therefore means the internal logic of all realities, not just the nature of human beings. Reason realizes itself by alienating or externalizing itself into reality. This process of the self-realization of Reason is what really happened, is happening, and will happen in this world; it runs from the earliest stage of the universe to the ultimate realization of Reason in human beings. Inside this process, the self-realization of human subjective reason is also a process of alienation and the overcoming of alienation. Human beings have Reason as their ultimate human nature, but they cannot understand their nature without externalizing their essence to the outside world, to an imagined otherness, a mirror image of themselves. Hegel believes that Christianity is one important step within such a process of alienation, that is, human beings project their essence of spirituality to an unearthly being. Hegel also believes that the Lutheran Reformation overcame this alienation and gave the essence of spirituality back to human agents, preparing the way for the self-actualization of reason within human beings. Their nature is thus realized, and so is

their freedom, which is nothing but acting self-consciously according to their rational nature.⁷¹

Young Marx applies this conception of alienation to labors in the capitalist society. He claims that the essence of human beings as a “species-being” is their creative labor, yet capitalism alienates this essence of the workers to a process of industrial production and capital accumulation. According to Marx, this process of alienation is necessary for the realization of human nature, but once workers realize this alienation, perhaps with the help of Marx’s own theory, they will overcome this alienation in a revolution towards communism, in which they enjoy, literally, their species life as creative laborers.⁷²

In a wider context, Hegel did not invent the concept of alienation anew, but rather synthesized similar observations of his predecessors into this concept. We can say, for example, that Hume was close to this concept of alienation when he demonstrated that causal relationships are projected into the world by our own understanding. Kant, following Hume, came much closer to the concept of alienation when he argued that not just causal relationships, but also our intuitions of space and time, and all of our cognitive concepts, are not internal to the world in itself, but are creations of our reason. Rousseau came even closer to the concept of alienation when he argued that people living in civil society, by reflecting themselves in light of others’ view of them, create another self-image of themselves that is different from

⁷¹ See Hegel, *Phenomenology of Spirit*, trans. A.V. Miller, Oxford University Press, 1977, especially Chapters IV, VI B and VII C, where Hegel presents his conception of alienation. For a systematic exposition of Hegel’s moral philosophy, see Allen Wood, *Hegel’s Ethical Thought*, Cambridge University Press, 1990.

⁷² See Marx, “Estranged Labor,” in *Economic and Philosophical Manuscripts*, collected in *Collected Works*, Lawrence & Wishart, from 1975 and on, volume 3. See also Allen Wood, *Karl Marx*, 2nd edition, Routledge, 2004, Part One, where Marxian conception of alienation is explored in detail. Rawls discusses Marx’s theory of alienation in PP, pp. 362-364.

their true selves in the state of nature.⁷³ From these philosophers, Hegel went one step further, and claimed that reality is nothing but reason, or the alienation and actualization of reason.

The historical background of the concept of alienation indicates that there are reasonable elements in this concept, and they can be helpful for our understanding of human cognitive and practical activities, and more generally, human social evolution. Our task here is to abstract these elements from this tradition. But it is important to notice that by presenting Hegel's and early Marx's theories of alienation, I am not endorsing their conceptions of alienation per se. It is obvious, from our abstractions of their theories, that both Hegel and Marx presuppose a rationalist understanding of human nature. For them, alienation means deviations from human nature, while overcoming of alienation means returning to the true nature. The institutionalist conception of alienation cannot assume such a human nature. But still, as a way to philosophize about human social psychology, the concept of alienation can be rendered as a plausible explanation of the process of human agency formation and institution building.

Using the concept of alienation, we can express the basic idea of institutionalism in this way: to solve the problem of cooperation and coordination, or to secure peaceful coexistence, a group of people alienate their separate rational deliberations to a shared common understanding, or a set of publicly endorsed rules. Separate rational deliberations give rise to almost infinite choices, many of which lead to distrust and conflict rather than to trust and cooperation. To secure a peaceful social

⁷³ Rousseau develops this idea in his *Discourse on the Origin of Inequality*. For a recent discussion of this idea, see Julia Simon-Ingram, "Alienation, Individuation, and Enlightenment in Rousseau's Social Theory," in *Eighteenth-Century Studies*, Vol. 24, No. 3 (Spring 1991).

union, people choose to follow an “alienated” solution captured in social institutions.⁷⁴

Here I condense the process of alienation into a simplified story. Suppose two adults, Jim and John, confront each other as strangers, and they don’t know how to treat each other. This brings a lot of anxieties and tensions in their minds, and a lot of uncertainties and instabilities to their relationship. Disturbed feelings lead them to look for a shared understanding about how they should get along with each other, without worrying about the possible threat to their own safety from the other side. Since every adult person was raised by adults, they must already have some moral sentiments and moral principles about how to live with other people. But suppose they have different principles, and cannot agree with each other on what principles are appropriate for guiding their interactions. Now from their own rational considerations, their relationship could be dealt with in so many ways. They may both want to gain from the other side as much as possible, using force or threat of force if necessary; they might also want to act as freely as possible, without regarding the concerns of the other side.⁷⁵ Individual rational deliberation leads them to too many possibilities, and many of these possibilities lead them to conflict rather than to harmony. Of course, in

⁷⁴ This may ring a bell in the minds of people who are familiar with the history of western political thought. Hobbes, Locke, Rousseau, and Kant, perhaps among others, all alluded to the need to rely on a certain public reason or general will to secure social order. In this sense institutionalism is not a new idea; many political philosophers since Hobbes can be labeled as “institutionalists,” at least partly, if not wholeheartedly. My contention is only that the ideas of institutionalism in their writings are usually not thorough, and they are usually distracted by rationalist temptations. This is especially true in the cases of Hegel and Marx, as illustrated above. For a survey of some of these philosophers’ opinions on public reason, see Duncan Ivison, “The Secret History of Public Reason: Hobbes to Rawls,” in *History of Political Thought*, Vol. XVIII, No. 1 (Spring 1997).

⁷⁵ Conflict of interests between these two persons can happen without any side being willing to deprive interests from the other side, since many actions taken by one side will have “externalities” on the other side. For example, during certain period of time, there are only a limited number of sources of food in their shared space of living, and if one side decides to harvest or hunt all or most of these sources, the other side might be threatened by hunger. “Externality” here simply means that one party’s actions may have positive or negative effects to the other party, even though the first party may have no intention to bring about those effects. For a discussion of the relationship between externalities of actions and the necessity of social norms, see James Coleman, *Foundations of Social Theory*, Harvard University Press, 1990, Chapter 10, section 3.

their rational deliberations, they may both know that if the intention of hurting the other is perceived by the other, the same intention will be reciprocated; in other words, the intention of hurting has a problem of backfire, and therefore can put the subject holding that intention in danger. These rational considerations may provide enough motivation for them to cooperate, but exactly on what terms they are to cooperate is still unknown. So basically they try to learn how to treat each other in practice, only with certain vague ideas or intentions at the beginning. Nevertheless, after they get along for a while, sometimes bargaining with each other with threats,⁷⁶ they will both gain clearer ideas about how to treat each other. That is, they explicitly or implicitly share a common understanding about their relationship. This is the “principle” they will hold on to. In the long run, there is no guarantee that this principle will not change in light of new circumstances, but there can be a tacit or explicit agreement between them, and they can both recognize this understanding as a moral principle.⁷⁷

In the sense that they are now relying on a principle that they mutually agreed to in the past rather than on their own free use of reason, this process of reaching agreement can be called a process of alienation. That is, they alienate the guarantee of their peaceful coexistence to certain artificially established rules or conventions, which are all to be called “institutions” in institutionalism. To see why this is so, we look further into the process of the formation of agreements between these two hypothetical individuals.

⁷⁶ Threat was argued as a useful strategy of bargaining to reach “enforceable agreement,” for example, in John Nash, “Two-Person Cooperative Games,” *Econometrica*, Vol. 21, No. 1 (January 1953).

⁷⁷ I do not claim that this is how morality was created in the first place. The evolution of human morality is a very complex and contested topic, to which this essay does not offer systematic answers. Neither is the story above meant to describe the real process of the formation of any institutional structure. The main point of this story is to show the necessity of building up common understandings, or public institutions, in order to secure peaceful human coexistence.

There are two processes of agency formation on the way to forming a shared understanding. The first process concerns how to form a collective agency or collective identity between these two persons, that is, how they could form a common goal and share the understanding of that goal in their cooperation. This common goal could be dealing with common issues facing them in the natural environment, or common human enemies outside their union, or common problems involved with their cooperation. Either way, once a collective agency is created among them, they are no longer separate individuals, since this common agency is, to repeat Aristotle, a whole that is bigger than the simple aggregation of its parts. This collective agency binds them together; no collective actions between these two persons can be carried out without resorting to this ideal agency. In this sense, this overarching agency is the guidance for these two persons as a “society.” In a much bigger social union, this collective agency will be represented by an institutional structure called “the state,” which claims authority over all the people living inside in the name of the collective agency of this society.

To clarify an important point, the formation of a collective agency is not totally defined against the external environment; it also defines the internal structure of the “society” under such a collective agency. Exactly in this sense, it enjoys a certain priority with regard to how such a “society” is to be structured. The collective agency of a society might at first be formed in light of external threats; it might be formed because collective actions, such as military self-protection or economic mutual assistance in face of flooding or famine, need to be carried out in order to deal with these threats. Evidences abound in human history about how effective the mechanism of interpreting or creating an outside enemy, either in terms of other people or in terms of environmental challenges, is in generating and sustaining social

solidarity. Even today, people around the globe are still defined by, and therefore separated by, different national, ethnic, religious, and other cultural identities. We can even suppose that without a common external threat to be addressed, such as global environmental disasters, global pandemics, or invasion from outer space, it would be almost impossible for us to break these barriers and bring all human beings under the same social order. But once a collective agency is created, more common problems will be identified, and more institutions will be created under such a collective agency to address these problems. The public goods provided by a collective agency tend to grow as time goes by; after all, a social whole is bigger than its parts combined.

This leads to the second process of agency formation on the way of our two hypothetical individuals to forming a common understanding. This concerns how to form their separate conceptions of their individual agencies, or how each person is to understand the status of himself and the status of the other side, as against their collective agency. To be sure, even if they have formed a common collective agency with regard to their working together, they are still separate persons, with identifiable separate interests and concerns. Practical actions of their common agency or their community can only be carried out through their separate agencies. The problem now is how to make sure that they share a common understanding of each other's roles or identities within the collective agency. If they both agree, for instance, that Jim should be the boss and John should be the one receiving orders, their cooperation can be smooth enough; if they cannot agree over who is in charge of the common business, they will sooner or later run into each other. So even when it comes to the understanding of their separate agencies, agreement is still necessary for the cooperation to remain stable in the long run.

Now after emphasizing the necessity of agreement between the two parties of this simple union, we should keep in mind that this agreement is never absolutely stable. Due to their different personal characters and experiences, due to the changing environment of their co-existence, it is highly unlikely that, after they reach agreements about the terms of their co-existence, they will stick to those particular terms forever. Different ideas about their social relations are bound to arise, and these differences may demand a new round of the process of dialogue and convergence. The intensity of this process depends on the particular situation at hand.

To connect this very simplified story to the concept of alienation, we can see that in this story, the construction of the collective agency and their separate agencies is a process of alienation. More specifically, we can distinguish two elements of alienation in this process. The first element of alienation concerns communicating and reciprocating their intentions. At the beginning, each side has both the intention to cooperate and to assault in the fear of the other side being hostile. Which intention will become the dominant strategy is largely dependent on the perception of the intention from the other side. Usually the expressed intention on one side will cause the same expressed intention on the other. This is what we usually call “reciprocity” or “the golden rule.”⁷⁸ In reality, the side that deems himself as stronger usually chooses the strategy of hostility, while the side that deems himself as weaker would

⁷⁸ “Reciprocity” can refer to either reciprocity of intentions or reciprocity of goods, or both. Connected with “the golden rule,” reciprocity has been recognized by many philosophers as an essential idea for social cooperation. Rawls takes reciprocity as a fundamental idea in his theory of justice: “all who are engaged in cooperation and who do their part as the rules and procedures require are to benefit in an appropriate way as assessed by a suitable benchmark of comparison. The two principles of justice, including the difference principle with its implicit reference to equal division as a benchmark, formulate an idea of reciprocity between citizens.” (JF, p. 49, footnote.) Levi-Strauss also takes reciprocity as the basic principle underlying all forms of social exchange, among which exogamy as an exchange of women is the “archetypal form of exchange.” See his *The Elementary Structures of Kinship*, translated by J.H. Bell, J.R. von Sturmer and R. Needham, Boston, Mass.: Beacon Press, 1969, “Introduction.” “Golden rule” was perhaps originally formulated in the Bible. Hobbes restates it as “Whatsoever you require that others should do to you, that do ye to them.” See *Livathan*, chapter XV, paragraph 35.

choose the strategy of cooperation. As Nietzsche puts it in a radical form, morality is the invention of the weaker for the purpose of containing the stronger.⁷⁹ Nevertheless, what happens oftentimes is that they both choose to get along with each other after trying in vain to control the other side. Whatever is the case, neither side decides the rule independently of the intention and the effort of the other side. A common understanding of their relationship cannot be reached without “alienating” or “projecting” one’s own intention to the other side, or reading the mind of the other before making up one’s own mind. That is, unless each side is sure that he can safely assume that the other side is willing to get along peacefully, he cannot stick to the same strategy of cooperation in confidence. This is the first element of alienation in the construction of their common agency; by assuring each other of their good will, they see in each other no longer a sheer “otherness,” but only an “alienated” self, or their own images. To put it more poetically, they have found in each other their soul mates. This in no sense means that they happen to be good for each other; the truth is rather that they contribute to each other’s agency or ego construction.⁸⁰

The importance of this mutual influence on each other’s agency formation will be more clearly illuminated if we consider that human group living usually consists of more than two individuals. Living within a larger group, individuals are required to perceive, understand, and remember more personal characteristics of other people. Higher capabilities of “alienating” one’s own intentions and thoughts into others’

⁷⁹ Nietzsche makes this point in many places. For an example, see *The Will to Power*, translated by W. Kaufmann and R.J. Hollingdale, Vintage, 1968, section 345, where he claims that the “chief means” by which the “weak and mediocre...weaken and pull down the stronger” is “the moral judgment.” To be sure, Nietzsche was not the first philosopher to play with this game of connecting morality with the weak. In *Gorgias* (483b-d), Plato explores this idea, through Callicles’ mouth, saying that “the makers of laws are the majority who are weak; and they make laws and distribute praises and censures with a view to themselves and to their own interests” (Benjamin Jowett’s translation).

⁸⁰ I think this is what Martin Buber wants to affirm when he famously explores the importance of the “I-Thou” relations in the construction of our self-consciousness. See Buber, *I and Thou*, translated by W. Kaufman, New York: Charles Scribner’s Sons, 1970.

minds will be developed in the more complex social interaction. In fact, group living has been shaping human cognitive capabilities, human brains, and the course of human evolution to such a significant degree that many anthropologists believe that “social intelligence” is a major key for human evolution.⁸¹ Our capability of reflecting on and evaluating our own thoughts and intentions, for example, has been well developed perhaps largely because of the environmental requirement that we express our intentions and thoughts to other people in order to facilitate peaceful coexistence.⁸² Or to put it in terms of our theory of alienation, we can reflect on and evaluate our own thoughts and intentions largely because we have developed a more and more complex mechanism for expressing and alienating our thoughts and intentions to other people, who, by living together with us, would put pressure on us for this alienation and reflection.

The first element of alienation, then, concerned the need for communication and reciprocation of intentions. The second element of alienation concerns the rules or the norms guiding the relationship between our two hypothetical individuals, or the constitutive and regulating rules for their collective agency and their separate agencies.⁸³ The cooperation rules need not be put into explicit words, but they must

⁸¹ For a discussion of the importance of group living for human evolution, see Todd Tremlin, *Minds and God: The Cognitive Foundations of Religion*, Oxford University Press, 2006, first chapter, especially pp. 32-7. To be sure, the evolution of human beings as a species is only of marginal relevance to the arguments in this essay. We need only to know that biologically, all human beings around our globe are at the same level of evolution, and every normal human being can in principle understand the highest cultural achievement of mankind. What we are dealing with in this essay is evolution of human societies, or more specifically, the direction of individuation and liberalization of social evolution through agency formation and institution building.

⁸² Harry Frankfurt makes a distinction between “first-order desires” and “second-order desires,” and he argues that “no animal other than man . . . appears to have the capacity for reflective self-evaluation that is manifested in the formation of second-order desires.” See Frankfurt, “Freedom of the Will and the Conception of a Person,” *Journal of Philosophy*, Vol. 67, No. 1 (January 1971), pp. 5-20.

⁸³ The distinction between “constitutive rules” and “regulative rules” was first made by John Searle. Constitutive rules are rules that create the possibility for certain actions, such as the rules of football game; regulative rules are rules that regulate the existing actions, such as rules of driving cars. This distinction can get tricky when we further categorize rules according to it, for many social norms, such as rules for property, are both constitutive and regulative. In this essay, I take the meanings of these

form a common understanding on both sides. This common understanding, after it has taken shape, might be interpreted by both sides as the natural result of their common reason when they look back into the history of their encounter, but what really happened is that they tried very hard, with huge risks and dangers, to reach that common understanding in their practice. Now with the newly gained common understanding, they can reduce the “transaction cost”⁸⁴ of their relationship to the minimum, and remain comfortable with each other. In this sense, the common understanding between them with regard to their relationship is another kind of “alienation” of their own rational deliberation. Indeed, with the convenience of such a common understanding finally achieved, they don’t need to do much rational deliberation when it comes to dealing with each other. Separate rational deliberations can drive them apart, while institutions unite them into a cooperation system. Institutions capture their past successful experiences of engaging with each other; based on these institutions they plan their future actions. Institutions, in this sense, are like convenient tools, the using of which liberates and extends our hands. Without relying on tools and institutions, without alienating our natural capabilities to these extensions, we wouldn’t have been able to overcome our natural limits.

Obviously, the second element of alienation is more important and more central to our conception of agency formation. For the most part, we will only talk about this element of alienation when we deal with agency formation. This in no sense devaluates the importance of the communication and mutual configuration

two terms as intuitively clear, and use them to name all institutional rules as rules for social cooperation. For Searle’s distinction, see *Speech Acts: An Essay in the Philosophy of Language*, Cambridge University Press, 1969.

⁸⁴ “Transaction Cost” or “Social Cost” is a very important concept put forward, in the name of “social cost,” by the economist Ronald H. Coase, in “The Problem of Social Cost,” *Journal of Law and Economics*, October 1960. I suppose that this widely used concept has an intuitive meaning that is clear for the current discussion. In fact, institutions are created to take care of the uncertainties in social transaction or interaction, and therefore to reduce the transaction cost.

between these two persons. Without perceiving the other as an understandable and acceptable agent, without imagining and expressing himself as a meaningful agent in the other's eyes, there is no way for either of them to remain comfortable with the other. The common understanding on which they rely for further communication and interaction is indeed only the result of their initial communications. In this sense, the second element of alienation is based on the first element of alienation in their mutual relationship. But from now on, our theory of institutionalism will center directly on the second element of alienation, namely, the alienation of our rational deliberation to social institutions as common understanding of our social relation to each other, and therefore as the basis of expectation in our practical actions and interactions.

Now what constitutes the overcoming of alienation in this process? After they have formed a common understanding and rely on this "institutional structure" to guide their practical actions and interactions (transactions), individuals may peacefully cooperate with each other for a comfortable period, but as new situations come up now and then, they will sooner or later find their institutions cumbersome in dealing with new challenges. As they struggle to live up to the established social institutions, they will also consider the possibility of revising these institutions so that new social practice can be accommodated. This is an opportunity to overcome the alienation represented in social institutions, at least to a certain extent. But here the aim is not to abolish all the institutions governing them, but to construct new institutions, or a new form of alienation. Overcoming of alienation is thus not the self-realization or self-actualization of the rational nature of the individuals in question, in such a way as to remove all future alienations; it doesn't lead to the end of the history of alienation in any sense, let alone the end of history altogether. The common understanding between these two persons will never reach a foreclosure; it will

change as times goes by, or when another person with different perspectives joins this “moral community.” Moreover, the newer common understandings will be more or less based on the older common understandings; institutions develop in a cumulative way, or to use a word from the new institutional economics, institutions move forward “path dependently.”⁸⁵ The exact changes that will be introduced into the common understanding are not predictable in the long run, just as they were not certain at the beginning what common understanding of their relationship would be adopted. In other words, the priority of practice over principles is not eliminable, and the process of alienation and overcoming of alienation is an open and irreversible process. By contrast, rationalist conceptions of alienation, such as the Hegelian and the Marxian, take the overcoming of alienation as the final realization of a pre-institutional human nature, therefore suppose that there will be a final overcoming of all alienations. This passion for the end of history is not shared in institutionalism.

Agency formation and institution building are two aspects of the same process, since agency formation is facilitated by common understandings or institutions. After the two persons, in our hypothetical example, have gained a common understanding of their relationship, they have successfully constructed out of themselves three moral agents: the two persons as two agents in a community of cooperation, and their community as a collective agent capable of carrying out collective actions in the name of both parties. The agencies of these two persons may not be the same; they can both agree that one party is more intelligent and should normally be the decider, while the other party should normally be the follower, etc. The division of labor between them

⁸⁵ “Path dependence” simply means that history matters, and what people used to do will be more or less carried into the future. Our rational deliberation about the future is, in this sense, configured by our past experience with institutions. As a result, history is an irreversible evolution process, not a design with a rational plan. For a more theoretical discussion of this concept, see Paul A. David, “Path Dependence, its Critics and the Quest for ‘Historical Economics’,” in Garrouste and Loannides eds., *Evolution and Path Dependence in Economic Ideas: Past and Present*, Edward Elgar Publishing, 2000.

usually makes them two different agents, with different roles to play. The common understanding also gives rise to a new and artificial agent, their community as a collective agent. This collective agent acts in the name of the community as a whole, not only in front of agents outside this community, but also in front of the membership agents of this community. The idea of such a collective agent has overarching influence over how the two separate membership agents are to be defined. In a small community, the collective agency usually does not exist independently or in a perceivable way, but in a big enough community, this collective agency evolves into the form of the state or the government. All of these three agencies are capable of carrying out practical actions; they are moral agents because they are all defined by rules or institutions commonly understood by the involved parties. The collective agent of a society, for example, is not only capable of taking practical actions within the society, but also capable of dealing with other collective agents from other societies in a wider context among different societies, such as what we have now among the nation states around the world. In such contexts, collective agents can treat each other as membership agents of a bigger collective agency, and build relations around certain “higher-order” institutional structures, just as their membership agents can within a domestic society. Agents are therefore “moral persons” or “artificial persons,” not “natural” persons deprived of any cultural or institutional commitment.

It is important to see that our conception of alienation is different from Hegelian and Marxian conceptions of alienation in a very meaningful way. Hegel, and Marx following him, believes that there is a logically pre-existing essence of human beings, and alienation is an externalization of this essence. Autonomy, if Hegel or Marx is willing to use this concept, is the overcoming of this alienation. Our conception of agency, on the other hand, does not assume such a pre-existing essence.

Instead, our conception of agency takes alienation and autonomy as ideals of agency: we build up ourselves and achieve autonomy by projecting our own rational deliberations to a “public space,” where a common understanding of the rules of interaction and the roles every agent is to play is formed, and then stick to this common understanding as the guidance of actions and the assurance of social order. Since our conception of alienation is not based on a pre-institutional human nature, our process of agency formation and institution building can be plural in the “realization” forms, and be open to the future. Hegelian and Marxian conceptions of alienation, on the other hand, presuppose a pre-existing essence of human beings, therefore require a singular realization of that essence in its ultimate form. This difference in conceptions of alienation can have totally different political impacts: while an open and pluralist process of overcoming alienation encourage diverse forms in realizing human freedom of institution building, a closed and singular process of overcoming alienation can justify authoritarian methods in the name of Reason or history.

To compare these two conceptions of alienation within our framework of rationalism versus institutionalism, we see that in the institutionalist conception of alienation, human beings make themselves through their practice of institution building. In this process, there is no pre-existing human nature to be relied upon, nor is there any pre-existing moral order acting as the direction of our self construction. Under this challenging condition, we develop moral and political orders among ourselves, and make ourselves what we are along the way. To borrow a metaphor from Otto Neurath, we repair our boat in the middle of the sea, with no safe harbor to

return to.⁸⁶ By contrast, rationalist conceptions of alienation, such as those developed by Hegel and Marx, take human nature as given or pre-determined, therefore point to certain sense of the end of human history.⁸⁷

So far in this section, we have articulated institutionalism as a theory of agency formation and of the construction of institutions through alienation. This section concentrated on a simplified story, and the theory of institutionalism was constructed in concrete examples. In the next section, we will articulate this theory of institutionalism in a more theoretical fashion, as a process of externalization and internalization.

Institution Building as Externalization and Internalization

Rationalism tries to capture a pre-institutional conception of human nature and apply it to the pursuit of moral, social and political order. For rationalism, history doesn't count, except as an unwrapping process of a given rational plan, a belief held by Hegel and Marx,⁸⁸ among other rationalists. By contrast, institutionalism emphasizes that moral, social and political order can only be achieved inside history,

⁸⁶ "We are like sailors who have to rebuild their ship on the open sea, without ever being able to dismantle it in dry-dock and reconstruct it from its best components." See Otto Neurath, *Philosophical Papers 1913–1946*, ed. R.S. Cohen and M. Neurath, Reidel, 1983, p. 92.

⁸⁷ Most recently, liberal democracy has been claimed by many people as "the end of history." This belief is perhaps the foundation of American Neo-Conservative approach to radical exportation of democracy, and other similar approaches. Francis Fukuyama, one of the representative Neo-Conservatives, explicitly endorses this rationalist conception of liberal democracy. For these rationalists, cultural dialogue is ultimately only a monologue delivered from the west. See Fukuyama, "The End of History?" *The National Interest*, Summer 1989, in which he says that "What we may be witnessing is not just the end of the Cold War, or the passing of a particular period of post-war history, but the end of history as such: that is, the end point of mankind's ideological evolution and the universalization of Western Liberal Democracy as the final form of human government." For his involvement in Neo-conservatism, see Fukuyama, "The Neoconservative Moment," in *The National Interest*, July 2004.

⁸⁸ Marx can also be interpreted as an anti-rationalist, for his major theory of history is supposed to turn Hegelian idealism totally upside down, and to give priority to social practice over theoretical concern. But overall, Marx's theory of human history is still modeled on Hegelian logic. See Marx's "Preface" to "A Contribution to the Critique of Political Economy" for his classic statement of his historical materialism, in *Selected Writings*, ed. D. McLellan, Oxford University Press, 2000.

in our internal construction and development of institutional relations with each other. This means two things: that our historical experience, or our tradition of institutional life, does count in our current and future efforts of building institutions, and that practice has a priority over theoretical considerations. The importance of history for institutionalism can be demonstrated straightforwardly in the fact that we are always carrying the internalized social norms with us whenever we try to rationally reflect and revise our institutions. That is, our practice of institution building is always “historically conditioned.”⁸⁹ Correspondingly, the rationalist understanding of the relationship between practice and principle is reversed in institutionalism: we don’t first rationally deliberate and decide the principles and then apply them in practice; we practice social life, and then abstract principles from our tested and successful practice. Human social practice is not a product of pure rational design.

Simply put, institutionalism believes that rationality alone is not sufficient for our pursuit of moral and political order, and as a strategy, we create and rely on different institutions to create and stabilize our moral and political order. Institutions are the externalized solutions to the problem of cooperation; they become necessary and therefore are created because a common solution is needed to maintain cooperation among different individual agents; this cooperation, according to institutionalism, could not be automatically generated as a result of the involved parties’ separate rational deliberations. Here “institutions,” in its widest sense, means whatever social practices with rules or norms. The process of creation, adoption, and

⁸⁹ As Charles Larmore says, “If even our most fundamental concepts and forms of understanding follow the vicissitudes of experience, then only by attending to why we have inherited the patterns of belief and experience we have, can we see clearly how we are to go on from there. We need, that is, a conception of philosophy that recognizes the historically conditioned character both of the problems it confronts and of the knowledge it can acquire.” See his *The Morals of Modernity*, Cambridge University Press, 1996, pp. 9-10.

revising institutions is a process of externalization and internalization, which can be very briefly described, unavoidably with simplifications and idealizations, as follows.

At the beginning, individual persons, because of their different situations and different viewpoints, encounter problems of coordination or cooperation that they cannot solve independently. They express⁹⁰ their concerns and their envisioned solutions to people living close to them, and together they reach an agreement or an externalized solution. This solution may deviate from any party's original intentions or deepest convictions, but since it is the object of agreement, and since the original problem could not be solved without such agreements, they might all agree to implement the consented solution, and to internalize this solution as a norm in their later actions. Given the structural need for a unified solution to the problems of coordination and cooperation, this process of externalization and internalization will be carried out by force if no expressed consent is attainable; in many cases, such as in a big community with limited means of communication, force might be even unavoidable. Nevertheless, since they implement the norm with different understandings, and perhaps even from their different rational calculations, the norm will depart from its original form as time goes by. Also, in practice, with new problems arising now and then, the norm will produce inconveniences to its various practitioners, even though these inconveniences may not immediately lead to revisions of the norm. Besides, the enforcing of the norm is not always smooth, and coercion may be in order in many cases; as more and more new situations contradict

⁹⁰ The word "express" is important here because one of the central differences between rationalism and institutionalism is that in the ideal case of rationalism, communication between community members is not even necessary if social order is to be achieved among them. Rationalism in moral and political philosophy, just as Cartesian rationalism in epistemology, is ultimately individualistic: a person thinking alone is enough to establish truth, since reason alone is the decider. By contrast, institutionalism recognizes the full importance of communication in the pursuit for social order, since it takes agreement as essential for social order. Of course, linguistic communication, and other forms of communication, are all implied here when we talk about communication. The role of communication in our theory of institutionalism will get more clarifications as time goes by.

the norm, more and more coercive enforcements are called into place, until in the end, the norm cannot stand any more. Revisions and innovations then become necessary, and the community of norm practitioners gathers again, roughly to start another round of externalization and internalization.

This is still a simplified articulation of the process of institution building, and to lay out its specific meanings, ten clarifications of this general statement will be presented in order in the following paragraphs.

First, the involved agents are not necessarily individual persons. Although ultimately social norms are to be embodied in the actions of individual persons, and are to be internalized by individual agents, social cooperation can happen at different levels, with different units of collective bodies of individuals. Families, for example, are perhaps natural cooperation units, since there are anthropological, historical, and psychological evidences indicating that family is the primary social unit of human society.⁹¹ Cooperation terms between families are usually worked out by the heads of families, not by individual persons insensitive to familial concerns. Indeed, more dependent members of a family usually internalize social institutions through the monitoring of the family head. There can also be cooperation between local communities, religious communities, and nations, etc. In each of these cases, relevant agents are collective bodies of persons.

Second, just as social cooperation can be carried out at different levels of collectivity, social norms also have different layers. Familial norms are different from village norms, which in turn are different from national norms, etc. Since different

⁹¹ To be clear, family is always a social institution, and what form of family a society adopts usually reflects, and very often determines, the institutional structure of that society. In no sense this essay would argue that some family structure, such as a patriarchal one, is determined by nature rather than by institutions. I use family as an example here only because family is normally the most basic unit of social organization.

levels of social norms are ultimately to be carried out by individual persons, usually one person needs to play different roles in different contexts. To avoid conflicts between these different levels of social norms, there is also a pressure for integrating these levels into unified systems. As a result, different levels of social norms will exist in certain hierarchal structure, with overriding norms and subordinate norms, etc.

Third, the above description of the process of externalization and internalization is not a social contract theory based on hypothetical or actual consent. When I say agents “gather together,” I don’t mean to say that there is an actual or hypothetical convention attended by every agent to whom the concluded norms are to apply. Some kind of convention might be involved when establishing norms, but conventions with all relevant parties attending are rarely held, and sometimes a social norm can be established without any convention being called upon, or any explicit procedure of establishment being carried out.⁹² The social norm of hetero-sexual marriage, for example, was deemed in most human societies as a natural norm, and was not developed from any sense of establishment procedure. Most social norms are established through long histories of trial and error, as part of human social evolution. As Hume vividly puts it,

Two men, who pull the oars of a boat, do it by an agreement or convention, tho' they have never given promises to each other. Nor is the rule concerning the stability of possession the less deriv'd from human conventions, that it arises gradually, and acquires force by a slow progression, and by our repeated experience of the inconveniences of transgressing it. On the contrary, this experience assures us still more, that the sense of interest has become common to all our fellows, and gives us a confidence of the future regularity of their conduct: And `tis only on the expectation of this, that our moderation and abstinence are founded. In like manner are languages gradually establish'd by human conventions without any promise. In like manner do gold and silver

⁹² I believe that Rawls’s contractarian device of “the original position” should be understood in the same spirit.

become the common measures of exchange, and are esteem'd sufficient payment for what is of a hundred times their value.⁹³

Nevertheless, I choose to say that agents “gather together” to establish a norm because ideally, a norm can effectively come into existence only when there is a relatively universal internalization and compliance among involved agents, so that there is an equilibrium⁹⁴ that holds the norm through time and across the society. Real universal compliance is, of course, rarely secured, and thus our process of externalization and internalization of social norms is an open process. It is still true, though, that a social norm will be more stable when universal compliance is more secured.

The fourth clarification regarding this process of externalization and internalization of social norms is that for institutionalism there is no pre-institutional guidance to be followed in our practice of establishing social norms. To be sure, different people, when they are forced to live together by outside environment, may have what Rawls calls a “natural duty” to treat each other with benign or even friendly intention, so that cooperative social norms can be worked out among them. After just social norms are established, people may also have a natural “duty of justice” to comply with these norms, and to “further just social arrangements not yet established.”⁹⁵ But these natural duties are only motivations for people to live peacefully with each other under social norms; they say nothing about what social norms should be established or what social institutions are just. In this sense

⁹³ See Section II, Part II, Book III of David Hume, *A Treatise of Human Nature: Being an Attempt to introduce the experimental Method of Reasoning into Moral Subjects*, reprinted, edited by L.A. Selby-Bigge and P.H. Nidditch, Oxford: Clarendon Press, 1975.

⁹⁴ I use the word “equilibrium” in its standard meaning in game theory. An “equilibrium” is reached when every party in an interaction process has chosen strategies that constitute the best responses for herself to the strategies adopted by the other parties. It is obvious that in human societies, social institutions are the locus of the equilibria of social cooperation. Indeed, social institutions are created in the first place to maintain such kind of equilibria of social cooperation. The concept of equilibrium in game theory was first presented by John Nash, in “Noncooperative Games,” *Annals of Mathematics* Vol. 54, pp. 289–95. For a philosophical presentation of game theory, see Cristina Bicchieri, *Rationality and Coordination*, Cambridge: Cambridge University Press, 1993.

⁹⁵ See TJ, section 19.

institutionalism is different from rationalism, which claims that social norms are established and complied with because they suit certain pre-institutional natural tendencies of the involved parties.

The fifth clarification is also relevant to the difference between institutionalism and rationalism: human nature, according to institutionalism, is not pre-determined, but is endlessly molded in the process of externalizing and internalizing social norms. People living under certain social norms, whether consenting to these norms or not, are required to follow these norms by different kinds of social pressures. As a result, they grow up internalizing these social norms to different degrees. When they move to another community with different norms, they will find themselves more or less culturally shocked, for people there seem to have different a “human nature.” This is what we now call cultural differences among human beings. These differences in no sense imply, of course, that people from different cultures cannot cooperate under the same norm. Indeed, one of the major advantages of institutionalism over rationalism is that it endorses no rigid conception of human nature, therefore leaves huge space for trans-cultural communication and trans-cultural influence. When people with different internalized social norms come together, they can establish new norms, or they can learn each other’s norms, or both. In some cases, they may resort to “our common human nature,” and view different cultures as different instantiations of the same, higher set of norms for human beings. But these are only rhetorical or analogical terms; when another still different culture shows up, the “common human nature” may need to be revised yet again.

