

## Reconsidering Public Sphere, As Necessary Precondition of Personality

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### 1. Introduction

Great number of the contemporary liberal approaches on the legal systems focuses on rethinking to public and private distinction in order to ensure liberal premises of legal ideology. In the present time, philosophical articulation of liberal premises whereof, while sometimes such as contractarian philosophy of Rawls or sometimes in the anti-rationalist way according to Humean line of thought liking to Hayek or Nozick, overlap with the temporal victory of capitalist social ideologies at the expense of social equality and welfare demands that they are all impinging public sphere of legal system, according to hyper-individualist agenda of radical liberalism. Contrary to the eighteenth century revolutionary era of liberalism, the overall conservative liberal politics, cast away all assessments of welfare state, even though every legal system would

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have necessarily concerned on public sphere and social well-being. However, we are nowadays in an ongoing process for advancement human rights, in which identity rights became ostensible and human dignity redefined under the newborn headlight, but such and such commitments could not yet develop appropriate legal remedies; moreover they are becoming solely political allegations that may cause to disentangle human rights from public sphere belonging to greater society. In sum, while those developments beget separation between political and legal means, distorted public sphere conveys all legal provisions on behalf of every layperson or group to an ineffective condition.

The contemporary legal thinkers aforementioned may be considered as made contribution to liberal political and legal ideology at the expense of political interests of greater public which encompass working class people. To some extent, we must ponder that philosophy would not be reduced to an ideological means in order to progress or to enchant either of mundane interests belonging to certain individuals regardless to well-being of society. Moreover, philosophers have to take part of responsibility in order to reconsider society and law, in cognisance of greater majority of human beings in contemporary world and must rejuvenate public concern appropriate to civic responsibility and social well-being. Therefore, I do not consciously use fashionable "oppressed groups" conception in public context, because such conception is open to distortion which might be (frequently unconsciously) perpetrated by post-modern group rights exponents. Such conception is imbued by local and consummation cultures definable according to communal relations, at the expense of the common assessments of civic life and constructive cultural images of modernity<sup>1</sup>. Nowadays, ostensible renaissance of unbridled liberalism, traditional communal group cultures depending on either of religious, ethnic or gender identities and post-modern gentrification of consumerist cultures, under super ordination of the MacDonal'd's culture that they totally opened a way to *divide et impera* policy of the new imperialism, where imperialist power centres, economical or political, abuse such and such rights, by which find occasion to crumble all societies according to their interested political strategy.

A legal order has inherently public concern which renders its function in a greater system of institutions, under a real or imaginary consent of

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<sup>1</sup> Cf., Iris Marion Young, *Justice and Politics of Difference*, New Jersey, Princeton Uni. Press, 1990, *passim*.

its subjects. As having been pointed out by Jürgen Habermas<sup>2</sup>, there are more or less tension between facticity of a legal order and validity in any extent which is resolvable due to the system's capability to create. Any legal order, primeval or highly civilised needs public approval that grounds on either gratification of utilitarian interests or through pragmatics of legitimisation discourses or both of them. This legal order in action depends on not only legal norms but also an admixture of extra-legal means in congruence with functioning legal apparatuses that, at the same time, has to be backed by ordering ideas of an imaginary social order residing in the mental life of subjected human beings (i. e. "citizens" for democracy) in aggregation. To a greater extent, validity claim is an allegation of popular acceptability of imaginary social order, which is overtly or covertly proposed by agents of actual legal life, which is not inherently or automatically emanate from legal order, contrary to Austin's assumptions of command theory<sup>3</sup>. In this manner, there is a tension between facticity and validity that are inevitable façades of legal system. Legal philosopher generally witnesses this tension that his or her professional concern contains two contradictory alternate premises, namely conservative defensive attitude of present legally uttered order and critical reconstruction of a purposive imaginary social order for the sake of any human ideal. The tension between facticity and validity necessarily compels philosopher to make disenchantment on public concern of the present legal order according to philosopher's actual stance, in mutuality with pre-given or prospective political attitudes as regards socially definable interests and the present power system. When we are decided or compelled to speak of legal order, our locution concomitantly accentuate the power, such as like Nietzsche or Foucault and legitimisation language liking to Kant or Habermas.

