Theoretical Reviewing Of Overlapping Consensus In The Context Of Abortion Debate

Kürtaj Tartışmaları Bağlamında Örtüşen Görüşbirliğinin Teorik İncelemesi

Mehmet Akif DOĞAN
Doktora Öğrencisi, Sakarya Üniversitesi, Sosyal Bilimler Enstitüsü
peoplefromzion@gmail.com
0000-0002-6458-061X

Araştırma & Yayın Etiği

Bu makale en az iki hakem tarafından incelenmiş, iThenticate yazılımı ile taranmış, araştırma yayın ve etiğine aykırılık tespit edilmemiştir.

Research & Publication Ethics

This article was reviewed by at least two referees, a similarity report was obtained using iThenticate, and compliance with research/publication ethics was confirmed.

CC BY-NC 4.0

Bu makale Creative Commons Attribution-NonCommercial License altında lisanslanmıştır.

This paper is licensed under a Creative Commons Attribution-NonCommercial License

Copyright ©

Sakarya Üniversitesi, Sakarya/TÜRKİYE

Sakarya University, Sakarya/TURKEY

Atıf/Citation

Saraç, Hakan. "Theoretical Reviewing Of Overlapping Consensus In The Context Of Abortion Debate". Akademik İncelemeler Dergisi 18 / 1 (Nisan 2023): 70-85. https://doi.org/10.17550/akademikincelemeler.1141674

Çıkar Çatışması/Conflict of Interest

Yazarlar herhangi bir çıkar çatışması beyan etmemiştir.
The authors declared no conflict of interest.

Makale Türü/Article Type: Araştırma Makalesi/Research Article
Geliş Tarihi/Date Received: 06.07.2022
Kabul Tarihi/Date Accepted: 19.11.2022
Yayın Tarihi/Date Published: 15.04.2023

ISSN: 1306-7885
E-ISSN: 2602-3016
Cilt/Volume: 18 | Sayı/Issue: 1 |
Yıl/Year: 2023 (Nisan/April)

Kürtaj Tartışmaları Bağlamında Örtüşen Görüşbirliğinin Teorik İncelemesi

Öz

Modern anayasalar geç modern dönemin başlagıcından beridir hem azınlık hakları olarak grup haklarını hem de bireysel hakları gözetmeye çalışmaktadır. Ancak, bazı durumlarda, bir eylemin veya bir olgunun grup haklarını mı ifade ettiği yoksa bireysel hakları mı refere ettiği hala muğlaktır. Siyasal haklar bakımından kürtaj tartışmaları bu muğlak durumların örneklerinden biridir. Bu bağlamda, Liberal görüş kürtajı bir kadının bireysel hakkı olarak değerlendirmeye yatkınken, komüniteryan görüş ise yaşama hakkını işaret ederek buna karşı çıkabilmekte ve bu, liberal bir anayasal krize dönüşebilmektedir. Bu makale günümüzde hala bu tür anayasal krizlerin yaşanması nedeniyle önem kazanmaktadır. John Rawls'un *Siyasal Liberalizm* isimli eserindeki örtüşen görüşbirliği teorisi liberal anayasalarda açığa çıkan böylesine siyasal çatışmaları kamusal aklı önceleyerek çözmeye çalışmaktadır. Bu makale Rawls'un teorisini kürtaj tartışmaları bağlamında özellike değer-göreceliği ve önceliklendirme kavramları üzerinden kavramsal olarak incelemeyi amaçlamaktadır. Çalışma hermeneutik yönteme dayanmaktadır. Çalışmaya tartışmanın evrenini geniş tutmak adına İmmanuel Kant, Isiah Berlin ve John Gray gibi konuyla ilgili çalışmaları bulunan önemli düşünürler de dahil edilmiştir. Sonuç bölümünde Rawls'un teorisinin faydacılık ilkesi ile komüniteryan hakları ihlal etmesi bağlamında hem pratik olarak hem de teorik olarak zayıf olduğu öne sürülmektedir.

Anahtar Kelimeler: Siyaset Bilimi, Örtüşen Görüş Birliği, Çoğulcu Liberal Anayasa, Grup Hakları, Bireysel Haklar.

Theoretical Reviewing Of Overlapping Consensus In The Context Of Abortion Debate

Abstract

Since the beginning of the late modern era, modern constitutions have been trying to keep both group rights as minority rights and individual rights. But, in some cases, it is still ambiguous if an action or a phenomenon must refer to individual rights or group rights. Abortion discussions, with regard to political rights, are one example of these ambiguous cases. In this context, whereas Liberal view tends to regard abortion as individual rights of a woman, Communitarian view can be against it by pointing out the right to life and this case may lead to a kind of liberal constitutional crises. This article gains importance as such constitutional crises still emerge even nowadays. John Rawls's theory of overlapping consensus in *Political Liberalism* tries to solve these political conflicts that emerged in liberal constitutions by prioritizing public reason. This article conceptionally aims to examine Rawls's theory in terms of prioritization and value relativity in abortion discussions. The method of article is hermeneutics. In order to extend the universe of the discussion, some important thinkers such as Immanuel Kant, Isaiah Berlin and John Gray, who have related studies on the topic, were included. In conclusion, it is asserted that Rawl's theory is weak both practically and theoretically as to the principle of utilitarianism violates the rights of communitarians.

Key words: Political Science, Overlapping Consensus, Pluralist Liberal Constitution, Group Rigths, Individual Rights.