The sixth clarification concerns the enforcement of social norms. Social norms need to be enforced to secure certain levels of universal compliance, but there is no pre-institutional or ideal way to enforce social norms. In other words, the ways to

enforce social norms are also dependent upon the process of externalization and internalization of norms. Since for a society to stay in order, a coherent system of social norms needs to be implemented all across the society, enforcement of social norms in larger societies usually requires more powerful coercive institutions. In real history, especially during periods of rapid enlargement of a society, blunt force plus indoctrination was widely used as effective strategy to enforce new social norms, especially norms pertinent to political compliance. But even here, cultural differences can have significant consequences. Some cultures encourage yielding to power; some cultures are more difficult to tame by force. Some people are more willing to internalize new social norms; some people are hard to convince. The colonization of the whole world by different Western countries gave us plenty of examples of how cultural differences influence the enforcement of new social norms. Compared with the Japanese, the English were less willing to use military force to realize their imperial goal; compared with India, African countries were more difficult to rule over, due to their lack of political traditions.⁹⁶

Following this, the seventh point I want to make is that social norms usually engender powers, and therefore power structures. This is so mainly because of two reasons. The first reason is that since most social norms need enforcement, people in the positions to enforce social norms would need the appropriate levels of power to do their job. Even in a radical democracy that distributes public offices by lot, different people still have different powers at any particular moment. The second reason is that social norms, as we clarified before, not only regulate, but also constitute. A legal system that guarantees several rights to its subjects, for example, empowers its

⁹⁶ For a recent discussion of colonialism, see N. Thomas, *Colonialism's Culture: Anthropology, Travel and Government*, Polity Press, 1994.

subjects through its social institutions, so that they can own property, can freely express their opinions, can cast votes, etc. By “power,” therefore, I do not mean general power to realize one’s will, but power that is particularly engendered by systems of social norms. This is what Joseph Raz calls “normative power,” or “the ability to perform a normative act.”⁹⁷

Furthermore, social norms within a society need to be generally coherent in order to secure social order, and they need to be formed into a structured system. This makes the normative powers engendered by social norms also structural: different people are endowed with different powers, and these powers form a hierarchal system. Without such a hierarchal system of normative powers, practical actions and interactions among members of a society would fall into constant conflict. In light of this power structure, an important problem to be addressed by any political philosophy, including institutionalism, is how to make the unavoidable power structure in any society not detrimental to its social order, or the sustainability thereof. More specifically, institutionalism believes that various normative powers need to be balanced within an institutional structure so that no particular power is in a dominant position allowing it to manipulate other powers. Without such a balance, a dominant normative power, or an alliance of dominant powers, will take advantage of their positions and harm people in inferior positions, therefore ultimately destabilize the order of the whole society. This point will be discussed in more detail in the next chapter when we get to the ideal of liberal democracy and the problem of political development.

⁹⁷ See Joseph Raz, *Practical Reason and Norms*, Oxford University Press, p. 98. Raz defines power in general as “the possibility of realizing one’s wishes.”

The eighth clarification regarding this process of externalization and internalization is about how these communal or societal rules or norms came into being in the first place. This question is hard to answer, since every generation of human beings find themselves already living under certain social norms,⁹⁸ and the social norms, in their historical development, are always in a process of accumulation. Current social norms always emerge above layers of past social norms; it is not as if rational deliberators, facing the inconvenience of not having any social norm in the state of nature, work out together a rational and consensual set of social norms and stick to them once and for all, as Hobbes and some other traditional social contract theorists suggested. It is more in line with Rawls's story, in which a thought experiment referring to an "original position" can always be called upon when fundamental moral and political issues are in dispute, yet the original position in question is always based on the current consensual social norms. Rationality plays an essential role in reflecting on old institutions and creating and justifying new institutions, but it plays this role only within this institutional background.

The ninth clarification of our description of the process of externalization and internalization of social institutions is about the momentum of innovations. As explained before, social norms cannot take shape without compliance from norm practitioners or agents, and ultimately, social norms are to be followed by individual persons. Nevertheless, due to their different circumstances and different backgrounds, individual persons will unavoidably follow social norms according to their different understandings, or even different manipulations. No social norm is absolutely stable in the process of internalization by individual persons—even the most successful

⁹⁸ As Rawls says, "no society can, of course, be a scheme of cooperation which men enter voluntarily in a literal sense; each person finds himself placed at birth in some particular position in some particular society, and the nature of this position materially affects his life prospects." See TJ, p. 12.

indoctrination has limits in its reach to different human minds. It is here we see the momentum of social innovations: individual agents are bound to understand, implement, and even manipulate the social institutions according to their own experiences and their own rational deliberations, and by making the institutional structure not absolutely stable, this individual effort leads to institutional innovation.⁹⁹ Again, the stability of social norms in the process of internalization is subject to the influence of the whole historical process. Some people, such as the Chinese and the Japanese, due to their historical experience with coercive institutions, are more willing to submit to unified social norms; some people, such as people of the Western European tradition, have more independent minds when they face the pressure of socialization, perhaps due to their less oppressive historical experience with institutions. Nevertheless, the stability and innovation of social norms are everywhere ultimately dependent upon individual agents, since they are the ultimate carriers of practical actions, and the ultimate residences of social norms.

The tenth, and the last, clarification regarding this process concerns the expansion of institutional structures. Social institutions, by peacefully solving coordination and cooperation problems among relevant agents, unite people into their cherished communities. With favorable outside social and natural environment, a society thus united will expand, and people within this society will have more chances to interact with people outside this society, individually or as collectivities. These additional interactions will in turn require further social norms and institutions to

⁹⁹ Bertrand Russell has a similar observation on this issue. According to Russell, the major problem for political philosophy is how to provide a sense of social order without suffocating individual creativity. He believes that defining political philosophy in this way will expose the merit of liberalism as a political philosophy, since liberalism provides the best solution to this major problem: "The essence of liberalism is an attempt to secure a social order not based on irrational dogma, and insuring stability without involving more restraints than are necessary for the preservation of the community." See Russell, *A History of Western Philosophy*, Simon and Schuster, 1945, p. xxiii.

regulate and to empower. If the two societies in discussion both have their own separate yet systematic structures of social norms, they will have difficulties integrating with each other. The more systematic they are, the two structures of social institutions will have more difficulties in getting along with each other peacefully under the same mutual understandings. Ethnic, linguistic, religious and other cultural differences all contribute to the price two societies need to pay for a peaceful coexistence or even a possible integration. Two institutional systems, once communications and interactions between them reach a certain level, will unavoidably have influences upon each other, sometimes causing changes in each other, sometimes making one even more affirmative of its own characteristics. In most occasions, however, one system will have more influence over the other; two systems of social institutions rarely recognize each other as absolutely equal and learn equally from each other. Whatever is the case, once two social systems are brought together in constant engagement, their social institutions tend to accommodate each other, and gain more and more similarities. This development is motivated by the same need on both sides for common understanding or common social norms in practical interactions.

The last three clarifications testify that institutionalism is not the same as conventionalism or cultural relativism. Conventionalism and cultural relativism may share our view about rationalism in claiming that social norms are not determined by any pre-institutional directions, but they both take systems of social institutions as closed ones in another direction: they believe that social institutions are arbitrary regulations that happen to bind certain people in certain society, and there is no point to seek for mutual understanding or mutual influence among different societies. Institutionalism, on the other hand, provides a universal framework to understand the

reasons why certain people accept and internalize certain norms and values, and thus a universal framework to promote mutual understandings among different institutional systems. In addition, institutionalism believes that the internalization of social norms by individual agents is never a process of defining or determining human nature by social institutions or conventions. Individual agents can always use their rational deliberation and judgment when they internalize the current social norms; indeed, for the process of internalization to get through, individual agents are required to use their brains, at least for the sake of understanding and memorization. Since individual persons are in no way “defined” or determined by any social institutions or cultural customs, the only problem is not about recognizing different peoples as what they are, but about how to promote mutual understanding among them, and how to proceed with mutual influences and cultural innovations.

In this section, we presented our theory of institutionalism as a process of externalization and internalization of social norms, and made ten clarifications regarding this process so that the implications of institutionalism are laid out in more details. This is the second step in the presentation of our theory of institutionalism. To further understand the agency construction in this process of institutional evolution of human history, we will, in the next section, look at the agency formation process at work, with examples of our historical experiences with religion and politics. This analysis will pave the way for our theory of political development in terms of our theory of the human construction of institutions.

Agency Formation through Religion and Politics

In this section, we discuss the formation of human agency at both the individual level and different collective levels. To carry out practical actions at

different levels, people need to endow two elements into different levels of human agency: the will-power of the agency and the rules for actions to be carried through. I will call these two elements two motivations for practical actions: the will-power of the agency gives agents a rational motivation to carry out certain practical actions, and the social rules for actions give agents a motivation of reasonableness to carry out practical actions with other people's foreseeable reactions in minds.

The will-power of the agency might be interpreted as rational desires or goals, while the rules for actions can be understood as the meanings of actions, meanings perceived by the agents who carry out the actions and by the co-community members. In other words, agents carry out certain actions not just because they want such actions to be done, but also because they believe they can explain these actions to their community, or in some cases, they believe that some members, if not all of the members, of their community are expecting them to do so. Brutus conspires to murder Caesar not just because he wants to protect the interest of the Senate, but also because he believes that this would save Roman Republic from devolving into an empire. In actions like these, rational motivations and motivations out of considerations of reasonableness are both present, and are closely intertwined.

Without a certain understanding of will-power, a human agent cannot implement any practical action. Nevertheless, will-power alone does not constitute the whole point of a practical action. A practical action concerns the realization of certain goals to be perceived in a community, and to generally make sure a future action will bring about a desired future state of affairs, people need to believe in advance that certain rules are there to guarantee the causal relationship between the practical action they are about to implement and the desired results. This is especially true when the desired goal of a practical action is a desired reaction from other co-community

members. Without knowing a shared set of social norms, people cannot make reasonable predictions about the future reactions from other people, therefore cannot act in a way that guarantees a peaceful coexistence with a minimum level of mutual confidence.

The necessity of will-power for practical actions is not just true for practical actions at the individual level, but even truer for practical actions at collective levels. Individual actions usually require a minimum level of desires, intentions and personal plans; to make and to stick to long term personal plans, a higher level of will-power is required; people trapped in extremely negative situations, such as drug addictions, usually find themselves incapable of bettering their situation by their own actions without believing in a higher being with higher power, who can help them to relieve pains and realize higher goals. Similarly, to carry out collective actions, a collective intention needs to be formed, and it requires a higher level of will-power formation. The same comparison of intensity can be made with regard to the rules for practical actions. More complex actions require more complex rules, since they involve more practical agents and more complex levels of coordination and cooperation.

Understanding human agency as being consisted of these two elements will prove to be very helpful in the development of our theory of institutionalism, and the more specific meanings of these two elements will become clear in an illustration of our historical experiences with religion and politics.

Reflection on our historical experience with religion is instrumental for our reflection on the social evolution of agency formation and institution building. Religion is arguably the most universal phenomenon in ancient societies, and any theory about human social evolution needs to account for this fact. We may not totally agree with Durkheim's definition of religion as "a unified system of beliefs and

practices relative to sacred things, that is to say, things set apart and forbidden—beliefs and practices which unite into one single moral community called a Church, all those who adhere to them,”¹⁰⁰ but it seems undeniable that religion does play a very important role in facilitating social organization, especially in ancient times. Our reflection on religion will therefore concentrate on the social function of religion, and will steer away from other aspects of religion for the sake of simplifying our task.¹⁰¹

Religions are helpful, and in ancient times are even necessary, in facilitating the formation of agency at both the individual level and collective levels.

Anthropology has provided enormous evidence about how, in pre-historical times, primitive human beings originally constructed their agencies through tribal identities and totem worship.¹⁰² Totems can be identified with individuals and with collective bodies of individuals, such as clans and tribes. The formation of individual agency and the formation of collective agency are always mixed up, in the sense that the formation of certain collective agencies requires the formation of certain types of individual agencies. When one tribe identifies itself as a wolf, for example, it’s likely that the members of this tribe are all identified as wolves. But in the sense that totem worship could only be established by a clan or a community of people, the

¹⁰⁰ See Emile Durkheim (1912), *The Elementary Forms of Religious Life*, translated by Karen E. Fields, The Free Press, 1995, p. 44. For a recent exploration of the relationship between religion and community cohesion, see Keith Ward, *Religion and Community*, Clarendon Press, 2000, which is based on a comparative study of five major world religions: Buddhism, Hinduism, Judaism, Christianity, and Islam.

¹⁰¹ For a review of recently influential theories of religion, see Stewart E. Guthrie, “Religion: What is it?” *Journal for the Scientific Study of Religion*, Vol. 35, No. 4 (December 1996), in which Guthrie categorizes these theories into three groups: wishful thinking theories (taking comforting as the major motivation for people to seek religion, such as Hume’s), symbolist theories (taking social cohesion as the major function of religion, such as Durkheim’s), and intellectualist theories (concentrating on the cognitive functions, such as the explanation and control of the world, as the most important reasons for religion, such as animism). I believe that all three schools have reasonable elements in their theories, and will feel free to use anyone of these elements as I see fit for my own theory of agency formation and institution building.

¹⁰² Durkheim and Levi-Strauss, among others, emphasize the role of totem warship in the construction of tribal identities. See Durkheim 1912 and Claude Levi-Strauss, *Totemism*, Boston, Mass.: Beacon Press, 1962. For a recent study on totemism, see Morten A. Pedersen, “Totemism, Animism, and North Asian Indigenous Ontologies,” *Journal of Royal Anthropological Institute*, 2001, pp. 411-427.

construction of collective agency through totem worship has some priority over the construction of individual agency through totem worship. As Durkheim says,

the totem expresses and symbolizes two different kinds of things. From one point of view, it is the outward and visible form of what I have called the totemic principle or god; and from another, it is also the symbol of a particular society that is called the clan...if the totem is the symbol of both the god and the society, is this not because the god and the society are one and the same?¹⁰³

The construction of totem systems in ancient societies, therefore, should be understood as an effort by our ancestors to construct the identities of their societies, and the identities of themselves. Religion is, in this sense, a very fundamental method of agency formation.

The process of agency formation through religion can illustrate very well the two elements of agency formation, the formation of will-power and the formation of rules. Here we will examine these two central elements of agency formation by looking into two types of religious experiences. In addition, the persistence of agency, or the consistency of the identity of an agent, is also an important element of agency formation, which is facilitated by religious belief in life after death. This belief is almost universal in all religions;¹⁰⁴ it reassures the believers that their culturally constructed identities will not be lost after they die. This belief makes believers feel much more comfortable and more confident in building up their own cultural identities.

We can roughly differentiate two types of agency formation through religions. One type of agency formation runs like this. Some ancient religions, and to some extent even some modern religions, construct a conception of a being (a god) with

¹⁰³ See Durkheim, *The Elementary Forms of Religious Life*, p. 208. This book by Durkheim had not been taken seriously by scholars for a long time before a resurged interest in it in late 1990s. For a general appraisal of this book, see Ken Morrison's review, in *Social Forces*, Vol. 82, No. 1 (September 2003), pp. 399-404.

¹⁰⁴ Even a Buddhist would hold that some elements of our cultural identities, such as our moral standings or moral characteristics, will survive the death and the incarnation.

higher or ultimate power, who demands his believers to do certain things, observes his believers' actions, and distributes rewards and punishments accordingly. As a result, the believers reflect and monitor their own actions in light of an ideal of agency, in almost its literal meaning, namely, an ideal in which they themselves are agents of the god, fulfilling god's will and staying responsible to god as his loyal agents. In this case, the god is the representation of the collective agency of this society. So long as the belief in this god is well maintained among the population, the sense of community and the sense of moral order are safely guaranteed. A typical example of this conception of god is, of course, the Judaic God in the Old Testament, who is said to be the protector and law giver of the people of Israel.

Another type of agency formation through religion can be seen in different kinds of witchcraft, in which the believers claim that they can gain superior power by performing as the gods or the demons they worship. Generally speaking, this type of religion constructs an agent higher than the believer's self, therefore helps the believer to form a conception of herself as a copy or incarnation of the agent, with will and power. This type is perhaps more primitive than the first type, and it has certain residues in the first type, such as prayers and other rituals helping believers to gain power and peace.

The first type of agency formation through religion illustrates the reasonable motivation for practical actions, while the second type testifies very well the rational motivation for practical actions. The first type shows that there is an internal connection between the formation of agency and the formation of norms. An agency is constructed when certain rules are put into place to guide and to constrain the practical actions carried out by the relevant persons. Actions unavoidably have consequences, and in order to make sense of these consequences, and to foresee these

consequences, people need to understand them in terms of norms or rules. Also, since actions from different agents are bound to conflict, norms are necessary to maintain order. People with certain religious beliefs, ancient or modern, act in the self-understanding that they are following the rules set up by god; they pray to god in the understanding that since they are following God's rules, God will protect and bless them in the future—if not in this life, then in the after life. This brings certainties to the unavoidably consequential and conflicting practical actions. The relationship between believers and their god is, so to speak, a relationship of contract, only here the terms are supposedly set up by god's commandments unilaterally.¹⁰⁵ When believers of god discover any discrepancies between the rules and what happens in reality, they suppose that god has his own plan, and what they perceive as discrepancies are only the lack of understanding of god's will on their own part. With these sometimes very complex self-adjusting mechanisms, people construct their agency through various religious norms.

Another element of the concept of agency, as shown in the second type of formation of agency through religion, is the awareness of the will-power in human actions. Most ancient cultures externalize human intentionality to other living beings; in some cases, even inanimate beings, such as mountains and the heaven, are deemed as intentional beings with will-power. To solve the problems in their lives, such as collecting food, curing illnesses, getting rid of the fear for death, they seek help from the good will of these inanimate beings by various rituals, including sacrifices, prayers, and even curses. Anthropologists call this instilment of will-power into all kinds of natural things “animism.” In some forms, animism as a way of thinking can

¹⁰⁵ Most major religious traditions of the world, such as Judaism, Hinduism, Confucianism, Christianity, and Islam, had their legal practice originated from religious authorities. This is especially true in the three monotheist traditions, where laws are explicitly ordained in their holy scriptures.

also be found in children.¹⁰⁶ This type of agency formation through witchcraft also works as a process of externalization and internalization: people feel their own actions as intentionally motivated; they then suppose that other beings are also motivated by intentions, and therefore can be pleased by good intentions from human beings. In witchcraft, people externalize their own intentionality to other beings, and then internalize that intentionality to gain will power for themselves.

The relationship between rules or norms, on the one hand, and will and power, on the other hand, can be very tricky. In our modern understanding, normative rules are different from “rules” governing nature: norms presuppose that people have free will to obey and to violate; natural rules, if they are genuine laws of nature, are not up for violation. Ancient people, however, might not necessarily understand social norms and natural laws as different in kind. As Kelsen says,

in the Christian Era, at least until Hume, the idea of causality was considered merely as a norm, since it was felt to be the expression of the divine will. God is not only the absolute moral authority determining by his will the norms of social life; he is also the creator of the universe, its *prima causa*; and if natural events occur according to a definite rule, this rule is but a manifestation of his omnipotent will.¹⁰⁷

In many primitive religions discovered by anthropologists, will and power in natural things can be negotiated or steered into the direction in favor of human beings, through rule-governed rituals. It’s likely that in their understandings, the actions of non-human natural beings are also governed by norms. As Kelsen illustrates,

in primitive societies the behaviour of animals, plants, and even inanimate things is regulated by the legal order in the same way as that of human beings.

¹⁰⁶ “Animism” is a concept first created by E.B. Tylor, in *Primitive Culture: Researches into the Development of Mythology, Philosophy, Religion, Language, Art, and Custom*, first edition in 1871. For a recent discussion of animism, see a roundtable discussion of this topic by a group of anthropologists, “‘Animism’ Revisited: Personhood, Environment, and Relational Epistemology,” in *Current Anthropology*, Vol. 40, Supplement (February 1999). For a discussion of animism in children, see Gareth Matthews, “Conceiving Childhood: ‘Child Animism’,” *Nous*, Vol. 16, No. 1 (1982).

¹⁰⁷ Hans Kelsen, *Society and Nature: A Sociological Inquiry*, The University of Chicago Press, 1943, p. 260. Here we can also see that a theocracy understands social norms as nothing but the divine will, or to use John Austin’s theory, laws are commands issued by the sovereign ruler.

Thus we read in the Bible that an ox which has killed a human being is to be killed (clearly as a punishment)... This norm-content, absurd according to present-day views, must be attributed to the animistic idea that not only human beings but also animals and inanimate objects have a 'soul', and so there is no basic difference between them and human beings.¹⁰⁸

In this sense, Judaism contains elements of animism. More generally, the intentionality of actions and the normativity of actions (in the sense that actions are governed by norms) are two interconnected dimensions of human actions and human agencies.

This interconnection between norms of action and will-power of action can be further illustrated as follows. Here we can make a distinction between demons that supposedly control us, and demons that control other things. Dealing with different types of demons may require different methods, but as both demons, they represent the same elements of agencies, that is, the will-power element and the rule-following element. As we saw above, to deal with the demons supposedly controlling us, we need to submit ourselves to god, who is supposed to be the ideal "demon," so to speak, who controls us. In other words, ideally we are the agents of god, and we submit our will to god's will as presented in his orders and norms. Our free will, which more genuinely belongs to us, is sometimes viewed as a sign of evil, or original sin, that is nevertheless alien to our own agency, or to use another religious term, is viewed as controlled by Satan. The hope of our redemption lies in our yielding to god's will, which means nothing but following moral norms set up by god. To deal with the demons supposedly controlling the things outside of ourselves, we used to resort to different means. Primitive people dedicated a lot of their energy to trying to control these demons, through their practice of witchcraft, so that these demons can work for

¹⁰⁸ See Hans Kelsen, *General Theory of Norms*, translated by Michael Hartney, Clarendon Press, 1991, p. 89.

human good. The practice of witchcraft is possible, however, only when the wills and powers of the demons are understood as following some rules or norms. These rules are not understood in modern mechanistic terms, of course; the demons can be satisfied, comforted, used, or scared away by prayers, dances, music, sacrifices, or threats. In any event, the wills and powers of the demons can be dealt with in terms of rules and norms. These rules and norms are then captured by different taboos and rituals, which are only the primitive forms of moral norms. Analyzed in this way, the building up of intentionality and normativity of practical actions and agencies through religion is an integrated process.

Besides the adoption of norms and understanding of will-power, another important element in agency formation is to maintain the identity or the persistence of the agency, which was also facilitated by religions. Religion, understood in its widest sense, is an effort by human beings to make sense of the mishaps in their life, especially their death. As Hume observes, “every disastrous accident alarms us... And the mind, sunk into diffidence, terror, and melancholy, has recourse to every method of appeasing those secret intelligent powers.” One possible origin of religion in the human mind, therefore, lies in the fact that people cannot accept the death of their beloved ones, as well as their own mishaps and their foreseeable death; or as Hume insists, “the primary religion of mankind arises chiefly from an anxious fear.”¹⁰⁹ They construct a conception of god, or an everlasting life, to make sure that death and other mishaps do have meanings beyond the destruction of their lives. With this help from

¹⁰⁹ See David Hume (1757), *The Natural History of Religion*, edited by H.E. Root, Stanford University Press, 1957, pp. 30 and 65, respectively. Hume also traces this theory that fear is the major reason for human beings to resort to religion back to ancient Greek. See the same book, p. 31. Hobbes has the same observation when he says, “this feare of things invisible, is the natural seed of that, which every one in himself calleth Religion.” See Hobbes (1651), *Leviathan, or the Matter, Form and Power of Commonwealth, Ecclesiastical and Civil*, edited by R. Tuck, Cambridge: Cambridge University Press, 1991, chapter 11, penultimate paragraph.

religious belief, people construct themselves as immortal agents or souls, so that even after the death of their biological bodies, they are still there to take actions, and to accept responsibilities in terms of reward and punishment. This factor of immortality of the agents has played an important role in the formation and evolution of human morality; Kant even claims, in *The Critique of Practical Reason*, that our moral conduct cannot be conceived without the practical presupposition of the immortality of the soul: “the highest good is practically possible only on the presupposition of the immortality of the soul, so that this, as inseparably connected with the moral law, is a postulate of pure practical reason.”¹¹⁰

This analysis of our historical experience with religion can shed new light on the relationship between politics and agency formation. Politics is always about collective actions, and as such it is always involved with construction of collective agencies, which can carry out collective actions, realize collective goals and take collective responsibilities.

In the case of the construction of the identity of a political community, we can see that religion plays an essential role in human political actions, especially in ancient times. We are told that in primitive societies, each tribe has its own god or totem, which unites the tribe into a collective agent, empowers the tribe to act as one body, and protects the tribe from above. Even the Judaic god is believed to protect only his chosen people; Even the Christian god has long been said to protect only those who believe in him.¹¹¹ In Homer’s epics, human political actions are understood as wars of gods, who, in their characters and emotions, if not in their higher

¹¹⁰ See *Immanuel Kant: Practical Philosophy*, translated and edited by Mary J. Gregor, General Introduction by Allen Wood, Cambridge University Press, 1996, p. 238.

¹¹¹ Rawls lost his Christian faith exactly because his realization of this arbitrariness of Christian god’s love. See Thomas Pogge, *John Rawls: His Life and Theory of Justice*, p. 14, translated by Michelle Kosch, Oxford University Press, 2006.

capabilities, are only images of real human beings. Ancient Chinese tribes were under different totems' protection; after they were united into a much bigger "Chinese" body politic, they were under the protection of a unified totem, the dragon, which is not a real species of animals, but only an imagined powerful animal with combined features such as pig's mouth, snake's body figure and deer's horns.¹¹² For over two thousand years, Chinese emperors had been claiming, and had usually been recognized, as the incarnations of the dragon, and therefore as having the power over the whole nation of China.

In light of this understanding, we can see that collective action, just like individual action, is guided by an ideal of agency—only here the agency is a collective one. A tribe acts as a united body under the ideal of the agency of its totem; a nation state acts as a united body politic under the ideal of a collective national agency or identity. Modern societies attribute the power of actions and the responsibilities for actions and inactions to different levels of corporate bodies, such as schools, firms, parties, governments, and countries. This is how political actions, and understanding of political actions, are carried out.

The construction of the state is perhaps the most important step in the evolution of human society, but the origin of the state is a highly contested topic, largely due to the lack of historical evidence.¹¹³ Just saying that the state was created because a coercive political power is necessary for maintaining social order among individuals with contested interest claims, as Hobbes and other traditional social contract theorists have said, is not a good enough answer to the question regarding the

¹¹² For a recent study on the dragon as a totem, see Margaret Sleeboom, "The Power of National Symbols: The Credibility of a Dragon's Efficacy," in *Nations and Nationalism*, Vol. 8 (2002), No. 3, pp. 299-313.

¹¹³ For a general survey of the dominant theories about the origin of the state, see Stephen K. Sanderson, *Social Transformations: A General Theory of Historical Development*, Blackwell, 1995, section 3 of Chapter 3.

origin of the state, for what we want to know is how it was possible to construct a collective agency on such a big scale and with such a coercive power.¹¹⁴ Recent studies in anthropology tend to suggest that the first state was created under a then newly founded belief in a common god, or a common system of gods, for a group of people.¹¹⁵ The logic behind this conjecture is that no matter how important the economic and sociological conditions were for the emergence of the first states, without such a common faith in such a common god, it would be hard to organize such a big political society and to legitimize such a coercive political power as a state. This conjecture, even if it is not necessarily correct on the issue of the first state, can still be confirmed by the states in history generally. In recorded history, rulers of states in different parts of the world have been accustomed to justifying the state with recourses to divine sanction.¹¹⁶

So far this is our rather simplified account of agency formation at both the individual level and collective levels. We have seen that agency formation is a process of institution building, which involves both the construction of will-power and the construction of social norms. It is still not clear how this analysis of agency formation and institution building is relevant to our central thesis concerning liberalization and

¹¹⁴ City states, such as the ancient Greek cities, and nation states, such as ancient Chinese states, might be different in their scales and their levels of coercion, therefore require different treatments. But here I will only emphasize on their similarities.

¹¹⁵ Leften Stavrianos endorses this idea when he talks about the origin of the first city state in ancient Mesopotamia. See his *A General History: From Prehistory to 21st Century*, 7th edition, Prentice Hall, 1998. Norman Yoffee also takes a common belief system as the necessary condition for the emergence of archaic city states, although he emphasizes on the naturalness of such an emergence after thousands of years of the development of agricultural and sedentary lives. See Yoffee, *Myths of the Archaic State: Evolution of the Earliest Cities, States, and Civilizations*, Cambridge University Press, 2005.

¹¹⁶ For an example, see Richard Baum, "Ritual and Rationality: Religious Roots of the Bureaucratic State in Ancient China," in *The Early State, Its Alternatives and Analogues*, edited by Grinin, Carneiro, Bondarenko, Kradin, and Korotayev, "Uchitel" Publishing House, 2004. After demonstrating the "intimate and powerful connection in ancient China between ritual leadership and the emergence of the institution of kingship," the author concludes that in no sense "was China particularly unique in the ancient world" compared with "other patrimonial theocracies." See pp. 211-2.

democratization. To establish this connection, we turn to the next chapter, where the element of political development of our theory of institutionalism will finally flesh out.

Transitional Remarks

This chapter develops the theory of institutionalism in three steps: the necessity of relying on common or public social institutions to establish and to stabilize social order was first presented as a theory of alienation, then as a theory of externalization and internalization, and then as a theory of agency formation and institution building. All these three steps are necessary to distinguishing institutionalism from rationalism, and to presenting institutionalism in its basic elements.

The process of the evolution¹¹⁷ of human practical actions is the process of agency formation and institution building. This process will lead, as I will argue in the next chapter, to two separate yet connected processes: the process of liberalization of individual agents and the process of democratization of the way societies establish, justify, and modify their institutions.¹¹⁸ The process of liberalization, which will

¹¹⁷ Yes, “evolution” is the right word here, since social development process can be largely understood as a process of adaptation to natural and especially social changes. By using this word, however, I am not endorsing any sense of direct application of evolutionary theory about natural world to human social world, nor am I trying to found my theory of social development on our evolutionarily shaped human nature. With this disclaimer, I can develop a theory about social evolution without borrowing any insight from Darwinian theory of natural evolution; social evolution has its own logic, so to speak. Social Darwinism in the 19th century and sociobiology in the 20th century, on the other hand, do rely on essential concepts of theory of natural evolution such as “gene” and “selection.” For a peek on the currently very popular subject named “sociobiology,” see E.O. Wilson, *Sociobiology: The New Synthesis*, Cambridge, MA: Harvard University Press, 1976; R. Dawkins, *The Selfish Gene*, Oxford: Oxford University Press, 2nd edition, 1989.

¹¹⁸ Liberalism and democracy are sometimes viewed as two conflicting ideals: liberal rights need to be secured within a democracy because, according to some philosophers, these individual rights need to be put beyond the reach of democratic (or majoritarian) decision procedures. No matter how delicate such an argument would be, liberalism and democracy, in real history, have actually been complimentary rather than contradictory. In institutionalism, liberalism and democracy both demand coherent system of institutional guarantees, and as such they are complimentary. For a critical assessment of the conflicting thesis, see Joan McGregor, “Liberalism and Democracy,” *Philosophy East and West*, Vol. 38, No. 3 (July 1988). For an argument for the positive connection between

sometimes be called the process of individualization,¹¹⁹ means that more primitive societies usually realize collective social actions with more unified institutions and less regard for individual concerns, but as more practical actions become possible within more complex human social systems, individual members of societies will be assigned with more practical roles as agents, which demands higher levels of self-consciousness of themselves as independent individuals. The process of democratization means that as individual agents are burdened with more duties by more complex social institutions, they will participate more actively in the creation, implementation, and justification of social institutions, and as a result gain more rights in determining their own fate.

In this essay, “liberal democracy” will be understood not as the automatic end of this development, but as the ultimate ideal of these two processes. That is, liberal democracy will be better justified with the presentation of these two processes not because these two processes will automatically and ultimately lead to the establishment of a political order called liberal democracy; rather, liberal democracy will be better justified in light of these two processes because people who recognize these processes will be normatively committed to the justification and realization of a liberal democratic political order. People do this from an internal point of view, that is,

majority rule and minority protection, see Anthony McGann, *The Logic of Democracy: Reconciling Equality, Deliberation, and Minority Protection*, The University of Michigan Press, 2006.

¹¹⁹ We can also use “individuation” or “individualization” to represent the process of liberalization. The individuation tendency of modern society is nowadays seldom addressed in philosophical literature. Existentialism, especially in Sartre, used to make a big deal out of the individualization tendency of modernity, along with their emphasis that individual human beings have no pre-determined essence. In addition, Sartre believes that individualization process gives us ultimate freedom to make ourselves. These points, I believe, can fit well into our institutionalism. For an update exploration of existentialism, see C. Guignon ed., *The Existentialists: Critical Essays on Kierkegaard, Nietzsche, Heidegger, and Sartre*, Rowman & Littlefield, 2003. For a recent discussion of the topic of individualization, see Ulrich Becker and Elisabeth Beck-Gernsheim, *Individualization: Institutionalized Individualism and its Social and Political Consequences*, Sage Publications, 2002.

from their own various efforts of institution building.¹²⁰ Ultimately, the ideal of liberal democracy is nothing but the ideal that political institutions of a society cannot be legitimate and stable unless it is justifiable to all individual agents that are to be regulated by those institutions.

With these preliminary comments, we now turn to chapter III.

¹²⁰ On the point that democracy is a problem of quantity (degrees) instead of quality (either democracy or not), there is a solid literature since Robert Dahl's *Polyarchy: Participation and Opposition* (Yale University Press, 1972). For a recent study, see Thomas Carothers, "The End of the Transition Paradigm," *Journal of Democracy*, Vol. 13, No. 1 (January 2002).

Chapter III Institutionalism and Political Development

This chapter will unwrap the dimension of political development of our theory of institutionalism. I will argue that institutionalism implies that for any established political order to be stable in the long run, a political development towards liberalization and democratization is normatively required. A political order that fails to develop in this direction will collapse sooner or later, no matter how hard people try to save it. This argument will establish liberal democracy as the ultimate ideal of human institution building. That is, liberal democracy will not be treated in this essay as an actual set of institutions that is to be realized in any actual body politic, but rather as an ideal for human pursuit of political order. This implies two things. First, every society, under any kind of political regime, needs to be liberalized and democratized in the long run if it is to stabilize its social and political order. Second, all societies, given enough time, will develop into an institutional structure similar to those societies we now call “liberal democracies,” even though the actual institutions can be very diverse.

To explain briefly why a political development towards liberalization and democratization is normatively demanded, we observe that whenever a political order is established among certain people, the need to regulate the possible practical actions of these people with a coherent and unified system of social institutions usually requires a strong hand over the making and enforcing of these institutions. As a result, social power will be concentrated in the hands of a few people, and the bigger the population of this body politic is, the more obvious the need for such a concentration of power would be. In the sense that such a concentration of power is necessary to establish political order, those few people in power actually represent not just

themselves, but also the collective agency of the body politic; indeed it is a common strategy that they claim power in the very name of the collective agency of this society. This need for power concentration gives priority to the establishment of collective agencies; such a priority is present in any situation where social order needs to be established in the first place. This way the effective surveillance over the majority's behavior is established, and social order is achieved as a result of the majority's compliance to a unified system of institutions. The rulers of such a society, however, are always the minority in numbers, and the ruled people who are supposed to obey the social institutions established by the former are always the majority. As time goes by, compliance with the social institutions, the very condition for maintaining social order, becomes more and more dependent on the majority's actions. The rulers can always play the game of "divide and conquer" over the majority of the people, but the imbalance between the minority's surveillance over the majority and the majority's surveillance over the majority is structurally unstable. In the long run, the minority in power will unavoidably corrupt: either they establish more social institutions in favor of their own interests, or they manage not to obey the same institutions to which they demand the majority's obedience. All these benefits, of course, are possible only with sacrifices on the majority's side. In the long term, the majority will be cornered to smaller and smaller living space. The majority cannot act against their own fundamental interests forever, and as their sense of justice has been violated constantly, they have fewer and fewer incentive or motivation to obey the established institutions. In their arsenal, they can choose either passive disobedience or positive revolt. Either way the established social institutions will be violated more and more regularly. The social order maintained by those institutions will be eroded away, slowly at the beginning, but then rapidly near the end.