## 2. The Three Historical Modes of Legal Validity

Habermas<sup>4</sup> pointed out that legal validity might be classified within two main social milieus, in which the first was dependent to traditional or customary rules, the second depended rational validity claims.

<sup>2</sup> Jürgen, Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, Translated by. William Rheig, Cambridge, Polity Press, 1998 (c. 1996), *passim*.

<sup>3</sup> Austin, John, *Lectures on Jurisprudence*, Vol. I, London, John Murray, 1873, pp. 81-352, *passim*.

<sup>4</sup> *Op. cit.*, p. 32.

Habermas's classification partially reiterated former historic classifications of modernity thinkers, which had been emerging since earlier stages of modernity, depended on the pivotal notion of differentiation between uncivilised, less civilised and civilised social life forms. Summarily, I refer some pre-eminent modernity thinkers, even though they were rationalist or not, who unanimously pointed predominant role of rationality. Firstly, Giambattista Vico addressed in his inaugural oration at the Royal Academy of Naples on October 20, 1723 that he heralded the power of reason was abolishing heroic age and opening a way in which human beings would cultivate godhead capacity, inherently present in human mind<sup>5</sup>. Then, Adam Ferguson, albeit his anti-rationalist way of thought, wrote on 1767 about human societies that they were in advancement from rude to the polished stages how in his present time civic arts developed and public justice was a fundamental means of civil society that prevents warlike relations in civic life and achieve sustainable peace and mutual affection<sup>6</sup>. Similar point of view had been set forth by Auguste Comte, who was one of the pre-eminent founders of sociology, that he claimed three stages of unified evolution of human societies<sup>7</sup>, which contained three conjectural epochs suitable for theological, metaphysical and positive modes of thought. Another similar approach was carried on by Henry Sumner Maine that he diversified historical societies according to the status relations and the contractual relationships<sup>8</sup>. Another one is Max Weber who differentiated modes of political legitimacy that depended traditional, charismatic and legal-rational legitimating of power structures that the latter of which indicated superiority of bureaucracy and formal and substantive rationality of law, corresponding with modernity and rule of law<sup>9</sup>. Such differentiations indicated different legitimising discourse articulations upon how the relationships between social structures and power systems. Before Weber, we ought to apply well-known criterion of Karl Marx, written in the "Preface" to A

5 See, Giambattista Vico, "On the Heroic Mind," (Translated by Elizabeth Swell and Anthony C. Sirignano), *Social Research*, Vol. 43, No: 4 (Winter 1976), pp.886-903.

6 See, Adam Ferguson, *An Essay on the Civil Society*, New Edition, (England), Basil, MDCCLXXXIX, p.235 et seq.

7 Auguste Comte, *The Positive Philosophy*, Translated by., Frederick Harrison, Vol. II, Batoche Books, Kitchener, 2000 (c.1896), p.149 et seq.

8 Henry Sumner Maine, 1901, *Ancient Law*, 17th imp., London, John Murray. 1901, *passim*.

9 Max Weber, 1954, *Max Weber on Law in Economy and Society*, Ed. by. Max Rhinestein, Translated by, Edward Shils and Max Rhinestein, New York, Simon and Schuster, 1954, pp.349-356.

*Contribution to the Critique of Political Economy* (on 1859) that social structures of all classed societies were (and are) dependent to power system and approval through ruled people's created or taken for granted consent, which he spoke the super-structure<sup>10</sup>. While such public consent is totally mixed product of affective and rational means, but ideological discourse articulation has overwhelming function based on rational mental operations. In sum, despite criticisms according to miscellaneous life worlds and political ideologies, the *polis*, *res publica*, *commonwealth* or *public sphere* concepts denote common principles and standards which can make modern inclusive society sustainable, by which its government can avail approval of inferior status groups or social classes. Public sphere necessarily emanates from two sources that the first is political power's concern and the second is pre-given and rationally elucidated sources of compliance corresponding to the present mentality of ruled people.