Introduction

The conception of constitution as supreme law means, in the most general sense, form of the state within its regime and fundamental rights and freedoms. In parallel with this definition, it can be stated that content of some codes in this definition such as fundamental rights and freedoms, is to be changed when the basic structure of society changes since conception of constitution directly underlies society. Thus, when the basic structure of society requires to be pluralist structure, fundamental rights and freedoms which primaliry take place in constitutions are to be redefined. In the late modern period, now that liberal societies have become more pluralist, liberal

constitutions are supposed to comprehend all reasonable political, philosophical, economic, religious and cultural demands of citizenships to keep pluralist a political structure. However, at this point, the vital problem purely underlies conflicting demands which can not be replaced each other due to value relativity. Such political crises underlying value relativity are one of the most political challenges of liberalism.

It can be said that this is one of feature of "modern liberalism" that emerged within the globalization era. This feature clearly means that people do not conflict with each other over their political identity for their ideologies emerged after Word War II, but conflict for their cultures. Samuel Hungtington overwhelmingly argued this thesis in 1990s (Huntington, 1996, 21-36). Huntington clearly says that what separates us is not any more ideologies like in the cold war; but cultures from ethnic identity to religious beliefs. Furthermore, Fukuyama's thesis *the end of history*, also argues that culture is both our modern problematic that separates us and also our mere dynamic that reunits us in terms of culture, economy and politics. So, this means that while what develops us is culture in the societies in which people trust each other such as Japan, Germany, it is also the seed of political, economic and cultural conflicts in the societies in which people do not trust each other such as Italy and France according to Fukuyama (Fukuyama, 1998, 20-24). When we consider Fukuyama's thesis and Huntington's thesis together, it is obvious that culture is not only related with private realm like in past; but also related with public realm in which fundamental rights and liberties are politically emerged.[1] As John Locke (Locke, 2017) discusses deeply, we can argue that when there is no constitutional limit for the principle of universal toleration of liberalism, the principle gets stuck in conflicting demands as it is unclear that which group in a society will tolerate another group's demand.

The abortion debate is one of examples of such cases. The conflict between pro-life and pro-choice generates one of the most essential and challenging conflicting demands in late modern societies. This conflict between pro-life and pro-choice emerges since abortion is still a vague action considering if abortion must refer to individual rights or group rights. Whereas Liberal view regards abortion as a woman's right, some traditional and religious groups (communities) can be against it by pointing out the right to life. At this point, if a liberal constitution is desired in a society in which both pro-life and pro-choice take place, which one of them should be prioritized by this constitution? This is a challenging question that can force Rawls's theory of overlapping consensus.

Rawls's political liberalism, specifically overlapping consensus, has importance in such debates over conflicting political demands in plural societies. As a pluralist constitution theory, Rawls's overlapping consensus is based on debating how conflicting political demands in a modern society can be compromised within a constitutional framework. Even so, some arguments of overlapping consensus ambiguate the debate over conflicting demands when these conflicting demands, at first view, seem to be right by their sides. So the scope of this inquiry is based on how overlapping consensus

approaches the conflict between pro-life and pro-choice within a constitutional framework.

From this point of view, I will examine Rawls's theory of overlapping consensus over the terms of relativity and priority. These terms are essential to evince how Rawls theoretically balance between relativity and prioritization and, thus, he justificaties his theory of priority among nearly equal political relativistic values.

1. Over Difficulty of Making a Pluralist Constitution

The most known characteristic feature of most late modern societies can be defined as different groups divided by comprehensive ethichal, religious and philosophical doctrines. In the past, such diversity used to be ignored by the normal citizen model, which mainly symbolizes course of action of heterosexual and healthy white man. Moreover, anyone who was out of this model was being excluded by getting them marginalized from western democracy and thus, western democracies were affiliated with such superior culture by putting this model in the center of the world of politics as main political actor (Kymlicka, 2016, 453). However, regarding the late modern era, all these comprehensive ethichal, religious and philosophical doctrines in most late modern societies have their demands over their particular rights claimed by themselves (Rawls, 2007, 49). And at this point, while these uncompromising demands from these comprehensive doctrines conflict with each other, modern-liberal constitutions are supposed to solve such conflicts by making an effort to satisfy all 'reasonable' political demands in order to be a pluralist constitution. Theoretically, difficulty of compromising of these conflicting demands is due to the relativity about which demand should be prioritized.

In this context, John Gray's criticism gains importance. He argues that liberalism is contradictory since it claims to satisfy all demands of all these comprehensive doctrines, although they cannot be comprimised due to their relativity (Gray, 2003, 28). Instead of a theoretical- discursive solution of liberalism, Gray asserts to be more realistic by pointing out Hobbesian liberalism (Gray, 2003, 31). His solution implicates Hobbesian liberalism since his liberalism disallows relativities of conflicting political demands. That is, Hobbesian liberalism does not pay attention to the relativities of pluralist values in a society. On the contrary, it is only interested in radical fundamental rights and freedoms which are not in conflict over priority. In this regard, it can be stated that the vital aim of Hobbesian liberalism is not compromising specific political demands such as group rights; but it provides fundamental rights and freedoms. And so, such liberalism has, then, a meaning of constitution which is purified from relativities of specific political demands of groups (Gray, 2003, 122-123).