To avoid such a process of erosion, a social order, after it is established, needs to develop in the direction of liberalization and democratization. By “liberalization,” I mean that voluntary consent from the ruled becomes more and more important for the legitimacy of the established institutional structure. At the beginning the majority may be forced, or in any case have little choice, to obey the newly established institutional structure. But while such an institutional structure, for the sake of being communicated and maintained throughout the whole society, is usually very restrictive and very simple, as the possible practical actions within this society increase, the system of the institutions will become more complex. Correspondingly, the power structure that enforces these institutions will also become more complex and more decentralized. Individual agents of this society will have more institutions to internalize and more roles to play in this process. As they gain more and more duties, they will also gain more and more rights—or so I will argue in the first section. This process we call the process of liberalization or individualization. By “democratization,” I mean the ruled majority need to be involved more in the making, justifying, and revising of social institutions with which they are required to comply. This process also concerns the genuine legitimacy of the institutional structure; in this essay, we define legitimacy in terms of the majority’s acceptance and internalization of the prevailing institutions. Legitimacy defined in this way is not equal to blind obedience. People would not simply internalize whatever institutions issued by the rulers; they must be able to digest the institutions with reference to their own understandings of justice. People need good reasons, besides the fear for punishment, to persuade themselves to internalize and comply with the established institutions, and when they do, the institutional structure has genuine legitimacy in the eyes of the majority. False consciousness may work well in deceiving the majority in some

circumstances, but it cannot work in the long run, for the majority's sense of rationality, and their sense of justice, cannot be violated for long. The legitimacy of the institutional structure in the eyes of the ruled is essential for the degree of the obedience the structure is to receive. For this reason the ruled, the majority of the population, need to form and reveal their own opinions about the acceptability of the institutions to people in authority. In the end, the more complex an institutional structure becomes, the more participation from the majority in the legitimization of this structure is required to avoid the erosion of social order in the long term.

Obviously, liberalization and democratization, defined as above, are the two faces of the same process of political development; they are separate only in the sense that they can be realized to different degrees: sometimes more liberalization doesn't immediately lead to more democratization, and vice versa. Usually a despotic regime will be liberalized first, and then be democratized, if the circumstances are fortunate. Any institutional structure, if it is rigid at the beginning, usually chooses to accommodate the majority's need for more flexible living space before it actually lets the majority have bigger roles in discussing, proposing revisions, and designing major social institutions. Liberalization and democratization may differ in such manners. In the end, however, our arguments for a political development towards liberalization and democratization resort to the same assumption, namely, social order is always based on institutions, and to have a social order stabilized in the long run, the majority's voluntary internalization of, and therefore voluntary obedience to, the established institutional structure are more and more essential. Such a normative demand for political development towards liberalization and democratization is both for the purpose of avoiding the tendency of corruption of the social order and for the

purpose of accommodating more and more complex practical actions as they are made possible by a social order and normal technological innovations.

By arguing for such a normative political development towards liberalization and democratization, this chapter will provide a culturally neutral justification of liberal democracy as a political ideal. Rationalism has claimed to offer such a culturally neutral justification, but as exposed in the previous chapters, this claim is founded on a false belief in the self-sufficiency and universality of human reason, or a pre-institutional human nature. Our institutionalism distances itself from any rationalistic conception of universal and unchanging human nature, but it manages to remain a version of universalism, as a universal explanation of every type of political order. In this effort institutionalism also distances itself from any version of cultural relativism, such as postmodernism.¹²¹

To carry the major points captured above, this chapter proceeds in this order. In the first section, we develop an institutionalist conception of liberties or rights, by connecting the concept of liberty to the concept of responsibility. This will prepare our way for the argument regarding liberalization. This section will specifically analyze the concept of liberty in light of our theory of agency formation as developed in the second chapter. In the second section, an institutionalist theory of power will be sorted out, and liberal democracy will be understood as the ideal of power balance between the government and the people, and power balance between different branches and levels of public power. This discussion of power paves further ground for a theory of political development pointing at liberalization and democratization. In

¹²¹ Hilary Putnam asserts, and I largely agree, that Richard Rorty, as well as Michel Foucault and Jacques Derrida, slip unfortunately into cultural relativism after correctly criticizing rationalism, or to use Putnam's words, "metaphysical realism." See his "Why Reason Can't be Naturalized," in *Realism and Reason*, Cambridge University Press, 1983; see also his *Realism with a Human Face*, Harvard University Press, 1990, pp. 18-26. I will deal with relativism later in this essay.

the third section, this theory of normative political development will be fleshed out within our theory of institutionalism. I will argue that the process of agency formation and institution building, if it is to secure social order in the long run, is directed by, and is under the pressure of, the ideal of liberalization and democratization. This argument is established through the analysis of the relationship between agents and institutions, which shows that as practical actions become more and more complex, social institutions regulating these actions can be internalized only when higher level of individuation of the social agents is realized. This leads us to the fourth and the last section of this chapter, which argues that more duties and rights are to be assigned to the individual agents of a more complex institutional structure, and more participation from the majority will be required in maintaining, justifying, and revising established institutions. In the long run, I argue, these two processes of liberalization and democratization confirm our ideal of liberal democracy, and constitute a culturally neutral justification of such an ideal.

Liberty and Responsibility

In this section we develop an institutionalist conception of freedom. Based on the theoretical grounds established in previous chapters, this section prepares further foundation for our theory of institutional development towards liberalization and democratization.

The concept of freedom is one of philosophers' favorite concepts, which understandably makes it a very controversial one.¹²² A non-controversial definition of freedom, however, is still available. To abstract a minimal definition of freedom from

¹²² For a selection of different views on freedom, see David Miller ed., *Liberty*, Oxford University Press, 1991.

different theories of freedom, we can see that freedom usually means that an agent is capable of carrying out certain actions in spite of certain restrictions.¹²³

Now the previous discussions have given us some ideas regarding agents and actions. Regarding the restrictions on human actions, we can generally divide them into two categories: things we cannot do and things we think we shouldn't do. More specifically, there are technological restrictions, such as restrictions on our physical capabilities, and there are normative restrictions, such as things we restrict ourselves from doing because of social norms.¹²⁴ It is interesting to notice that, regarding technological restrictions, we have a natural desire to overcome them, while regarding normative restrictions, we actually try to restrict ourselves from overcoming them. The irony of freedom here is that regarding physical restrictions, our freedom lies in overcoming them, while regarding the normative restrictions, our freedom may lie in our capability of establishing these restrictions in our society.¹²⁵ This irony is very real in the sense that especially in our own time, we do need to restrict ourselves from "freely" using our physical capabilities. For example, we are now perfectly capable of destroying the whole biosphere of the earth, including ourselves, by nuclear wars or by pollution; it is in the normative restrictions on ourselves that lies the hope of our survival and prosperity, and our liberty as well. In this sense, our normative freedom can only exist with social order supported by social norms. On this front we totally agree with Edmund Burke when he says, "The only liberty I mean is a liberty connected with order, that not only exists along with order and virtue, but which

¹²³ Here I am strictly following Rawls's definition of liberty. See section 32 of TJ.

¹²⁴ Rousseau makes a similar distinction when he talks about "natural liberty" and "moral liberty." See Book I, section 8 of *The Social Contract*, in *"The Social Contract" and Other Later Political Writings*, Gourevitch ed., Cambridge University Press, 1997.

¹²⁵ This might be what Rousseau means when he says that we are forced to be free, or we force ourselves to be free. Autonomy, for Rousseau, means we restrain ourselves with the social norms we design by ourselves and for ourselves. See Steven G. Affeldt, "The Force of Freedom: Rousseau on Forcing to Be Free," in *Political Theory*, Vol. 27, No. 3 (June 1999).

cannot exist at all without them.”¹²⁶ We create social order by restricting ourselves with institutions; this way we achieve our freedom.

The irony of freedom, therefore, lies in this dilemma: curiosity and intelligence provide incentives and means to make it possible for us to have more and more capabilities, therefore to be able to carry out practical actions with higher and higher levels of complexity and collectivity, yet meanwhile we need to deliberate and implement normative restrictions at corresponding levels on ourselves so that our improved capabilities would not end up harming ourselves and our society. Refraining from using our technological skills to destroy the biosphere, as mentioned above, is only one side of our freedom. Another, more important and more pertinent, side of freedom concerns how to avoid using our now much higher skills of social organization to destroy ourselves. Totalitarianism, in its various forms, is such a danger posed by higher organization skills. Hitler and Stalin, using modern skills of ideology and propaganda, organized and mobilized their societies in such an unprecedented and ruthless way, so that the potential of self-destruction of human societies emerged as even a stronger threat to our freedom and our very survival. For our own good, we need to implement appropriate social institutions to guide and to restrict our social organization skills, and the public powers made possible by such skills.

My position is exactly based on this irony of freedom: in moral and political terms, our freedom lies in our capabilities of normatively restricting ourselves. But the smell of irony will go away if we realize that social norms are not only restrictive, but also constitutive and enabling. Remember that according to our institutionalism,

¹²⁶ See *The Portable Edmund Burke*, edited by Isaac Kramnick, Penguin, 1999, p. 155.

answers to questions like “who we are” and “what we want to do” are not pre-determined. You may want to be a real American, but before America becomes an independent country, you are not free to do so. Yet “independent country” is a normative concept established by modern social norms; without these norms, you are not free to have any identity in relation to nation states, let alone wanting what that identity wants. I hope that so far in this essay, we have made this point clear enough.

Our moral and political freedom lies in our capability of deliberating and implementing normative restrictions on our own actions. Here the concept of autonomy is essential: we can be free in this sense only if we deliberately restrict ourselves by certain social norms. This view of freedom as autonomy means two things: on the one hand, we cannot be so “free” that we don’t need any social norm to restrict our actions; on the other hand, the social norms restricting our actions must be those norms that we can voluntarily endorse and accept. The first point establishes, almost by definition, that our moral and political freedom has an internal connection with our capability of restricting our actions with social norms. The second point leads us to the problem of agency construction: Who am I? Who are we? How are we to understand ourselves? How are we to carry out actions according to our self understandings?

In the previous sections, we had a good look at how we construct our agencies or identities, both individually and collectively, through social norms. To capture this theory of institutionalism in a nutshell, we say that the need to create and maintain social order among certain people, when felt by these people, incurs the activities of contriving and implementing certain social norms, which, after being accepted and internalized by these people, define the collective identity of this community and the

individual identities of the membership agents. Individual agencies and collective agencies are thus constructed.

This restatement of institutionalism paves the road toward an institutionalist theory of freedom. Moving one step further, I now define freedom, in moral and political terms, as our capability of self-construction through understanding, reflecting, and revising social norms. Compared to animals and insects, human beings are free because we are capable of understanding ourselves according to moral and political ideals expressed in different social norms, and carrying out actions accordingly. Moreover, our freedom doesn't just lie in the following of social norms, but also lies in our understanding, reflecting, and revising these normative restrictions we put on ourselves. Just following rules does not make us freer than ants; what gives us more freedom is our capabilities of understanding the reasons for social norms, and reasoning with each other about the reasonableness of these norms. Simply put, freedom lies in our self-incurred responsibilities.

This logical connection between liberty and responsibility may sound ironic, especially if we are talking about "feeling freedom." In our daily life, "feeling" responsible is usually different from "feeling" free. The feeling of being free usually means that one is not bound by any responsibility. Yet this is not a complete understanding of liberty if we understand it from an inter-personal perspective: I am free because other people are bound by social norms, in the name of responsibility, not to interfere with my freedom; I am feeling free because others are feeling responsibilities. This tricky connection between liberty and responsibility also gives us a direct feeling of being free when we can freely travel around within a rule governed society, doing business with money all parties accept, making friends according to the same moral laws, etc. You may not feel as free in China as you feel

in America, but nobody is free in a society torn by endless civil wars; in such societies, even people with guns and armies are not free from the fear for their own security.

When Rawls claims that his political liberalism is a “liberalism of freedom,” he is actually endorsing such an institutionalist conception of freedom. For example, when Rawls interprets Hegel’s theory of rights as a liberalism of freedom, he lists with sympathy four things that are entailed by Hegel’s thesis that the free will wills itself as the free will:

First, that the free will wills a system of political and social institutions within which the free will can be free...Second, that the free will wills the ends of this system of political and social institutions, and it wills these ends as its own. Third, that the free will is educated to the concept of itself as a free will by various public features of this system of institutions. Fourth, that these various public features that thus educate the free will are themselves features that fully express the concept of a free will.¹²⁷

We will further look into Rawls’s institutionalism in the next chapter; in this chapter, we systematically develop our theory of institutionalism, and only point out similarities or connections between Rawls and our institutionalism when occasions arise.

To understand the relationship between liberty and responsibility at a more general level, we can see that the concept of liberty is internally connected with the concept of responsibility. To say someone is responsible for her actions presupposes that she is at liberty to carry out her actions.¹²⁸ In other words, an agent can be

¹²⁷ See MP, pp. 349-50.

¹²⁸ Philip Pettit analyzes the concept of “freedom” into three domains: “the first is that the agent can be rightly held responsible for what he or she did...the second is that the action freely chosen is one that the agent can own...the third is that the agent’s choice was not fully determined by at least certain sorts of antecedents.” Pettit further believes that the responsibility domain is the central one, which entails the ownership domain and the under-determination domain. I agree with his analysis. See Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency*, Oxford University Press, 2001, Chapter 1. The connection between liberty and responsibility was perhaps first established by Peter Strawson. See especially his *Freedom and Resentment and Other Essays*, London: Methuen, 1974. In recent decades, John Martin Fischer has been promoting this connection, and his works broadly present alternative views and arguments on this issue as well. For examples, see Fischer and Mark Ravizza, *Responsibility and Control: A Theory of Moral Responsibility*, Cambridge University Press, 1998;

justifiably held responsible for her actions because it is assumed that she has certain level of control over what she does. In modern legal practice, this internal connection between liberty and responsibility has been widely used and misused in insanity defenses. The internal connection between these two concepts means that to understand the concept of liberty, we need also to understand the concept of responsibility.

Responsibility is a fundamental concept necessary for any serious moral practice anywhere around the world. People must be able to make responsibility attributions to each other before they can interact with each other in a moral order. It would make any sense of social order impossible if we suppose that whatever happens in this world is merely happening by accident or by mere causal determinism, not by actions initiated by some agents who are to be held responsible for them. In terms of mechanics, every event or action is both a cause and an effect, and the causation of any effect can in principle be traced to infinite events or actions in the past. This perhaps explains why a criminal suspect is always able to blame external factors instead of himself for his negative actions. To attribute causation of practical actions to their subjects, to hold these subjects ultimately responsible for their actions, is in this sense a very impressive achievement, if not a totally arbitrary practice. It is called into place not because there do exist souls or selves, who are the ultimate causes of all of the actions attributed to them yet are not caused by anything, but mainly because out of practical necessity, we must stop somewhere in the endless causal chain. That somewhere, of course, needs to be able to respond to such norms of responsibility.

Before a person is told that she is responsible for her actions, she needs, at the

Fischer, *My Way: Essays on Moral Responsibility*, Oxford University Press, 2006. David Norton grounds rights in responsibilities, he claims, perhaps with certain validity, that old liberals (I suppose he is talking about libertarians here) took rights as presupposed rather than as in need of justification. See Norton, *Democracy and Moral Development*, University of California Press, 1991, chapter 5.

minimum, to be able to use her consciousness and self-consciousness to control her own behavior. But in any case, without being able to attribute responsibilities for actions to their actors or agents, who are nothing but the supposedly ultimate causations of those actions, no definite causal relationship between actions and consequences can be constructed. Without being able to construct a definite causal relationship, no rules or norms can be established to regulate practical actions, and people will simply run into each other in random emotional or habitual reactions.

This practice of responsibility attribution is not totally arbitrary because it leads to the concept of freedom. To take a person as a responsible agent, we need to assume that she is aware of the consequences of her actions, and knows that she would be held responsible for her actions. This requires that she has not only the necessary knowledge about causal relations among common practical actions, but also the necessary knowledge about the related social norms. Gaining enough of these kinds of knowledge makes it possible for her to be “free” in controlling her own actions. For this reason, a reasonable legal system would not charge persons with serious responsibilities before they reach a mature age, be it normally 16 or 18. Before this age, they need to be taught with the knowledge mentioned above. After this period of education, they can no longer legitimately blame something else, such as their social background, as the element ultimately responsible for their own misbehavior. In this sense, people learn to be free so that they can take responsibility for their own actions. The practice of responsibility attribution is thus not arbitrary at all; it is supported by a whole system of institutional life forms and moral education.

The construction of agencies of actions is required by the need for tracing the ultimate causation and attributing responsibilities, which in turn is called for by the need for social order and social control of actions. In other words, to have social order

among certain people, the practical actions of these people need to be regulated by certain social rules, which specify who under what circumstances is responsible for what actions. If these people accept these rules, forced or voluntarily, they will internalize these rules and control their own actions accordingly. If social rules say that a person can own what she earns as her property, for example, no one else should “steal” or “rob” her of that property without worrying about punishment. Social rules thus help people understand the consequences of their actions, therefore can control what they are about to do. Responsibility attribution is, in this sense, a precondition for human institutional practice. It is the way, and perhaps the only way, we establish social order among human beings with consciousness and learning capabilities.

Here again we see the internal connection between causal relations and social norms. Human beings need food and security to survive, and they need to obtain these goods from the natural environment and from their social companions. For this purpose, they need to know in advance how to make their next move successful. Their past experience can help them in this effort, but past experience is useful only because it points to certain causal relations, or regularities based on which successful predictions can be made. Knowledge about natural causal relations is one way to do the trick; knowledge about social norms is the other. Social norms are presented in the form of causal relations: if you do action x, retribution y would ensue, which punishes or rewards you according to the institutionally defined moral merits of action x. Social institutions specify meanings for x and y; by the same logic, social norms give “you” a rule-governed identity: if “you” are an American citizen beyond 18, for example, you can vote in American elections. More generally, people are institutional agents, with institutional statuses. Even the concept of soul or person is somehow invented through such a process of institution building, just as the concept of gods or demons

are created for the convenience of controlling the world through pleasing gods. Just like gods and demons, human persons are also creations of human minds, for the purpose of simplifying and controlling causal relations among practical actions.¹²⁹ With this convenient device of attributing “souls” to everything meaningful in their lives, people in primitive societies were able to construct order both in the natural world and in their own human world.¹³⁰ In our modern days, we have learned to understand causal relations in the natural world through the natural sciences, but gods and souls, at least in some places, are still deemed as useful in our institutional practice of social life.

If responsibility attribution presupposes that the relevant agents have free will in making their decisions, the old problem about free will would be unavoidable in any moral theory (here I assume that no moral theory can be developed if responsibility attribution is an illegitimate practice). This old problem can be simply stated as this question: how could there be an entity, which is capable of causing yet is not caused by anything? From our modern scientific point of view, the idea that such an entity exists seems to be a sheer absurdity, yet what the practice of responsibility attribution presupposes, therefore any moral practice presupposes, is exactly the existence of such kind of entities.

¹²⁹ For a discussion of the connection between minds and gods, see Todd Tremplin, *Minds and God: The Cognitive Foundations of Religion*, Oxford University Press, 2006, especially chapter 3.

¹³⁰ It is fair to ask at this point: does this practice of responsibility attribution at least presuppose that human beings are capable of being such agents? This is a fair question because obviously we cannot make mice responsible agents by assigning them responsibilities. In order to be treated as responsible agents, therefore, human beings need to be able to understand the related social norms, and the related causal relations between the actions to be regulated and the consequences of those actions. So far only human beings have reached such a level of intelligence, and several of our relatives in primate world may have some rudimentary elements of such a high level of social intelligence. For examples of primate moral instincts, see Frans de Waal, “Morality and the Social Instincts: Continuity with the Other Primates,” *The Tanner Lectures on Human Values*, delivered at Princeton in 2003, now available online at http://www.tannerlectures.utah.edu/lectures/volume25/deWaal_2005.pdf.

This theoretically formidable problem about free will is solved in our epistemic and moral practice by a very simple manipulation: to reverse the one-dimensional timeline by knowing the consequences of actions beforehand. This manipulation is the root for both our epistemic effort of knowing the causal relations between natural things and our moral effort of regulating practical actions. By knowing causal relations, we know how to make a desirable effect happen by introducing its tested causes; by knowing social norms, we know how to avoid punishment or how to secure positive benefits by following rules of actions. Both our epistemic effort of surviving in nature and our moral practice of maintaining social order, therefore, are based on a cognitive foundation of knowing or predicating consequences of actions in advance. From hindsight, only such a manipulation of “reversing” the timeline can bring certainties and orders to our life. Without such a manipulation, we would lose every sense of direction in the relentless chain of causes and effects.¹³¹

Now with this understanding in mind, we can see that responsibility attribution is a legitimate practice not because agents are really ultimate causes that are not caused by anything else, but because agents are capable of understanding causal relations and social norms, therefore are capable of foreseeing the consequences of their actions—if not all of their actions, at least most socially meaningful practical actions. This in turn means that those who lack the knowledge and capability of foreseeing the consequences of their actions should not be held responsible for their corresponding actions. In other words, to say that freedom exists does not mean that there is a realm of “freedom” “outside” the causal chain of events in this world;

¹³¹ For this reason, human knowledge could not be all based on sense data, or more broadly, on past experience. We must have some innate knowledge or anticipation. A new born baby “knows” that if he sucks the stuff in his mouth, he will get food. If a baby needs to learn this from experience, he cannot survive in the first place. Here we are not going to discuss this epistemic issue in any further detail.

“freedom” lies in knowledge about causal relations and social norms (you shall know the truth, and the truth shall set you free).

A classical puzzle for philosophers is whether our human life is as deterministic as the natural world, or whether we do have some privileged elbow room called free will. Our common intuition seems to confirm that we do possess the capability of deliberating and choosing between different options about our future life, but our scientific understanding of the world seems to suggest that nothing can exist “outside” of the loop of the causal chain. This puzzle concerns moral philosophers because they need to make sense to our normative practice of responsibility attribution: if no human society can function without attributing responsibility of actions to their subjects, how could we justify this practice if we don’t have real control over our future actions?

In institutionalism, we claim that this metaphysical dilemma can be solved in practical philosophy in this way: we can have free will exactly because this world is to some extent determined by causal relations, and freedom lies in knowing these causal relations, both in terms of scientific laws and in terms of social laws.¹³² We are free from harm and are free to secure positive effects for ourselves, as long as we know how to avoid the former and bring about the latter by causal laws. We can lay responsibilities on persons, so long as they can understand the social norms we give to them in advance.¹³³ Foreknowledge about social norms is the key to moral

¹³² I do not, however, claim that these problems are ultimately solved. Problems like determinism, free will, and compatibilism will definitely intrigue philosophical minds in future generations. In fact, philosophical investigations in recent decades have made huge progress in clarifying these metaphysical problems, if not ultimately solving them. For a comprehensive presentation of the progress on this front, see Robert Kane ed., *The Oxford Handbook of Free Will*, Oxford University Press, 2002, in which different theories and approaches to these problems are well represented.

¹³³ Many philosophers argued recently that our moral practice of responsibility attribution is not threatened by determinism. For example, John Martin Fischer argues that “even if there is just one available path into the future—I may be held accountable for how I walk down this path.” See Fischer, *The Metaphysics of Free Will: An Essay on Control*, Blackwell, 1994, p. 216. Some other

responsibility.¹³⁴ We can hold people responsible after we told them the related social norms because all social norms are put in the form of hypothetical imperative: if you do x, then y should happen to you.¹³⁵ This general form of social norms can help us avoid the dilemma between free will and determinism because it lays out clearly the consequence of practical actions in advance, not in terms of prediction, but in terms of stipulation. Once you can understand such a stipulation, you cannot absolve yourself of the responsibility of acting against such a stipulation.

In more general words, social norms stipulate a virtual world with moral order, therefore can maintain social order if general compliance is maintained. In creating, justifying, and maintaining social institutions, we fight a winnable war against the uncertainty of the future, and create a world with the order we envision. Our moral and political freedom, if we can say it does exist, lies in our capability of maintaining social orders through institutions. We can enhance our freedom by contriving a better virtual world of order, justifying that ideal to our co-community members, and work together with them to make that ideal set of social norms the laws of our community. Alternatively, we can also gain more freedom by understanding the rules of the life-

philosophers' research, however, confirms an old worry that if determinism is true, there is a high price to pay in the moral appraisability. For examples, see Ishtiyaque Haji, *Moral Appraisability: Puzzles, Proposals, and Perplexities*, Oxford University Press, 1998; *Deontic Morality and Control*, Cambridge University Press, 2002. In this essay, I do not claim any credit for solving this puzzling controversy.

¹³⁴ Many philosophers recognize the connection between our normative social engagement and our freedom and responsibility. Carlos J. Moya, for example, says, "against a profoundly individualistic view of human beings, our approach instead stresses their social nature and their participation in normative systems as enabling conditions for their freedom and moral responsibility." See p. 220 of Moya, *Moral Responsibility: The Ways of Scepticism*, London and New York: Routledge, 2006.

¹³⁵ Hans Kelsen argues that all social norms are hypothetical imperatives, in the sense that they are normative only under certain conditions. For his arguments, and his critique of Kant's effort of taking categorical imperative as the formula of universal moral law, see his *General Theory of Norms*, translated by Michael Hartney, Clarendon Press, 1991, sections 3-5. Jiwei Ci points out that all norms of justice are conditional in another sense, namely, people are motivated to follow norms on the condition that other co-community members will also comply with the same norms. Ci further argues that even norms of justice are usually expressed in categorical terms, in the sense that the fact that other people also steal does not and cannot justify my stealing, the implementation of justice principles is still dependent upon its conditional form. The conditional face of justice, therefore, constitutes the single most important moral psychology for theories of justice, and justifies the creation and existence of the state as a coercive institution. For Ci's rather elegant arguments, see his *Two Faces of Justice*, Harvard University Press, 2006.

game of our society and utilizing them for our own benefit. Either way, freedom does not lie in our personal mind or personal will, but in our normative engagement with social institutions.

The advantage of adopting this institutional understanding of freedom will become crystal clear if we compare it with the rationalist conception of freedom and personality. In all versions of rationalism, freedom is attributed to a subjective “self” as its rational power, whether the subjective “self” is the transcendental self in the Kantian sense or the empirical self in the common sense, whether it is the self in an individual person or the self in a society as a collective body. To say such a “self” is free, in rationalism, is to say that this “self” is a rational agent capable of making decisions and pursuing goals by her own will. The fundamental logic of this rationalistic conception of agency is that agents exist prior to the social practice with which these agents are about to engage. Our institutional conception of agency, by contrast, understands “self” as ideals of agencies that are socially constructed through the normative engagement with social norms. Such a “self,” or institutional agency, does not exist prior to the institutional practice of community members, but are ideals specified by social institutions, ideals that are to be realized by people in different social roles.

The above paragraph demands further explanation. At first sight, our institutional conception of agency is harder to digest, while the rationalist conception of agency is easier to imagine. In our daily life, we tend to attach agencies to real people, whose existence is the condition for social engagement. Rationalism thus appeals to our intuition in a more “natural” way. After a further reflection, however, the institutional conception of agency makes more sense. For example, the institutional view claims that we cannot understand our “real” self if we have no idea

of what we are supposed to do or to become according to the moral norms of our society that we have internalized. This makes more sense than the rationalist view because the socialization process in our childhood provides the basic material foundation for our agencies, in the sense that our self-understanding starts from here, and borrows momentum and motivation from this foundation. And what we get from this foundation is precisely an initial sense of what we are supposed to do or to become according to the moral norms of our society. The influence of social institutions on our self-understanding is so delicate that it is almost invisible to us, yet it is these norms and values that give meanings to our actions, and more radically, give meanings to our lives. It is always a temptation to us to imagine that persons exist before societies can function, or that our metaphysical existence is logically prior to our social life, but the truth is on the opposite side.

Many joys and tragedies in our life owe their origins to our social norms. Soldiers feel proud in their sacrifice, even when their injuries may shed long shadows over their life expectation. Young girls commit suicide because they have lost their innocence in socially reproachable ways, while their physical lives may stay unharmed and bear a bright future. These cases abound, and their existence is only meaningful when we understand the specific social norms involved. Although physically we may share a genome pool as members of *Homo sapiens*, our life stories are nevertheless divided by different institutional practices in which we were raised and are living.

If the above reasoning is sound, then the more knowledge about causal relations and social norms we have, the freer we will be in deliberating and carrying out actions. The construction of agency is not a once-and-for-all achievement, but an endless process. With more knowledge about causal relations and social norms, our

agencies will become thicker and stronger, and we will be more capable of successfully carrying out actions according to our own needs and interests, save that social expectations to us through various institutions are already fulfilled.

Now it is undeniable that our knowledge about causal relations, in both the natural world and in our cultural world, has been increased monumentally since the scientific revolution in the 17th century, or for that matter, since the beginning of human civilization. It is likely to increase in the foreseeable future. This guarantees that one aspect of our freedom has been, and will continue to be, in a process of growth. But what about our freedom in conceiving and realizing our own rational good within society, our liberty in the moral and political sense? Is it, or will it be, also on the rise?

Before we address this question, however, we need to lay one more brick for the ground. In the next section, we further develop an institutionalist theory of power, which will prove to be a concept closely connected with the concept of freedom we clarify in this section. This theory of power will finally lead to a theory of political development towards liberalization and democratization in the section after the next one.

Freedom and Power

In this section I develop a theory of power within our institutionalism, by connecting the concept of power to the institutionalist conception of freedom laid out in the previous section. This theory of power will work for our institutionalist justification of democracy because democracy will be interpreted as a balance of

institutional powers.¹³⁶ The institutional theory of power will also lay ground for our argument for a political development towards liberalization and democratization. Any power structure, once created, will form a pyramid, in which power holders at the top levels are always the minority, while the people that are supposed to obey the powers are always the majority. To secure obedience, a power structure usually devolves in the direction of decentralization, so that people at the lower levels will gain more and more rights in participating in the decision making of this structure. I call this tendency the political development towards liberalization and democratization, and will elaborate more fully on it in the next section.

We analyze the concept of freedom as meaning that an agent is capable of carrying out certain actions in spite of certain restrictions. This definition of “freedom” rings a bell: can’t we also define “power” as an agent’s capabilities of carrying out certain actions in spite of certain restrictions?¹³⁷ Are we ready to claim that freedom and power are the same concept, or two closely connected concepts?

To be sure, in our ordinary vocabulary, “freedom” and “power” do carry different meanings. Wanting freedom usually is deemed as a good or even a noble desire, while wanting power is usually not such a morally admirable motivation, especially when a person wants power only for the sake of having power. Even worse, historical evidences show that power, when it is in the wrong hands, can work against the freedom of the people who is at the receiving end of power. So at least on the

¹³⁶ On this score we follow Montesquieu, Joseph Schumpeter, and Robert Dahl, among others. See especially Dahl, *Polyarchy: Participation and Opposition*, Yale University Press, 1971.

¹³⁷ To define power in this way is not controversial. Indeed most scholars who have offered a definition of power follow this line. Weber defines power as “the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests.” (See p. 53 of *Economy and Society*, vol. 1., ed. G. Roth and C. Wittich, New York: Bedminster Press, 1968.)

semantic surface, it should be recognized that there are significant differences between these two words.

All of the mentioned differences, however, come from a specific understanding of the concept of freedom. If we follow Isaiah Berlin and emphasize the importance of “negative liberty,” that is, the liberty of being left alone without intentional obstructions from other human beings, then freedom and power are two radically different, if not contradictory, concepts: to be free is to be FREE FROM outside interference, yet to be powerful is to be FREE TO bring about intended effects in the outside world, be it other people or the outside environment in general. In the context of what Benjamin Constant calls “liberty of the moderns,” freedom is also understood as to be FREE FROM the coercion of state power.¹³⁸ By contrast, positive liberties, or liberties of the ancients, sound like something closer to power. In political terms, positive liberties are the liberties to do some positive things, such as to vote or to organize political movements, which are only possible with empowering institutions. Thus while it sounds appropriate to call positive liberties “powers,” it is not appropriate to call negative liberties “powers.”

Yet the distinction between positive liberties and negative liberties reveals a very narrow understanding of the concept of freedom. To look at liberties from a historical point of view, we can see that it usually took hard efforts, sometimes even big sacrifices, to get the so-called negative liberties; doing nothing, or totally getting rid of the government, would not automatically bring about negative liberties, such as freedom of speech and freedom of conscience. Even when some people happen to have such liberties already in hand, certain social institutions still need to be built up

¹³⁸ See Berlin, *Four Essays on Liberty*, Oxford University Press, 1969; Constant, “The Liberty of the Ancients Compared with that of the Moderns,” in *Constant: Political Writings*, edited and translated by Biancamaria Fontana, Cambridge University Press, 1988.

so that these liberties will be guaranteed in the future. In this sense, negative liberties are not so different from positive liberties. They may both be “naturally” desirable, but none of them can exist without institutional guarantees.

In institutionalism, we largely neglect the distinction between positive liberties and negative liberties, and define all liberties, in moral and political terms, as ranges of practical actions permitted and guaranteed by social norms and institutions to practical agents, including individual agents and different levels of collective agents. Under this definition, the “individual” rights or liberties guaranteed to individual citizens by a constitutional democracy is only one type of institutional freedom. Another type of institutional freedom is the different levels of collective power, such as presidential power and congressional power, defined and secured by constitutions and other social and political institutions. Understood as such, institutional freedom and institutional power are closely connected, if not completely convergent. Indeed, liberties of the moderns in terms of individual rights can be better appreciated if we take them as institutional powers secured to the people (or the civil society), as against the powers of the public officials (or the state). Both forms of power need to be secured with certain social institutions; their opposition forms a balance of power for a stable modern democracy.

In institutionalism, therefore, power, like freedom, is viewed as a structural relationship based on social norms or institutions. To say that power and freedom are structural relationships, I mean they are not simply capabilities. People with power and freedom are in some sense capable, but how capable they are is dependent upon the larger framework of social institutions in which they live. Bill Gates would be powerless in a country that doesn’t respect intellectual property rights; Hitler wouldn’t become a dictator if he were born in the United States, where a strong

tradition of power balance and human rights protection would have prevented any potential dictator from materializing. In more general terms, social institutions define the scope of the power and freedom agents can have; these available powers and freedoms will then be distributed to, or grasped by, individuals, according to their talents and lucks. An individual person's possible power and freedom are created and defined by an institutional structure, in which she lives as an institutional agent. Through her personal endeavor, she may manage to have more freedom or power than her compatriots, or she may use her freedom and power more wisely for her own benefit, but without such an institutional structure, she would have no secured freedom or power at all.

Institutionalism is concerned with freedom and power mainly for the sake of evaluating and designing social institutions. Institutionalism doesn't provide any advice to any individual about how to improve one's odds with respect to freedom or power. Instead it asks how to construct people's institutional relationships so that people's chances of getting freedom and power would be defined to the effect that social order and justice can be maintained in the long run.

From this basic understanding of the concept of power, we move one step forward, and propose that democracy as a good social order relies on a delicate balance between different forms of powers. Power can be embodied in different forms, such as political power, military power, ideological power, economic power,¹³⁹ etc.

¹³⁹ Economic power may deserve special discussions. Although wealth cannot exist without institutional protection of property rights, economic power usually is not deemed as a form of public power, except the economic power of the government, such as taxation and budget spending. In a non-socialist system, people accumulate wealth through legal yet "private" avenues, and after paying taxes, people can usually administer their own wealth, or their economic power, according to their own flavors. This non-public appearance of economic power, however, is only a false perception. Just like other forms of social powers, economic power is also based on a wider background of social institutions (in the cases mentioned above, a capitalist system of social institutions). Unlike libertarians, I take people's property rights, especially the rights to own capitals, as institutional rights, not "natural" rights. There are different ways to define property rights. Capitalist system is only one way to define

These forms of power may be generated and may work in different ways, but they are all made possible by social institutions. In other words, they are all the results of social cooperation made possible by social institutions. As such, these forms of power need to be regulated so that every person of a society can benefit from their being exercised, or to say the least, these power will not be abused in favor of some as against others. When social powers are manipulated to the benefits of some groups as against others', we have different forms of corruption, and the social system supporting those powers cannot be just or stable in the long run. On the other hand, social powers are always unequally located in people's hands, due to the necessity of the division of social labor and the asymmetry of talents, luck, and information among people. The tendency to abuse and misuse social powers is inherent in such an imbalanced distribution of social powers. In light of this consideration, democracy, as any other political system, is a method of generating, distributing and regulating social powers. What is special about democracy is that it engenders and regulates its public powers in such a balanced way that in the long run, no power holders can dominate the public powers for their own private gains.