A legitimised legal order is sum total of valid legal norms and provisions that is construed through social imaginary that is an outcome of social imaginary structured by miscellaneous non-material elements of culture, which were emerged spontaneously or created in reflective manner. While it is a sum total of cultural patterns of ideals, purports an imagination about history of society, which is expression upon present time and future social ideal. Public sphere is common concern of a legal community that cannot be enlightened in the abstract political imagination of liberalism through utilitarian or market model, that is, the notorious model presumes public sphere very strict sense like as a joint-stock company within which citizens assumed as shareholders<sup>11</sup>. On the contrary, public sphere is constructive element that makes legal order an imaginary sanctuary for favouring lower class individuals and worsen off persons in general, even if they would not repay the cost of governmental subsidiaries. Regarding to pre-capitalist and capitalist modes of production, I prefer to draw up a summarised classification in order to appreciate main desiderata of uncivilised, civilised but pre-modern and civilised-modern life forms of historical societies that their predominant

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<sup>10</sup> See, Karl Marx, *A Contribution to the Critique of Political Economy*, Notes by R. Rojas, Moscow, Progress Publishers, 1977. In <http://www.marxists.org/archive/marx/works/1859/critique-pol-economy/preface.htm>

<sup>11</sup> Nozick, the co-called radical liberal utopia writer, delineates his ultra-minimal state in the form of dominant protective association (i.e. liking specially hired security personnel) that its clients pay fees in consideration with its service. Robert Nozick, *Anarchy, State, and Utopia*, New York, Basic Books, 1974 (c.), p.12, *et seq.*

social order are (and were) respectively depending on intertwined cultural patterns, political domination and rule of law.

The first encompasses traditional and uncivilized societies, which were studied by anthropologists and ethnologists upon historical or present day examples. Primitive societies have a meaning system depended icons which are emotively condensed symbols attached to the constructed social identity. As having been demonstrated by Claude Lévi-Strauss, who studied upon metonym and metaphor articulation of symbols and signs in primitive societies, that in such a society, all icons, signs and totemic classifications are articulated in a meaning system<sup>12</sup>, liking to meaningful articulation of linguistic signs as realised in any language. As members of social aggregation, human beings create symbols at the first level and consequently they articulate symbols and signs in a structuring meaning system. I share the point of view, proposed by two different authors who are Assman and Connerton,<sup>13</sup> that social remembrance systems depend on a constructed cultural pattern how articulate present and past stories of society. In primitive societies, remembrance system depends on oral narratives that were supported by a hot understanding; in so far heating is fulfilled by ritualistic reiteration of mean condensing acts through peculiar mythological belief system with contribution of face-to-face relationships. As Durkheim and Malinowski pointed in different dates<sup>14</sup>, common assessment of social aggregation in an illiterate society is mutual solidarity (Durkheim says "mechanical solidarity") which is embodied by certain taboos, shrines and sacred objects articulated in a monolithic legend, whatsoever articulation is performed through interactive practice of impersonal social thought. Consequently, certain social traits, which protect social solidarity, represent public sphere under the highlight of taken for granted common good of society. When we compare this mental state in comparison with the sum total

<sup>12</sup> Claude Lévi-Strauss, *Yaban Düşünce*, Translated by., Tahsin Yücel, Istanbul, Hürriyet Vakfı, 1984 (Original: *La pensée sauvage*, Paris, Plon, 1962), *passim*.

<sup>13</sup> Jan Assman, *Kültürel Bellek, Eski Yüksek Kulturlerde Yazı, Hatırlama ve Politik Kimlik*, Translated by, Ayşe Tekin, Istanbul, Ayrıntı 2001 (Original: *Die Kulturelle Gedachnis, Schrift, Erinnerung und Politische in frühen Hochkulturen*, München, C. H. Beck, 1997), p.69 *et seq.*; Paul Connerton, *Toplumlar Nasıl Anımsar?*, Translated by., Alaeddin Şenel, Istanbul, Ayrıntı, 1999 (Original: *How Societies Remember*, Cambridge University Press, 1992).