So, correspondingly, a very simple question regarding Hobbesian liberalism, as classical liberalism, inevitably arises: 'If liberalism does not pay attention to value pluralism, how can it be called liberalism?'. This simple question arises due to the principle of tolerance which is the one of the most important principles of late modern liberalism. And consequently, this vital question rising against Hobbesian liberalism is essentially the question that late modern liberalism asks to classical liberalism. Because, the principle of tolerance is purely regarded as a vital instrument to enhance freedom in liberal and

pluralist societies to some extend (Bellamy, 2014, 7). At this point, it can be said that the reason why Hobbesian radical (classical) liberalism and other more emancipatory liberalisms are ambiguous results from disunity over where limits of the principle of tolerance should start and end. And thus, basic codes of difficulty of making a comprehensive – pluralist constitution can apparently be stated as relativity and priority problems.

Such hard cases are likely to be solved by dealing with the problem of priority rather than relativity since the former can be measured to some extend. Because trying to solve this hard case by dealing with the problem of relativity is almost impossible as relativity can not be measured even to some extend. This means, as Berlin stresses (Berlin, 2002, 42), value incommensurability which deepens the conflict more. But priority of political demands of values conflicting with each other can be identified by a cluster of principles achieved by rational mind to some extend. What Rawls tries to do is exactly this: Developing a rational priority method to overcome priority problem. In *Political Liberalism,* Rawls tries to achieve such a solution by pointing out the public reason. At this point, Rawls converts the rational mind into public reason. So, the next chapter will be about the Rawlsian method.

2. The Codes of Overlapping Consensus

As told before, the main problem of making a pluralist constitution apparently results from a kind of disunity in deciding where the limit of fundamental rights and freedoms should start and end and defining what they –fundamental rights and freedoms- are in the constitutional framework. Because once a pluralist constitution suggests that it will satisfy all reasonable political demands of pluralist values for the sake of the principle of tolerance, almost all these demands of pluralist values tend to stay away from collective interest by asserting priority of their demands (Rawls, 2007, 102-108). Political philosophy, throughout the history of political thought, has suffered from an effort to reconcile the weightings of intuitions emerging from fundamental matters such as freedom and justice (Berlin, 2010, 52). This, firstly, creates uncertainty or can be called a kind of chaos, in the process of doing politics. Because, for example, when fundamental cases such as justice or freedom gain currency politically, everyone approaches the case through their intuitions that point out the right of their side.[1] The main reason why there are many intuitions in such fundamental cases is that such cases are not what can not be materialized by rationalism agreed by everyone. The relativity of such abstract cases creates different intuitions[2], resulting in the fact that rationalism may seem to begin to consume itself silently.[3]

Even though meanings of fundamental cases such as justice and freedom change from period to period, from geography to geography and so on, sketching a kind of cluster of principles agreed by common sense could be beneficial to build a society in which common idea on such fundamental cases approximately can be achieved. From this point of view, sketching such a society model apparently depends on developing a common mind. Accordingly, Rawls's method, which underlies overlapping consensus, is

entirely developing such a common mind which centralizes intuitions emerging from relativity.

3. Rawlsian Method Between Kant and Rousseau

Initially, Rawls's method of centralizing intuitions is related to discrimination between the public realm and private space by prioritizing the public realm. Because, to Rawls, these abstract fundamental assertions, such as freedom and justice, which contain relativity, can never be compromised by regarding –asserting- private space as it is in the absolute center of relativity. Instead of this, Rawls asserts a compromise that entirely relies on the public realm since it refers to the point at which rules should be obeyed by everyone (Rawls, 2007, 55-56). At this point, it can be said that the most basic instrument of Rawls's method is related to the public mind.

In this context, in order to grasp Rawls's public mind well, the main difference between consequentialism and deontology ought to be grasped well. Consequentialism is, basically, based on the result(s) of action with regard to gaining favor. So, for consequentialist philosophy taking advantage of the result of an action is more important than the moral of that action (Thomas, 2015, 2-3). So, when it is regarded within a constitutional framework, this philosophical conception means that the constitution should only regard the advantage of each individual or group rather than the collective benefit. It, basically, refers to Berlin's conception of Liberalism prioritizing *values* over collective order that must be obeyed. Practically or theoretically, providing all group's or all individuals good in a same constitution is nearly impossible. Public reason achieved by all agents in a well-ordered society totally breaks down in such Liberalism as agents would only consider their benefits rather than a collective benefit.

On the other hand, deontology mainly focuses on the sense of mission for the sake of everyone's benefit. It, mainly, refers to both Kantian liberalism with regard to his *universal moral* and Rousseau's *general will.* Kantianism plays a central role in any understanding of the difference between consequentialism and deontology (Thomas, 2015, 3). Kantian universal law is a kind of expression pointing out the fact that agents should not do an action that is not wished to be done to themselves. Such actions clearly point out the sense of mission. This means agents's actions should be universal by maximizing themselves. Kant calls this *Categorical Imperative.* (West, 2016, 41). In this sense, according to the categorical imperative, agents should not wait when the light is red just because of the law, but they should wait with the sense of mission. So, to be more clear in understanding Kantian deontology, it can be said that even if the road is completely empty and there are no formal or informal witnesses, agents should wait at the red light as the sense of mission requires that.