More specifically, a democracy maintains power balance through two main avenues. First, by giving its citizens universal and equal political rights to vote and to be elected, and other rights to be free from state interferences, such as freedom of speech and freedom of association, a democracy maintains a power balance between the rulers (the actual power holders) and the ruled (people who do not occupy any public office besides their citizenship). The regular elections held in a democracy make sure that the rulers are monitored consistently by the ruled, so that any

property rights, not the "natural" way, neither necessarily the best way. This perspective is in line with Rawls's consistent comment that "property owning democracy" and "liberal socialist democracy" can both be compatible with his theory of justice.

systematic misuse or abuse of public power will be punished in elections. Second, by establishing different branches (executive, legislative, judiciary, etc.) and levels (federal, gubernatorial, municipal, etc.) of public offices, a democracy maintains a balance between different public powers. This is to make sure that different public offices, with their different powers and different interests, and the same need to seek approval from the public, will not collaborate together to exploit the public.

In the sense that citizenship, due to the positive and negative rights installed within it, is also a public office with public power, the two avenues for a democracy to maintain power balance are very closely connected: they are both means to maintain balance between different forms of powers made possible by social institutions. But a meaningful difference between them is worth mentioning because within a democratic society, public officers and citizens are different by many measures. For one thing, they exist in different numbers, with citizens being always the majority while the public officers always the minority. It's also much easier to transfer one's identity from a public officer to a private citizen, since a public officer usually still keeps all her rights of being a private citizen. Due to this difference between public officers and private citizens, the power balance between office holders and the public is usually easier to maintain, while the power balance between different public offices requires higher level of political wisdom in institutional design. Perhaps for this reason, the literature about the power balance effect of democracy usually emphasizes the power balance between different branches and levels of public offices, while in fact the power balance between the rulers and the ruled is much more important, and much more essential for a democracy to worth the name in the first place. Without making sure that the public officers are largely accountable to the

public, in the sense that misuse and abuse of public power will be punished in elections, no democracy can exist in a real sense.

This leads us to an even more important question to which democracy and non-democratic regimes give radically different answers. This question is about how people come into power, or to trace it to the real root, how a power structure gets created among a group of people. Every type of social organization, to the extent that it has any mechanism through which its members coordinate or cooperatively focus their efforts into a structured enterprise, has a power structure. This we can be sure of by logic. What the empirical processes contribute concerns how such a power structure is created, and who will occupy the powerful positions thus created. In most times of our recorded history, power structures of different social organizations were created by violence, and people came into power through violent conquest, or inheritance of the effects of such a violent conquest. Even in many forms of families, power structures were created and maintained by the superior physical strength of the male against the female. Within such power structures, people in inferior positions choose to follow their superiors out of fear, not out of willing compliance. In the long run, they may form a habit of obedience, or even a habit of respect, towards their rulers, but the main point is that even if they happen to lose such a habit, they still know they are bound by violence, or threat of violence, to obey. The rulers within such power structures, on the other hand, can feel their power being safely enjoyable only when they control the means of their power, namely, violence. Within such societies, ideologies that promote the morality of obedience to the ruled and the morality of benevolence to the rulers are only parasitical “super-structures” (as Marx would say) of the power structures maintained by violence.

As a principle of social organization, democracy is a revolutionary idea against this historical background. It says that power structures should be created and maintained on the basis of voluntary consent. In its most radical meaning, the principle of democracy says that a power relationship can be created and applied only when all the relevant parties to such a relationship, all the parties whose interests are influenced by such a relationship, voluntarily agree to it.¹⁴⁰ From such an idea of democracy, we can also deduce that within a real democracy, people in powerful positions should get their jobs from the consent of the people who are subject to such powers, and their exercise of the powers should be under the scrutiny of those subjects.

Of course these basic ideas of democracy are not as simple as they appear to be. They indeed produce many complex consequences. For example, in saying that the creation and the maintenance of any power structure should be based on the voluntary consent of the relevant parties, we cannot literally mean that whoever disagree with the power structure, or with the people that are in power, can choose not to comply whenever she feels like it. To endow people with that kind of “freedom” would make any sense of social order collapse, since people might choose non-compliance for their own convenience, such as free riding. To solve this problem, people need to be charged with the duty to stay consistent with their commitment to

¹⁴⁰ Modern democracies embodied in the form of nation states are not democratic enough in this sense. As Rawls also admits, a democratic nation is not a voluntary association because in most cases, people do not choose to which nation they would like to belong. Considering human beings’ growth cycle, no one can choose in which nation she would like to grow up, and since whoever grow up in a nation has benefited from the social order of that nation, there seems to be a bona fide duty for her to stay loyal to that nation. This is a plain matter of fact in our world of nation states, and in some cases, it poses moral dilemmas. For example, if a person grew up in a dictatorship chooses to flee her own country, or even to help other nations to overthrow her own national government, she might be charged with treason. Since in our world, competition between different nations also exists as a matter of fact, such a treason charge is not totally senseless, at least not in some circumstances. Overthrowing a dictatorship can sometimes weaken that nation, and other nations helping you to overthrow your national government usually have perceived national advantages to gain. All these dilemmas are real, and ultimately their being possible relies on the fact that we usually do not choose our own citizenship.

social institutions; they cannot demand that others follow the rules without themselves also being subject to the same rules. Another solution to this problem is majority rule: when a group of people needs to create and maintain a power structure (backed by a set of norms or institutions) to guarantee the common interests of the whole group, and when the majority of this group agree to such an arrangement, the power structure should be created and maintained according to the majority opinion. Usually the minority chooses to stay in the group because their interests are contingent on the common interests of the group, or because they perceive that it is possible that on some issues they can be part of the majority, or both. In any case, the basic ideas of democracy can have very complex consequences in the real world.

Before we end the discussion of power, several cautions are in order. To be sure, there are complex factors of power that we cannot discuss here. For example, power can be held by different agents, such as individuals, collective bodies of individuals, and institutions, in different forms, such as military power, political power, economic power, etc. Obviously the different characteristics of these power holders and power forms will bring meaningful differences to the corresponding power relationships. Military power, for example, usually demands absolute obedience, due to the life and death situations it handles; this character is not shared by economic power, or most other forms of power. In this essay, however, we will leave these differences largely aside, and concentrate mainly on power relationship in general. Another complexity regarding power is that under some circumstances, power relationships can exist without institutional arrangements. A person with stronger physical strength, for example, can have power over a weaker one, if he chooses to do so, by threat of violence or by actual use of violence. When a person happens to love another one, due to whatever reasons, the beloved one can have a

certain level of power over the loving one. Some philosophers, such as Michel Foucault, even claims that power exists in every kind of human relationship. In the sense that a power relationship relies highly on people's perceptions, these philosophers do have a good point. A beautiful lady has power because people perceive her as attractive or personable; a president has power because people perceive the presidency as a powerful post. Social institutions, in this sense, are only one way to set up perceptions behind power relationships. Those personal power relationships with no institutional backup, however, cannot be addressed in our theory of institutionalism.

Still another complexity regarding power is that a power relationship can be, as Steven Lukes famously pointed out,¹⁴¹ three dimensional: A can have power P over B. This three-dimensional characteristic can sometimes bring about very complex power relationships among different agents. Many American citizens, for example, can travel around the world very freely, due to the economic, monetary, technological, or even military advantages the United States as a country enjoys. In the same way, developed countries in the west can do many more things in the international world than underdeveloped countries can. This kind of power relationship in the international arena, however, will not be dealt with systematically in this essay. What we are concerned with here is only domestic power relationships within a sovereign country. This is not to say that power relationships on the global stage are not based on institutional structures. In fact many trans-national institutions, including the very institution of national sovereignty, have been put into place to secure international power relationships. Yet this essay leaves this topic aside due to the limited space. We

¹⁴¹ See Steven Lukes, *Power: A Radical View*, 2nd edition, Palgrave Macmillan, 2005. In this edition, Lukes admits that "power over" as a three dimensional relationship is actually a form of the two dimensional relationship of "power to."

can end this essay at ease in this respect because, once we have reached an institutionalist theory regarding basic concepts such as freedom and power, other related issues will have a much better chance to get solutions.

So far we have established the internal connection between the concept of freedom and the concept of power, and presented democracy as a special way to engender and to regulate power relationships. Before we end this section, I want to say a few words about these two concepts regarding the topic of political development. This will lead us to the next section of this chapter: a political development towards liberalization and democratization.

To look at this connection between freedom and power from a perspective of political development, a historical tendency towards more equal power distribution among co-patriots of a society seems to be salient. This tendency reveals itself in the gradual process of expanding franchise in western democracies. As Dennis Wrong argues, together with other political scientists such as Seymour Martin Lipset, “there is an unmistakable leftward drift inherent in the functioning over time of democratic politics.”¹⁴² This is due to the structural majority of the poor within the electorate of a democracy. The middle and upper classes can manage to maintain their political and economic power by their superior ideological influence, such as the recourse to patriotism, or by the political apathy of the poor. But in the long run, the advantage of numbers on the side of the poor will gain more and more favorable political and economic redistribution for the poor.¹⁴³ As a result, the social powers will move towards more equal distribution among the people.

¹⁴² See Dennis Hume Wrong, *Power: Its Forms, Bases and Uses*, 2nd edition, The University of Chicago Press, 1988, p. 210.

¹⁴³ See Wrong, *Power*, p. 201ff.

The poor can achieve this, of course, because they are empowered in a democracy with voting rights and other related rights. As we have argued, these rights are also forms of power. With these institutionally guaranteed powers, no wonder the majority people in a democracy can gain more and more advantages for themselves as time goes by. What about those poor or powerless living in a non-democratic society? Without legal rights of participating in the political decision process, can they get more and more equal share of social powers in the long run?

A positive answer to this question can be secured by an argument from legitimacy. The main point of this argument is that since social powers rely on social institutions for their existence and fulfillment, whether a system of social powers can sustain itself in the long run depends on how it can secure compliance with its supporting institutions. The non-office holders, as always the majority, have a very big say in such a process. When the majority of a people have certain political rights and civil rights, they can express their will in elections and other public forums, and use the peaceful means available to them to gain more power and justice; when there are no peaceful or legal ways for them to express their will and register their dissatisfaction, they will choose the strategy of non-compliance, which includes both passive inaction and positive actions. For this reason, most empires in history collapsed from inside. When the majority of the people of an empire recognized that their chances to benefit from the common enterprise had been constantly diminished, or had not been improved as quickly as the chances of the elites, they began to withdraw their compliance. As a result, the empire could no longer hold itself together in face of internal and external challenges, and began its process of decline.

The developing cycle of dynasties in Chinese history testifies to this tendency with its own idiosyncrasies. Usually when a new dynasty is established, the founding

emperor, with his long history of fighting with the people, enjoys wide support from the people, and high authority over his ministers. Such a founder is usually able to establish institutions with justice to the people; the power his ministers and local officials have, coming from his authorization, is usually well regulated and monitored from above. As a dynasty develops generations forward, however, ministers and local officials, as the majority within the power structure as compared to the emperor, will gain more and more independent power, even though nominally they are still surrogates of the emperor, in the sense that their power ultimately comes from the emperor, not from the people. Because of this indirect power relationship between officials and the people (through the emperor's sovereignty), these officials actually have less motivation than the emperor to be benevolent to the people. Thus corruption among officials will also grow as their use of power is less and less responsive to the emperor's orders. In the end, such corruption will force the people to rise up, as they no longer feel the "protection" from the emperor. Since the power structure of a dynasty is based on the sovereignty of the emperor, there is no way a dynasty can incrementally liberalize and democratize itself so that long-term stability of the political order can be maintained or revived. In the end, the ultimate decline and demise of a dynasty is always unavoidable, no matter how hard those later generations of emperors would try to reform and reinvigorate it.

Such rejuvenation is possible only in a democracy, where regular elections give officials both the motivation to be benevolent to the people and the refreshed mandate and authority to carry out reforms. Within a democracy, the sovereignty belongs to the people. This sovereignty is embodied, first and foremost, in regular general elections, but it is also embodied in other institutions, such as the independent judiciary and the relatively independent local governments, etc. The process of

liberalization and democratization, without which no power structure can maintain itself in the long run, can proceed indefinitely in a democracy, although it does not necessarily lead to equal power for everybody. A democracy, as different from an anarchy, still needs a power structure and actual inequality of power between the officials and the public. But a democracy can be infinitely liberalized and democratized, since its power structure is based on the sovereignty of the people. In brief, the different power structures in democracies and dynasties lead to different trajectories of political development, although they are both under the same pressure of liberalization and democratization.

To put this theory of power under our institutionalism as a theory of agency formation, we see that the popular sovereignty of a democracy, as an ideal way to legitimize public power, fully fulfils our theory of agency. To define power as an institutional relationship, we in effect attribute power to different agencies, including individual agencies and different levels of collective agencies. Individual liberties within a democracy give individual citizens, as individual agents, different powers; different levels of collective agencies, such as cities and states, are given different levels of public power by democratic institutions. The principle of popular sovereignty requires that different levels of public power belong to the corresponding levels of collective agencies, or more accurately, to the collective body of the people of which such agencies consist. Public power doesn't belong to royal families, or any group of private individuals; it belongs to all the members of the corresponding body politic. To take popular sovereignty as its primary principle, to embody this principle in its basic institutions, and to incrementally fulfill this principle to its fullest implication, a democracy poses as the ultimate goal of human agency formation and institution building.

The political development towards liberalization and democratization, as we will elaborate in the next section, is therefore not a descriptive tendency, but a normative tendency. It says that in order to maintain a political order in the long run, or to maintain its stability in the long run, the power structure within this society needs to be continually democratized, and its basic institutions need to give more and more rights and powers, as presented in different forms of institutionally guaranteed benefits, to the majority of its people. This is the road towards stability and growth of a political order. Without following this trend, a political order will develop towards the opposite direction, namely, destabilization and decline, with the ultimate end being collapse of the political order, and the grievous sufferings of its people.

Agency Formation and Institutional Development

Time is ripe, after the systematic presentation of institutionalism as a theory of agency formation and institution building, for giving some general consideration to the development of human social organization. In this section, I will argue that liberalization and democratization is the general normative direction of the evolution of human societies. This will be done by utilizing the theory of institutionalism we have developed so far.

In institutionalism, we analyze a human society into the practical actions performed by the society as a collective agency, and by its membership agencies, both at the individual level and at different collective levels. For these practical actions and interactions to be coordinated, a common system of constitutive and regulative rules or institutions need to be put into place, so that individual agents and different levels of collective agents within such a society will act according to these institutions, not in destructive conflict against each other. The organization of a society, according to

our institutionalism, is therefore essentially dependent upon how the involved people can successfully live and cooperate with each other through a unified system of social institutions, and how successfully this society can communicate its institutional rules to its membership agents so that a common understanding of these rules is achieved among them. In other words, before a social system can come into being, the people involved in this society need to internalize a unified and coherent system of institutional rules and comply with these rules in their actions and interactions, so that problems of coordination and cooperation can be solved and social order be achieved among them. Without such a common system of social institutions, conflict rather than cooperation will prevail among these people.

This central doctrine of institutionalism is not a totally new doctrine. We can find similar ideas in Hobbes's concepts of the state of nature and the sovereign, in Rousseau's idea of general will, and in many other political philosophies. What is new in our institutionalism is, again, that we don't take human individual minds or rationality as given, and human social order as a result of following such a human nature; rather, we claim that human beings, in order to achieve social order among them, build social institutions and create societies among them, and in this process change and improve their own rational power—including their moral power of being rational in pursuing their own goods and their moral power of being reasonable in dealing with other people. Equally important, our institutionalism claims that in this process of institution building, human beings create and improve themselves as institutionally defined moral agents, and therefore create themselves according to their own ideals of human beings. It is in this process of self creation, not in anything else, that lies our much treasured freedom.

Understood in this way, institutionalism is not a political theory about any particular social order, but a political theory about any form of social order. Moreover, it is internally a theory about political development of human societies, universally applicable to any human society. As such a theory, it is unavoidably very general; no one would unrealistically hope that institutionalism can solve all political problems, or even all problems in political philosophy. Nevertheless, institutionalism does provide a very useful tool for us to understand the huge varieties among different forms of social order, and the general trend of the evolution of human social organization. Negatively, institutionalism provides an antidote to various forms of cultural relativism,¹⁴⁴ which claims to be able to reconcile or respect cultural differences among different societies.

To see how institutionalism can explain the history of human societies, we begin with an easy recognition. Human societies around the globe and across history did have a tendency to become more complex: the number of people a society can accommodate, and the territory an institutional structure can cover, do pose as an expansion process, although not devoid of retreats and withdrawals from time to time; the interactions between different societies have also increased as different societies have expanded, first motivated by technological innovations and population growth, but then by people's capabilities of dealing with each other by building up mutual understandings. Through such a long process of expansion and integration, we now have a global world with more than 200 "nation states" peacefully living together—not in lack of conflicts at different levels, yet still hanging together. Among these nations, several large ones are particularly impressive in terms of nation building and

¹⁴⁴ T.M. Scanlon discusses relativism in detail in the last section of *What We Owe to Each Other*, Harvard University Press, 1998. His analysis and refutation are much more sophisticated than what we can do here.

social integration. It is also impressive that these big countries nowadays usually do not pursue the goal of occupying the smaller ones—they actually follow certain peace terms in dealing with international relations. If we are lucky enough, a global society of human beings would not be a fantasy, but a realizable dream. This history of human societies, in its general trend, testifies to how human beings can establish social order through institution building, and how can they define and improve their rational power as social animals, therefore define their own identities and fate.

This all looks sound and coherent, but how are we to argue that a political development towards liberalization and democratization is also warranted by our theory of institutionalism?

In fact, this same process of human societies, and interactions between societies, getting more complex implies a political development towards individualization and liberalization. The general idea is simple: the complexity of human societies is based on the complexity of social institutions, and as social institutions become more complex, the people involved will be required to internalize more complex social norms and to take more social responsibilities. In this process, individuals, as the ultimate residence of social institutions, will become more individualized as practical agents, with more complex identities; as they internalize more social institutions, they lay more responsibilities on themselves. If their responsibilities to other members of the society and to the state are balanced by the responsibilities from the latter to respect them, they will gain more liberties, as the logical relationship between responsibility and liberty argued before shows.

Here we elaborate on this process of political development with a sketch of the history of human social evolution. In early stages of human societies, the construction of the collective agency of a society usually required severe restrictions over the

practical actions of its individual membership agents and constituent collective membership agents, such as families and local communities. The means of social communication in these societies are very underdeveloped and limited. To organize the whole society with a coherent system of rules, and to generally communicate these rules all across the whole society, these societies, or their membership agents, have to rely largely on vague yet strong rules. Morality is especially important, partly because practical actions in these societies are more or less limited to familial and local activities, dealing with acquaintances rather than strangers, but mainly because moral rules are relatively easier to be generalized (such as “you shall never lie”). In particular, moral rules were oftentimes represented in very transmissible religious stories and doctrines, which made moral rules easily understandable (gods’ appearances and thinking are always human-like), memorable (popular religions are more about stories than about theories), and acceptable (because gods issue direct and commanding orders).¹⁴⁵ As a result, these societies are usually overflowing with moralism, their laws being general moral rules rather than specific legalities.

Another dimension of traditional moralism is its emphasis on the absoluteness or transcendence of moral principles. This dimension works very well in convincing people to comply, and spreading the norms all across a society, thus proves to be very instrumental in maintaining social order through institutional rules endorsed by the majority of the population of a society, if not by all of them. In addition, a set of immutable social norms, as backed by the transcendence of morality, also fits well with a usually very stable traditional society, the practical actions supported by such a society being limited in scope and type, and relatively changeless across time. To use

¹⁴⁵ For the transmissibility of religions, see Stewart Guthrie, *Faces in the Clouds: A New Theory of Religion*, Oxford University Press, 1993. Guthrie develops animism and personalism into a more sophisticated theory called “anthropomorphism,” which stresses the importance of gods being human-like and therefore being easily acceptable to believers.

Rawls's words, such traditional societies usually are founded on some system of "comprehensive" doctrines, be it moral, such as Confucianism, or religious, such as Christianity and Islam.

By contrast, modern societies tend to make distinctions between morality and law to accommodate the more advanced and more complicated systems of practical actions and interactions. As commerce and industries develop, more and more people move from their cherished local communities into unfamiliar cities, change their lifetime career as farmers to busier and more complicated jobs. Commuter transportation loaded with strangers moves people around, carrying different information across regions. When people from different localities meet in cities, they realize that the general and vague moral laws they previously learned are not so useful, just like their different accents. To share common understandings about how to carry out practical actions and interactions, they now try to develop more explicit norms, as well as more "standard" dialect. Indeed, they find themselves in need of specific rules for their own protection, since they can no longer rely on "simple principles" they used to take for granted when dealing with family members and co-villagers. Different walks of life requires different rules, different businesses follow different ethics.

As such a "comprehensive" system of morality breaks down, the method for justifying social norms also changes. As analyzed above, social norms of a traditional society are usually justified by a transcendent source, such as god or heaven. Now since social norms of a modern society become more diverse and more mutable, another method of justification needs to be introduced. Laws and legislation become more and more important for maintaining common social institutions, and to be accepted by the membership agents, social norms are now required to be under the

scrutiny of the norm practitioners. For any society, social norms are justified for, and therefore applicable to, membership agents only if these agents are willing to submit to them. In traditional societies, due to the comprehensiveness and immutability of their social norms, the justification or legitimization of social norms is usually backed by an absolute source, which transcends and stays above the society. This doesn't mean that whoever controls the ideology would be able to control the people in whatever way he wants, since when the majority of a society is in extreme suffering, no ideology would be able to establish social order. Indeed, dominant ideology in any society is subject to different interpretations, and no interpretation can sustain its force when it is in direct conflict with the majority's survival. Nevertheless, traditional societies do rely on general and immutable ideologies to maintain social order. When social norms become more diverse and more mutable in a modern society, however, the membership agents of this society are given more say in the justification and legitimization of social norms. This change in method of justification seems to be an inevitable strategy shift. Trying to justify social norms with a transcendent source, and therefore trying to establish theocracies in modern societies, are doomed to fail, since in a modern society, social norms can be effective in regulating practical actions and maintaining social order only when they are adapted to people's diverse and quickly changing practices.

From another angle, this general development from moralism to legalism can also be understood as a development from a social relationship guided by social statuses to a social relationship guided by social contracts, or as a development "from status to contract," as Henry Maine observes.¹⁴⁶ Ancient societies, due to their limited means of communication and their limited ranges of social actions, founded their

¹⁴⁶ Henry Maine (1861), *Ancient Law*, London: Murray, 1861, p. 170.

social orders on strict systems of social statuses. People were bound with different social positions, each one of them carrying out the same social function for his or her whole life; in most cases, social positions are even inherited by generation after generation. As the possibilities of wider and more flexible social actions grow, however, binding every member of the society with the same social status for the whole life become less feasible and less desirable. Social relationship among people must be constantly redefined, not according to their born statuses, but according to what kind of socially useful actions they can perform. This development doesn't automatically lead to equal status for all, but it makes restricting people to unchanging statuses less and less doable. As a result, legal rules must recognize, through an incremental process, the equal status of every citizen of a society, or at least the potentiality of such an equality of status. By contrast, a comprehensive and immutable system of moral rules usually results in a hierarchal system of social statuses. The logic behind this connection is that since social norms are absolute and are sometimes even deemed as from a transcendent source, arguing with each other about the meanings of these norms is not likely necessary, and whoever has more knowledge about these norms will naturally have more authority in enforcing these norms.¹⁴⁷

As legality replaces morality as the common guidance for practical actions, as regulating rules become more rather than less, people feel, ironically, that they are much freer than before. Although they may complain about the cumbersome legal rules, they nevertheless discover that so long as they follow these "stupid" rules, they can enjoy their "private space" according to their own flavors and styles. They will not be prosecuted simply because they are different. Of course, some societies tried

¹⁴⁷ Thus we see that although Islam is highly egalitarian in terms of the brotherhood of believers, and although Qur'an doesn't promote any hierarchal church system, Muslim societies in most places are still not susceptible to liberal democracy. For an analysis of this internal momentum, see Keith Ward, *Religion and Community*, Clarendon Press, chapter 2.

totalitarianism on their way towards modernization, sticking to simple and oppressive rules in a cosmopolitan era. But as social practices diversify, there is no way to demolish differences among people anyway, at least not in the long run. In modern cities, people physically living together are always separated by their diverse enterprises, and the rate of change typical of modern life makes it impossible to frame the minds of neighbors into the same model. In a modern society, people gain solidarity among themselves by following the same laws, not by sharing the same moral sentiments, so to speak. The collective agency of a society now consists of clearer and more formal rules; as the society cuts its lines more elegantly, more space is created for individuals. Membership agents of a society are no longer restricted within vague circles, afraid of offending the sacrosanct social taboos every step forward. They can even boldly challenge social norms and argue with the authority about the reasonableness of rules. A totalitarian regime that refuses to let this challenge happen would sooner or later find themselves hated by everybody, and therefore cannot sustain their government any longer.

In his late works, Rawls devotes a lot of energy to proving how people committed to different comprehensive doctrines can nevertheless endorse the same political principles, therefore can legitimize their political order with their overlapping consensus. Our analysis here shows that the fact of pluralism can be more or less neutralized, as Rawls has argued, by another fact of modern societies, namely, the fact that a modern society cannot make its members commit to the same comprehensive moral system without using oppressive means.¹⁴⁸ Maintaining a peaceful social order without resorting to common belief in comprehensive doctrines is a new contribution

¹⁴⁸ This Rawls calls “the fact of oppression.” For a relative concentrated discussion of the five “general facts of political sociology and human psychology,” see section 11 of JF.

of modern civilization to human life. As Rawls vividly illustrated, people at the beginning of modernity tried very hard to maintain the unity of ideology, with religious wars and prosecutions; it's only after they realized that this goal is no longer achievable that they started to accept the fact of pluralism, and to work out more sophisticated and more diverse ways to maintain social solidarity.

As a result of this modern achievement, people living in modern societies, when they look back to their more compassionate past, usually feel lonely, homeless, or even alienated. They can no longer commit much sentiment in their engagement with others; friendship becomes rarer, human relationship more formal and more detached. If we really look seriously back into human history, however, we will find that this feeling of alienation is nothing new; in fact, it has been an unavoidable accompaniment of human civilization. Whenever more strangers are brought together by the advancement in human social organization, people experience this sense of loss in attachment. At the beginning of almost every civilization, for example, literature and history were invented to honor the immemorial past, when people cared for each other and lived together peacefully in love. The journey of human civilization is the journey of remembering the lost; this way we say farewell to our past and adapt our human nature to the new ways of life.

This journey is nothing but the process of externalization and internalization of more and more complex social norms. As social organization becomes more complex, people become more dependent on institutional rules rather than on their personal feelings or moral beliefs they socialized in their younger years in dealing with each other. The sense of alienation ensues, but sooner or later, people will develop new sentiments in accordance with the new social realities. Their hearts will be more open to strangers, for example, and their sense of justice will become more

abstract and more neutral, with less trails of familial, tribal or local biases. Meanwhile they will be able to embrace, and to be attached to, larger communities in their feelings and thoughts, their human nature being adapted to more complex social cooperation on larger scales. The sentiment of nationalism exemplifies this expansion of human sociability, and hopefully the feeling of every human being living in a lovely global community will be engendered and solidified in the foreseeable future.¹⁴⁹

To drive the above points home, ancient societies are usually more homogeneous and more oppressive than modern ones, due to their limited means to communicate a coherent system of rules all across the whole society, while more recent societies tend to allow more freedom to its membership agents, due to their more advanced communication systems, and another interrelated phenomenon, their more complicated systems of practical actions. Primitive societies, in this sense, are like animal “societies” such as ant societies, whose social fibers are characterized by rigid rules or even social instincts, while more advanced human societies allow more flexibilities and more innovations in their social norms. This rough line of development can be called the historical direction of individuation of human beings, or more appropriately, the direction of history as liberalization. As a general tendency of the history of human civilization, people living in earlier stages usually rely more on each other, and on their communities, to maintain moral and political order. The blood vessels of these earlier societies are fewer and thicker, so to speak. This makes people feel more comfortably at home, but people with innovative minds will find it

¹⁴⁹ David Reidy argues, and I agree, that Rawls’s theory of international justice does not stick to current post-Westphalia system of nation states, with every nation only worrying about its internal business, but rather encourages institutional development towards a more cosmopolitan economic and political order: “Within such a [Rawlsian international] politics, liberal democratic peoples are free to engage in a variety of undertakings aimed at promoting liberalism and democracy around the world.” See Reidy, “Rawls on International Justice: A Defense,” *Political Theory*, Vol. 32, No. 3 (June 2004), p. 312.

more oppressive and more stifling. As more blood vessels are created to connect more people together, sense of attachment to each other is loosened, while at the same time social cooperation at larger scales becomes possible.

To understand why growing complexity in practical actions within a society leads to greater individuation, we need to remember that all practical actions are ultimately to be carried out by individual agents of a society. This in no sense implies that we are endorsing an individualist conception of the person; indeed, institutionalism holds a more integrated view about the relationship between individuals and their society, as is demonstrated in the first chapter.¹⁵⁰ In institutionalism, we analyze a society into the practical actions it sustains, and the institutions it uses to guide and constitute these practical actions for the sake of maintaining social order. Ultimately, a society can be well in order if all its institutions are internalized and followed by every relevant individual agent. Obviously, assuming a society maintains the same number of individual agents, when the possibility of practical actions in this society grows, the corresponding regulating and constitutive institutions will also grow, and so will the number of institutions an individual agent is supposed to internalize and to honor in her now more complex structure of actions. By the last specification I mean that an individual agent is now required to carry out more practical actions by herself and with other individual agents in coordination and cooperation within the collective agencies of the society. As a result, individual agents in a more advanced society, generally, will be more acutely aware of their being individuals. Their social positions on the social network

¹⁵⁰ Max Weber, who studies societies on the basis of actions, also emphasizes on “individual human beings” as the only “intelligible performers of meaningful actions.” Weber further believes that this emphasis in no sense “implies a certain valuation of ‘individualism’ (in any possible sense of that word).” See chapter 1 of *Economy and Society*. I cite these two paragraphs from pp. 17, 21 of *Max Weber: Selections in Translation*, edited by W.G. Runciman, translated by E. Matthews, Cambridge University Press, 1978.

are constantly in motion and reshaping, no longer fixed by stagnate relations; in order to know how they are to perform their now more complex social roles, they need to reflect on their whereabouts and themselves more often than before.

The process of liberalization of individual agents is only the other face of this process of individuation. Since individual agents are now required to internalize and follow more institutions, the society can no longer hope that they will stabilize their socialization in early ages, and follow a rigid pattern of actions thereafter. What kids learn in schools will prove to be less useful in their adult lives; past experiences are no longer sure guidance for the future. Individual agents are therefore required to participate in their social institutions more actively, first in the implementation of institutions, then in the creation and legitimization of institutions. By contrast, in a less modernized society, the patterns of actions, the institutions guiding practical actions and their legitimacy, are highly dependent upon the long tradition laid down by ancestors. Individual agents in a pre-modern society were only required to blindly follow traditional institutions; in most cases, all the significant things they do in their lives only repeat what their ancestors have done in previous incarnations. In short, liberalization of individual agents simply means that as individual agents are obliged to honor more institutions in a quickly changing social environment, they will be endowed with more participating rights in the formation, implementation, and legitimization of these institutions. In this sense, liberalization and democratization are two closed connected concepts in institutionalism.

Another consequence of the growing demands for institutions of a more complex society with more complex structure of practical actions is that the enforcement of social institutions is now less dependent upon moral norms through peer pressure, and more dependent on legal and political administrations. This in turn

requires bigger and more complex institutional structures, which are supposed to administer social institutions in the name of the collective agency of the whole society. Nevertheless, the same irony is also at work in this aspect of social evolution: on the one hand, to enforce the now more complex social institutions, and to carry out the now more complex collective actions such as national defense and welfare distribution, institutional structure of a society tends to become more powerful and more penetrating; on the other hand, as social institutions become more complex, the effectiveness of the enforcement of social institutions become more dependent upon individual agents' voluntary thinking and voluntary actions. In other words, in order to realize social control in a more complex society, its social institutions must be more responsive to individual agents, on whom the society relies to carry out the now more complex practical actions, at the individual level and different collective levels. This dialectical process also leads to liberalization and democratization.

Before we further solidify this direction of liberalization and democratization, we need to be aware of possible complications of this historical development. The process of liberalization and democratization doesn't constitute a straight line of progress in every society. Specific degrees and conditions of homogeneousness and oppressiveness in different ancient societies may vary, and a later stage of society might not necessarily be freer than a previous stage. But these variations can be accounted for within our theory of agency formation and institution building. People of more ancient times, such as citizens of classical Athens and of the Roman Republic, might enjoy more freedom than people living in the later Macedonian Empire and Roman Empire. In these cases, the enlargement of society is so rapid and so extensive that bigger community means more oppressiveness and less liberty. Even in the early modern time, the advancement of industries, communications and social organizations

did not immediately lead to bigger space for private life, but to different forms of state absolutism and totalitarianism. This is so because to secure social order, the collective agency for a bigger society must be built first, with only very raw materials of building at hand, and leaving more elegant adjustments in individual or other membership agencies for later development. History rarely proceeds with good preparation; it's not like building a pyramid, with higher level of collective agencies only added to the top of lower levels of collective and individual agencies. Sometimes a society can enlarge itself gradually and peacefully, such as the American society especially after the Civil War (this is not to disregard the sufferings of the Indians, by the way). But oftentimes the changes in the environment are so threatening and the need to create and solidify a bigger collective agency is so urgent that there is not enough time to wind up together in an incremental manner. When the possibility of a higher level of social organization and a bigger scale of collective practical action is on the horizon, there will be certain individual agents who emerge as Napoleons, whose foresight, ambition, and charisma give them the capability of moving people towards the realization of this possibility, or in the cases like that of Alexander and Napoleon, moving people even further than what is actually possible, that is, to embrace too large a territory into one country or one collective agency. People see in these heroes the power of doing things that were unimaginable before, but what these heroes are really capable of doing is arousing the people to this power (think about how powerless Napoleon was on the island of Saint Helena). Fortunately or unfortunately, those big empires built up by swords often have shorter lives than smaller political entities; they usually consume themselves before they can integrate all the different peoples they felt so eager to conquer. These empires deserve to collapse, since they could not turn their subjects into their membership agents so that

these people can identity themselves as members of the collective agency, as members of “our” empire.

Cultural differences may also bring complications to this process of liberalization and democratization, but ultimately what is decisive is the expansion of communication and the possibility for collective actions at bigger scale. Many civilizations in human history, such as the Maya and the Incan, did not have chances to develop into modern forms before they perished, mainly due to their limited geographical positions, and in consequence, their lack of opportunities to grow bigger or interact with and learn from other civilizations. Indeed, in the history of human civilization, only one continent has produced modern forms of human life, or forms of life closer to modernity. The Euro-Asia continent, due to its vastness and the continuous interchange between the diverse forms of life it is able to produce, had been the center of the evolution of human civilization. On this continent, the part of the Western Europe was especially important for the emergence of modern civilization, perhaps due to its geographical openness and cultural diversity.¹⁵¹ This in no sense implies, however, that only people of Western Europe are suitable for modern ways of life, characterized with liberalization of individual agents by advanced systems of social institutions and democratization in political participation.