<sup>14</sup> Emile Durkheim, *The Division of Labour in Society*, Translated by., Joseph Ward Swain, New-York and London, The Free Press, 1964, (c.1915), *passim*; Bronislaw Malinowski, *Crime and Custom in Savage Society*, Littlefield, Adams and Co., 1982, *passim*.

common assessment of philosophy and modern science, it may seem to us an inappropriate mismatch, but hot understanding of ritual makes available its inner coherence<sup>15</sup>.

The second denotes civilised, but traditional (or pre-modern) societies that their social organisations primarily depend on social stratification, under the superordination of highly diversified full-time political power. In this context political power persuades ruled people through priestly legitimisation rhetoric. Since earliest hydraulic civilisations of Middle-East, up to modernity, all pre-modern civilised societies had been in constellation around central political domination that construct larger complex society through political domination and influence, as either small scale monarchies or greater imperial kingdoms. In pre-modern patrimonial sovereign bodies, public realm is primarily a constellation around overwhelming authority of sovereign, regardless to bargain power of subjected people, because it is absent. The belief system supports public image through professional priestly practice of certain religion, in which priest is patriarchal teacher of people, due to control individual conscience by means of religious belief. As Assman<sup>16</sup> concluded, common understanding of such larger scale societies depend upon centralised reason, cold understanding of archives, religious doctrines and history to any extent unionised in a canon which comprise formally blessed worldview, sacred norms and social control through legal and pastoral action. In this context, religious texts directly construct social image and common good conception through intertwined religious and legal discourse and rhetoric. Although, ritualistic elements and hot understanding remain, furthermore they function to stiffen religious and legal mentality, but they undertake ancillary function in comparison with literary action of intellectuals and priests, in so far as they were directly or indirectly subservient inferiors of sovereign.

The third is modern society that, so far as under present conditions socialist societies destructed, it encompasses only capitalist societies. We may set forth an additional difference and sub categories under the heading of two typical examples, that firstly auto-kinetic modernity that developed onwards industrial revolution of British Empire and second

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<sup>15</sup> Cf., Ernst Cassirer, Ernst, *İnsan Üstüne Deneme*, Translated by, Necla Arat, İstanbul, Remzi, 1980 (Original: *Essay on Man*, Yale Uni. Press, 1944), p. 83; Raymond Firth, *Symbols Public and Private*, London, George Allen & Unwin, 1975 (c.1973), p. 54 et seq.

<sup>16</sup> *Op. cit.*, p. 105 et seq.

constructive modernisation of Germany, Japan and Turkey in the last two decades of nineteenth century. As great number of sociologist pointed, modern society is outcome of miscellaneous effects of social changes in a manner how capable to alter traditional society. I do not repeat well-known story of economic modifications, in which, we may cite commercial revolution, developing world market, colonialism, industrial revolution, surplus value exploitation etc. They are true, but I want to point out that public realm of modern society underwent a substantive alteration which caused radical change in the very roots of public sphere. Regarding to a pre-modern civilised society aforementioned, a political sovereign strictly defines public realm according to his political interest where clergy is main political incumbent for controlling ruled people through patriarch authority. On the contrary, a modern society, as Habermas pointed, is environment of communicational<sup>17</sup> rationality which is depending on robust or distorted communication whether or not political sovereign recognises ruled people's rights to express their group interests, sooner or later they can avail bargain power at any rate.

The different philosophers of modernity pointed that modern age displays a radical shift from pre-modern of how social aggregation planned or elucidated according to reflective and constructive ideas and ideations. Immanuel Kant defined his idealised "enlightened" men on 1784 that they act according to guidance of their rational choice; henceforth they are capable to establish a rational society<sup>18</sup>. Therefore, rational discourse articulation and argumentative communication became emergent whether or not actual democratic political life was existent and that reinstate mode of political legitimisation different to the former and inherently necessitate *rule of law* principle in all legal domains. At the same time, it must settle reasonable political sovereignty and sustainable legal sphere for everyone which is able to convince its subjects and incumbents. John Stuart Mill, despite he was an utilitarian, not a rationalist, alleged at 1869 that modernity must redefine the pre-given roles and statuses of human individuals, including women according to their rational choice. He also alleged that the present social order of his time was outcome of modernity which constructed by deliberative achievement through abolition of bad instincts and related customs, that is the re-establishment potential of modernity through new public:

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<sup>17</sup> See, Habermas, *op. cit.*, Ch. I, pp. 1-41

<sup>18</sup> Kant, Immanuel, 1784, "What is Enlightenment?" Königsberg in Prussia, 30th September, 1784, *passim*. In <http://eserver.org/philosophy/kant/what-is-enlightenment.txt>



"However any of our present institutions may have begun, it can only, they think, have been preserved to this period of advanced civilisation by a well-grounded feeling of its adaptation to human nature, and conduciveness to the general good. They do not understand the great vitality and durability of institutions which place right on the side of might; how intensely they are clung to; how the good as well as the bad propensities and sentiments of those who have power in their hands, become identified with retaining it; how slowly these bad institutions give way, one at a time, the weakest first, beginning with those which are least interwoven with the daily habits of life; and how very rarely those who have obtained legal power because they first had physical, have ever lost their hold of it until the physical power had passed over to the other side. Such shifting of the physical force not having taken place in the case of women; this fact, combined with all the peculiar and characteristic features of the particular case, made it certain from the first that this branch of the system of right founded on might, though softened in its most atrocious features at an earlier period than several of the others, would be the very last to disappear."<sup>19</sup>

Public sphere of any modern society is juxtaposition both of the power and consent, in other words it is a place for citizen between rebellion and pious subjection, even though public sphere cannot dethrone political sovereign, can civilise it<sup>20</sup>. Additionally, public sphere gave impetus to dissidents to express their criticisms through rational discursive acts either as progressive demands or as revolutionary initiations. As Habermas pointed, while modern society is specified as communicational rationality, in which public sphere is constructive for social fabric to a greater extent that it purports legally legitimised power, i. e. backing by legal provision and actual or alleged popularity via reflective consent of citizens. I do not intend to establish naive syncretism in order to reconcile the power structure and its popular approval, but to the point that public sphere is a necessity for political domination through *rule of law* principle that make available actual or prospective reconciliation between individual rights and social well-being, contrary to radical (i.e. dehumanised) liberal rhetoric of Nozick or Hayek<sup>21</sup>.

<sup>19</sup> See, John Stuart Mill, "The Subjection of Women,(1869)" *On Liberty and Other Writings*, Ed. By., Stefan Collini, Cambridge, Cambridge Uni. Press, 1995, p. 129.

<sup>20</sup> Cf., Michel Foucault, *Toplumun Savunmak Gerekir*, Translated by, Şehsuvar Aktaş, 2<sup>nd</sup> imp., Istanbul, Yapi Kredi, 2003 (original, "Il faut defendre la société," *Cours au College de France (1975-1976)*, Seuil/Gallimard 1997), *passim*.

<sup>21</sup> Both of the two liberal philosophers displayed extraordinary ardour to limit public

### 3. Public Order and Personality

As aforementioned, public sphere is necessary constructive of legally ordered society, which it is not an example of heavenly well-ordered society or an environment of unbridled individual interests, but it is only creature of rationally directed social aggregation. Modernity was inevitable outcome of capitalist development that blindly and unre-servedly dismantled traditional patterns of social aggregation without any sustainable prospective solution. Henceforth, modernity necessarily requires private persons as constructive agents, there is no solution concerning to whom, except becoming rationally directed human individuals. Thus, public sphere of the modern society is derivative of interaction and debate of rational human beings that can be deliberately constructed respective to otherness and dependent to the available dialectic of power allocation among aggregates. As far as I presume, Immanuel Kant, who was the first architect of congruence between rational legal order and individualistic premises of liberalism, concluded diligently that public sphere is an equilibrium (i.e. uneven and interchangeable equilibrium) between political liberalism and legal order in his "Introduction" of *Science of Right* on 1796: "The universal law of right may than be expressed thus: 'Act externally in such a manner that the free exercise of thy will may be able to coexist with the freedom of others, according to a universal law'"<sup>22</sup>. According to Kant, coexistence is not a temporary social condition; on the contrary it establishes freedom guaranteed by legal provisions, instead of provisory rights conferred by the State of Nature.