Such ipso facto sense of mission nearly refers to a kind of Kantian Utopia in which agents in a society act according to a cluster of morals rather than the results of acts they can benefit from. What makes the Categorical Imperative almost a kind of utopia is impossibility of acting always according to universal moral rules. At this point, Hobbesian human nature showing that human being is always in pursuit of his good stands against it to promote more realistic political order and that is why Hobbes put radical political power at the center of his political theory. It means what protects agents

from each other is not agents themselves who are always in pursuit of their good, but a radical political power. When Kantian universal law is regarded as human nature, it can be said that Kantian conception does not have a viable political basis since there is no political sanction over agents' acts that is committed only according to an ipso facto cluster of morals. Thus, *Transcendental Idealism* remains as Kantian Utopia when regarded politically.

As for Rousseau, general will primarily means a political order rather than a kind of conception based on the integrity of acts relying on a cluster of morals. In general will, agents, who willingly left their natural freedom for a civilized life, act according to only a political order that they freely established in order to have a common public life. Thus, they become citizens and from now onward their moral of acts are moral of that political order.[4] So, it can be said that there is only a slight difference between the Categorical Imperative and the conception of general will. While the Categorical Imperative orders agents to act according to a kind of cluster of universal moral for the sake of protecting agents from each other almost regardless of a kind of political order, general will points out a kind of *political good* for each agent at the end of an achieved political order. So, to be more clear, the little difference between these conceptions is the difference between acting according to moral rules regardless of what it will individually and politically cost agents and operating for political good regardless of behavioral ethics in that process.

As for moral dimension of general will, Rousseau stresses that what rules us is not "reason" totally, but impulses also (Rousseau, 1990, 82). By mentioning impulse, he means will and what frees us is that and furthermore he stresses that we act according to conscience in some cases in which reason is inadequate. So, to Rousseau, those who lost their freedom lost their moral agent identity as well. [5] In this context, agents, who are against general will, are also against moral identity and freedom of other agents. Thus, general will literally means a kind of existential moral, which is the center of political moral, and that is why it can never be separated from people. As a result, it can be inferred that conception of general will turns categorical imperative as philosophical moral into political moral by keeping moral justification of agents.

To get back to Rawls, whereas what the most important thing for consequentialism is entirely 'goods', it is 'right' for deontology. This basically shows that moral theory is based on the difference between *right* and *good.* At this point, the most important thing showing the difference is which one is being prioritized over the other. Consequentialism prioritizes good over right by defining right according to good. Because, according to the conception, agents can have their goods with rights defined according to these goods. Rawls objects to this way of reasoning and suggests prioritizing right over good. To Rawls, good without a determined cluster of rights is unacceptable. So, in Rawls's method, goods should be defined according to an achieved cluster of defined rights. Rawls suggests this way because he thinks that it leads to ambiguity to have a moral theory as everybody's understanding of good is different (Kocaoğlu, 2015, 30-31).

Rawls primarily tries to solve this methodological problem between 'good' and 'right'. To him, this methodological problem is related to intuitionism. He says there are many different intuitionist understandings as everybody's rights are different, and a such plurality of intuitionism leads to a lack of having a common sensibility (Rawls ,1999, 30). For example, in the case of social justice, whereas some groups may suggest that educated and talented people should earn more wages than others, some groups may suggest that wages should merely be distributed according to taxes (Rawls, 1999, 31). Rawls suggests promoting a certain and common intuitionist theory based on common sense and he calls this as *Commonsensical Intuitionism.*[6] (Rawls, 1999, 31). Rawls's intuitionist theory aims to have a common mind which prioritizes different intuitions according to common sense. By common mind, Rawls means common political mind, that is, public mind. Here the vital question is: *"How can agents have a common public mind while everyone's political understanding of right is different?"*. This question, in actuality, is the heart of understanding overlapping consensus.

Key points of Rawlsian answer to this question are *reasonability* and *rationality* (Rawls, 2007, 110). Rationality means that everyone is rational and in pursuit of their goods. This is a very simple human nature definition that most of political philosophers agree with. But the main problem is how people can reach their goods while their goods are in conflict with others. At this point, Rawls invites agents to be reasonable to achieve their goods consistently. So, this simply means that everyone can have their goods (Rationality) consistently as long as they have social cooperation (Reasonability). One of Rawlsian sentences summarizes this philosophical suggestion: *"This reasonable society is neither a society of saints nor a society in which everyone is egocentric."* (Rawls, 2007, 97-98). To Rawls, regarding only individual goods which conflict each other deepens the conflict more, and thus, justice disappears since there would not be a principle that shows which good should be prioritised. From this point of view, initially, a principle that will show which good should be prioritised is necessary (Rawls, 2007: 99). So, rationality requires public mind purified from a way of using the daily mind with regard to only daily good. Therefore, Rawls distinguishes the needs of free and equal citizens and the needs of patients or students by stressing that needs are different things from desires and interests. This shows that public reason contains only the former, as the former means needs and the latter means desires and interests (Rawls, 2007, 224). Thus, it can be said that overlapping consensus is merely related to a kind of 'advanced' justification of political values.[7]

By a kind of advanced justification of political values, it is meant a kind of advanced political justification of both Kant and Rousseau. As mentioned before, an overlapping consensus which is the heart of *Political Liberalism,* is based on a cluster of rights which are prioritized over goods. This basically means that political behaviors should deontologically be upon a kind of political sense of mission rather than consequentialist way. In Kantian Categorical Imperative, this almost seemed philosophical moral rather than political moral. So, it can be deduced that Rawls makes Kantian Transcendental Idealism a kind of Transcendental Realism by enhancing political moral via Kantian deontology. Similarly, while Rawls develops Kantian moral conception politically, he also improves Rousseau's political conception by bringing conscience into the political context as common sense. This means that general will based on enlightened absolutism gains Rawlsian modern political moral based on pluralism within an overlapping

consensus.[8] Thus, it can be said that overlapping consensus takes its political moral from Kant while it takes its political context from Rousseau.