¹⁵¹ Many students of modernity, such as Karl Marx, emphasize on the importance of scientific and industrial revolutions for the creation of modern social forms. Some other students of modernity, such as Max Weber, believe instead that the evolution of cultural values and social institutions is more important for the emergence of modern social forms. Institutionalism explored in this essay obviously leans to the latter side. This is not to devaluate the scientific and industrial revolutions, but only to understand these revolutions within the background of the evolution of social institutions. For one thing, Chinese people had put into use many advanced technologies, such as paper, gunpowder, and compass, centuries before Europeans got a chance to know, but the same technologies leading to scientific and industrial revolutions in Europe did not cause much social change in China. Weber gives a quite institutional explanation of why China did not develop capitalism by its own in *The Religion of China: Confucianism and Taoism* (1916), translated and edited by H.H. Gerth, Free Press, 1951. Marx’s “historical materialism” is most clearly presented in *German Ideology* (1845) and the Preface to *Toward a Critique of Political Economy* (1859). For a systematic exploration of Marx’s “Historical Materialism,” see G.A. Cohen, *Karl Marx’s Theory of History*, Princeton University Press, 1978.

Indeed, European people came into the modern age with their own struggles, with religious persecutions, religious wars, civil wars, national wars, world wars, the holocaust, etc. European modernization was also accompanied by colonization of almost every other part of the world, while American modernization was smeared by slavery and the deprivation of the Native Americans. The historical process of liberalization and democratization in no way means smooth transformation.

After the modern form of life has taken shape, other people from other civilizations will first be pushed, then be eagerly committed, to learn the successful institutional practice from the west. After all, the process of institution building is nothing but the solidification of successful experiences, and the process of social evolution is only a process of learning from the past.¹⁵² As they are imitating the west, however, they are also communicating and interacting with the west, and so is the west with them. As a result, they are now both participating together in the process of externalization and internalization of new institutional rules guiding and empowering new forms of practical actions and interactions. Some parties may play bigger roles, some parties may be involved mainly in passive ways, but for a stable social and political order to be implemented all around the globe, engagement of every party is required. In our own age, dialogues between civilizations are emerging large on the global stage, oftentimes leading to violent confrontation. If our sanity is strong enough, we will be able to externalize and internalize more advanced and more reconciling forms of institutions to sustain a global collective agency, with all human beings and all human communities its membership agents. History does not end in our own time; it will never end, as long as the expansion of human communication,

¹⁵² Hayek says, “in social evolution the decisive factor is not the selection of the physical and inheritable properties of the individuals but the selection by imitation of successful institutions and habits.” See Hayek, “Freedom, Reason, and Tradition,” *Ethics*, Vol. 68, No. 4 (July 1958), p. 233. This article was later adapted into his *The Constitution of Liberty* (Routledge, 1960) as Chapter 4.

human practical action, and human institution building are still at work. In fact, “the end of history” happens only in a much less exciting fashion. The collapse of the Roman Empire is such a case, and so are the collapses of many ancient Chinese dynasties. During these periods, stagnation and corruption in public space make the current moral and political order no longer sustainable, and people were forced to withdraw to smaller units of social universe, such as local communities and families, to get a sense of order.

To sum up, liberalization and democratization is a general trend within a bigger general trend, that is, the trend of the expansion of human social organization. Any human society, to be a stable social system, must work out a way to communicate its norms to its members, and to have its norms internalized by its members. Without a set of shared institutional rules, people with different norms of social conduct in their minds will unavoidably come into conflict when they meet. In earlier societies, when communication across the society is more rudimentary and the life forms of its members more restricted to local communities, social norms are usually more general and more oppressive. Membership agents of an ancient society are usually not required to actively participate in building up the collective agency of their society; they are rather passive recipients of social norms, and are required to internalize these norms without much arguing. In fact, there was no much chance for people to get together, arguing for and exchanging their thoughts, let alone reforming their own institutions.¹⁵³ As communication improves and interaction between people becomes more complicated, more specific social norms are called into place, and

¹⁵³ This, again, doesn’t mean that whatever ideology or institution will be internalized by the individual members of those ancient societies; those ideologies and institutions that threaten the survival of the majority, such as the Mayan practice of human sacrifice in large numbers, cannot bring about stable social union in the long run. Such societies will ultimately collapse, either because the majority rise up in rebellions, or because it destroys its population.

membership agents of a society are required to play more social roles than they used to. As a result, more active participation from the membership agents in the adoption and the adaptation of social norms become necessary, while blind compliance becomes less efficient and less useful. The representative of the collective agency of a society used to be a monarch, the throne being inheritable, as well as most other social positions; now the changing social needs over time require that the collective agency of a society being more immutable and more responsive to the quickly changing environment and to the various and changing needs of the membership agents. The collective agency of a society can no longer be claimed in the divine or royal names; it must be claimed in the name of the people. Thus a society is liberalized and democratized.

This concludes our discussion of the process of liberalization and democratization through agency formation and institution building. In the next section, we will use this institutionalist theory of political development, and more generally, the theory of institutionalism developed in this essay so far, to provide new perspectives on our ideal of liberal democracy.

The Ideal of Liberal Democracy and Political Development

Simply put, liberal democracy is an ideal that social norms should be created and legitimized by the consent of all the applicable agents, whose liberties and interests are bound to be under the influence of these norms. This way a seamless compliance can be secured all across the society, under the supposition that every agent will stick to her consent and will abstain from taking advantage of free riding. In reality, however, free riding is a dominant issue for any society to fight with, and seamless compliance, even under the condition that all the social norms are endorsed

by unanimous consent from the whole body of the citizenry, is rarely secured. This makes the problem of enforcement essential for every social order. A social order is secured only when different agents are willing to coexist with each other peacefully and submit themselves to the same set of social norms when disputes arise. When some agents try to manipulate or violate certain social norms so that their rational interests can be better advanced, appropriate punishments should be carried out so that those social norms are recovered and reinforced. When the norms of a society are systematically violated, the social order will lose its grasp, and a vicious circle will bring this society into chaos. A society without an efficient system of enforcement is therefore unstable, and efficient enforcement, in the long run, relies on the legitimacy of the social institutions to be enforced.

This observation in no sense presupposes that human beings have a corrupted or evil nature, or that human beings are selfish by nature,¹⁵⁴ or that human beings are naturally fond of rebelling, as the story of the original sin suggests. Rather, compliance with social norms is hard to maintain perhaps mainly because information available for norm construction, and for every agent in her decision making, is always incomplete. This incompleteness of information can be further analyzed into two categories. First, since social norms must be abstract in their forms and general in

¹⁵⁴ To be sure, separate rational interests of different agents do have influences on their choices of compliance and disobedience. In a famous book, the economist Mancur Olson analyses the evolution and corruption of social orders on the basis of the problem of free riding. According to Olson, "If the members of a large group rationally seek to maximize their personal welfare, they will not act to advance their common or group objectives unless there is coercion to force them to do so, or unless there is some separate incentive, distinct from the achievement of the group objectives." For Olson, therefore, the necessity of enforcement is entailed by people's separate rational interests. Our argument here can admit the merit of Olson's point, or similar points. See Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups*, Harvard University Press, 1965, p. 2. Olson continues his thinking in this spirit in a later work, in which he argues that societies like Roman Empire ultimately collapse exactly because free riding problem will get out of control as these societies enlarge upon their success yet cannot develop corresponding effective systems of enforcement. See Mancur Olson, *The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities*, Yale University Press, 1982.

their applications, they unavoidably bring about inconveniences in certain situations. As a result, mechanically following social norms might be undesirable in many circumstances, even from the point of view of the society as a whole. Usually, a society would give its agents, and the enforcers of social norms, certain elbow room for discretion. As a consequence of the incompleteness of information for norm construction, no system of social norms can be so rigid that compliance with social norms is only a matter of “mechanical jurisprudence.”¹⁵⁵ Second, when individual agents make their decisions about how to comply with social norms and how to interpret social norms so that the best meanings of these norms can be realized in different situations, they also face the incompleteness of information. There is no way to guarantee beforehand that their discretions and interpretations indeed honor the best meaning of the corresponding social norms, or that other agents will agree to the same discretions and interpretations given the same circumstances. With these two senses of incompleteness of information, a system of social norms will be unstable even if we suppose that every agent has absolute good will towards herself and her co-community members.

An effective system of enforcement is therefore necessary for any system of social norms. In reality, the function of enforcement is usually assigned to a certain group of people under the social division of labors. As a result, in real history, the relationship between different agents under the same structure of social norms is rarely in absolute symmetry. Nevertheless, although the creation of an enforcer function can better guarantee and stabilize compliance with social norms, it brings about further complications for social order. The enforcers of social norms carry

¹⁵⁵ For this point, see Roger A. Shiner, *Norm and Nature: The Movements of Legal Thought*, Clarendon Press, 1992, pp. 33-4.

social powers with them, and when they can abuse public power for their own benefits, they are very likely to do so, unless they are monitored by higher levels of social norms and higher levels of norm enforcers. This in principle can bring the levels of norm enforcers to an infinite regress, with two possible exceptions: either there is an absolute enforcer, who has the absolute power to enforce social norms, or a circle of enforcement is formed, so that every enforcer is under the monitor and enforcement of at least another enforcer. These two exceptions, as two solutions to the problem of infinite regress of norm enforcement, are therefore universally used in every human society, with different degrees of mixture that constitute a continuum of power distribution. A theocracy, which makes the sovereign ruler the ultimate source of social norms and the absolute enforcer, is at one end of this continuum, while a liberal democracy, which makes every agent both the creator and the enforcer of social norms, is at the other end.

Before we explore the ideal of liberal democracy, another important concept needs to be analyzed in light of the institutionalism. This is the concept of rights, which is closely connected with the concept of duties. Here we see that the cunning of history is also at work: in order to lay more responsibilities to its membership agents so that more complex social actions and interactions can be organized, the society now bestows more individual liberties upon these agents.

Duties and rights, in institutionalism, are both understood as institutional rules constituting and regulating practical actions and interactions. Individual persons, as constituents of different levels of institutional agencies, externalize their deliberations, desires and concerns into institutional rules, and internalize these rules in their actions and interactions so that a common understanding is shared between them and their interaction is stabilized. Duties and rights are therefore nothing but constitutive and

regulative rules of the social institutions; they can be assigned to both individual agents and collective agents, according to their institutional statuses. In other words, duties and rights do not internally “belong” to the relevant agents; they are assigned to these agents by institutions, which are general and abstract rules applicable to every membership agents of a society. As such, rights and duties of one person are always involved with some “other” persons; as well put by Rex Martin, “rights always involve normative directions for the conduct of second parties—and thus rights lay the hand of duty, or something like it, on such persons...the duties in question are, all of them, institutional duties.”¹⁵⁶ Natural rights theories, in this sense, are only rationalist justifications of rights and duties; they do not account for the real process through which rights and duties are created and administered. On the other hand, even the basic human rights promoted in international politics, as David Reidy puts it, must be understood “in terms of their practical function within the international order” in order to be real rights. “They are not timeless, prepolitical, natural rights belonging to the moral fabric of the universe or flowing directly from some universal human nature.”¹⁵⁷ The institutional understanding of rights therefore is totally different from natural rights theories.

Duties and rights, of course, are both very complicated legal and philosophical concepts, of which our analysis here in no sense constitutes a general theory. For example, we do not, and can not, deal with various institutions enforcing rights and duties. For our purpose of arguing for the general tendency of liberalization in the

¹⁵⁶ See Rex Martin, *A System of Rights*, Clarendon Press, 1993, pp. 304-5. Martin defines rights as “established ways of acting.” This definition obviously fits our institutional understanding of rights very well, since the institutionalism is centered on practical actions. It is to be noted, though, that the institutionalism developed here is far less a comprehensive theory of rights as presented by Martin.

¹⁵⁷ See David Reidy, “Political Authority and Human Rights,” in *Rawls’s Law of Peoples: A Realistic Utopia?*, edited by Rex Martin and David Reidy, Blackwell, 2006, p. 174. Rex Martin also observes that “natural rights,” “resolutely non-institutional” as they are, can only provide “reasons or grounds for saying that certain ways of acting or of being treated ought to be civil rights.” See *A System of Rights*, p. 125.

evolution of social organization, we need only establish two connections: that as more institutional rules are to be internalized by individual agents, they will be assigned with more duties for carrying out institutional rules; and that there is a general balance between the assignment of duties and the assignment of rights. The first connection is intuitively clear in our presentation of the theory of institutionalism, while the second connection merits a few more words of clarification regarding our theory of institutionalism.

Institutionalism believes that certain rights can be claimed for some agents against other agents only if certain meaningful corresponding duties can be laid upon relevant agents by appropriate institutions. This means that how many rights an agent can have is dependent upon how many duties can be institutionally laid upon those agents who are capable of violating those rights. This is especially true for welfare rights, but it is also true for other rights, even those rights as basic as the right to one's life. In the battlefield, for example, a soldier doesn't have a legal right to his own life, since there is no way to lay legal duties upon the enemy soldiers to respect such a right. A soldier, when getting on the battlefield, must be ready to die for his cause, without the right to demand that whoever on the enemy side kills him would be held legally accountable. This is how the institution of war works. For another example, no individual agent can be endowed with the right of life when it comes to her own suicidal effort, simply because there is no way to punish suicide besides persuading people into the belief that suicides will go to hell.¹⁵⁸ But in a domestic society, a right to one's own life must be generally and universally secured by institutional rules;

¹⁵⁸ This is not to say that this kind of belief cannot be institutionalized. In fact, the Catholic Church, as well as some other churches, used to be able to establish, legitimize, and enforce a set of very effective institutions based on this kind of beliefs. As we explored before, this kind of belief has high potentiality to be institutionalized, since they are understood as God's commandments, therefore are automatically legitimized in the believers' hearts.

otherwise the social order cannot be well maintained. In pre-modern societies, people with institutional power could manage to escape punishment after killing innocent yet powerless people, but as these cases accumulated, these societies sooner or later collapsed due to their incapability of maintaining a sense of security and order among the people. On the other hand, whenever there is no enforceable way to lay institutional duties, no meaningful rights can be claimed. As Joel Feinberg famously articulates, “A man has a legal right when an official recognition of his claim (as valid) is called for by the governing rules...A man has a moral right when he has a claim the recognition of which is called for...by moral principles, or the principles of an enlightened conscience.”¹⁵⁹ The right of the people in poor countries to be assisted by advanced countries, for instance, is not meaningful until we have some enforceable trans-national institutions to lay the corresponding duties to assist, or enough “enlightened conscience,” upon the advanced countries. Until then, people living in poor countries do not really have the right to be assisted.

This dependence on how far an institutional structure can lay duties upon relevant agents in turn means that institutional agents will gain more and more rights as the degree and the scope of applicability of social institutions are improved. In this sense, liberalism, the political philosophy based on rights claims, should not be understood as a stagnant goal. We are not to follow the libertarians and argue that we have certain rights to be protected, and so long as these rights are effectively protected,

¹⁵⁹ See Feinberg, *Rights, Justice, and the Bounds of Liberty*, Princeton University Press, 1980, p. 154. It is Joel Feinberg who defines rights as “valid claims.” This definition is perhaps a little bit wider than our institutional understanding of rights, but it can be largely fit in the institutionalism, in the sense that it takes as the other party’s recognition as essential for a person to have a right. Henry Shue agrees to this view of rights when he says that “Being socially guaranteed is probably the single most important aspect of a standard right, because it is the aspect that necessitates correlative duties.” See p. 16 of *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, 2nd edition, Princeton University Press, 1996 (1st edition 1980).

liberalism is realized.¹⁶⁰ Rather, institutional liberalism is internally a progressive doctrine: it says that just as our institutional rules will always be improved and expanded as time goes by, so will the system of our liberties. Institutionalism supports a liberalism defined as an endless process of liberalization rather than a process of realization of certain list of “natural” liberties.

A possible way to oppose our institutional doctrine of rights and our institutional understanding of liberalism is this: rights are not defined by institutions; rather, rights set limits to institutions. It is argued that although people know it is necessary to have coercive institutions in order to create and maintain public order, they don’t want the coercive power of institutions to trespass their “inalienable rights” or “negative rights” of being left alone in their personal pursuits that are harmless to others. According to this reasoning, therefore, rights are not limited by institutions; on the contrary, institutions are limited by rights.¹⁶¹ This way of defining rights, however, is in fact not contrary to our doctrine of rights; the only problem with it is that it stops halfway. Suppose people do want to set some limits to institutional power, how could they implement these limits? Not surprisingly they need more institutions,

¹⁶⁰ Typically, libertarianism defines liberties as pre-institutional belongings of individual persons; based on this definition, Nozick argues that only minimal state is justifiable. See Robert Nozick, *Anarchy, State, and Utopia*, Basic Books, 1974. In a later work, Nozick insists that “a right is something for which one can demand or enforce compliance,” leaving how a person can enforce her own rights not clarified. See Nozick, *Philosophical Explanations*, Harvard University Press, 1981, p. 499. For Rawls’s criticism of libertarianism, see Lecture VII of PL.

¹⁶¹ Rights and liberties have been largely advanced in the name of this simple claim that people have rights against the government. Isaiah Berlin typically holds this view on rights and liberties when he emphasizes the importance of “negative liberties.” See *Four Essays on Liberty*, Oxford: Oxford University Press, 1969. Ronald Dworkin defends this sense of rights against the government with certain reservations in *Taking Rights Seriously*, Harvard University Press, 1977, especially in chapter 7. Henry Shue, on the other hand, argues that “it is impossible, therefore, meaningfully and exhaustively to split all rights into two kinds based upon the nature of their implementing duties, because the duties are always a mixture of positive and negative ones.” See his “Afterword” to the 2nd edition of *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, Princeton University Press, 1996, p. 155. Here Shue refers to Jeremy Waldron’s vivid illustration about how the protection of the “negative” rights of being left un-interfered may require “successive waves of duty,” such as the collaborative efforts by the police, the court, and the legislature. For Waldron’s similar institutional theory of rights, see Waldron, *Liberal Rights: Collected Papers, 1981-1991*, Cambridge University Press, 1993. Rawls disregarded the necessity of the distinction between positive rights and negative rights as early as in 1971. See TJ, section 32.

such as constitutional protection and judicial review, to make these limits enforceable. These institutions in fact constitute parts of the institutional structure we are talking about here.

Before we conclude our presentation of institutionalism as a theory of agency formation and a theory of institution building towards liberalization and democratization, we need to address two doubts that might have been haunting our readers from the very beginning: is the institutionalism presented here treating individual persons as only puppets controlled and manipulated by society and its institutions? Is the general trend of liberalization and democratization justified by institutionalism the same thing as a rationalist prediction of the end of history in liberal democracy, or for that matter, any other type of social order?

The answer to both questions is clearly “no.” To see why this is so, we can look at the ideal of liberal democracy, which has been confirmed in institutionalism when we treat liberal democracy as a process of liberalization and democratization through institution building. It is helpful to view liberal democracy as an ideal state of affairs, as long as we admit that the actual realizations of this ideal can differ in different times and places, and the realization of the ideal of liberal democracy in no sense leads to the end of history. To view liberal democracy as an ideal makes it clear to us, creatures living in certain places and certain period of history, what we are striving for in our normative construction of institutions. Doing philosophy by constructing and justifying certain ideals is a valuable practice endorsed by Rawls as constructing “a realistic utopia.”¹⁶² This practice is totally different from a prediction or an advertisement of a rationalist end of human history.

¹⁶² See JF, p. 4, where Rawls says, “we view political philosophy as realistically utopian: that is, as probing the limits of practicable political possibility.” Rawls’s ideal of an overlapping consensus over his liberal principles of justice, or a generic liberal principle of justice, is in no sense claimed as the end

It is worth noticing that in light of our theory of institutionalism, this ideal of liberal democracy can be interpreted as the ideal form of agency formation through institution building. From our historically gained vantage point, liberal democracy, as an ideal if not in its different realizations in different places, is the highest form of the ideal of agency formation that human beings can imagine and can implement in their communal life. On the one hand, the ideal of liberal democracy gives every individual member of a body politic¹⁶³ a separate, independent and equal status of agency; on the other hand, this ideal insists that any level of collective actions should be carried out in the name of a corresponding level of collective agency, which is nothing but the will of the individual members of that collective agency.¹⁶⁴ In short, the ideal of liberal democracy is the ultimate ideal of agent autonomy at every level of agency formation and practical action. If our historical process of institution building leads to liberalization and democratization, as has been argued for in institutionalism, then ultimately, individual agents are not puppets of social institutions, but the very creators of their institutions.

Something like the above mentioned process of liberalization and democratization through institution building, I contend, is the general direction of the evolution of human social organization. The ideal of liberal democracy can be

of human history, but is only a construction of social ideal from the current state of liberal democratic culture. Rawls would never dream of a foreclosure of human history.

¹⁶³ Here I am not assuming that nation state is the best form of embodiment of a liberal democratic body politic. I leave it open for the possibility of a global body politic in the future, although I believe that our current moral psychology may prove to be insufficient to initiate such a global body politic, due to the limits in our moral imagination and moral sentiment, if not the limits in our moral understanding. Cosmopolitans have proved that at least for some members of our species, moral understanding has already reached such a level.

¹⁶⁴ Rawls works out only the principles of justice for liberal democratic nation states as bodies politic. He admits that principles of justice for other kinds of organizations, such as families and local communities, may deviate from his justice as fairness. What I hope to achieve is to argue that there is a general principle of liberal democracy that guides all kinds of collective agencies. To some extent, Rawls's political liberalism might be interpreted as such a general principle, although his explicit intention might not be so.

confirmed within institutionalism as an ideal of agency formation, which, even if it will never be actually realized in any real circumstance, is a guide for our normative institution building. With this we conclude our general presentation of institutionalism as a theory of agency formation, and a theory of political development.

In the next and the last chapter, we will see how the theory of institutionalism, and its implication for political development towards liberalization and democratization, can be squared with Rawls's delicate system. So far we have been using Rawls's doctrines and arguments at will to promote our own theory. Now it's time to see whether such a use of Rawls is legitimate or not. By interpreting Rawls's system as an instantiation of institutionalism, we will make Rawls's eloquent arguments work for the ultimate purpose of this essay, namely, a culturally neutral defense of our ideal of liberal democracy.

Chapter IV Rawlsian Institutionalism and Political Development

In this chapter I will develop an interpretation of Rawls's system according to our institutionalism, and argue that Rawls's system, as an instantiation of institutionalism, can be read as a culturally neutral defense of the ideal of liberal democracy. Two reasons make this interpretation an integral part of this essay: first, many basic ideas of this essay owe their origin to reading Rawls, and since we have been freely using Rawls to support our arguments, there is a legitimate question about whether Rawls is really a friend of institutionalism; second, if we can prove that Rawls's well constructed system is an instantiation of institutionalism, the advantage of adopting institutionalism rather than rationalism as a strategy to justify moral and political doctrines will be further supported, due to the widely acknowledged reputation of Rawls's delicate system. I also believe that an institutionalist interpretation of Rawls's system will provide a better understanding, and a better justification, of his system. Rawls's own articulations of his system sometimes unnecessarily complicate the issues, and invite unnecessary misunderstandings. A simple and contrasting enough theory like our institutionalism can bear out the merits of Rawls's system in a more conspicuous and more defensible way.

The most important goal we can achieve by an institutionalist interpretation of Rawls's system is that Rawls's well designed arguments for his principles of justice can be read as a delicate and convincing justification of the ideal of a liberal democratic political order. This chapter tries to abstract from Rawls's system a culturally neutral justification of the fundamental principles underlying liberal democracy, and argues that this justification implies a normative requirement for a political development towards liberalization and democratization. Rawls's particular

principles of justice, and his systematic arguments for them, will only be discussed in connection with this Rawlsian justification of democracy. According to our institutionalist interpretation, the major contention of Rawls's system is not that his two principles of justice should be adopted in certain societies, but that some similar principles are normatively justified for any sustainable modern society. Understood in this way, Rawls's justification of liberal democracy will stand, even if we do not agree to his particular principles of justice or any particular conclusion.¹⁶⁵

The main point of developing an institutionalist interpretation of Rawls is, therefore, to bring out the dimension of political development towards a well-ordered liberal democratic society implied in Rawls's theory of justice. Rawls himself suggests in many places that he works only within the tradition of liberal democracy, or within the tradition of modern liberal thinking. The basic conceptions Rawls uses to develop his theory of justice, such as society as a cooperation system, persons as free and equal citizens, and the ideal of a well-ordered society, are all "fundamental ideas familiar from, or implicit in, the public political culture of a democratic society."¹⁶⁶ But this practice does not in any sense imply that Rawls's justification of liberal democracy is only valid for the context of liberal democracy as a western tradition.¹⁶⁷ Even if Rawls's expected major audience is only citizens of western or

¹⁶⁵ In his later thinking, Rawls suggests that his own principles of justice are only "an example" of a more general concept, namely, "political conceptions of justice." (PL, p. xxxviii.) He further argues that even if his justice as fairness would not be adopted as an object of overlapping consensus, some generic "liberal political conceptions of justice" will be adopted anyway, and they are more or less similar to his own conception of justice in that they all specify "certain rights, liberties, and opportunities," "a special priority for these freedoms," and "measures assuring all citizens, whatever their social position, adequate all-purpose means to make intelligent and effective use of their liberties and opportunities." (PL, p. xlvi.) This is why Rawls says that "justice as fairness is a form of political liberalism." (JF, p. 40; see also PL, p. xxxi.)

¹⁶⁶ See JF, p. 27. This point is emphasized throughout Part I of JF, which introduces fundamental ideas to be used in Rawls's major arguments.

¹⁶⁷ For example, see Ed Wingenbach, "Unjust Context: the Priority of Stability in Rawls's Contextualized Theory of Justice," in *American Journal of Political Science*, Vol. 43, No. 1 (January 1999).

American style of liberal democracies, the attractiveness of his message would not necessarily be limited to such an audience. A practical project as it is, Rawls's system tries to show that a liberal democratic political order can be just and stable, and by showing the desirability and feasibility of this ideal to a democratic people, Rawls also proposes a political ideal for other peoples. Our institutionalist interpretation of Rawls, by providing a universalistic foundation for Rawls's system, strengthens this legitimate point, and frees Rawls from any suspicion of relativism or contextualism.

This institutionalist interpretation of Rawls will be worked out in three main steps. First, I will prove that Rawls's major methodology of justification, the public justification of a public conception of justice as the foundation of a social order, accords with institutionalism. This is so because such a public justification gives priority to social order, and takes the establishment and justification of a public conception of justice, which in turn is the foundation of social institutions, as the first task of political philosophy. This part is important for establishing a Rawlsian theory of political development because the pursuit of a well-ordered society will be shown as the normative end of human institution building. Second, I will prove that Rawls's conception of the moral person is also institutionalist, in the sense that this conception of the person is not a pre-institutional conception of human nature, but rather a conception informed and constructed by normative engagement with social institutions, or ideals of social institutions. This step is necessary because Rawls's conception of the moral person has been misunderstood so often as an abstract conception of the rational person, while our interpretation provides an easy way to distance Rawls's conception from such a rationalist one. Third, I will argue that Rawls's proof of liberal democracy as a well-ordered society is a justification of

democracy, and this justification will normatively encourage a political development towards such a well-ordered society.

For the convenience of writing and reading, these steps will be further divided into smaller sections with subtitles. The first section argues that Rawls has a unified project that stays coherent across time, namely, to provide a public justification of a public conception of justice, so that a well-ordered society with justice, legitimacy and stability can be established and maintained. This project will be demonstrated as compatible, if not consciously based on, institutionalism. For the limited purpose of this chapter, we will pay more attention to Rawls's arguments concerning legitimacy and stability, and leave Rawls's detailed theory of justice largely aside. The second section looks into Rawls's central methodology of public justification, and distinguishes the concept of "reasonableness," which is central to a public justification, from the concept of truth. This clarification further distances Rawls's methodology from rationalism, but it also unleashes two possible challenges to Rawls's methodology. One challenge says that just because a justification is publicly endorsed doesn't necessarily mean it is normatively binding, the other says that there must be some limitations put on how far a public justification can go. These challenges will then be addressed in the next four sections. Section Three discusses and rebuts the criticism against Rawls from perfectionism, which insists that a pre-determined conception of human good or common good must be the guidance for any justification of any conception of justice. Section Four links this challenge about normativity with the problem of legitimate coercion, and defends Rawls's own conception of legitimacy. Section Five discusses the other challenge in the name of a libertarian conception of inalienable rights, and argues that although Rawls gives the liberty principle priority over other concerns of justice, he nevertheless holds a view

about rights that is different from libertarianism, or rationalism for that matter.

Section Six rounds up the main point of these two challenges: if Rawlsian institutionalism really doesn't rely on any pre-determined conception of human nature, wouldn't Rawls's public justification end up endorsing whatever dominant values a society happens to have? Wouldn't Rawls's theory become a version of cultural relativism? By laying out the universalism element in Rawlsian institutionalism, I argue that Rawls is not vulnerable to this fundamental charge. This finishes our defense of Rawls's methodology against two main rationalist criticisms.

In Section Seven, we explore Rawls's conception of the moral person, and unite it with our conception of institutional agency established in the previous chapters. Section Eight further testifies that Rawls's conception of rationality, one of two moral powers Rawls defines as belonging to moral persons, is not a rationalist conception of human nature, as many influential criticisms of Rawls, such as communitarian and cosmopolitan ones, seem to suggest. This defense will be carried out with a helpful discussion of the moral power of reasonableness. With all the above sections, we will have finished presenting a relatively whole picture of Rawlsian institutionalism, and can then turn to the argument that Rawlsian institutionalism internally demands a political development towards liberalization and democratization. In Section Nine, we argue that "constructivism," the word Rawls himself uses for his methodology, is not as good as "institutionalism" in representing Rawls's whole system. Section Ten begins the exploration of a Rawlsian theory of political development by focusing on Rawls's pursuit of a well-ordered society, and argues that such a pursuit should be viewed as a universal pursuit for any human society. If this institutionalist point can stand up, then a proof of any political ideal to be such a well-ordered society would normatively demand a political development towards such

an ideal. Section Eleven discusses the Rawlsian ideal of a well-ordered society, a liberal democracy or “deliberative democracy” justified as the ultimate ideal of political autonomy, and argues that this ideal is compatible with our institutionalist ideal of liberal democracy as a balanced power structure, which is the ultimate goal of human institution building. This then leads us to the Twelfth section, the conclusive section of this chapter, in which we finally integrate Rawlsian institutionalism with the theory of institutionalism we have so relentlessly developed in this essay, and unit them in a normative demand for a political development towards the ideal of liberal democracy.

Rawls’s Institutional Project

This essay adopts the following basic reading of Rawls. Rawls’s theory across time is a project of unity, a project to find a public conception of justice to support a well-ordered society. His emphasis does shift from the early years (till TJ) to his later years (since his Dewey Lectures, accumulated in PL), in the sense that early Rawls concentrates more on defending the justice of his conception, while later Rawls concentrates more on the legitimacy and stability of his conception, or of the political order supported by his conception. This shift, however, is internally required by his ultimate target, namely, a well-ordered society. To secure a well-ordered society with his conception of justice, the crucial test is not to prove that his conception satisfies the requirements of justice, but to prove that his conception, and the social institutions based on his conception, can be accepted and internalized by the members of the targeted society, therefore can secure legitimacy and stability. What justice requires for people varies across the board and changes over time, but without a largely shared system of social institutions, a well-ordered society cannot be achieved or maintained.

Rawls's proof that a liberal democratic political order supported by his conception of justice, or any similar conception, can be a well-ordered society therefore constitutes a justification of the ideal of liberal democracy.

Based on this reading, this essay focuses more on Rawls's arguments for legitimacy and stability, and much less on his early arguments about justice. Indeed, this essay treats Rawls's legitimacy and stability arguments as his major justification for liberal democracy, and insists that his justification is an institutionalist one. In this sense, early Rawls is closer to rationalism, and Rawls only gets closer to institutionalism in his later, more mature works. His belief in the possibility that people who live under social institutions backed by his conception of justice as fairness will adopt a Kantian world view, for example, betrays his early tendency towards rationalism, while his recognition of the fact of reasonable pluralism, and his later theory of public reason, embody the spirit of institutionalism.

This interpretation is a very uncommon one, yet it accords with Rawls's own words. In this essay, we will develop this interpretation on the basis of a close examination of Rawls's texts. In this particular section, we first show how Rawls's main project is compatible with the institutionalism we have established so far.

The unity of Rawls's system across time hangs on his central concern to provide a publicly justifiable conception of justice so that a well-ordered society is realizable. This central concern is compatible with the priority institutionalism gives to social order through universal internalization of unified social norms.

Rawls himself is always clear about the unity of his philosophical project. For example, when he introduces the "major change" from "comprehensive philosophical and moral doctrines" to "conceptions limited to the domain of the political," he insists

that “otherwise these lectures [of PL] take the structure and content of *Theory* [TJ] to remain substantially the same.”¹⁶⁸

What remains the same through Rawls’s philosophical career is also clear from his own words. In the beginning of TJ, Rawls says:

a society is a more or less self-sufficient association of persons who in their relations to one another recognize certain rules of conduct as binding and who for the most part act in accordance with them...A set of principles is required for choosing among the various social arrangements which determine this division of advantages and for underwriting an agreement on the proper distributive shares. These principles are the principles of social justice: they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation.” Rawls’s major goal is therefore to find and justify such a “public conception of justice,” which is to be knowingly accepted by every person in this society, and is to be knowingly followed by its basic institutions. This public conception of justice therefore constitutes “the fundamental charter of a well-ordered human association.”¹⁶⁹

It is worth noticing that by “a society,” Rawls does not mean a modern constitutional democratic society. In fact Rawls believes that every society needs a shared conception of justice to settle social conflicts and to facilitate social cooperation. For example, Rawls says that “Some measure of agreement in conceptions of justice is, however, not the only prerequisite for a viable human community.”¹⁷⁰ From this we can of course infer that a shared conception of justice is ONE prerequisite for ANY viable society. For another example, he cites Aristotle’s view with sympathy:

“Aristotle remarks that it is a peculiarity of men that they possess a sense of the just and the unjust and that their sharing a common understanding of justice makes a polis. Analogously one might say, in view of our discussion, that a common understanding of justice as fairness makes a constitutional democracy.”¹⁷¹ In its literal meaning, this paragraph implies that a shared conception of justice is necessary for every human

¹⁶⁸ PL, pp. xvii-xviii.

¹⁶⁹ TJ, pp. 4-5.

¹⁷⁰ TJ, p. 5.

¹⁷¹ TJ, p. 214.

society if social order is to be realized among its members; what is special for a constitutional democracy is only the particularity of the conception of justice it is made of. In Rawls's view, the shared conception of justice for a constitutional democracy is, or should be, his two principles of justice, or more broadly, his conception of justice as fairness.

Another point to be noticed is that by providing and justifying a conception of justice for a constitutional democracy, Rawls's major goal is not to justify constitutional democracy from an external point of view, or against other forms of political order, but to prove that a constitutional democracy, if it is based on his conception of justice, can be a well-ordered society. This justification is from an internal point of view, from the perspective of a normal citizen living within such a society. To put this point in another way: if we can say that Rawls does provide a justification of democracy in his theory of justice, then this justification is done in the argument that a constitutional democracy following his conception of justice, justice as fairness, can be a well-ordered society, namely, "a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles."¹⁷² Understood in this way, the stability argument as presented in Part III of TJ, and in the whole book of PL and other later writings, together with his argument from legitimacy, are really Rawls's major arguments for liberal democracy. Rawls's argument for the justice of his principles is, of course, also essential for his system, but in light of his major concern for a well-ordered society, the justice argument is somewhat peripheral. Surely we can develop, as Rawls repeatedly

¹⁷² See TJ, p. 4.

recognizes, other conceptions of justice rather than his justice as fairness to support a well-ordered society.

Because of this interpretation, Rawls's arguments for his principles being just will be touched upon only when doing so is necessary, while the focus of this chapter will be Rawls's legitimacy and stability arguments. We can also use a simplified name to refer to both, namely, Rawls's stability argument. Rawls's legitimacy argument, centered on the liberal principle of legitimacy, is only a condition for his stability argument. For that matter, a different conception of legitimacy would work perfectly for his stability argument if satisfactory justification is provided. The main goal for Rawls's system is, ultimately, to secure a well-ordered society, or to secure the stability of a conception of justice, or the stability of a social order supported by such a conception of justice. Different peoples in different societies may adopt different conceptions of justice or different conceptions of legitimacy, but there is an objective goal towards a well-ordered society that is applicable to any human society. In institutionalism, as well in Rawls's system, the ultimate test for any form of human social order is simply this: is the system of social institutions, or the conception of justice supporting such a system, stable enough to maintain a well-ordered society?