However, at the outset of modernity, public sphere had been presumed as a social condition established in a conjectural procedure that depend on enacted social contract by rational human beings, aiming to live in civil society. Political liberalism was the womb of public sphere of

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sphere when it permeates individual rights and liberties delineated by classical liberal rhetoric. Albeit from their sober preference of minimal or ultra-minimal (Nozick) state, democracy, which may be main lever of communicative rationality, may be postponed or totally relinquished for the sake of right of property and free market. Cf., F. A. Hayek, *Law, Legislation and Liberty*, Vol. I (Rules and Order), Chicago, The University of Chicago Press, 1983, pp.55 *et seq.*, *et passim.*; Nozick, *op. cit.*, pp. 26-53, *et passim.* Though, Nozick had not felt any enthusiasm for democracy, additionally he equated it with slavery in inconsistent way of think. He is inconsistent because he had initially begun along the line of Lockean liberalism, but reached to shelter Herbert Spencer's Social Darwinist allegations on legislation (See, *Ibid.*, pp.280-292).

<sup>22</sup> Immanuel Kant, *The Philosophy of Law: An Exposition of the Fundamental Principles of Jurisprudence*, Translated by, W.Hastie Edinburgh, Clark, 1887, p. 46.

modern society, but it was an uneven provisory condition that might be broken down without a legal frame established, that legal frame could broaden social understanding, transient to individual interest. And, notwithstanding the controversial nature of Hegelian speculative mode of thought in his *Philosophy of Right*, we must participate his theses on legal order which may traverse divided social interests:

“The principle of rightness becomes the law (*Gesetz*) when, in its objective existence, it posited (*gesetzt*), i. e. when thinking makes it determinate for consciousness and makes it known as what is right and valid; and acquiring this determinate character, the right becomes positive law in general. (Sec. 211)

“It is only because of this identity between its implicit and its posited character that positive law has an obligatory force in virtue of its rightness. In being posited in positive law, the right acquires determinate existence. In such existence there may enter the contingency of self-will and other particular circumstances and hence there may be a discrepancy between the content of law and the principle of rightness” (Sec.212)<sup>23</sup>

Contrary to taken for granted deregulation demands of neo-liberals, the three basic rights subsumed in liberal creed, that is life, liberty and property, cannot be ubiquitously presumed in recalcitrant manner, without any regard to the pre-established or newborn legal provisions. Moreover, legal order assures liberal basic rights in real or imagined rationally directed public sphere that carries on them in a kind of resolution permeates one another like melting. Hence, legal order is not only utter abstract liberal values, but combines them in a congruent system in which miscellaneous concepts of justice become harmonious, like Kant remarked in sec. 41 of *The Science of Right*.

“The formal Principle of the possibility of actually *participating* in such Right, viewed in accordance with the Idea of a universally legislative Will, is *Public Justice*. Public Justice may be considered in relation either to the Possibility, or Actuality, or Necessity of the Possession of objects — regarded as the matter of the activity of the Will—according to laws. It may thus be divided into *Protective Justice* (*justitia testatrix*), *Commutative Justice* (*justitia commutativa*), and *Distributive Justice* (*justitia distributiva*). In the *first* mode of Justice, the Law declares merely what Relation is internally *right* in respect of Form (*lex justii*); in

<sup>23</sup> Hegel, *Philosophy of Right*, Translated by., T. M. Knox, London, Oxford University Press 1979 (c.1952) pp. 134-136.

the *second*, it declares what is likewise externally in accord with a Law in respect of the Object, and what Possession is rightful (*lex juridica*); and in the *third*, it declares what is right, and what is *just*, and to what extent, by the Judgment of a Court in any particular case coming under the given Law. In this latter relation, the Public Court is called the *Justice of the Country*; and the question whether there actually is or is not such an administration of Public Justice, may be regarded as the most important of all juridical interests."<sup>24</sup>