After codes of overlapping consensus are mentioned methodologically, its political reasoning should also be mentioned. As told before, overlapping consensus aims to develop a common political ground in democratic societies via a common political moral. The requirement of this results from the fact that late modern democratic societies are pluralist. So, political justice is one of the most important problems of such societies as they contain comprehensive different philosophical, religious and moral doctrines. The primary mission of the theory is to stop any kind of sovereignty of one of these doctrines or groups over others and balance them with regard to constitutional guarantee (Rawls, 2007, 180). This shows that overlapping consensus is explicitly related to public realm. In this context, Rawls also distinguishes his liberalism from comprehensive liberalism of both John Stuart Mill and Immanuel Kant because their liberalism is related to moral principles of liberalism more than political principles (Rawls, 2007, 139). Within the statement of Kymlicka, which refers to this difference, Rawlsian project is a kind of public duty showing that agents can be communitarian in private space while they should be liberal in public realm (Kymlicka, 2016, 332). In parallel with this, Rawls urges that the agent who should change is the communitarian agent. The reason why Rawls alleges communitarian agent is that he thinks the communitarian agent is against change in both public realm and private space. Therefore, in the center of overlapping consensus, there is a very important condition for communitarian agent to become flexible in the public realm. This simply means that determined rights within the principle of reasonability in public realm are prioritized over goods of groups or agents in private space.

Whilst the Rawlsian project renders public realm in order to be liberal via common sense based on public reason, communitarians may want to draw attention to their autonomous rights in their private space. So, in the political case of abortion, communitarians who are generally pro-life supporters and liberals who are pro-choice supporters stand so conversely to each other that the theory faces with a very difficult and deep problem both politically and philosophically. As a result, overlapping consensus faces a very deep problem in the context of making liberal conception the mere truth by prioritizing public reason over autonomous values of closed groups. Next chapter will be about this conflict in addition to pro-life and pro-choice examples of Rawlsian theory.

4. An Abortion Debate Between Freedom of Religion and Individual Freedom

Before discussing this chapter, mentioning briefly how pluralism emerged may clarify understanding of late modern liberal thought with regard to the distinction between pluralism and majoritarianism. While 'basic needs' such as property, security, the fundamental right to life and so on are demanded in an understanding of classical state[9], comprehensive religious, philosophical and moral autonomous rights are demanded in late modern liberal state conception after basic needs are provided. It can be said that the primary tasks of classical state were providing basic security, property and the

fundamental right to life and so on in the era when conception of pluralism was not under discussion politically. After the industrial revolution, a nation-state form emerged by regulating the relationship between the state and the individual via an ideal (Heywood, 2018, 60-64). According to this new type of relationship, the most important thing emerged as an ideal, and the majority of citizens gathered for the sake of this ideal politically, sociologically and economically, while minority part was to obey to majority.[10] In this context, it can be said that there is an ideal in nation-state and majority represses minority politically and sociologically, not officially, on behalf of this ideal at the root of majoritarianism. This ontologically implicates a conflict that different groups who have political demands such as education in their mother tongue, indeed, are almost unacceptable in majoritarian societies whilst all citizens are equal before the law and no person or group is legally privileged (Barbelet, 1988, 2-14).

Following World War I, after macro ideologies such as Liberalism, Socialism, Fascism and etc, gained more power, form of state was initially questioned, and this also effected the connection between individual and state over conception of citizenship. Liberalism, as an ideology that theoretically gives more freedom and tolerance to individuals than other ideologies, became the prevailing ideology globally and its principles of freedom and tolerance were expanded to group rights in the 1980s. Since then, a conception of liberalism has not only been an ideology which brings individual into the forefront by giving freedom and tolerance politically, but it has also been an ideology regarding all comprehensive religious, philosophical and moral autonomous rights constitutionally, thereby the matter of equality of citizenship over minority and majority was ontologically and partly solved. Thus, it can be said that the intellection of pluralism emerged after liberalism had begun to regard group rights in conjunction with individual rights by overcoming majoritarian problems partly.

Regarding both individual rights and group rights together is the breaking point of pluralist liberal thought for this essay. What leads to such a problem is the conflict between negative freedom of individuals and negative freedom of groups. Abortion is one of the greatest examples of such a breaking point as it is related to both individual rights directly and religious freedom of some fundamental religious communities. At this point, whereas legitimacy on the demand of pro-life refers to the right to religious freedom, legitimacy on the demand of liberal citizens refers to the right of negative freedom of women. Both weightings of the justifications, in the first place, are almost equal since freedom of religion and belief and political freedom of a woman over her body are entirely equal rights. In addition to this, the famous violinist example argued by Thomson points out which right should be prioritized between mother's right to life and right to life of fetus. [11]Consequently, relativity over the priority of political demands between them appears, creating conflicting demands (Kymlicka, 2016, 328-330).