For this reason, Rawls's justification of the ideal of liberal democracy as a well-ordered society is a universalist justification, not a contextual or relativist self-proclamation, of the ideal of liberal democracy. To be sure, the stability argument is not an argument for constitutional democracy as against other possible regimes, but an argument for the stability of a liberal democracy supported by his conception of justice, justice as fairness. In this sense Rawls's stability argument is an "internal" argument. By contrast, a rationalist justification of democracy would first provide a pre-institutional conception of human nature, such as the love of freedom, and then

show by comparison that democracy serves this human nature better than other political regimes. For rationalism, there is a neutral or transcendental standard, by which every type of political regime is to be judged. Rawls's "internal" justification of democracy, on the other hand, doesn't rely on a transcendental standard to determine what conception of justice best serves our human reason, but rather leaves the conception of justice for a social cooperation system to be determined by the involved agents, with an eye on their own social circumstances.

Rawls illustrates this contrast between the traditional methodology of justification and his own methodology of justification by asking these questions:

How are the fair terms of cooperation to be determined? Are they simply laid down by some outside authority distinct from the persons cooperating? Are they, for example, laid down by God's law? Or are these terms to be recognized by these persons as fair by reference to their knowledge of an independent moral order? For example, are they recognized as required by natural law, or by a realm of values known by rational intuition? Or are these terms established by an undertaking among those persons themselves in the light of what they regard as their reciprocal advantage?" Rawls then answers the question: "Justice as fairness recasts the doctrine of the social contract and adopts a form of the last answer."¹⁷³

Speaking of a well-ordered society, it is important to notice that although every society has its own public conception of justice to some extent, it is not true to say that every public conception of justice supports a well-ordered society. We must recognize the difference between a public conception of justice and a stable conception of justice. Any "viable human community" has a public conception of justice, but having such a public conception of justice doesn't automatically make a

¹⁷³ See PL, pp. 22-23. To be acknowledged, Rawls doesn't use "rationalism" in the meaning I define, nor does he use the word "institutionalism" to describe his own methodology. The "rational intuitionism" in Rawls's usage is close to what I call "rationalism," but "rationalism" can also be used to refer to some other doctrines or methodologies criticized by Rawls, such as perfectionism, utilitarianism, etc. About the term "institutionalism," Rawls's own word "constructivism" is the closest relative. Besides necessary clarifications, I will not systematically discuss the relationship between all these names. The main point is to distinguish Rawls from such doctrines or methodologies, and show the major differences. No doubt this will lead to a rather radical interpretation of Rawls's system, but the hope is that this interpretation will present Rawls's justification of liberal democracy in a more unified and more perspicuous way.

society a well-ordered society. To be able to support a well-ordered society, a conception of justice must be stable, “that is, when institutions are just (as defined by this conception), those taking part in these arrangements acquire the corresponding sense of justice and desire to do their part in maintaining them.” Also, different conceptions of justice may have different levels of stability: “One conception of justice is more stable than another if the sense of justice that it tends to generate is stronger and more likely to override disruptive inclinations and if the institutions it allows foster weaker impulses and temptations to act unjustly.”¹⁷⁴ By arguing that his own conception of justice, or some similar conception of justice, can support a well-ordered society, Rawls not only accomplishes a defense of the ideal of liberal democracy, but also poses a challenge to all human beings who would prefer a different political ideal: can your conception of justice support a well-ordered society?

Rawls’s later concentration on the stability argument is therefore not a deviation from his theory of justice, as some commentators would argue. The major goal of Rawls’s theory of justice, to repeat, is to provide a conception of justice that can support a well-ordered society. To realize this goal, simply arguing that his conception of justice is just is not enough; he must also prove that the society based on his conception of justice is a well-ordered society. This makes the stability argument the final and decisive part of his theory. Indeed the third and last part of TJ is about the stability argument; Rawls later wrote PL only because he found the third

¹⁷⁴ See TJ, p. 398. To be noticed, “stability” in Rawls’s work means two connected ideas: stability of a conception of justice and stability of a political society. The former means that citizens of a society generally accept the conception of justice governing their basic social institutions; the latter means that a political society is generally free from violent contestations and variations. Rawls more often talks about the stability in the former sense, but he believes that there is an internal connection between these two senses of stability: political stability is usually secured by the stability of conceptions of justice. Thus understood, Rawls’s conception of stability is closely connected with his liberal principle of legitimacy, and together they have a priority position in his looking for, and justification of, the conception of justice for a well-ordered society. For a general survey of Rawls’s thoughts on stability, see George Klosko, “Rawls’s Argument from Political Stability,” in *Columbia Law Review*, Vol. 94, No. 6 (October 1994).

part of TJ doesn't provide a satisfactory stability argument under a realistic condition of reasonable pluralism. Even after this so-called "political turn," Rawls still focused on the major concern of his theory. Here I quote several passages to confirm this continuity: "a main aim of PL is to show that the idea of the well-ordered society in *Theory* may be formulated so as to take account of the fact of reasonable pluralism. To do this it transforms the doctrine of justice as fairness as presented in *Theory* into a political conception of justice that applies to the basic structure of society." "Thus, to repeat, the problem of political liberalism is to work out a political conception of political justice for a (liberal) constitutional democratic regime that a plurality of reasonable doctrines, both religious and nonreligious, liberal and nonliberal, may endorse for the right reasons."¹⁷⁵ The main point of PL, therefore, is that even with the permanent fact of pluralism of reasonable doctrines that characterizes modern constitutional democracies, his conception of justice can still support a well-ordered society. Rawls's final statement of his system also confirms this central concern: "the principles of justice provide a response to the fundamental question of political philosophy for a constitutional democratic regime. That question is: what is the most acceptable political conception of justice for specifying the fair terms of cooperation between citizens regarded as free and equal and as both reasonable and rational, and (we add) as normal and fully cooperating members of society over a complete life, from one generation to the next?"¹⁷⁶

With these quotes, we end this section and feel now confident that Rawls's system is compatible with our theory of institutionalism, and has nothing to do with contextualism or relativism.

¹⁷⁵ See PL, p. xliii, p. xli, respectively.

¹⁷⁶ See JF, pp. 7-8.

Rawlsian Institutionalism and Possible Challenges

Rawls's life project is to discover, and to justify, a public (and political) conception of justice, so that the basic institutions of a society can be established and adjusted according to this publicly endorsed conception, and social order can be secured and stabilized. It is for this purpose that Rawls's whole project is oriented: the design of the original position, as the central justification device in Rawls's system, is an ideal forum of public justification, while his later theory of public reason, as the central contention of Rawls's later philosophy, is a more realistic version of such a forum. Even Rawls's liberal principle of legitimacy, the central concept of his political liberalism, is meant to carry out this idea of public justification: it says that "our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational."¹⁷⁷ Indeed, this liberal principle of legitimacy is presupposed throughout Rawls's project of providing a publicly justifiable conception of justice for a well-ordered society; if people don't generally have a tendency to obey social norms they recognize as just or legitimate, a public conception of justice wouldn't be able to maintain a well-ordered society anyway. In that case Rawls's whole argumentation for the possibility of a well-ordered society would be misplaced, and Rawls should instead seek for other devices, such as power dominance, to pursue a well-ordered society. The ultimate goal of Rawls's project, therefore, is to secure a well-ordered society with a conception of justice that is publicly justifiable to the members of this society.

¹⁷⁷ See PL, p. 217.

Central to Rawls's system, and central to our institutionalist interpretation of this system, is such a public and political justification of the basic principles of justice for a well-ordered society. The first and foremost goal of institutionalism is to achieve social order, including moral, political and legal order, through justification and internalization of social norms. To achieve social order, institutionalism believes that we need social norms to guide social actions and interactions, so that possible conflicts in practical actions and interactions among relevant social agents are peacefully solved through justified procedures and institutions. In order to make these social norms really effective, institutionalism believes that these norms need to be justified to, and internalized by, all or most involved agents, and they need to be realized in social institutions defining basic rights and duties for these agents, so that the legitimacy and the stability of the system of social institutions are secured.¹⁷⁸ All these doctrines of institutionalism fit very well with Rawls's pursuit of a public conception of justice. We can thus call Rawls's methodology of justification "Rawlsian institutionalism."

The benefits of this concentration on a publicly justifiable conception of justice can be revealed by a comparison between public justification and non-public justification of moral and political doctrines. A non-public justification of moral and political doctrines centers on the "truth" of these doctrines, whereas a public

¹⁷⁸ An early effort to develop a theory about social order and social norms can be found in Jovan Brkic, *Norm and Order: An Investigation into Logic, Semantics, and the Theory of Law and Morals*, New York: Humanities Press, 1970. This work includes many intuitively attractive comments on this subject, such as this one: "no state can exist and be sustained without coercive machinery. And such a coercive machinery cannot be set up without a normative order. And the crystallization of such a normative order, together with the formalization of a part of it as the legal order of the state, must be independent or sovereign; otherwise it would be a part of another normative order." See p. 99.

justification relies on the reasonableness of these doctrines, and refrains from assigning truth values to these doctrines.¹⁷⁹

The concept of truth has a transcendental dimension, while the concept of reasonableness intrinsically forms an internal point of view. We can say that certain theories may turn out to be false, even though they are now universally accepted by scientists. The concept of reasonableness, on the other hand, is internally related with people's opinions. What is reasonable is always reasonable to somebody. Although we can also say that a doctrine that is reasonable to one group of people may not be reasonable to another group, or may not be reasonable to the same group in the future, the final criterion of reasonableness for certain group of people lies within this group for the present time. This is not to say that the concept of reasonableness is a closed concept. People's ideas about reasonableness do evolve across time and vary for different individuals and groups, and different groups of people can and do influence each other on what is reasonable, but the justification of reasonableness does not, or in any case should not, seek for any authority outside human communities.

To illustrate this difference between the concept of truth and the concept of reasonableness with an example, we can see that utilitarianism, in the sense that it encourages people to act according to a neutral and maximized utility index, does not really accord with the concept of reasonableness, although it may use the word "reasonable" to define its central tenets. Utilitarianism can be true, but it is unreasonable to expect, as utilitarianism does, that people would not care more about themselves or their perceived relatives and friends, and take an absolute neutral or objective perspective to maximize the aggregate or average utilities in their actions. In

¹⁷⁹ For Rawls's distinction between the concept of truth and the concept of reasonableness, see Lecture III of PL, especially section 8.

this sense, utilitarianism might be a transcendental truth, but it is not a reasonable doctrine. On the other hand, Rawls's conception of public justification is always done from an internal point of view, by citizens living in a society to citizens living in the same society. This internal perspective in no sense prohibits real communication between different societies, but even that kind of communication needs to be done from an internal point of view, namely, no society should force its own conception of justice to another society simply in the name of objective truth.

This difference between the concept of truth and the concept of reasonableness, of course, should not be exaggerated. To some extent, we can say that in order to find truths, we have nothing to rely on except human epistemological efforts. On the other hand, whether we can persuade people with reasonable ideas very often relies on the truth values of our assertions. To argue that people need to take actions to reduce greenhouse emission, for example, we must prove that greenhouse emission does have a negative and humanly undesirable influence on the environment. To some extent, therefore, appeals to truth involve appeals to reasonableness in people's minds, while appeals to reasonableness involve appeals to objective facts and therefore truth.

Even though these two concepts are not totally separate, they are still different concepts with different practical consequences. When some doctrines are deemed untrue, for example, there is little room for negotiation or compromise, whereas when some doctrines are judged unreasonable, the holders of such doctrines do not necessarily feel cornered. Furthermore, the concept of reasonableness internally forbids the practice of forcing other people to agree to some moral and political doctrines on the basis that they are true no matter what they might think. In both cases, the concept of reasonableness leaves much larger space for compromise and toleration.

This space justifies our choice of using the concept of reasonableness rather than the concept of truth in public justification of moral and political doctrines.¹⁸⁰

Rawls's idea of reasonableness has a very important role to play in his argumentation. We will look further into this idea when we discuss Rawls's conception of the moral person. For now, we need to be aware of several possible challenges to Rawls's focusing on public justification, and the priority Rawls gives to social order. Addressing these challenges will further illustrate the advantages of Rawlsian institutionalism.

To the priority that Rawlsian institutionalism gives to social order, and to public justification, there are many possible challenges, of which two deserve responses in this essay. One challenge concerns the problem of normativity: it says that just because some moral and political doctrines are publicly accepted doesn't mean that they have normative force. The other challenge concerns the problem of rights, or the normative limits to institutional designs: shouldn't the pursuit of social order and public justification be limited by personal rights? Isn't it the case that no social order that violates personal rights is justifiable?

These two challenges, I will argue, are both based on rationalism. Addressing them is part of our effort to distance Rawlsian institutionalism from rationalism. I will illustrate these two challenges from the examples of perfectionism and libertarianism in the next several sections. By doing this, we address these challenges and further clarify the merits of Rawlsian institutionalism.

¹⁸⁰ Now does this distinction reflect the dichotomy of fact and value? Does this distinction presuppose the so-called naturalist fallacy? Does institutionalism ultimately result in emotivism? In the sense that institutionalism assumes that human beings are capable of being reasonable, we can say that morality, according to institutionalism, is based on the fact human beings do have moral sentiments. But these questions are difficult to answer, and will not be systematically addressed in this essay.

The Challenge from Perfectionism

A perfectionist¹⁸¹ may challenge the sufficiency of the institutionalist understanding of the primary function of social institutions. The perfectionist believes that it trivializes social institutions to say that the primary function of social institutions is to secure social order. He would rather say that the primary function of social institutions is to better pursue what people want to realize in themselves with respect to a good life, especially those things they cannot realize by themselves independently of social unions. In other words, for perfectionism, which is a teleological doctrine, the ultimate goal of societies is the realization of the public good, or more specifically, the perfection of human excellence.

A perfectionist can challenge an institutionalist with this question: if the primary function of social institutions is to achieve and maintain social order, is a structure of social institutions automatically legitimate if it does maintain social order? This question is challenging because for a perfectionist, the primary function of social institutions and the primary reason to legitimize these social institutions should be the same thing, and in his own theory, the perfectionist can stay consistent on these two fronts. For a perfectionist, social institutions are created for the purpose of achieving human excellence, and the primary reason for social institutions to be justified or legitimized is that they are really working for this purpose.

The institutionalist, of course, can stay consistent too. He can claim that since the primary function of social institutions is to achieve and to maintain social order, social institutions should be justified or legitimized first and foremost in terms of this function, that is, in terms of the test whether they can really achieve and maintain social order. But in order to avoid admitting that whatever society can maintain social

¹⁸¹ For Rawls's discussion of perfectionism, see section 50 of TJ.

order is legitimate or justified, the institutionalist can emphasize the difference between an apparent, short term social order, and a real, self-sustainable, and long term social order. Short term social orders are not “real” orders because when people perceive a social order as a short term deal, they will very likely choose the strategy of non-compliance or withdrawal, which in turn will further destabilize such a short term social order. You can prove the legitimacy of a structure of social institutions only if you can publicly prove to all or most of the subjects of this structure that this structure can secure social order in the long run, or to use Rawlsian words, that this structure is stable, for all citizens in their whole life and for generations of citizens to come.

Now what does this criterion mean? The institutionalist would say that stability of a social order in the long run requires that its social institutions can gain the endorsement from the majority of its subjects, if not from all of them. The assumption here is Rawls’s liberal principle of legitimacy: if people do not agree to some institutions, they will very likely to disobey when there is a chance, and will likely to revolt when the deterrence against revolt is perceived as low and the chance of success is deemed high. This assumption does not say that when people agree to some institutions, they will ALWAYS comply with these institutions automatically. The free rider problem does exist, which is why institutional enforcement is necessary even for a perfectly just society. To assure everybody that other persons will also comply with the same institutions, coercive enforcement of social norms is always required.¹⁸² But it is a tested moral psychology that if people don’t perceive certain rules as fair or just, they are unlikely to follow these rules voluntarily. As a result, these social institutions would be unstable in the long run.

¹⁸² See TJ, p. 211.

This tendency reveals from the opposite side the deep faith in our sense of justice within Rawlsian institutionalism. One major contribution Rawls has made to the social contract tradition is that for Rawls, the reason for people to be able to make contracts with each other and stick to the contract is that they have a sense of justice:¹⁸³ when they recognize the contract as fair or just, they have a tendency to stay loyal to the contract. The whole point of making a social contract would be lost if people don't have this tendency. Social contract theory, according to Rawls, should not be understood as founded only on people's rational power of contriving and pursuing their own good. Instead, moral agents, according to Rawls, have a power of being morally motivated by reasonable social norms. This doesn't mean that there is a general definition for reasonableness,¹⁸⁴ or that what is reasonable is the same in every circumstance. But as made explicit in our presentation of institutionalism, the motivation from reasonableness is nevertheless an inalienable motivation if we want to understand social norms as reasons of actions.

Institutionalism further believes that without such a confidence in people's moral tendency, no moral or political doctrine can ever be justified anyway. On this issue institutionalism runs directly against those philosophers who claim that they can derive people's moral sense from the rationality of contriving and pursuing self-interest alone. For institutionalism, rationality and reasonableness are two separate motivations with two separate sources. Consideration of rationality usually provides us widely open options, but consideration of reasonableness is usually more certain. As Douglass North puts it, "institutions have been devised by human beings to create

¹⁸³ See Rawls, "The Sense of Justice," in *The Philosophical Review*, Vol. 72, No. 3 (July 1963), for a "psychological construction" of our sense of justice; it is also collected in CP.

¹⁸⁴ Rawls believes that the idea of reasonableness is not generally definable. See JF, p. 82.

order and to reduce uncertainty in exchange.”¹⁸⁵ Indeed, considerations of reasonableness are usually guided by rules or norms set out, explicitly or inexplicitly, by the community or society, not by individuals thinking alone. In this sense social norms are by nature social contracts, not individual choices.

To some extent, perfectionism is a version of rationalism. As expressed by Thomas Hurka, perfectionism

starts from an account of the good human life, or the intrinsically desirable life...certain properties, it says, constitute human nature or are definitive of humanity—they make humans humans. The good life, it then says, develops these properties to a high degree or realizes what is central to human nature. Different versions of the theory may disagree about what the relevant properties are and so disagree about the content of the good life. But they share the foundational idea that what is good, ultimately, is the development of human nature.¹⁸⁶

In this sense, perfectionism, as a political philosophy, is based on a conception of human nature as rationality. For the perfectionist, “public good” is the goal of social institutions, and only the realization of “public good” can legitimize social institutions. This point does make sense in many contexts, but the problem is that the conceptions of public good certain institutional structures are supposed to pursue are in a deeper sense constructed by these institutional structures. The integrity of a country’s territory, for example, is definitely a public good for that nation state. But this public good is conceivable only when you do have the institutional structure named “nation states.” When Quebec pursued its independence from Canada, the public good of Quebec and the public good of Canada are obviously different, and Canada cannot persuade Quebec by using the public good argument.¹⁸⁷ You can pursue the public good of a firm only if you do have a firm, or you do have institutional structures, such

¹⁸⁵ See Douglass North, “Institutions,” in *The Journal of Economic Perspectives*, Vol. 5, No. 1 (Winter 1991), pp. 97-112, p. 97.

¹⁸⁶ See Thomas Hurka, *Perfectionism*, Oxford University Press, p. 3.

¹⁸⁷ For a discussion of the issue of secession, see Allen Buchanan, “Theories of Secession,” in *Philosophy and Public Affairs*, Vol. 26, No. 1 (Winter 1997), pp. 31-61.

as corporate laws and property laws, to make it possible to build a firm. In institutionalism, the public good of a collective agency is to some extent determined by the construction of this agency through social institutions.

It doesn't make sense to say that institutions are built up to maximize utilities or public or private good until you have a conception of these goods, yet very often you need social institutions to define these goods in the first place. The fundamental problem of rationalism, whether it is in the form of perfectionism or utilitarianism,¹⁸⁸ is that it takes rational interests, collective or individual, as pre-institutionally defined. A rationalist always ask the misconceived question: given the rational interests, what institutional structures can best realize them? To this rationalist question, institutionalism answers that there are no given interests to be maximized until you have certain institutional structures that define these interests. Even if there are certain "primary goods" that a rational person would take as her basic interests, how she understands and pursues these goods are still framed by social institutions.¹⁸⁹ The major function of social institutions, according to institutionalism, is not to fulfill any particular conception of rational interests for any particular units of individuals, but to maintain social order in the long run.¹⁹⁰ We build up social institutions or social

¹⁸⁸ About perfectionism, Rawls thinks the problem to it is that "the parties [in the original position] do not share a conception of the good by reference to which the fruitions of their powers or even the satisfaction of their desires can be evaluated." (TJ, p. 288) Rawls's own principles of justice "manage to define an ideal of the person without invoking a prior standard of human excellence." (TJ, p. 287) About utilitarianism, Rawls believes that "the real objection" to it is not that we cannot make meaningful interpersonal comparisons of utilities, but about "whether the total (or average) happiness is to be maximized in the first place." (TJ, p. 78)

¹⁸⁹ Rawls does have a concept of "primary goods," which are "things that every rational man is presumed to want," and which "normally have a use whatever a person's rational plan of life." (TJ, p. 54) Nevertheless, these primary goods are not supposed to be maximized by institutional arrangements (TJ, p. 80; PL, p. 188), therefore do not constitute a criterion to evaluate different institutional structures. More generally, Rawls's theory uses five conceptions of good. For detail, see his "The Priority of Right and Ideas of the Good," in *Philosophy and Public Affairs*, Vol. 17, No. 4 (Autumn 1988); also collected in CP.

¹⁹⁰ When Rawls takes justice as "the first virtue of social institutions," when he gives the securing of justice the priority over the pursuit of the good, and when he uses the liberal principle of legitimacy as the major argumentation structure, as is shown in his argument from the original position and his

norms to build mutual trust among people, therefore to secure social order, and we adjust and improve social institutions to address new challenges to social order ensuing from new social practices, such as the challenges brought up by Protestantism, nationalism, industrialization, and the information age. When new practical actions become possible, new social norms are called upon to regulate and enable them.

The Rawlsian reply to perfectionism, or to any doctrine demanding the maximization of any sense of public good, is therefore this one: there is nothing wrong in pursuing the public good, but this pursuit should always be restrained by a public conception of justice, and social institutions based on this public conception.

Rawls stresses this point when he discusses the “common good idea of justice” in LP:

the common aim or end (should there be one) is what the society as a whole tries to achieve for itself or its members. The common aim or end affects what persons receive and their well-being. In the common good idea of justice the pursuit of this common aim is to be encouraged, but is not to be maximized in and of itself, but rather maximized consistent with the restrictions specified by honoring the steps in the consultation procedure, which provides the institutional basis for protecting the rights and duties of the members of the people.¹⁹¹

In the end, Rawls is not against the concept of the public good per se, but against the perfectionist or any rationalist understanding of the public good as pre-institutionally defined.

The Problem of Normativity in Institutionalism

In a deeper sense, the challenge posed by perfectionism against institutionalism touches on the problem of normativity: how social norms could have normative powers, or why certain social norms should be obeyed. As mentioned

argument from public reason, he is actually arguing that long term stability of social orders is the primary function of social institution. This point has been made clear so far in this chapter; what follows will further clarify this point to its accuracy.

¹⁹¹ See LP, p. 71.

before, perfectionism believes that a structure of social institutions deserves the obedience of its subjects because it promotes their rational good, namely, the development of their human nature, or at least the good part of human nature, or human perfection. For institutionalism, however, since there is no pre-institutionally defined human nature to guide our institution building, perfectionism is not a good strategy to justify or to legitimize social institutions.

Public justification of social institutions, the justification method of institutionalism, doesn't rely on any pre-institutionally defined interest to be maximized. It says that no matter what interests people may happen to have, no matter what conception of the good people may happen to harbor, they need to work out a conception of justice that can gain the majority support, if not the universal support, from the citizens of their society. The legitimacy of an institutional structure, or the normative power of a system of social norms, comes only from such a public justification of the basic principles behind these institutions, and the universal internalization of these institutions or norms thereafter. Institutionalism doesn't seek any further origin of normativity.

It is worth noticing that the problem of normativity is not only about justice, but also about legitimate coercion. The problem asks two questions: how social norms gain normative power over the relevant subjects, and why people should be forced to obey these norms if they choose not to. To both questions, institutionalism answers that people should comply with social norms because they would have agreed to these norms if they had thought about them in their mature deliberation. Here we may need to make a distinction between actual consent and hypothetical consent, whose

normative force may not be the same, as Dworkin famously argues.¹⁹² But regardless of the internal difficulties of the consent theory of normativity, the major challenge it must face is that even if people did give actual consent to certain social norms, they may still have reasons, or feel temptations, to violate them. It is here we need to call just coercion into place. As Rawls argues,

It is reasonable to assume that even in a well-ordered society the coercive powers of government are to some degree necessary for the stability of social cooperation. For although men know that they share a common sense of justice and that each wants to adhere to the existing arrangements, they may nevertheless lack full confidence in one another. They may suspect that some are not doing their part, and so they may be tempted not to do theirs. The general awareness of these temptations may eventually cause the scheme to break down...For this reason alone, a coercive sovereign is presumably always necessary, even though in a well-ordered society sanctions are not severe and may never need to be imposed.¹⁹³

Institutional enforcement, in this sense, not only makes sure that social institutions are obeyed, but also communicates this message to the people who are subject to these institutions.

Social norms, assuming that they have passed the test of justice in a public justification to their subjects, are normatively binding in two senses: if people comply with these social norms out of their sense of justice, then the normative force of these social norms could be said to come from their moral attractiveness; if some persons, due to unnamed reasons, do not comply with these just norms, then the enforcement apparatus of the institutional structure that is based on these norms is there to legitimately demand their compliance and to levy retribution in cases of violations. Obviously, the first case shouldn't concern us so much, since there the normative force of social norms automatically carries the tide. We do not need to go any further into the details about people's moral psychology and ask why on earth they would

¹⁹² See Dworkin, "The Original Position," in *The University of Chicago Law Review*, Vol. 40, No. 3 (Spring 1973).

¹⁹³ See TJ, p. 211.

comply with social norms they consent to. Once we assume that people do have a sense of justice, this problem goes away. It is the second case that concerns us: how to justify coercion against practical agents who violate the justifiable social norms based on a justifiable public conception of justice.

The problem about legitimate coercion is a problem about how to justify coercion of an institutional structure to its subjects. In institutionalism, as well as in Rawls's system, this legitimacy problem is solved in the public justification of the basic principles of justice behind those social institutions, and the universal or majoritarian acceptance and internalization of these institutions or norms thereafter by the people who are subject to the rule of these institutions. To demand people's compliance with social institutions, or with the authorities created by these institutions, we have no reason other than that the actions of these authorities, and the social institutions behind them, are actually publicly justifiable. When such a public justification is secured for a conception of justice and the institutions based on it, the coercion of this institutional structure from the authorities created by these institutions will be legitimized, and people living in this society will have a coherent and unified system of social institutions to internalize. Such a public justification and internalization will then secure a stable social order. As time moves and circumstance changes, new rounds of justification and internalization will be necessary, but so long as this process can be carried out through the procedure mentioned above, long term stability can be achieved.

The Challenge from Libertarianism and the Problem of Liberty

Another challenge against the institutionalism's primary concern with social order comes from libertarianism. A libertarian believes that the major purpose of

social institutions is to protect the liberties or rights individual persons have prior to any social arrangements. Libertarianism challenges institutionalism, or any political philosophy that justifies substantial institutional redistribution, by the argument that these pre-institutional rights, therefore the dignity of moral persons, are unduly violated in the name of social order. For a libertarian, “no one has a right to something whose realization requires certain uses of things and activities that other people have rights and entitlements over.” Individuals are not “instruments or resources,” but “persons having individual rights with the dignity this constitutes.”¹⁹⁴ Any social cooperation must be “voluntary” cooperation among such individuals.

A libertarian would disagree with Rawls and institutionalism over the primacy of social order. For the libertarian, social order would be meaningless if personal freedoms are not secured. The goal of everything about society is, or should be, personal liberties, while social order is only a means for protecting and realizing personal freedoms, not an end by itself. For this reason, a libertarian is more concerned with limiting the power of social institutions than with creating and maintaining social institutions. Any violations of personal freedoms are internally unjust, even if they are done in the name of the society as a whole. To use Nozick’s words, “Individuals have rights, and there are things which no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do.”¹⁹⁵

There are two issues involved in the challenge posed by libertarianism against institutionalism, one is about the problem of normativity as we discussed before, the

¹⁹⁴ See Robert Nozick, *Anarchy, State, and Utopia*, Basic Books, 1974, p. 238, 334, respectively.

¹⁹⁵ See Robert Nozick, *Anarchy, State, and Utopia*, Basic Books, 1974, p. ix.

other is about the origins of rights or freedoms. We will deal with these two issues in order.

Libertarianism seems to suggest that the normative force of any social institution must come from their being respectful of personal rights, which exist prior to any social arrangements. In this sense it is a form of rationalism: it requires a pre-institutional conception of human nature to normatively empower social institutions.

To distinguish institutionalism from libertarianism, it is important to recognize that when an institutionalist says that the problem of normativity doesn't need an answer beyond people's endorsement and internalization, he is not talking about individual persons thinking rationally and voluntarily independent of any influence from institutions. Remember that institutionalism doesn't rely on such a concept of the person; rather, the institutionalist concept of the person is that people understand themselves, and understand each other as human beings,¹⁹⁶ with the help from their understanding of social norms. Modern western societies, for example, have an individualist conception of persons, but in history, western people used to have different understandings of persons. Western feudal societies, for example, supported a conception of the person attached to familial origin and class of birth. These two conceptions of persons are both constructed within an institutional background. The differences in institutional structures engender the differences in conceptions of

¹⁹⁶ Here I don't use "co-community members" because in our history, it was almost a universal phenomenon that people within the same culture usually defined human beings in terms of their own cultural norms. As Montaigne rightly complains, "What they are not familiar with people call barbarian." (I quote this from Norbert Roulard, *Legal Anthropology*, translated by Philippe G. Planel, Stanford University Press, 1994, p. 1. The very subject of legal anthropology, of course, leads us to the appreciation, and better understandings, of pluralism in different legal systems across time and space.) We can call this a rationalist strategy, since it presupposes that whoever is a human being must confirm to our own cultural norms. It is a very successful strategy for the justification of social norms and the integration of a society, I should admit. But the point of this essay is to prove that it is a misleading strategy that causes unnecessary intolerance and conflicts, especially in a time rife with cultural diversity. The claim of this essay is that we should change to an institutionalist strategy.

persons.¹⁹⁷ So when the institutionalist says that endorsement from the subjects is necessary for the long term stability of a social order, he is actually saying that the institutions of this society, when properly justified and internalized, have a tendency of cultivating and reinforcing compliance by the subjects.

To address the challenge to Rawlsian institutionalism from libertarianism, we need a Rawlsian theory of rights and liberties. Libertarianism claims that individuals have rights prior to any social arrangements, and social arrangements should respect these pre-institutional rights in order to be just. It is obvious that Rawls also intends to justify liberal rights. By contrast, Rawls's view about liberties and rights are institutional, not pre-institutional. Rawls defines liberty as "a complex of rights and duties defined by institutions."¹⁹⁸ To be sure, the "liberty" that Rawls is concerned with is "liberty in connection with constitutional and legal restrictions." It is in these cases that "liberty is a certain structure of institutions, a certain system of public rules defining rights and duties."¹⁹⁹ But this category of liberties is all that political philosophy cares about. Liberties of conscience, freedom of speech, freedom of association, property rights, and all other liberal rights that concern libertarians, for Rawls, are liberties based on social institutions. About these liberties and rights, Rawls has an institutionalist view similar to the theory of rights and liberties we developed in the previous chapters.

Now it might be contended that with such an institutionalist view about liberties and rights, Rawls might be willing to sacrifice people's liberties in order to secure social order, since his primary concern is, as we have argued, social order, and liberties and rights for Rawls are not as pre-institutionally demanded as for

¹⁹⁷ For an excellent account of the origin of modern western conception of person, see Charles Taylor, *Sources of the Self: The Making of the Modern Identity*, Cambridge University Press, 1989.

¹⁹⁸ See TJ, p. 210.

¹⁹⁹ See TJ, p. 177.

libertarians. Given such a contrast between Rawls's view of liberties and a libertarian one, it is indeed a wonder that Rawls does end up arguing for the priority of liberties in his theory of justice. Rawls even claims that his principles of justice "provide the strongest arguments for freedom."²⁰⁰ This leads us to a further examination of the reasons why Rawls argues for the priority of liberty.

Generally, Rawls can be interpreted as arguing that rights and liberties are to be respected and to be given priority over other considerations exactly because of the need for social order. In his argument from the original position, for example, the liberty principle is to be selected by the representatives, and to be given priority, because this is the best way to attract loyalty to the target principles of justice, therefore to secure the social order supported by these principles. In the original position, parties take their basic rights and liberties as their "highest-order interest," or the most fundamental interest through which their other interests can be fulfilled. Giving these basic liberties priority in the basic principles of justice would attract their endorsement to these principles. Also, once such a priority is secured by the institutional structure, it will give every person living in such a society the equal sense of her own worth or her self-respect, therefore make the social order governed by this institutional structure stable in the long run. If equal basic liberties were not guaranteed with priority, people would find themselves obsessed with competing against each other for higher status, and "are set at odds with one another in the pursuit of their self-esteem." Since higher statuses are always compared to lower statuses, such a struggle would never end, and the social order under such an intense competition for status would be highly instable, if not totally impossible.²⁰¹

²⁰⁰ See TJ, p. 214.

²⁰¹ This paragraph cites from section 82 of TJ.

Institutionalism believes that human freedom, understood as freedom in a social world, is facilitated by the practice of human institution building. This institutional view of freedom leads us to an institutional conception of rights: how many rights a person can have is dependent upon how many duties she can lay upon, through institutions, her co-community members in their actions towards her, just as how free a person can be is dependent upon how many restraints she can put on, through institutions, her co-community members in their actions towards her. In both cases, by co-community members I mean not just individual persons in the relevant society, but also collective or institutional bodies of persons, including the state itself and its various branches.

Compared with the libertarian view of rights, the institutional conception of rights does not promote a closed set of rights and liberties, but actually encourages rights and liberties to grow as our practice of institution building proceeds. In other words, the institutional conception of rights internally encourages political development towards more rights for more people. We will discuss the dimension of political development implied in the Rawlsian conception of rights later. For now, we need to address another meaning implied by the libertarian challenge to Rawlsian institutionalism.

Institutionalism Does not Mean Simple Indoctrination of Institutions

Now the libertarian can challenge institutionalism: isn't it the case that all institutions have this same tendency of encouraging internalization and compliance, at least according to institutionalism? Here the assumption is that according to institutionalism, people will endorse whatever institutions they are actually living under. The institutionalist cannot accept this proposition, of course. Otherwise

institutionalism would be simply a version of cultural relativism. But to distance himself from such a position, the institutionalist must explain why people would not simply internalize whatever institutions to which they are exposed. It seems that institutionalism must introduce some resilient characteristic into human nature, so that human beings are not as flexible as simply endorsing whatever institutions surround them. In other words, it seems that institutionalism must find a “deeper” ground to explain why people accept or reject certain social norms. Habermas, although not a libertarian, makes this point very clearly when he says that “Rawls must make a sharper distinction between acceptability and acceptance.”²⁰² A libertarian would agree with Habermas on the point that mere acceptance is not morally binding by itself: “Nothing follows morally from the fact that everyone within a group has agreed to abide by certain guidelines unless the agreement itself enjoys normative force... Unless there is some independent norm that can underlie an agreement, the agreement fails to obligate morally.”²⁰³

Here we have reached the core of difference between institutionalism and rationalism. If in answering this challenge, institutionalism admits that there are substantial and universal elements in human nature that determine what social norms we would voluntarily endorse in the long run, institutionalism seems to converge with rationalism over a pre-institutional conception of human nature.

This solution is not unavoidable if we attend to the fact that the need for social order can be satisfied with different institutional arrangements in different societies, and people with different possibilities of practical actions in minds would reason differently, and accept different social arrangements, when they pursue social orders.

²⁰² See Jurgen Habermas, “Reconciliation through Public Use of Reason: Remarks on John Rawls’s Political Liberalism,” in *The Journal of Philosophy*, Vol. 92, No. 3 (March 1995), p. 122.