Finally, personality is active component of legal system<sup>25</sup> which embody public sphere in wholeness, i. e. public order which embodied by very construction of socially rehearsed common reason as Hegel<sup>26</sup> said, "the purely positive side of law lies chiefly in this focusing of the universal not merely on a particular instance, but on an isolated case, i. e., in its *direct* application." Personality is a system depended category that can survive whether or not public sphere is continuously robust. In a democratic society, egalitarianism is the core principle of public sphere

<sup>24</sup> Kant, *The Philosophy of Law*, p. 155.

<sup>25</sup> Regarding to the content of personality in civil law with respect to capacity and statuses, the natural person denotes human being, but it is a legal entity that redefined as legal personality, similar to corporate bodies. Austin demonstrates it from his positivist point of view: "The term '*person*' has, therefore, two meanings, which must be carefully distinguished. It denotes a *man or human being*; or it signifies some *condition* borne by a man. A person (as meaning a man) is one or individual: But a single or *individual person* (meaning a man) may sustain a *number* of persons (meaning conditions or status). The erroneous definition of a *person* to which I have already adverted, probably arose in part from a confusion of these significations. Every *status* or condition consists of rights or duties; or consists of both. And if we impute to a person (as meaning a *man*) this essential of a person (as meaning a *condition*), it will follow that a person (as meaning a man) must be defined thus: A man invested with rights, or subject to obligations." (Austin, *op. cit.*, p. 363. Accents were belonging to Austin). Having been remoulded by natural lawyers, natural person seems as human individual ubiquitous; but great number of facts from legal history reveals that actual content of the person enlivens within constraints of a legal order. According to which legal person is a constructed legal entity which dependent to affiliated legal ideology anyhow. Roscoe Pound pointed to similar opinion that his conjectural fourth stage of the evolution of legal thinking confers "legal personality" to all human beings, which a entity converges both of moral and legal units in the same legal person (see Roscoe Pound, *The Ideal Element in Law*, Indianapolis, Liberty Fund, 2002 (c.1998), pp.149-150.). The term "person" is a concept worthwhile to research on its archaeology. It suffices to refer relationship between *proswpon* and *jersu* (correct writing may be *jersu*) from Greek tragedy (the term denotes Latin synonymus *imago* and *persona*) which dependent to the role allocation in a certain play. See., Jean-Marc Trigeaud, "La Personne," *Archives de philosophie du droit*, Tome. 34 (1989), pp.104-105.

<sup>26</sup> *Op. cit.*, p. 137.

that capable of alteration through free communicative act whether or not weighting the *pros* and *cons* arguments for strictly liberal principles. Needless to say that legitimacy through free communication is an inherently democratic process that steers society into democratisation by all means, even though actual democratic procedures are absent.

#### 4. Conclusion

Modernity and enlightenment on the one hand is about social state, on the other hand is mental achievement of human condition that both of them are twin sisters made available reflective equilibrium among human individuals. They contrive a new mode of life irreversible in a form how newly emergent human matters can be cope with through reflective action. Henceforth, human individual redefined as rational legal person in the milieu of legally framed public sphere.

I assume post-modernity as highest and radicalised stage of modernity, in which rationality of modernity regressed with confluence of utilitarian discourses and iconic cultural effects, which gradually reduce public sphere in favour of dehumanised liberal political ideology. While post-modern consummation culture makes redundant or makes fruitless the deliberation among citizens (more correctly it makes citizen consumer of utilitarian and cultural commodities), it reinforces only pre-established power of property owners through gloomy political economy of mass media. Meanwhile, biggest owners of capitals or assets are wanting to dilute public sphere in order to immune themselves from liabilities (especially from tax liabilities) which are necessary to survive public concern. If public sphere can actually be diminished, smaller public would only drive the society into harsh conflict of unbridled interests. Public sphere is conciliation between power system and public demands that it is the actual protector of democracy and rule of law.

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