The abortion issue, which is often discussed in democratic liberal regimes, is politically and sociologically one of the challenging issues that compel Rawls's theory as to justification of political demands which underlies incomparable values. Rawls states that political liberalism approves abortion in terms of women's rights and more generally basic rights and freedoms (Rawls, 2007, 276). Rawls's claim is on the fact that protection of these rights would strengthen the value and meaning of individuals' right of self-

actualization, and doctrines which don't give these rights to women are not reasonable (Rawls, 2007, 276).

Dombrowski, on the other hand, emphasizes a different point and states that Rawls, as well as thinking that abortion right is a woman's equal political right, may allow an abortion ban on condition that only if a woman who demands abortion is exposed to abuse of political right (Dombrowski, 2001, 127). However, Dombrowski's main objection to Rawls here is that fetus can't be regarded as human in early pregnancy, and as a resulti no abuse of right is discussible (Dombrowski, 2001, 127). In that case, Rawls's condition of not being exposed to abuse of right is unnecessary, according to Dombrowski. What's more, abortion is not only an issue of liberal democracies' political right, but it is also a special example that points out how individuals interpret the world, the universe, and existence, and how differences resulting from these interpretations cause conflicting nature of value pluralism. Prior to political debates, the 'arkhe' problem, which is the first main problem of philosophy, underlies this difficult issue.

This problem appears in the claims of if a fetus is a moral aim in early pregnancy. Foremost people of the Catholic world, such as Saint Augustine and Thomas of Aquinas, approve of abortion right by using their theology as secular and pointing out that a fetus, in early pregnancy, is not a sentiment creature yet, so it cannot be defined as human (Dombrowski, 2001, 126). However, there is a lot of dissents, even within the catholic world itself, through the theories of 'delayed hominization' and 'immediate hominization'[12], about how to define a fetus (Donceel, 1970, 76). While Christian doctrine, which inherited Aristotle's belief that the soul is placed in a fertilized egg on the fortieth day, argues for their opposition to abortion due to this principle, supporters of 'delayed hominization' claim that Christian members –especially Catholics- should discuss their opinions in the public mind platform through abortion which is an important political and social issue (Dombrowski, 2001, 128).

From this point of view, it can be said that the complete abortion issue, in fact, emerged from different views and values resulting from how a fetus is interpreted. The Abortion right issue, which women have in terms of equal political rights comes up as a secondary discussion as a result of this difference. Rawls's project is not interested in how the Catholic world interprets fetus, but asks them to support their claims with public justification by public mind. With regard to this case, what Rawls's desire to establish a steady society in which fundamental religious communities who demand the freedom of religious and liberal citizens who demand their individual negative freedom can live together via overlapping consensus.

On the other hand, lastly, to underline the difficulty of the issue again, Quinn states that the abortion issue gets stuck in two points. First, as a result of the fact that scientists are in disagreement with what a fetus is, the 'arkhe' problem is most likely to continue the discussion of abortion issue; second, if a fetus is accepted as a moral aim, this dilemma appears: abortion right of women as an equal political right, or life right of a human (Quinn, 1995, 44).

Rawls tries to do this by prioritizing individual rights over religious rights as he thinks that abortion ban is a kind of violation of individual rights; thereby it is not reasonable for public mind. At this point, Rawls's theoretical deficiency totally comes up as to vagueness of which values are reasonable for public mind. This is related to which demands should be prioritized over others and the fact that how the principle of reasonability of Rawls's project will be formed. That is, Rawls's public mind based on principle of reasonability can not explain why abortion ban is not reasonable politically and why the agent who is supposed to be flexible should be a communitarian agent for social cooperation whilst the project aims to regard all comprehensive religious, moral and philosophical doctrines in conjunction with individual rights. While abortion ban is a violation of individual freedom (rights), how can the Rawlsian method of public justification explain why it is not a violation of freedom of religion?

This question furthermore points out the vagueness of political and social sense of mission, based on both Kantian and Rousseau's deontological moral as to which agent's demand or act should be approved for the sake of categorical imperative or general will. In parallel with this, while one group or an agent in a well-ordered society based on overlapping consensus should not establish political superiority over others, Rawls already gives such superiority to only liberal side on abortion matter. This shows, in fact, that liberal envisagement of overlapping consensus does not support other comprehensive religious, moral and philosophical doctrines if they are against to atomistic individualism of liberalism when public mind can not determine which 'right' should be prioritized. In abortion matter, Rawlsian deontological 'right' becomes 'good' of negative freedom of a liberal woman. This result can mean that Rawls's common sense only serves to utilitarianism of the Liberal side on this matter. So, it simply shows that such a solution is inevitable, as if there was no way beside utilitarianism in politics. This inference makes Berlin a current issue by his criticism of 'universal' Western policy over Machiavelli.

To him, pluralism is inevitable as pluralism of values is available; therefore, making a choice between values is also inevitable, both politically and individualistically. For example, this simply means that agents may support a modern education system or, on the other hand, they may support a kind of radical religious education system; but they can not support both of them at the same time. Thus, while the fact of choice establishes a pluralist ground in which values differ in a society, it establishes a conflict as to which choice (right) should be prioritized over others on critical political matters. This fact divides society into groups that make a choice, bringing forth a policy in which each choice loses others. Briefly, to Berlin, a world without a loss is impossible.