²⁰³ See Tibor R. Machan, *Libertarianism Defended*, Ashgate, 2006, p. 321.

The complexities of different societies, in terms of the practical actions possible in them, are hugely different. Such difference in levels of complexity is recognized in institutionalism, which, like rationalism, is not a moral and political theory about any particular society, but a theory about all human societies. What is different between institutionalism and rationalism is that institutionalism can accommodate and explain different forms of social order better than rationalism.

Rationalism believes that for any human society, social order can be established and sustained only if its social institutions fit with human nature. As such, rationalism is internally a normative theory: it demands that a social order loyal to our rational nature should be established. When a rationalist is asked why this rational order has not been always followed in human history (for example, how come slavery can be maintained for so long and in so many societies), he blames limitations of historical circumstances, which are guilty of preventing our rational nature from full materialization. Yet this answer begs the question if we ask her: “how could you be sure that the current social background you are living in is not just another limited historical circumstance?”

Institutionalism, on the other hand, is more capable of taking the historical variations and cultural diversities connected with human institutional practice as what they actually are, and explaining them as different adaptations of human sociality. Institutionalism says that to realize social order among different groups of people with different ranges of practical actions and interactions, different social institutions are created by these people to regulate these actions and interactions so that possible social conflicts among these people can be resolved through regular, if not always

peaceful,²⁰⁴ procedures. For institutionalism, therefore, people in different historical conditions and social circumstances would voluntarily or be forced by their situation to endorse different institutional arrangements for different reasons, since their different manners of actions and interactions, or their different practical lives, give them different understandings of themselves and their co-community members. To persons living in a feudal or patriarchal society, for example, the overriding importance of their relationship with their family members and extended relatives and co-local people makes certain very restraining moral conceptions of family loyalty and inter-family regulations acceptable to them. During some periods of Chinese feudal history, fathers can even legally punish their children with death if the children committed heinous familial offenses. Modern societies, by contrast, usually allocate all or most of these punishment powers to a concentrated institutional apparatus called the state. This development is surely not due to changes in human nature, but due to the changes in the system of practical actions a society needs to empower and to regulate.

Admitting the historical relativity of human practical reason does not necessarily lead to cultural or historical relativism, since it doesn't encourage the idea that whatever a certain group of people endorse is right. People must accept social norms for right reasons, and which reasons are right can usually be determined in light of specific social contexts. Institutionalism says nothing beyond the admission that our institutional practice for getting social order does change across time and vary across cultural boundaries. It is not the same thing as claiming that whatever is

²⁰⁴ Even violence can work to stabilize social order, if such violence is institutionalized according to certain procedures or institutions. Prison, police, and even the military are all examples of such institutionalized violence; their existence, unlike the existence of gangsters and mafias, works for the stability of social order, not against it. But in certain societies, when such kind of institutionalized violence are abused, when they are not guided by publicly justifiable conception of social justice, they do not stabilize the social order, at least not in the long run.

accepted is always acceptable. Indeed, in the sense that institutionalism can account for institutional differences of different types of society, it is actually a form of universalism as against particularism or relativism. Institutionalism asserts that for any human society, if it is to be in stable social order in the long run, it must find a set of social norms that can be accepted and internalized by all or most of its members, so that all or most social conflicts can be solved through procedures backed by these consensual social norms.

On the other hand, the universalism behind rationalism is ambiguous or even self-contradictory. Assuming that a set of social institutions can guarantee social order in the long run only when they respect a pre-institutional human nature, why did the correct social form for rationalism, whether it is democracy or any other form, not always prevail? If the rationalist social form failed to prevail in human history because of the historical limitations of different social or technological circumstances, how could we be sure that our current rationalist understanding of human nature and social order are not limited by historical circumstances? A rationalist justification of any social order would ultimately face this dilemma, yet there is no available rationalist answer to it.

For institutionalism, people always need to justify their social norms, and their normative propositions about how to adjust social norms, with good reasons they can provide before their co-social members, taking the possible practical actions allowed by particular social circumstances into consideration. Without such a process of public justification, unified social norms cannot be established across a society and be internalized by all or most of the members of this society. People living within the same society need to engage with each other, reasoning about how best to institutionally secure their peaceful co-existence and their fruitful cooperation. People

living within a society always present their cases to each other, not just through verbal arguments, but also through all other forms of practical actions that are available to them. When it is possible, they can use economic transactions, migrations, social protests, and even military struggles to achieve their own goals, whatever goals their real lives may motivate them to pursue. Social institutions are the responses to the real conflicts among the people of a society; they solve these conflicts through procedures that are acceptable to the relevant parties, so that social order is maintained and mutual destruction is avoided. What makes a democratic society different from a non-democratic society is the idea that in a democratic society, citizens are supposed to engage with each other in the forum of public reason with the understanding that all citizens are free and equal in the dialogue, and thus ideally, all internal strives can be settled through peaceful procedures and peaceful solutions.

Although institutionalism is a universalism, it admits no way for getting a standard version of justification for all social institutions in all contexts, since there is simply no standard institutional structure for all social circumstances. Pursuing such a standard justification requires that we adopt the strategy of rationalism, which is, at its deep foundation, a desire to transcend our historicity. An institutionalist must resist this rationalist temptation to become a philosopher king or a prophet. As Rawls clarifies, in the dialogue of public reason, “a philosopher has no more authority than other citizens. Those who study political philosophy may sometimes know more about some things, but so may any one else.”²⁰⁵

Now it may be objected that Rawls’s idea of public reason only “belongs to a conception of a well-ordered constitutional democratic society” (CP, p. 573), and as such it presupposes the political relationship between the free and equal citizens of a

²⁰⁵ See his “Reply to Habermas,” in PL, p. 383.

democracy. Obviously citizens of a non-democratic society don't have, nor do they think they have, such a free and equal relationship, therefore it might make no sense to say that they need to engage with each other in the forum of public reason.

No doubt this objection has some weight. Rawls's theory of justice, especially his idea of public reason, would have more appeal if we limit it to the context of a modern constitutional democracy. But on the other hand, according to institutionalism, to secure a shared understanding of the same system of social norms, therefore to secure social order, public justification of these norms to the citizens of this society is almost logically necessary. This public justification might take the form of indoctrination of ideology, such as the doctrine that the power of the kings is endowed and legitimized by the creator of the universe and each and every human being. But in the long run, the majority of the people's thinking cannot be too removed from their own real practical life. By this I mean that even the worst indoctrination, if it succeeds in the long run for a relatively large population, must have its public justification beyond pure indoctrination. Ancient Rome used to be a republic, and even after it became an empire, the knowledge about their republican past, including the knowledge about ancient Greek democracies, must have remained available to the Roman people. Yet even with such a democratic alternative in mind, those noble Romans who struggled for republicanism still failed, while the institutions for a powerful emperor prevailed. As another example, in Chinese history, in over 2,000 years of empires and monarchies, there were always intellectuals remembering a democratic era in ancient times, when the rulers were selected by the people instead of being hereditary. The reason why non-democratic institutions and ideologies prevailed while democratic institutions and ideologies failed in these cases, therefore, cannot simply be that the indoctrination strategies of those dictators were more

successful than those of the democrats. The only reasonable explanation for such a political development is that within those historical circumstances, the available practical actions and interactions could only sustain the prevailing forms of political society, and with continued practical trial and error, people living in those circumstances finally settled down on those social institutions that could bring long term social peace and social cooperation. To continue exploring the examples listed above, ancient and medieval empires and dynasties did not settle on democratic institutions (some democratic elements, such as the institutions of consuls and imperial meetings, might be present) because they integrated so many people into a single society, yet since most people were bound to their local land and limited economic production, there was no way to organize all the people into a democratic engagement.

A more convincing example to show that public justification of a system of social norms cannot be simply indoctrination is the modern history of democratization around the world, including both the so-called developed countries and the developing countries. France was perhaps not the first country to harbor modern democratic ideas, but the French revolution was the most influential democratic revolution in modern history. The wide-spread democratic ideas among French population, however, were not even strong enough to support a French republic for long, let alone promote democratic institutions all around the world. What the troubled history of French republics in the 19th century shows is not how powerful democratic ideas were, but the exact limit of any ideology. If we look at the history of democratization of the developing world in the 20th century, the same pattern of undulation presents itself. Latin American countries, for example, had several waves of democratization, each

one was followed by the return of dictatorship or other forms of autocracy.²⁰⁶ Before the stable conditions for a modern democracy develop, powerful ideas about democracy were simply not powerful enough to support real democratic institutions.

In light of this consideration, it doesn't make any sense to say that Rawls's ideal of public reason only applies to an ideal state of affairs called "modern constitutional democracy." Internally, modern democracy is a process of democratization, not any realized or mature form of government in any particular country. Rawls's ideal of democracy is the construction of a "realistic utopia," which aims at a normative political development towards more democratization, not at a stagnant description of a sterile state of affairs.

Before we return to such a Rawlsian theory of political development, however, we need to discuss Rawls's conception of the moral person. This conception is central to Rawls's system, yet there are many misunderstandings of it, some of which are even from influential critics of Rawls. Exploring this conception will help to develop an accurate interpretation of Rawls.

Rawls's Conception of the Person

Many previous discussions of Rawls in this chapter demand a further understanding of Rawls's particular conception of moral persons. This section will present this conception, and further clarify the meaning of Rawlsian institutionalism.

By "person," Rawls doesn't simply mean individual persons. As he clarifies, "This expression is to be construed variously depending on the circumstances. On some occasions it will mean human individuals, but on others it may refer to nations,

²⁰⁶ For an intriguing survey of waves of democratization in 20th century, see Samuel Huntington, *The Third Wave: Democratization in the Late 20th Century*, University of Oklahoma Press, 1993.

provinces, business firms, churches, teams, and so on. The principles of justice apply to conflicting claims made by persons of all of these separate kinds.”²⁰⁷ This definition of moral person fits very well with the concept of “agent” we developed as one of the central concepts in institutionalism. Moral “persons” in Rawls’s system just means the agents behind the relevant levels of practical actions, whether it is individual actions or collective actions.

Rawls’s conception of the moral agents, for both the context of domestic justice of a liberal democratic society and the context of global justice, can be abstracted into a theory of institutional agents, who have the moral powers of being rational and being reasonable and therefore can interact with each other in fair terms within the relevant institutional context.

In the first original position for domestic justice in a liberal democratic society, Rawls assumes that moral persons represented by the parties have two moral powers: the power to rationally conceive and pursue one’s own conceptions of the good, and the power to offer, accept, and act from reasonable terms of cooperation when interacting with co-citizens.²⁰⁸ In the second original position for global justice, Rawls also assumes that the involved agents, the peoples or nations around the globe, are agents with these two moral powers: they are rational in the concerns for securing their domestic structures of justice, the integrity of their territories, and a due respect by other peoples, and they are reasonable in the willingness to offer, accept, and act from reasonable cooperation terms.²⁰⁹

For Rawls, therefore, the relevant moral agents for an institutional structure can be either individuals or collective bodies of individuals, but in either case, moral

²⁰⁷ See CP, pp. 193-4.

²⁰⁸ See PL, section 5 of Lecture I, sections 1, 7, and 8 of Lecture II.

²⁰⁹ For a comparison between these two original positions, see section 3 of LP, where Rawls believes that the second original position completely copies the first original position.

agents are to be assumed as both rational and reasonable so that interactions between them can be governed by fair terms. In this sense, moral agents can also be treated as “institutional” identities.²¹⁰ This unity in Rawls’s conception of the moral persons suggests that a more universalist theory of moral agents (or institutional agents) might be presupposed by, or can be worked out from, Rawls’s system. For example, we can define any institutional structure as a rule-governed practice, and for it to be willingly endorsed by the involved parties and therefore to be stable for the right reasons, its constitutional terms must treat these parties as agents with the moral power of being rational and being reasonable. This universalist undertone partly explains why Rawls stipulates that the parties attending the “meeting” are not and should not be real persons. Real persons are all individuals, and the diversity of real persons might distract us from reflections on the institutional identities within an institutional structure. What we are pursuing here, after all, is to understand their institutional relationship with each other, not their particular social connections in general.

With this universalism of Rawls’s conception of moral persons in mind, it is important to notice that Rawls defines the moral power of rationality for the two domains of justice in different terms. For example, Rawls assumes that in the context of domestic justice, individual moral agents, as rational agents, have certain comprehensive conceptions of the good to pursue; but for the institutional agents in the context of global justice, the major concern is not any comprehensive conception of the good, but to secure their domestic social order with their own public conception of justice.²¹¹ Also, while individuals as institutional agents strive to maximize their rational gains from the domestic social cooperation system through distributions and

²¹⁰ See footnote 34 on pp.31-2, PL.

²¹¹ See p. 34 of LP.

redistributions, peoples (nations) as institutional agents, according to Rawls, should not be concerned with distributional or re-distributional gains at the global level, but should only be concerned with securing the rational interests they already have, and the rational interests they can gain from international exchanges.²¹²

This apparent discrepancy in rational power of the relevant institutional agents has not been positively received. Communitarians have long been charging that Rawls, by limiting rationality in the domestic context to the concern for individual interests, doesn't provide enough motivation for moral persons to keep their allegiance to their political communities;²¹³ nationalists, perhaps as a species of communitarians, criticize that Rawls doesn't justify nationalist sentiment as a legitimate branch of our moral power as rationality, therefore fails to sufficiently address the legitimacy problem for liberal democracies.²¹⁴ Cosmopolitans, on the other hand, believe that Rawls, by taking nation states (peoples) as the only relevant institutional agents in the context of global institutional structure, provides in effect a conservative justification of the status quo, which covers its injustice under the name of the autonomy of national agents.²¹⁵ Cosmopolitans also believe that Rawls underestimates interdependence in international economic interactions and the power of rationality in peoples (nations) as institutional agents in international politics; once the advantages the advanced countries have been gaining from international transactions is duly admitted, they claim, these countries should be laden with more responsibilities to

²¹² For example, distributions of resources and population are not to be redistributed at the global level. Immigration is allowed, but it should not be taken as a measure of distribution or redistribution, but should only be taken as a measure for human rights protection. See John Rawls, "The Law of Peoples," *Critical Inquiry*, Vol. 20, No. 1 (Autumn 1993), section 5.

²¹³ For a new effort on this front, see Michael Walzer, *Politics and Passion: Towards a More Egalitarian Liberalism*, Yale University Press, 2004.

²¹⁴ See David Miller, *On Nationality*, Clarendon Press, 1995; *Citizenship and National Identity*, Polity Press, 2000.

²¹⁵ See Allen Buchanan, "Rawls's Law of Peoples: Rules for a Vanished Westphalia World," *Ethics*, Vol. 110, No. 4 (July 2000). See also Andrew Kuper, *Democracy beyond Borders: Justice and Representation in Global Institutions*, Oxford University Press, 2004, especially chapter I.

assist the less advanced countries, to initiate certain global distributional and re-distributional institutions, or even to rectify the injustice they have done to those less advanced countries.²¹⁶

What these philosophers suggest, I think, are two things: negatively, they accuse Rawls of impoverishing the moral power of rationality in the formation and evolution of our institutional life; positively, they believe that instead of connecting agents of an institutional structure with an overlapping consensus over a public conception of justice based on the moral power of reasonableness, or so-called “civic friendship,” or what Mill calls “common sympathies,” we should rather use the concept of collective rational interest to justify the need to create and stay loyal to a political community.

In light of our institutionalist interpretation of Rawls’s conception of the moral person, we can defend Rawls against the negative charge along this line. As mentioned above, Rawls in fact allows the moral power of rationality to be adapted to different levels of collective identities or collective agents, who pursue different levels of collective interests; what Rawls wants to dispute is whether rational power in this sense alone is sufficient for establishing the relevant levels of institutional structures. Instead of accepting all these rational pursuits as what they are, Rawls believes that we should instead restrain our collective rationality with an ideal of the reasonable appropriate for the institutional context. Nationalism, for example, as a collective rational pursuit, is only acceptable in the name of “liberal nationalism” or “civic nationalism”;²¹⁷ other kinds of collective rationality should also be restrained by the appropriate concerns of reasonableness. Unless we can develop the appropriate

²¹⁶ For updated discussions in this direction, see Charles Beitz, “Cosmopolitanism and Global Justice,” *The Journal of Ethics* (2005) 9:11-27; Thomas Pogge, “Real World Justice,” *The Journal of Ethics* (2005) 9:29-53.

²¹⁷ For Rawls’s endorsement for “liberal nationalism,” see PL, p. lx, n37.

constraints of reasonableness for different levels of collective rationality, Rawls can claim, we would not be able to build just and stable institutional structures in the relevant context. As Rawls says, “the reasonable has priority over the rational and subordinates it absolutely. This priority expresses the priority of right...”²¹⁸

Compared with Rawls, therefore, the positive contention of these philosophers is in effect that people support a coercive regime not because they have an overlapping consensus over a public conception of justice, but because they generally recognize that the regime is protecting and promoting rational interests at the relevant levels.²¹⁹ They believe that reasonableness as a motivation is not strong enough to maintain loyalty to, and the stability of, a political regime. The legitimacy of a coercive political regime over its agents, according to these philosophers, comes rather from such a general recognition concerning common rational interests. Cosmopolitans are the exception in this case, for they more or less agree with Rawls on the necessity of the introduction of the idea of the reasonable. They also agree with Rawls that the legitimacy and stability of an institutional structure should be secured by a public conception of justice; what they are complaining is that by not giving the rational element of international politics a more sufficient consideration, Rawls doesn’t provide strong enough reasonable terms for the international cooperation system, therefore doesn’t sufficiently honor the idea of the reasonable and the idea of reciprocity in the context of global justice.

²¹⁸ See p. 82 of JF.

²¹⁹ Besides the philosophers we listed above, there are other philosophers, who also develop positive theories of democracy on the considerations of rationality. For example, David Gauthier, in *Morals by Agreement* (Oxford University Press, 1986), believes that rational calculation alone is strong enough to sustain a stable liberal democratic order. Ian Shapiro puts forward a theory of democracy that more or less confirms a Lockean conception of power balance, or a conception of democracy as non-dominance. See *The State of Democratic Theory*, Yale University Press, 2003.

On his part, Rawls has no problem in admitting that the rational concern for self-interest is part of the motivation for moral agents to comply with an institutional structure. After all, a well-ordered society²²⁰ is defined by Rawls “as one designed to advance the good of its members and effectively regulated by a public conception of justice.”²²¹ Rawls also admits that in order to make the rules of an institutional structure effective and just, we need to consider possible strategies and tactics the institutional agents might adopt in order to make the institutional rules work for their own rational interests. Without foreseeing these rational strategies, the institutional rules we make may become vulnerable to manipulative abuses, while the institutional structure may suffer from corruption and instability.²²² Rawls can also endorse the concept of common interest or common good, in the sense that the “public order and security”²²³ supported by a just institutional structure is good for all the members, or that acting justly is a common good for all the members of a well-ordered society. As Rawls says, “It is to citizens’ good, of course, that their rights and liberties are respected, yet respecting them is what citizens owe one another as the shared end of their republican regime. So much is true of any liberalism of freedom, whether that of Kant or J. S. Mill, or of *A Theory of Justice*. It is incorrect to say that in a liberalism of freedom the state has no publicly shared common ends but is justified entirely in terms of the private aims and desires of its citizens.”²²⁴

Nevertheless, there is no doubt that Rawls doesn’t regard collective interests per se as relevant for the legitimacy problem. When discussing legitimacy for both

²²⁰ In the sense that both liberal peoples and decent peoples, who together constitute Rawls’s ideal society of peoples, are well-ordered domestic societies (p. 4, LP), the society consisted with these peoples, as an international society, is also a well-ordered society. This society of peoples is also ordered by a public conception of justice, and is therefore stable for the right reason.

²²¹ See p. 397, TJ.

²²² See section 10 of TJ.

²²³ See section 34 of TJ.

²²⁴ See Rawls, “Social Unity and Primary Goods,” in CP, pp.365-366.

domestic and international contexts, Rawls always assumes that the institutional structure under discussion is a closed one, and the major function of the institutional structure is therefore to address conflicts of claims about rational interests among its own members, not to organize all the members to pursue a collective goal as the common good. For Rawls, the concern for collective rational interests against the claims of outside agents has little to do with the problem of legitimacy.

In the end, Rawls believes that if a stable social order is to be achieved, there must be a balance or congruence between the rational and the reasonable as two independent moral powers of the involved institutional agents. This belief in balance can be illustrated with Rawls's theory of international justice. Instead of defining the rational power of the peoples as pursuing national interests on the global stage, Rawls limits the rational concern of the peoples as institutional agents for the context of global justice to the concern for securing a sustainable peaceful coexistence. This rendering is perhaps due to a rather realistic observation of the status quo of international politics, namely, that a legitimate global coercive government is not yet in place to govern the so-called international distribution or re-distribution. Indeed, Rawls believes that, at least at the current stage of human history, this global coercive government should not be pursued, since such a world-government "would either be a global despotism or else would rule over a fragile empire torn by frequent civil strife as various regions and peoples tried to gain their political freedom and autonomy."²²⁵ Rawls believes so perhaps because he deems the current level of disagreement over conceptions of justice held by different peoples too high to support an overlapping consensus over a public conception of justice for a global government. Or maybe, he believes so because he knows very well how the rationality of those strong nations

²²⁵ LP, P. 36.

can lead them to benefit from the global system at the price of weaker nations' suffering.

In any case, Rawls has good reason to limit the rationality of peoples as institutional agents to the concern for peaceful coexistence, instead of allowing a more expansionist rational motivation to them. Since for Rawls, the only overlapping consensus we can achieve on the current global stage is the common concern for collective security, the rational element in the moral motivation for the relevant institutional agents should only be defined as the desire to secure their respective domestic structures of justice within a peaceful global coexistence. In other words, the primary purpose for Rawls to propose his conception of global justice is to secure a "democratic peace" among more or less just peoples. By doing this, Rawls assumes that once domestic justice is fairly secured within the relevant nations, a peaceful coexistence would be secured among these peoples. International insecurity, for Rawls, only arises from domestic injustice, not from the so-called conflicts of national interests.

At least so far as the problem of justice and legitimacy is concerned, Rawls doesn't underestimate the role played by rationality in the international arena. Indeed, it is arguable that Rawls has a very reasonable view of the role that is usually played by rationality in this arena. That is, once encouraged, the moral power of rationality of the institutional agents (the nations) can get out of control. If liberal democracies follow the cosmopolitans' reasoning and adopt a foreign policy that is based on equal liberal rights for every human being, then their aim "will be to act gradually to shape all not yet liberal societies in a liberal direction, until eventually (in the ideal case) all societies are liberal." What's wrong with this foreign policy is that it "simply assumes

that only a liberal democratic society can be acceptable.”²²⁶ This foreign policy would unavoidably lead to oppressive use of national power over other peoples, therefore create more international injustices.

More generally, the hope to have a just and legitimate global institutional structure, as in the case of domestic institutional structure, lies in the development of the moral power of reasonableness in the institutional agents of international politics. When this power is not yet well developed, we should be cautious with various projects of expanding global governance; when so many developing nations are in a very weak bargaining position, the powerful nations may manipulate these projects to further their own rational interests. As well put by Thomas Nagel, “Prosperous nations have reasons to want more governance on the world scale, but they do not want the increased obligations and demands for legitimacy that may follow in its wake.”²²⁷ In light of our recent experience with globalization and international interventions, this is rather a serious concern. Although cosmopolitans are only calling for global justice in a more egalitarian direction, the real consequences of legitimizing more international governance may turn out to be less desirable, especially for those not yet well developed societies.

So far in this section, we have clarified Rawls’s conception of the moral person as a conception of an institutional agent, and cleared Rawls’s system of several charges in relation to this conception. In the next section, we will look further into Rawls’s conception of rationality, and distinguish this conception from a rationalist conception of human nature.

²²⁶ See LP, pp. 82-83.

²²⁷ See “The Problem of Global Justice,” *Philosophy and Public Affairs*, Vol. 33, No. 2 (2005), p. 136.

Rationality as a Moral Power, not Human Nature

In various versions of rationalism, rationality is taken as the major component of “human nature.” Different institutional structures are viewed as different ways to satisfy such a human nature, and the best political order is the one that suits this human nature the best. But in Rawlsian institutionalism, rationality is a necessary moral power for human institutional engagement, not a part of human nature acting as a reference frame for institution building. People’s concerns for rational interests, according to institutionalism, are not pre-institutionally determined, or at least not sufficiently so as to provide a reference frame for institution building, but are framed and modified by their engagement with their institutional environment. The major question moral and political philosophers should ask about rationality is therefore not how to satisfy our rational interests, but how to use and improve our moral power of rationality to make our institutional life better.

The inadequacy of the idea of the rational for solving problems of justice and legitimacy can be illustrated in the following way. The moral power of rationality can be assumed by different levels of “self” as either individual or collective moral agents. Rational interests can be conceived and pursued for different levels of “self,” such as personal interests, family interests, tribal interests, local interests, and national interests, etc. This moral power of conceiving and pursuing rational interests for different levels of “self” is a very important element in our moral life; many moral and political phenomena in human societies, such as families and nations, would not come into place if this moral power were lacking. The issue of justice and legitimacy, however, has a dimension of “otherness,” that is, justice and legitimacy become issues only when there is a plurality of agents involved, with interests and conceptions of interests that are not identical. If we take a body politic and the group of people living

under it as a bigger “self,” or as Hobbes does, as an “artificial” person,²²⁸ then perhaps the issue of legitimacy wouldn’t come up in the first place, or even if it comes up, it would only concern the absolute legitimacy of the sovereignty of the state or the monarchy as the collective rational agent; the issue of justice, in this case, is only about a matter of obeying the sovereign whatever it ordains, since not obeying the sovereign will ultimately send everybody back into the misery of the state of nature, where the lack of a collective agency makes everybody at war with everybody. If we take rationality as the sole criterion for legitimacy, then at least we cannot get any kind of liberal or democratic conception of legitimacy.

In order to solve the problems of justice and legitimacy, Rawls introduces another moral power of moral agents, namely, reasonableness. This moral power is appropriate for dealing with other-regarding human relations, not merely self-regarding rational interests. For a just society to be possible, Rawls believes, we must assume that moral agents have a moral power of being reasonable, so that our rational power will be restrained by the consideration of reasonableness or the consideration of reciprocity. For this purpose, the idea of the reasonable must not be reducible to the idea of the rational. For example, our moral power of being reasonable cannot be reduced to agents’ seeking for mutual rational advantage through interpersonal exchange, nor could it be reduced to rationality as impartiality as represented in classical utilitarianism. Thus Rawls defines the idea of reciprocity as lying between the idea of impartiality and the idea of mutual advantage.²²⁹

Under these considerations, Rawls introduces the moral power of being reasonable into his conception of moral agents. Thus understood, the requirement for

²²⁸ See Hobbes, *Leviathan*, ed. Richard Tuck, Cambridge University Press, 1996, p. 121; see also Quentin Skinner, “Hobbes and the Purely Artificial Person of the State,” *The Journal of Political Philosophy*, Vol. 7, No. 1 (1999).

²²⁹ For Rawls’s definition of the reasonable, see section 1 of Lecture II of PL.

reasonableness is always central for any context of institutional justice. The moral power of rationality for moral agents can vary in reality as we move from one context to another; so long as the moral power of reasonableness can develop correspondingly, so that it is strong enough to restrain the moral power of rationality, a reasonably just society will remain a possibility.

We have so far established that Rawls has good reasons to introduce the moral power of the reasonable into his conception of the moral person, and that by relying more on the idea of the reasonable than the idea of the rational, Rawls can justify his liberal conception of justice and legitimacy on a more solid ground. Now we need to understand why Rawls feels it necessary to endow the relevant institutional agents with the moral power of rationality. Besides setting the subjective circumstance for the problem of justice, what does the idea of the rational provide for these institutional agents? Wouldn't justice be more easily realizable if all the members of a society have only the moral power of being reasonable?

This question may sound redundant or even ridiculous, for it is obvious that people in real life are motivated by rational concerns, and a conception of moral agents, being normative as it is, cannot be taken seriously if it totally disregards rationality as a moral motivation.

Nevertheless, it is also obvious that the rational power of the institutional agents in various contexts is usually hard to contain. When it comes to the matters of justice, non-compliance and instability always come from disproportional considerations of rational interests. To secure the legitimacy and the stability of a body politic, it is obviously desirable if we can restrain or even eliminate the moral power of rationality in our normative conception of moral agents from the very beginning. Indeed, many moral theories, such as stoicism and Christianity, believe

that morality is possible only if we can eliminate rationality for good. Rousseau's concept of general will can be interpreted as an encouragement for the citizens to dissolve their rationality into reasonable concerns for others and for the body politic. In the Marxist ideal society, the real communist society, people are also supposed to have no rational desire to take advantages of others; for people living in the communist society, rationality is present as objective needs for the function of a biologically and socially normal human being, not as subjective desires or motivations.

By introducing the moral power of rationality into his conception of moral persons, Rawls faces a tremendous difficulty in establishing the legitimacy and stability of his conception of justice. How could different moral agents, with different conceptions of the good to pursue, end up endorsing a reasonable conception of justice, so that the legitimacy and the stability of the body politic can be secured? This question consumes perhaps half of the energy of Rawls as a moral philosopher.²³⁰

To understand Rawls's reason for introducing rationality as a moral power, an easy answer is that rationality is a necessary moral motivation for moral agents who would engage with each other in institutional structures. As Rawls says, "Merely reasonable agents would have no ends of their own they wanted to advance by fair cooperation; merely rational agents lack a sense of justice and fail to recognize the independent validity of the claims of others."²³¹ To engage with each other in a social cooperation system, therefore, moral agents must have their own conceptions of good to pursue. To give the moral agents only the power of reasonableness would make them puppets of institutional arrangements, cooperating merely for the sake of cooperation.

²³⁰ For the major question addressed by later Rawls, see Lecture I of PL.

²³¹ PL, P. 52.

The moral power of rationality is introduced into Rawls's conception of moral agents, therefore, because their engagement with institutions needs to be motivated by their own free will. It is another matter whether they are metaphysically free, but they must conceive themselves, and others as well, as free agents of cooperation. In this respect, the freedom of the moral agents means three things: they are free to form and pursue their own conceptions of good; they are self-authenticating sources of valid claims against institutions, not puppets for institutions to manipulate; they are capable of taking responsibilities for their own choices of rational ends.²³²

In the sense that rationality in Rawls's system is a moral power, we should not identify it with people's rational concerns for given wants and desires. This distinction is important, for it will decide whether Rawls's liberalism is vulnerable to a typical charge against liberalism, namely, it takes people's desires and wants as the given, and it prohibits any social institutions from correcting or improving people's understandings about what is rationally good.²³³ If this charge is applicable to Rawls, then perhaps Rawls's system is compatible with the possibility of such a society, which is well-ordered by Rawls's conception of justice, but is nevertheless a society of mediocre persons, who are simply stuck in their harmless yet foolish preferences, such as shopping, playing video games, watching soaps, talking nonsense, etc. Some may understand that liberalism doesn't and shouldn't intend to improve human rationality in any circumstance. They can cite Mill's "harm principle," which states that so long as a person's interests or preferences do not cause harms to others, he is free to do whatever he wants.²³⁴ They can also cite Rawls to prove this point, since

²³² See Leif Wenar, "The Unity of Rawls's Work," *The Journal of Moral Philosophy*, 2004, p. 270.

²³³ See Brian Barry, "Liberalism and Want-Satisfaction: A Critique of John Rawls," *Political Theory*, Vol. 1, No. 2 (May 1973).

²³⁴ See J. S. Mill, *On Liberty*, Bobbs-Merrill, 1956, p. 13, where he says, "That the only purpose for power can be rightfully exercised over any member of a civilized community, against his will, is to

Rawls says that people's rational preferences and conducts can be restricted only on the ground that they "interfere with the basic liberties of others or else violate some obligation or natural duty."²³⁵

There is no doubt that Rawls's principles of justice, especially his equal liberty principle, are not principles of perfection. As Rawls says, "While justice as fairness allows that in a well-ordered society the values of excellence are recognized, the human perfections are to be pursued within the limits of the principle of free association." People living in a liberal regime "do not use the coercive apparatus of the state to win for themselves a greater liberty or larger distributive shares on the grounds that their activities are of more intrinsic value." Although Rawls's liberalism does not take the satisfaction of people's rational desires as the goal of social institutions, as utilitarianism usually does, it does not aim at advancing human excellence either, as various forms of perfectionism do. In this sense, justice as fairness occupies an intermediate position between perfectionism and utilitarianism.²³⁶

Nevertheless, to say that all institutional agents have the moral powers of rationality and reasonableness does not necessarily mean that the rational pursuit of good of every citizen is of equal value.²³⁷ Indeed, justice as fairness recognizes that different rational ends do have different values; it is only that as a matter of justice, public social institutions should not give special favors to those rational ends deemed more valuable. The values of different rational ends should be left to people's own

prevent harm to others. His own good, either physical or moral, is not a sufficient warrant." Although Mill is only talking about legitimate coercion, and Mill's own version of liberalism is kind of perfectionist, the idea expressed here is a typical liberal principle of letting people alone in their own choices and desires.

²³⁵ TJ, p. 291.

²³⁶ TJ, p. 289, p. 287, respectively.

²³⁷ TJ, p. 289.

judgment; they can deal with these issues in their personal quest or voluntary associations.

The above considerations lead us to this point: rationality does not just constitute negative obstacles on the road to justice; it is also a positive moral power with a constructive role to play in our pursuit of justice. At least in Rawls's conception of moral persons, we should be aware of this crucial point. To put this point in a simplified form, it is not only the case that "the rational divides while the reasonable unites"; it is also the case that "justice draws the limit, the good shows the point."²³⁸ Rawls's institutional agents need the moral power of rationality not because they are born with a human nature of selfishness. They may be selfish in many senses, but the point is that rationality gives them a moral motivation to freely engage with each other in a just social structure. For Rawls, rationality is not a human nature waiting to be satisfied by institutional structures, but a moral power of the institutional agents. This power makes human institution building possible, and is to be cultivated and improved in our institutional pursuit for social order.

To sum up, Rawls's institutional agents in well-ordered societies have two higher order interests in developing their two moral powers, rationality and reasonableness. These moral powers should not be understood as conceptions of human nature in the traditional sense; rather, they are both necessary conditions for social cooperation, and they are to be improved and expanded as social cooperative systems move forward. Together they are an essential part of a normative conception of moral agents, who need these powers in their endless pursuit of a well-ordered society secured by a public conception of justice. This conception of institutional

²³⁸ See Rawls, "The Priority of Right and Ideas of the Good," *Philosophy and Public Affairs*, Vol. 17, No. 4 (Autumn 1988), p. 252. See also JF, p. 141.

agents confirms our interpretation of Rawls's methodology as institutionalism, as against rationalism.

To see the difference between Rawls's conception of moral agents and the rationalist conceptions of human nature, we need to pay special attention to a dilemma involving the reciprocal relationship between human beings and their institutions. The dilemma goes like this: to know what institutions are good for human beings, we need some general assumptions about what human beings are, but we cannot have knowledge about human nature beforehand, since social institutions have profound influence upon "human wants and men's view of themselves."²³⁹ This dilemma seems to force us to be satisfied with two different yet equally deficient approaches: we can start with a perfectionist conception of human nature and then look for institutions suitable for this nature, as rationalists would do, or we can admit that what we want to achieve in ourselves is influenced by the current institutions in which we live, and therefore what we can achieve is only culturally and historically relative ideals. The rationalist approach is deficient because it begs the question as to where the conception of human nature comes from, while the relativist approach is deficient because it only achieves ideological justification of the status quo or false consciousness.

Now from our exposition of Rawls's conception of institutional agents, we can see that Rawls's approach is better than these two alternatives. Rawls's conception of institutional agents is not a rationalist conception of human nature, since it leaves

²³⁹ See TJ, p. 230. Section 41 of TJ in general is illuminating in light of our interpreting Rawls's methodology as institutionalism. For example, on p. 229 Rawls says, "Moreover, the social system shapes the wants and aspirations that its citizens come to have. It determines in part the sort of persons they want to be as well as the sort of persons they are. Thus an economic system is not only an institutional device for satisfying existing wants and needs but a way of creating and fashioning wants in the future. How men work together now to satisfy their present desires affects the desires they will have later on, the kind of persons they will be."

what human beings want to achieve in themselves largely open to their reciprocal engagement in institution building. Neither is Rawls's conception of institutional agents a relativist conception, since it carries a tone of normative universalism, that is, whatever the actual social institutions are, in order to achieve social order, the relevant institutional agents need these two basic moral powers, namely, being rational and being reasonable.

With this hint, we can now complete our discussion of Rawls's conception of the moral person, and turn to the element of universalism in Rawlsian institutionalism, especially the dimension of political development in his justification of the ideal of liberal democracy. But before we do this, we need a clarification regarding the appropriate name for Rawls's system.

“Institutionalism” or “Constructivism”

So far we have proven that Rawls's conception of public justification and his conception of the moral person all accord with institutionalism. But “institutionalism,” after all, is not the actual word Rawls uses to describe his methodology. Rather, Rawls calls his own methodology “constructivism,”²⁴⁰ and many other philosophers follow him in naming his methodology.²⁴¹ In this section, I will argue that although this name may represent the structure of Rawls's argument from the original position very well, it lures misunderstandings of Rawls in three directions. When these possible misunderstandings are exposed, it will become clear

²⁴⁰ This name appears in Rawls's works for the first time in “Kantian Constructivism in Moral Theory.”

²⁴¹ For example, see Onora O'Neill (1998), “Constructivism in Ethics,” in E. Craig (Ed.), *Routledge Encyclopedia of Philosophy*, Routledge, 1998. See also her *Constructions of Reason: Explorations of Kant's Practical Philosophy*, Cambridge University Press, 1989; *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*, Cambridge: Cambridge University Press, 1996.

that “institutionalism,” as we have argued so far in this chapter, is really a better name for Rawls’s methodology and philosophy.

First, while Rawls’s intention for adopting this methodology is to bypass the very concept of the epistemic objectivity of morality,²⁴² the word “constructivism” leads the readers to the impression that Rawls is arguing against moral realism.²⁴³ In fact, for Rawls, whether we should adopt moral realism or moral anti-realism is beside the point for practical philosophy.²⁴⁴ The objectivity of moral and political reasoning, according to Rawls, should not be understood in terms of a “causal view of knowledge.” The problem for practical reason is not about “knowledge of given objects,” but about “the production of objects in accordance with a conception of those objects.”²⁴⁵ In other words, the point is how we, as free moral agents, should conceive ourselves when we try to build a reasonably just social union among ourselves.²⁴⁶ Practical philosophy concerns those values or ideals, which, when

²⁴² Thus Rawls says, “it is important to notice here that no assumptions have been made about a theory of truth. A constructivist view does not require an idealist or a verificationist, as opposed to a realist, account of truth.” See “Kantian Constructivism in Moral Theory” in CP, pp. 351-2.

²⁴³ There is a whole body of literatures contributed to this debate. Allen Wood thinks it inappropriate to interpret Kant as a constructivist, since that would suggest that Kant is not a realist. See Wood, “What is Kantian Ethics?” in Wood ed., *Groundwork for the Metaphysics of Morals*, Yale University Press, 2002. Onora O’Neill argues that Rawlsian constructivism stands on the middle ground between moral realism and moral relativism. See her *Constructions of Reasons: Explorations of Kant’s Practical Philosophy*, Cambridge University Press, 1989, chapter 11, “Constructivisms in Ethics.” Christine Korsgaard reads Kantian and Rawlsian constructivism as against moral realism. See her “Realism and Constructivism in Twentieth-Century Moral Philosophy,” *The Journal of Philosophical Research*, The Philosophy Documentation Center, 2003. Frederick Rauscher believes that Rawls interprets Kant as an anti-realist when he draws on Kantian constructivism. See “Kant’s Anti-Realism,” *Journal of the History of Philosophy*, Vol. 40, No. 3, 2002. Cristina Lafont tries to reconcile constructivism with moral realism in “Moral Objectivity and Reasonable Agreement: Can Realism be Reconciled with Kantian Constructivism?” in *Ratio Juris*, Vol. 17, No. 1 (March 2004).

²⁴⁴ Thus Rawls says, “in what I have called ‘Kantian constructivism,’ we try to avoid the problem of truth and the controversy between realism and subjectivism about the status of moral and political values.” See “Justice as Fairness: Political not Metaphysical,” *Philosophy and Public Affairs*, Vol. 14, No. 3 (Summer 1985), p. 230; in CP, p. 395. There are good reasons for Rawls to try so hard to avoid the problem of truth in his political philosophy. One of them is that the language of truth has a flavor of intolerance to be avoided in liberal political philosophy: once a truth is established, it is not tolerable if someone is unwilling to submit to it.

²⁴⁵ See Lecture III of PL, especially sections 5 and 6.

²⁴⁶ Jeremy Waldron also believes that the controversy between moral realists and moral anti-realists is misleading when it comes to solve moral disagreements. See his *Law and Disagreement*, Clarendon Press, 1999, chapter 8, “The Irrelevance of Moral Objectivity.”

justified and internalized, will guide our practical actions. This explains why many ideologies based on totally imaginary scenarios can in time build strongholds in human minds.

Second, the word “constructivism” is doubly ambiguous: it is not clear whether the supposed construction is the construction of the moral agents of institutional structures, or the construction of the philosophers who promote the constructivist theories; neither is it clear whether the construction is done by the representative agents inside the original position, or by the real agents living real institutional life. In “Kantian Constructivism in Moral Theory,” Rawls calls the agents in the original position “agents of construction,” which suggests that Rawls might connect his constructivism especially with the argument from the original position. Since the original position doesn’t constitute the whole argumentation of Rawls’s system, calling Rawls’s overall methodology “constructivism” is obviously a mistake of identifying the whole with a part.

Rawls’s argument from the original position should be understood under his wider normative standpoints. That argument is neither neutral nor decisive by itself. It is not neutral because the setup of the original position, including the specific tailoring of the veil of ignorance and the specific rendering of the rationality of the parties, reflects our wider normative considerations of justice, which in turn reflect our culturally and historically cultivated values; it is not decisive because we can hold the thought experiment whenever we need to solve controversies over fundamental issues of social justice. The choice of the principles of justice in the original position is ultimately binding only in the sense that the representative agents are to make their choices under this condition so that full compliance will be secured, not in the sense that the real institutional agents should restrain themselves forever with the final

choice of a particular original position meeting. The original position argument is not decisive also because the options presented before the representative agents do not constitute a complete or comprehensive list of candidate principles of justice.

Overall, the argument from the original position is only an abstract idealization of Rawls's normative ideal of political autonomy. This normative ideal of political autonomy, in its totality, can be captured by the name "institutionalism," while the name "constructivism" invites the misunderstandings listed above.

Third, the name "constructivism," with its construction metaphor, alludes to an idea of completeness, yet there is no reason to read Rawls's conclusion regarding his conception of justice as a closed or final one. Rawls's ideal of overlapping consensus over a political conception of justice is not another utopian dream about the end of the history. A better and more truthful interpretation of Rawls's later philosophy is to view his conception of public reason as implying an endless journey towards the ideal of overlapping consensus. There is no such a final overlapping consensus upon which a well-ordered society will dwell forever. If we must use the metaphor of construction, then that construction will never be finished in real time.

Compared with this last misunderstanding, the benefit of adopting the name "institutionalism" is, of course, the bearing out of a Rawlsian theory of political development, to which we now turn in the rest of this chapter.

Rawls's Pursuit of a Well-ordered Society

The central argument of this chapter is that Rawls's theory of justice, interpreted as an instantiation of institutionalism, aims at providing and justifying a public conception of justice for a well-ordered society. This section looks into the possibility that Rawls is in fact, or can be interpreted as, arguing that societies trying

to be well-ordered should seek for a political development towards some kind of constitutional democratic social order.

To our attempt at connecting Rawls's conception of well-ordered society with a theory of political development towards liberal democracy, an immediate protest would be this: Wait a minute! Doesn't Rawls also believe that there are other possible well-ordered societies? Do you forget that in LP, Rawls also calls those decent societies "well-ordered" societies? If for Rawls, a well-ordered society is not necessarily a constitutional democracy, how can you say that Rawls's theory implies that a political development towards constitutional democracy is normatively encouraged?

This protest is only fair enough. But we need to notice that although Rawls also calls decent societies "well-ordered," he does not mean to say that they should be totally satisfied with their current status as decent societies. When arguing that liberal peoples need to show due respect to decent peoples, Rawls says that

if a liberal constitutional democracy is, in fact, superior to other forms of society, as I believe it to be, a liberal people should have confidence in their convictions and suppose that a decent society, when offered due respect by liberal peoples, may be more likely, over time, to recognize the advantages of liberal institutions and take steps toward becoming more liberal on its own.²⁴⁷

For Rawls, therefore, the ultimate point of offering toleration to decent peoples in the law of peoples is not to maintain the status quo of those decent peoples, but to encourage their "reforms in a liberal direction" from within.

In addition, if we attend to the reasons for Rawls to call these societies "well-ordered,"²⁴⁸ we will see that a decent society in Rawls's sense is not so different from

²⁴⁷ See LP, p. 62.

²⁴⁸ It should also be noticed that Rawls denies straightforwardly the possibility of "tyrannical and dictatorial regimes" being members of a "reasonable society of peoples." (CP, p. 530) From this we can infer that for Rawls, once liberal democracies are established in this world, they cannot rely on a peaceful coexistence with those tyrannical and dictatorial regimes, at least not in the long term.

a liberal democracy anyway. The reasons can be inferred from Rawls's second criterion for a decent hierarchical society:

(a) ...a decent hierarchical people's system of law, in accordance with its common good idea of justice, secures for all members of the people what have come to be called human rights...(b) ...a decent people's system of law must be such as to impose *bona fide* moral duties and obligations (distinct from human rights) on all persons within the people's territory...(c) ...there must be a sincere and not unreasonable belief on the part of judges and other officials who administer the legal system that the law is indeed guided by a common good idea of justice.²⁴⁹

From these criteria, we can safely conclude that Rawls's major reason to call such decent hierarchical societies "well-ordered societies" is that these societies, or their laws or basic institutions, are governed by a "common good idea of justice," just as is a well-ordered constitutional democracy.²⁵⁰ The only meaningful difference between these two kinds of societies is that in a decent hierarchical society, members are not recognized as free and equal citizens as in a liberal democracy; instead, their relationship with the body politic is an indirect one, with their separate groups as the medium.

Rawls's own words about the relevance between his theory of justice and a justification of liberal democracy are usually humble and inexplicit. Rawls suggests, in different places, that "both *Theory* and PL attempt to say how a reasonably just and well-ordered democratic society might be possible," or "whether a just democratic society is possible and can be stable for the right reasons."²⁵¹ According to these words, Rawls seems to be more worried about the survival of democracy than about the spread or expansion of democracy. Yet these very words in fact show, in the

²⁴⁹ See LP, pp. 65-66. Rawls's first criterion of a decent hierarchical society is, understandably, that it "does not have aggressive aims, and it recognizes that it must gain its legitimate ends through diplomacy and trade and other ways of peace."

²⁵⁰ See LP, p. 71, footnote 10, where Rawls admits that a well-ordered liberal democracy is also governed by such a common good idea of justice.

²⁵¹ See PL, pp. lx, lxi; LP, p. 6.

background of his theory of justice, Rawls's concern with a justification of democracy. Indeed, the major concern behind Rawls's whole system is to prove that a liberal democratic society, backed by his conception of justice, is possible and stable, since it can be a well-ordered society.

Institutionalism, including Rawlsian institutionalism, believes that human beings engage with each other in institution building because they care about a just and stable social order, without which their lives would be threatened by constant conflicts and miserable prospects, if not totally meaningless. To use Rawls's own words, the big question behind the whole project of Rawls's political philosophy is "whether it is worthwhile for human beings to live on the earth" if it is not possible for members of a society to subordinate their power to reasonable moral aims. For Rawls, if a just and stable social union among human beings can only be facilitated by power and coercion, not by a publicly justifiable and internalized conception of justice, human life would be not worth living.²⁵²

Now if we agree with Rawls that a constitutional democracy is indeed well-ordered and worth fighting for, what should we, readers from non-liberal and/or non-democratic cultural backgrounds, do? Rawls's own words become even more elusive when it comes to this question. Is Rawls only writing for people already living in liberal democratic societies? Are Rawls's arguments only developed to give these people some sense of self-satisfaction with their own situation? Can Rawls achieve more than such a trivial goal in a justification of the ideals of liberal democracy? Does Rawls believe that his theory of justice requires or necessitates a theory of political

²⁵² See the final paragraphs of *The Law of Peoples* and the second Introduction to *Political liberalism*, where Rawls articulates his major motivation for philosophizing rather explicitly.

development towards liberalization and democratization?²⁵³ Or is Rawls really a cultural relativist, who has no further interest other than a proud confirmation of his own value system?

Rawls's main work contributes to building and justifying an ideal well-ordered society, but he says little about how different societies could move towards this ideal. Regarding his own society, Rawls does provide some clues about this political development. For example, his discussion of moving from a *modus vivendi* to a constitutional consensus and then to an overlapping consensus²⁵⁴ is clearly an effort on this score, and so is his discussion of moral psychology leading to stability in Part III of TJ. But overall, this theory of political development is a rather latent theme in Rawls's system. This makes the project of this essay more meaningful, if not more difficult.

To deal with these challenging questions, I will, in the next two sections, use our newly established institutionalist interpretation of Rawls's system, and therefore use the theory of institutionalism we have developed in the previous chapters, to look into the connection between a Rawlsian institutionalist justification of the ideal of liberal democracy and a normative theory of political development towards liberalization and democratization. This will naturally conclude this chapter on Rawls, and the whole essay on institutionalism and political development.

²⁵³ For example, when trying to distinguish a political conception of justice and a comprehensive conception of justice, Rawls says that "while political liberalism is of course liberal, some political conceptions of right and justice belonging to political philosophy in this sense may be conservative or radical; conceptions of the divine right of kings, or even of dictatorship, may also belong to it." Here Rawls does emphasize that "in the latter two cases the corresponding regimes would lack the historical, religious, and philosophical justifications with which we are acquainted," but nevertheless he claims that "they could have free-standing conceptions of political right and justice." One of the central contentions of this essay is to show that Rawls's such comments are not really defensible. See Rawls's "Reply to Habermas," in *The Journal of Philosophy*, Vol. 92, No. 3 (March 1995), p. 133.

²⁵⁴ See sections 6 and 7, Lecture IV, PL.

Democracy as Power Balance and Democracy as Political Autonomy

So far in this essay, we have established a theory of institutionalism, and have proved, in the third chapter, that institutionalism implies a theory of political development towards liberalization and democratization; we have also demonstrated, in this chapter, that Rawls's methodology is totally compatible with, if not consciously based on, institutionalism. The natural question now is whether Rawls's justification of the ideal of liberal democracy implies a normative encouragement for a political development towards liberalization and democratization.

To answer this question, we attend to the perspective of power structure in institutionalism, a perspective Rawls doesn't explicitly talk about, but is important for revealing the political development dimension of institutionalism. I will argue that Rawls's conception of the rule of law, and more generally his theory of deliberative democracy, which justifies liberal democracy as an ideal of political autonomy, confirm this power structure perspective of institutionalism. Since the power structure perspective of institutionalism takes the ideal of liberal democracy as the ultimate goal of human institution building, and since Rawls also views the ideal of liberal democracy as the ultimate goal of political autonomy, Rawls's theory of justice, I will argue, indeed encourages a normative development towards the ideal of liberal democracy, or towards liberalization and democratization.

According to institutionalism, to secure social order among certain people, public norms need to be created so that all or at least most members of such a society can carry out practical actions, and can seek their particular conceptions of the good or their interests, under the guidance of the same set of norms that is accepted and internalized by all members of the society. Without a common understanding about what they can or cannot do, institutionalism believes, mutual trust among these people

cannot be established, nor can there be a sense of security and order. Social norms, however, carry power with them, due to their empowering and regulating effect on the norm practitioners. With power, there comes social hierarchical structure, which is created by a system of social institutions. Once a social order is established among certain people, public offices with public power need to be created to make sure that the social norms do bind people's behavior, and to carry out different functions on different levels of collective agencies, including the hierarchical orders of offices and different functional offices at the same levels of hierarchy. For these offices to function, appropriate powers or authorities need to be bestowed upon these offices, so that people occupying these offices can enforce the related social rules and carry out appropriate levels of collective actions.²⁵⁵ As a result, persons in these offices will have these powers at their disposal. Since more important offices carry bigger powers, there will be a hierarchy of power structures among different offices. Taking those who do not occupy any public offices into consideration,²⁵⁶ we have a hierarchy of the whole society. Ultimately, the need for social order brings about the need for social norms, while social norms, demanding norm enforcement and collective practical actions, precipitate structures of social powers and authorities.

With powers come the possibilities of power abuses, which demand further social norms to regulate and to deter. Power abuses exist not because human beings are by nature corrupt, but rather because no social norms, not even the norms

²⁵⁵ Maybe certain moral rules, such as the rules regarding inter-personal manners, do not necessitate public authorities. But no social order can be established by such moral rules alone. Especially in a society more complex than a family, such moral rules can only act as supplementary rules.

²⁵⁶ Rawls calls citizenship within a liberal democracy a public office. In this sense everybody has certain public power. Indeed, the reason a liberal democracy gives every citizen the political powers of free speech, freedom of association, voting rights, etc., is perhaps the intention of reaching a power balance within the society, so that politically weakened majority who don't occupy any public office may still be able to restrict the behavior of public officials. In the same sense, even the citizenship of a dictatorship can be viewed as a public office, since the institutions of such a society define duties to its citizens. The difference between the citizenship of a democracy and the citizenship of a dictatorship lies in the rights and duties protected to such an office by the corresponding institutional structures.

regulating the use of social power, will be automatically followed until appropriate enforcement mechanisms are in place. Human beings are not “created” for any particular social norms, and as such no social norms will be followed automatically or mechanically; on the contrary, all social norms need to be enforced, through required levels of social pressure or social surveillance. As it is commonly said, social laws are different from natural laws because social laws can always be violated while natural laws can never be violated without losing their status as laws.

Social powers are created in the first place to make sure that social norms are enforced, yet after offices of norm enforcement are created, a whole new range of practical actions, the practical actions to be carried out in the name of the newly created collective agencies or public offices, become available, and additional norms are called for in order to regulate these new practical actions and the new agencies. Without these second-order social norms, social powers will be abused, sooner or later. After all, social norms are nothing but ways of socially controlling practical actions for the sake of social order.

Now when certain institutions to prevent power abuse are lacking, or when the system of social institutions has some breaches or weak points, social norms tend to be constantly violated, and the social order these norms are meant to guarantee tends to deteriorate. In the last years of the Roman Republic, for example, when the generals gained more and more military power and popular support through one conquest after another, senators living in the city of Rome, who were institutionally bound to make and enforce laws and elect executive officials, slowly lost their leverage on these generals. People in the conquered regions, on the other hand, didn't have legal or political means to monitor these generals either. The result is that when more and more people were incorporated into the Roman Republic, more and more

people became passive participants of the collective agency of the social order, without corresponding power to lay enough social pressure on the public officials, who therefore could easily concentrate social powers into their own hands, and use power according to their own pleasures. So even though the Roman Empire was big, it was nevertheless weak from inside, since effective social norms regarding public offices could not be maintained. Many empires and dynasties in ancient times and the middle ages faced the same dilemma: they needed to grow bigger in order to be able to defend themselves against invasions from neighbors, or to be able to quell internal strife, yet after they became big enough for self-protection and self-maintenance of social order, they also became too big for internal regulation of their internal political powers.

According to institutionalism, human beings have always been trying to establish a stable and self-sustainable social order, through different levels of social norms or institutions regulating different levels of practical actions, including the practical actions of those who occupy public offices. To some extent, we can say that they are getting better and better at this effort, not along a straight line of course, but are getting better nevertheless. If we compare the qualities of different social orders in terms of how social powers are created, grabbed, executed, and so on, we can see that the modern practice of the rule of law is more stable and more self-sustainable than the rule of kings in the old regimes. When peaceful means and procedures are followed in all processes involving power, a social order gets close to the ideal of the rule of law. Rule of law, of course, doesn't mean the rule of the same laws for all the time. Laws can also be created, changed, and polished. But the ideal of a rule of law is that the creation and revision of laws also follow certain laws and procedures.

Although Rawls doesn't systematically discuss power relations engendered by social institutions, Rawls does have a high regard for the idea of rule of law. When Rawls discusses rule of law, what is in his mind seems not just to concern modern democracies, but also social order in general, or more particularly, legal systems in general: "A legal system is a coercive order of public rules addressed to rational persons for the purpose of regulating their conduct and providing the framework for social cooperation."²⁵⁷ As an idea, a legal system is supposed to satisfy certain precepts concerning the rule of law, such as "ought implies can," "similar cases should be treated similarly," and "no offense without a law." These precepts are supposed to "be followed by any system of rules."²⁵⁸ "Other things equal, one legal order is more justly administered than another if it more perfectly fulfills the precepts of the rule of law."²⁵⁹ Some societies get closer to the ideal of rule of law, and therefore closer to a more stable and more sustainable social order. They have a better understanding of, and better means to fulfill, the idea of rule of law.

For any society, if stable and sustainable social order is to be achieved, it is essential that public agencies with public power be regulated with corresponding social norms, and these social norms be enforced through appropriate social institutions and social pressure. The best possible situation is that within a society, social norms or social institutions are all based on certain principles of justice, which in turn are all understood by, and justified to, all the relevant social members, so that all members are pushing for these principles, and social norms and institutions based on them, to be followed by all the agents to carry out practical actions at all levels of collectivity. Within such a society, what each particular person can do for maintaining

²⁵⁷ See TJ, p. 207.

²⁵⁸ See TJ, p. 207.

²⁵⁹ See TJ, p. 208.

the well-orderedness of her society may be very limited, but as a whole this society is just and stable, since its social institutions are complete and well-maintained, and are known to most of, if not all of, its members to be so.

The ideal of liberal democracy bears out these ideals about the rule of law and a well-ordered society very well. In our human practice of pursuing a well-ordered society, we have no higher goal to pursue but a real liberal democracy, which protects an expanding set of rights and liberties for all its citizens and empowers them to participate in public life, so that not only is social order secured by institutions accepted and internalized by all or most citizens, but the public powers that are responsible for enforcing social institutions are also duly monitored and therefore prevented from abusing power and destabilizing the social order. To use a metaphor, the way social norms are created, justified and enforced in an ideal democracy draws a complete circle around human social institutional structures: with citizens empowered to monitor the behavior of all levels of public officials, there is no practical actions that is beyond the regulation of publicly justifiable social norms, which are the ultimate protector of social order. When a society reaches, or gets close to, such kind of state, we say that it has a balanced power structure. In institutionalism, a well-ordered liberal democratic society is a balanced power structure. Since according to institutionalism, to reach a balanced power structure is the highest goal of human institution building, the ideal of liberal democracy is the ultimate ideal of human institution building.

When Rawls uses the ideals of democracy that have been made manifest in the historical experience of modern western democratic practice, he is not in any sense contextualizing these democratic ideas to western society or western culture. What he

has constructed out of the western historical experience is a normative ideal, or a “realistic utopia,” of human institution building for any human society.

To confirm this observation, we look at Rawls’s theory of deliberative democracy as an ideal of political autonomy. This theory of democracy has its root in the democratic tradition, especially in Rousseau’s idea of the “general will,” but it also inserts new elements into this tradition. Democracy is traditionally understood as a contesting process, with different individuals voicing and voting for their different interests. Understood as such, democracy still has an external relationship between the government and the people, just like all other forms of regime. What is special about democracy is only that in its ideal, the majority, instead of some minority group, wins the control of the government. This ideal of democracy may have an element of autonomy or self-governance, but there is still a clear distance between the ruling and the ruled, or the government and the citizens. In Rawls’s ideal of liberal democracy, however, the relationship between the government and the people is presented as if it is an internal relationship within civil society. All citizens participate in a public forum as free and equal members of the society, and they present their own cases from a perspective of “public reason,” which is supposed to be a shared perspective for all citizens, ideally. Rawls seems to pay much less attention to the diversity of interests among citizens of a democracy, and the contesting tendency among these interests. It is as if the relationship between the state and the society, or the relationship between the government and the people, is only an internal one, and power hierarchy does not, or should not, exist among members of a democratic society. Democracy, according to this view, is not about how to balance the power structure, but about how to realize the political autonomy of the people. In the sense

that Rawls's theory of democracy is different from the traditional view of democracy, many scholars call Rawls's model of democracy a "deliberative democracy."²⁶⁰

The difference between the ideal of democracy as a balanced power structure, as presented in the name of institutionalism, and the ideal of democracy as a political autonomy, as presented in Rawls's theory of deliberative democracy, however, is only a difference on surface. On their foundations, both ideals strive to secure and maintain social order with a publicly justifiable and internalized conception of justice. What the theory of deliberative democracy has added to the traditional theory of democracy is this: it points out that in an ideal democracy, citizens should not voice and vote only from the perspective of their own particular interests, but should also take a stance that can be reasonably accepted by other reasonable citizens. In other words, citizens of an ideal democracy are not only capable of rationally pursuing their own interests; they also reason together and form a common point of view of the whole society, and voice and vote according to this perspective of reasonableness. Compared to the theory of deliberative democracy, the ideal of democracy as a balanced power structure puts more emphasis on the idea of rationality—it basically says that by giving people with different interests and values a balanced opportunity to defend, and to fight for, their own interests and values, democracy can achieve a state of justice and stability. Taking this theory of democracy as a balanced power structure alone, without supplementation from the theory of deliberative democracy, the ideal of liberal democracy wouldn't be wholly understood. An ideal liberal democracy cannot consist only of rational citizens; for such a democracy to be a well-ordered society, its citizens must also think and act from a reasonable point of view. As we

²⁶⁰ For the concept of deliberative democracy, see Samuel Freeman, "Deliberative Democracy: A Sympathetic Comment," in *Philosophy and Public Affairs*, Vol. 29, No. 4 (Autumn 2000). For Rawls's view about deliberative democracy, see his "The Idea of Public Reason Revisited," in *The University of Chicago Law Review*, Vol. 64, No. 3 (Summer 1997), p. 772f.

have made it clear, Rawls's theory of justice, as a Rawlsian institutionalism, indeed has given both of these viewpoints, or moral powers, a fair and balanced consideration.

From the point of view of our institutionalism, these two ideals can be integrated into a single ideal of human institution building, which is also the highest ideal of human institution building. By proving that Rawls's system is an instantiation of institutionalism, we unit these two ideals, and reveal the political development dimension internal to them. The ideal of power balance and the ideal of political autonomy are the two faces of the universal ideal of human institution building, towards which every human society should develop if it strives to become a well-ordered society with justice and stability.

With this recognition, we now turn to the concluding section of this chapter.

Rawlsian Institutionalism and Political Development

When we say that Rawls's justification of liberal democracy normatively demands a political development towards a liberal democratic political order, people may naturally dispute as to the sense in which Rawlsian institutionalism is different from a rationalist justification of democracy. After all, isn't this institutionalist justification of democracy leading to the same conclusion that democracy will ultimately prevail, therefore is the end of the history, so to speak? Isn't this the same conclusion a rationalist would draw? Yet this whole dissertation claims that a serious distinction can be drawn, and should be drawn, between institutionalism and rationalism.

To address this reasonable doubt, we develop two more arguments in the last section of this essay: (A) institutionalism does lead to the conclusion that a political

development towards liberalization and democratization is not only normatively desirable, but also unavoidable in the long term future of the social evolution; (B) institutionalism draws this conclusion from a logic different from rationalism. These two arguments are based on the theory of institutionalism (including Rawlsian institutionalism) we have established so far, and formally seal this theory with its logical conclusion.

According to institutionalism, to secure peaceful co-existence and social order among people who interact with each other continuously through some available space of transportation and communication, social institutions need to be created to enable and to regulate their practical actions and interactions. For the purpose of social order, these social institutions or social norms need to be internalized, through public justification, in most, if not all, members of such a society. When most, if not all, members of such a society endorse and internalize the social institutions based on a public conception of justice, and comply with these institutions, a well-ordered society is realized. To make such a well-ordered society stable and sustainable in the long run, its social institutions, and the principles of justice behind them, need to be continuously adjusted and justified in light of any newly available space of practical actions and interactions. Without such a process of continuous adjustment and justification, social institutions tend to be manipulated and abused for some members' benefits, especially for the benefits of those who hold public offices empowered by social institutions.

Now in order to understand the direction towards which such a process of adjustment and justification will move, we need to know to which direction our practical actions and interactions are moving. The latter direction is much more transparent than the former one. As our knowledge and technologies grow, people

will more easily encounter each other, and interact with each other, through the new medium of transportation and communication, by commerce and by other activities. As more and more practical actions and interactions become available to us, new social norms or institutions need to be put into place, and to be justified to all or most participants, so that social order can be established among newly available human actions and interactions.

When a larger space of practical actions become available to members of a society, it looks like their freedom grows, but ironically, they also need to restrict themselves with more obligations, so that this increased freedom can turn into meaningful political freedom.²⁶¹ Thus increased space of practical actions demands more social institutions, and more institutions, if they are going to work, put more obligations on the members of a society. If not balanced with increased political rights granted to these members, however, these increased obligations would put too much power in the hands of those who hold public offices and therefore are in charge of laying obligations upon the people through newly established social institutions. This enormous power will then bring about power abuse on an enormous scale, which will ultimately bring the social order to an end, and make the majority suffer in a state of social anarchy.

When we look at the history of human societies, the pattern of establishment and erosion of social order clearly present itself. In most ancient societies, social order was established when political authority was grabbed by a heritable monarchy. Such a monarchy establishes a monopoly over the use of violence throughout the society, therefore guarantees an effective enforcement mechanism for a unified system of social norms. For the convenience of ruling, the monarchy also establishes other

²⁶¹ Recall the section on freedom in Chapter II.

public offices, whose power and authority stem from the sovereignty of the monarchy. Since most of these offices are also heritable, the law makers and the law enforcers in this political system are actually the same group of people, who benefit most from such a system of social norms. This institutional arrangement, and its heritability through blood lines, gives this elite further motivation to make sure this system of social norms really works. So long as these social norms are coherently maintained by this elite, so long as the majority are given enough space to lead a normal life, this monarchy system usually proves to be able to ensure stability of social order. The majority can accept this institutional structure because the social and economic circumstances of this society don't provide much opportunity for the majority to organize themselves and participate in the political process, and the majority can therefore only remain passive recipients, the protected, of the social order. Ideologies supporting such a social order were then created, which further stabilized such a hierarchal power structure and social order. Because the majority has very limited institutional rights and power to influence this political process, however, they have no official channels to monitor the behavior of the ruling elite. As a result, the power elite tend to abuse their power, even though the elite are already those most benefited within this society. This power abuse and corruption will then erode the social order by sabotaging the institutions supporting it, until the system of social order can no longer be sustained. The majority, passive as they are in supporting such a social order, are nevertheless active in overthrowing it, since their ability to suffer injustice will ultimately be put to its extreme. Such a society with the institutional power concentrated in the hands of an elite minority is ultimately unstable, unless it develops in the direction of liberalization and democratization, that is, to reform its social institutions so that the majority can have more and more rights to participate in

justifying the institutions, therefore in securing the social order, in which everybody has a stake. Failing to develop in this direction is the major reason for the collapse of most ancient regimes, as we have argued in the previous chapter.

In the sense that a society does need a hierarchal power structure to secure order in its internal and external practical actions, modern democracies are not so different from ancient monarchies. What makes a modern democracy better than an ancient monarchy is how such a hierarchal structure is created, empowered, and regulated. Within a monarchy, peasants and other powerless citizens have two options to act against the royal laws and decisions if they don't like them: to manage a way to avoid compliance, or to revolt in order to change the authority's minds, or otherwise to replace the monarchy itself. Either way the old social order will suffer, while a certain level of chaos will ensue. Where a modern democracy is better when it comes to facing these problems is in the fact that it has a more peaceful mechanism to solve them. Citizens of a democracy are allowed to express their discontents with the political authority more freely and more openly, and if people with authority fail to address these discontents to satisfaction, a peaceful revolt, namely an election favoring the opposition party, can be carried out according to the legal procedures that are already in place. Equally important, modern democracies protect a whole range of individual rights and liberties for their citizens, so that people with public authority cannot manipulate the institutional system to the extent of depriving the people of such a democratic order.

From the perspective of avoiding power abuse or corruption, the difference between democracies and despotic regimes is also about quantities, not about qualities. To secure and stabilize a monarchy, for example, appropriate institutions also need to be established and enforced to monitor the actions from public offices, including the

monarchy itself. The stability of a monarchy usually depends on how successfully these institutions are designed and implemented. Outright dictatorship, with a dictator executing public power arbitrarily according to his own pleasure, always leads to quick deterioration of social order. Ultimately, democracy is only a more stable mechanism to reduce the chances of abusing collective powers of public offices. Democracy generally fares better than despotic regimes because it introduces more social institutions and social surveillance of the use of these public powers. The reason for giving citizens of a democracy the political right to vote, for example, is to empower these citizens so that they can make public officials responsible for their conduct. Exactly in this sense, Rawls calls citizenship within a liberal democracy a public office, which is empowered by democratic institutions, just like other public offices.

If such a comparison between ancient monarchies and modern democracies is not fair enough, in the sense that a much better understanding of the historical background cannot be presented here, a quick look at the transformation process from old regimes of monarchy to modern democratic societies will make our case for a political development much stronger. In the early periods of modernization of almost every society, we witness the process of power corruption and social order erosion in a much more heartbreaking scenario. In terms of damage to their people, modern dictators fare far better than ancient dictators. What they grab into their hands are not just modern technologies of violence, but more importantly, modern technologies of social organization. With these newly gained social institutions, including propaganda, mass ideology manipulation, and other technologies of surveillance and control, modern dictators can lay “obligations” upon every person of their society, and stretch their control to every corner of the human mind.

It is this danger of enormous power abuse that makes democracy in a modern society both normatively desirable, and objectively unavoidable in the long run. Democracy balances the greater number of obligations laid upon people with a greater number of rights, so that they are not only regulated by more social institutions in the face of a bigger space of practical actions, but are also capable of monitoring the establishment, justification, and adjustment of these social institutions. Without such a balanced increase in people's rights, a modern society will simply become the prey of dictators, and social order within such a society, if there is any, cannot be sustainable in the long run. In this sense, and exactly in this sense, liberalization and democratization are not just normatively desirable, but also practically unavoidable in the long run, if human beings' march into modern societies is not reversible.

It is fairly clear that institutionalism gets this conclusion about political development through a logic different from that of rationalism. Here we don't presuppose any idea of pre-determined or pre-institutional human nature; rather, we start with the need of maintaining social order through social institutions, and we analyze how this need can be satisfied under different social circumstances, with different ranges of possible practical actions and interactions. This institutionalist understanding of social order, as we have argued, normatively demands, and practically necessitates, the tendency of liberalization and democratization throughout the history of human social evolution. Human beings, if they have a nature, are actually improving their nature as their institutional practice moves forward, so that they can maintain and sustain peaceful coexistence and peaceful cooperation with more and more people included, and under more and more complicated situations. So long as they continue this journey of pursuing social order, their moral nature is open to the future, not pre-determined as suggested by rationalism.

Final Remarks

What we have done in this essay is mainly provide three arguments: 1. Institutionalism is a universalist theory about every human society and every human culture—different cultures, including different religions, so long as they deal with interpersonal relations, are nothing but different social norms, or the foundations for different social norms, to regulate practical actions and therefore to secure social orders. 2. According to institutionalism, the ideal of liberal democracy is the normative goal of human institution building because it is the highest ideal of social order, or of the most complete and most sustainable well-ordered society. 3. Rawls's theory of justice, including his different arguments for his conception of justice as fairness, are either actually based on, or can be interpreted as based on, such a theory of institutionalism. From these three major arguments, we draw the conclusion that Rawls's justification of liberal or constitutional democracy is not a relativist self-assertion of American or western culture, but a normative defense of democracy against all other forms of social order. As such a universalist justification of democracy, Rawls's theory of justice encourages political development towards liberalization and democratization. Democracy is the ultimate ideal of human social order, an ideal that is not to be realized only in certain cultures or under certain social circumstances, but to be permanently pursued by all societies through their different paths towards a well-ordered society.

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