Berlin regards the fact of a world without a loss as nature of 'real' freedom. Because, he thinks that all classification and systematization of the western rationalist tradition of material progress is nothing but trying to grasp and interpret the 'eternal' universe or life via fatal means (Berlin, 2010, 261-262). This means that infinite life, which always precesses, is being tried to be turned into monotype policy, moral and society via systematized western rationalism. Thus, systematized western rationalism and determinism customize the life space of a kind of romantic, traditional or religious communities via principles of objectivity and absolute knowledge in modern liberal societies within melting pot. According to Berlin, while such drive of modern liberalism

justifies the fact of pluralism for the sake of public interest via public mind, this is a kind of attempt that turns heterogeneous form of pluralism into homogeneous form. As a result, almost all forms of life which are out of the perspective of modern liberalism face with a hazard of political exclusion and, thereby notion of pluralism disappears. This simply sabotages free will with regard to having what kind of life agents or communities prefer and Kantian freedom is violated.

In parallel with all of these, Berlin criticizes all macro ideologies, doctrines and so on via such fact of choice that he argues. To him, all of them essentially aims to take over power. He states that all philosophical, religious, and moral doctrines such as marxism, protestantism, catholicism, imperialism, liberalism, and so on, which trigger a turning point of history, aim to take over power, which is the center of Machiavelliest policy, by putting a kind of moral philosophy instead of showing real purpose of policy. All these 'big' historical cases (doctrines) could put nothing but the discourses of Machiavelli or could lead to nothing but nature of realist policy. So, to Berlin, the hidden purpose of liberalism is also taking over power; it is not distributing power equally to establish a real pluralist society. As for overlapping consensus with regard to Berlin's criticism, it can be said that the Rawlsian project (Political Liberalism / overlapping consensus) creates a kind of power of liberalism that excludes agents or groups who are out of determined cluster of deontological rights. In conclusion, as Berlin mentions, sociologically and constitutionally, creating a pluralist society is almost impossible in practice or in public realm, whereas it can be possible in private space. It is related to the fact which points out more realist or more consistent understanding of policy: *We can not regard a society in which one group takes over power via even public mind as a pluralist society.*

Conclusion

In October 2016, in Poland, which is known as one of most fundamentalist catholic countries in Europe, woman's protests against the prohibition of abortion again pointed out that such hard cases as abortion debates still continue to be relevant. In spite of the principle of tolerance of pluralist liberalism and fundamental human rights that refers to a cluster of universal rights, making a pluralist constitution in late modern pluralist societies is still too hard to even today since each conflicting political demands regard themselves as right by their sides. Regarding themselves as a right by their side is mainly due to the relativity and priority of demands. Whereas modern and pluralist liberalism asserts that those conflicting demands can be compromised by the principle of tolerance, the principle gets weak on the ground of vagueness over where freedom of pluralist values starts and ends against each other. If we assume that votes for pro-choice and votes for pro-life are equal after a referendum in a pluralist society, it can be said that relativity and priority of these demands/votes have almost equal justification between freedom of religious life as pro-life (This refers group rights) and individual rights that simply refer to negative freedom of a woman as pro-choice (This refers individual rights).

Rawls's solution for this problem focuses on how to deal with relativity and the priority of demands in this context. From this viewpoint, Rawls's project asserts that we can deal with relativity or priority problems by only public reason based on his theory of intuitionism. To solve this problem 'principally', Rawls's public reason merely requires a 'reasonable' public justification of political demands of all comprehensive ethical, religious and philosophical doctrines. Hence, public reason seems to be able to absorb relativity and priority of demands within a constitutional framework via Kantian common sense, which was turned into a political base as reasonable public justifications in *Political Liberalism.* At this point, the simple but vital question again gains importance against Rawls: *How can public reason constitutionally determine which demand should be prioritized when they have equal reasonable public justification?* This question gains importance because it is still ambiguous if a fetus is a sentiment creature in early pregnancy or not.

Herewith, in the context of abortion, if it is aimed to establish an impartial pluralist society consistently, public priority should not be determined before the scientific determination of what a fetus means indeed. In the case in which such a disputable value (meaning of fetus) is ambiguous scientifically and is incomparable, Rawls's argument is a side of atomistic individualism of liberalism automatically. This shows that Rawls's political perspective, that is, overlapping consensus, tends to establish only a kind of 'liberal majoritarian society' like Rousseau's general will or ambiguate how to make categorical imperative more political. In this sense, the deontological right of overlapping consensus as public justification with regard to improving individual rights turns into the 'good' of agents of atomistic individualism of liberalism. This also reveals a different conclusion related to the dichotomy between utilitarianism and deontology. If the deontological right of Rawls's project turns into the good of those agents, this reveals that the project tacitly supports the interest of those agents regardless they have equal public justification and, thereby, the theory becomes close to being interpreted as utilitarianism. Terminatively, deontological moral may tend to be turned into an interest of one of any philosophical interpretations. Rawlsian method of deontological moral is very close to this conclusion. Briefly, Rawls's project seems 'constitutionally' weak since the notion of public reason is weak for unidentifiable or incomparable values as to determine which political demand of a value in a pluralist society should be prioritized.

Notes

[1] For more knowledge about public realm and private realm see also Arendt, 2018.

[2]For example, when the conception of justice between socialism and liberalism as macro ideologies are compared, the differance between their conception of justice appears in their different conception of identification of human nature and natural right.

[3] At this point, a basic-comparative question may be asked: 'Do intuitions create relativity or does relativity create intuitions?'. This question could be a good starting point to overcome the uncertainity of which weighting should be regarded in the fundamental cases like freedom and justice.

[4] This also shows that rationalism could turn out to be a useless circle. However, deepening this rationalist problem philosophically is beside the mark.

[5] This analogically refers to political order in Ancient Greek. In Ancient Greek, citizens are important only for polis and all of their public acts are for the sake of polis. (see also Ağaoğulları 2011, 44-45.)

[6] By refering to Rousseau, West interprets this as: We shifted to a kind of responsible moral agent from impulse creature within civilized life (West 1998, 47-61).

[7] Rawls, firstly, mentioned this conception in *A Theory of Justice*, but it is also valid for *Political Liberalism,* and specifically *Overlapping Consensus* as well. This topic will also be mentioned in the following sentences.

[8] See also Kocaoğlu 2015, 95.

[9] In this sentence, the term of enlightened absolutism is used to refer to transformation of monarchies through republics by the effect of principles of enlightenment era.

[10] By classical state, it is meant that a state which provides basic needs such as property, security, the fundamental right to life and so on. It can be a monarchy, a religious state or a secular state.

[11] This also looks like the prevalent state form of Ancient Greek in terms of the relationship between the state and the individual regardless of the conception of the minority. At this point, Constant distinguishes liberty of modern societies from Ancients. To him, while liberty means ideal of state in ancient era, it means liberty of individual in modern era. (See also Constant 2011, The Liberty of Ancients Compared with that of Moderns) This is instructive to grasp the meaning of citizenship through political history to some extent.

[12] See also A Defense of Abortion/ Thomson , 1971.

[13] While the theory of 'Delayed hominization' means that fetus cannot be regarded as a sentiment creature in early pregnancy yet; the theory of 'immediate hominization' means that fetus can be regarded as a sentiment creature in early pregnancy. See also Immediate Animation and Delayed Hominization/ Donceel 1970, 76.

Bibliography

Ağaoğulları, Mehmet Ali. *Sokrates'ten Jakobenlere Batı'da Siyasal Düşünceler. İstanbul*: İletişim Yayınları. 2011

Arendt, Hannah. *İnsanlık Durumu.* Trans. Bahadır Sina Seçer. İstanbul: İletişim Yayıncılık. 2018.

Barbalet, Jack.M. *Citizenship: Rights, Struggle and Class Inequality*. Oxford: Open University Press. 1988.

Bellamy, Richard. "Liberalism: Political Doctrine And Impact On Social Science". *International Encyclopedia Of The Social & Behavioral Sciences* (2015) *14:* 26-31.

Berlin, Isaiah. *Liberty.* Ed. H. Hardy. Oxford, New York: Oxford University Press. 2002.

Berlin, Isaiah. *Kirpi İle Tilki.* Trans. M. Tunçay, Z. Mertoğlu. İstanbul: İstanbul Bilgi Üniversitesi Yayınları. 2010.

Constant, Benjamin. *The Liberty of Ancients Compared with that of Moderns*. Indianapolis: Liberty Fund. 2004.

Dombrowski, Daniel A. *Rawls and Religion: The Case for Political Liberalism.* New York: State University of New York Press. 2001.

Donceel, Joseph F. "Immediate Animation And Delayed Hominization". *Fordham University Press 31*(1970)*:* 76-105

Fukuyama, Francis. *Güven: Sosyal Erdemler ve Refahın Yaratılması.* Ankara: Türkiye İş Bankası Kültür Yayınları. 1998

Gray, John. *Liberalizmin İki Yüzü.* Trans. Koray Değirmenci. Ankara: Dost Kitabevi Yayınları. 2003.

Heywood, Andrew. *Siyaset*. Trans. F. Bakırcı. Ankara: BB101Yayınları. 2018.

https://www.theguardian.com/news/2017/nov/30/how-polands-far-right- government- is-pushing- abortion-underground, (Accessed in 03.01.2018.)

Huntington, Samuel P. *"The Clash of Civilizations?".* New York: Simon&Schuster. 1996.

Kocaoğlu, Mehmet. *John Rawls: Adalet Teorisi ve Temel Kavramları*. Ankara: İmaj Yayınevi. 2015.

Kymlicka, Will. *Çağdaş Siyaset Felsefesine Giriş.* Trans. E. Kılıç. İstanbul: İstanbul Bilgi Üniversitesi Yayınları. 2016.

Locke, John. *Hoşgörü Üstüne Bir Mektup.* Trans. M. Yürüşen. Ankara: Liberte Yayınları. 2017.

Quinn, Philip L. "Political Liberalisms and Their Exclusions of the Religious". *American Philosophical Association 69 (2)*(1995)*:*35-56.

Rawls, John. *Siyasal Liberalizm.* Trans. M. Fevzi Bilgin*.* İstanbul: İstanbul Bilgi Üniversitesi Yayınları. 2007.

Rawls, John. *A Theory of Justice.* Cambridge, Massachusetts: The Belknap Press of Harvard University Press. 1999.

Rousseau, Jean. Jacques. *İnsanlar Arasındaki Eşitsizliğin Kaynağı*. Transl. Rasih Nuri İleri. İstanbul: Say Yayınları. 1990.

Thomas, A.Jean. "Deontology, Consequentialism And Moral Realism". *Minevra – An Open Access Journal of Philosophy.*(2015): 1-4.

West, David. *Kıta Avrupa Felsefesine Giriş: Rousseau, Kant ve Hegel'den Foucault ve Derrida'ya.* Trans. A. Cevizci, H. Arslan. İstanbul: Paradigma Yayıncılık. 2016.