DEMOCRACY AND POLITICAL LEGITIMACY: IS DEMOCRACY A NECESSARY CONDITION FOR POLITICAL LEGITIMACY?

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Abstract

The article argues that democracy is not a necessary condition for political legitimacy. Principle of equal-consideration does not provide a solid foundation of having a democratic decision-making procedure for political determinative projects. The paper suggests we evaluate the political instruments in terms of their exclusionary effect so that a more meaningful discussion could be held. The result of that evaluation shows that the notion of political legitimacy may be relativistic to a particular historical point of time, and thus, whether a political entity is legitimate or not is not depended on the form of the entity in question itself.

Keywords: democracy, political legitimacy, principle of equal-consideration, equal-exclusionary effect, democratic intrinsic value

1   INTRODUCTION

The problem I intend to solve in this paper is this: is democracy, defined below, a necessary condition for the legitimacy of a political entity. In my view, the claim that democracy constitutes a necessary condition for political legitimacy is a false statement. At most, democracy is one of the many political instruments that brings out one of the main political ideals, namely, the ideal of equality, in the political domain.

At the heart of the arguments presented in this paper lies the following claim: the *principle of equal-consideration*, which makes up the essence of democracy, does not make democracy intrinsically valuable. The reason for this is because, first of all, the principle is too dominating, it silences out other principles that may deserve priority for the task of securing justice. Secondly, this dominating feature may be due to the cause that the focus of our philosophical investigation with regarding political legitimacy is constructed upon a discussion that did not focus exactly on the purpose of political determinative projects, namely, to achieve justice. Perhaps the problem is not with its nature of dominance whatsoever, but that we have mistaken the proposition to be supreme but in fact it is contradictory in nature.

I will begin the paper by laying out an analytical framework that would be useful for the philosophical investigation so to make the task more comprehensible and logical. We then proceed to the analysis of the principle

of equal-consideration (PEC), which I take it as the essence democracy. The paper will then examine whether there is a contradiction within the principle, and will conclude that there may be a contradiction. Solving the contradiction requires us to look at the matter from a different angle. The paper believes that the key lies with the principle of equal-exclusionary effect (PEEE), and gazing through this new lens will help us build a better foundation for any philosophical investigation on the topic of political legitimacy in the future.

2 MODUS OPERANDI – FRAMEWORK FOR ANALYSIS

A. *Definitions and Operational Terms*

As with all projects of inquiry, a set of clear and focussed definitions will help us navigate more effectively. In this part of the section, we will go through swiftly on the relevant terms needed for the understanding of this paper. To begin with, let us start with the term *democracy*. For the purpose of this paper, democracy should be taken to mean a type of decision-making procedure that political institutions adopt when determining on any political matters (Roemer, 1999: 57). Descriptively speaking, democratic decision-making procedure (DDM), be it direct or representative, entitles citizens to elect legislations and other related affairs in a collective manner (Machin, 2012: 103).

The objective of democracy, as some theorists put it colourfully, is to resolve the original sin of disagreement. The logic of disagreement can be formalized as below:

Analysis 1.0. Logic of Disagreement.

P1: Individuals disagree about many subjects, including political matters, due to the various factual circumstances, abilities in making mistakes, and acquisitions of bias, just to name a few, that one experiences in life, individuals inevitably adopt different standpoints from each other.

P2: This difference may be fundamental, for each individual may disagree on what constitutes their disagreement, including how the disagreement could be resolved.

P3: Thus, individuals are unable to resolve any disagreement, because each method of resolution is exposed to disagreement. (From P1 and P2)

P4: Hence, an *infinite regression of disagreement* may be presented (at P3) (Waldron, 1999: 295; 2006: 1368).

Without any settled or agreed procedure as to how we could meaningfully discuss about what we disagree, we could never be able to resolve any kind of disagreement. Hence, this could be detrimental to the task of achieving justice. One way of resolving this potential infinite regression is to come out with a compromise policy that could embrace

disagreement and yet be able to promote and achieve justice at the same time. Christiano (2008) argues that since we are unable to make a consensus out of all disagreements, our focus should be whether the advancement of interests is fair and embrace disagreements as they are. The way to achieve this state of affairs is to add a 'publicity requirement' to individuals' deliberation, making sure that the procedure is fair. In doing so, we satisfy the minimal principle of justice, being *nemo iudex in causa sua* (justice must be seen to be done) (2008: 101).

Apart from the different views on how to deal with the logic of disagreement, theorists also have different views as to which conception of democracy they ought to adopt. In short, there are two conceptions of democracy, *viz.*, *aggregative* or *deliberative* conception of democracy. Aggregative theorists took a narrow account of political equality, viewing democratic decision-making procedural terms to be 'one person, one vote' (Saunders, 2010: 150). Deliberative theorists took a richer view, arguing that people participating the political forum, exchanging ideas and, by doing so, enriching their political identities are all part of the value of democracy (Peter, 2007: 376).

The inclusive and substantive nature of deliberative conception is central to the democratic intrinsic value theory (DIV). This is because the deliberative conception gives space for the operation of PEC, which is the main source of power that animates DIV. Without further ado, let us now turn to the many types of *theory of democracy*, which DIV is one of those.

One could analyse democracy in terms of *outcomes* and/or *procedures*, with or without, the *substance* and/or *form*. A *democratic instrumentalist* may hold the view that democracy is necessary or not by asking whether the outcome(s) is of the *best quality*, in *substance* and in *form* (Peter, 2010: SEP § 4). Contrary to the instrumentalists, other theorists examine it solely in terms of its *procedure*. According to the proceduralists, democracy is intrinsically valuable because of its *form* – the procedure – and not because of its *substance*. Whether democracy is necessary for political legitimacy for them depends on whether the *procedure* is *fair or not* and whether the *outcome* derived from the *process* is *fair or not*, independent from the *quality of the substance of the outcome may be* (Anderson, 2008: 132).

Essentially, the difference between instrumentalism and proceduralism is that the former focuses on the *best quality of the outcome(s),* where the latter focuses on the *fair quality of the procedure*. As with all theories, the two theories are no exception to derivative factors, such as, the degree of required thresholds, proportion of outcome/procedure analysis, and other extrinsic values. For example, some instrumentalists argue that the pure instrumentalists' threshold is too strict, a mere *substantive correct decisions* is suffice to grant democracy the necessity status needed (Saunders, 2011: 472). This move is said to help softening the hard edges of pure outcome analysis, where qualities of egalitarian's ideals may be neglected (Wall, 2007: 416).

Contrary to the proceduralists and instrumentalists' theories of democracy, there is another group of theorists who claims that democracy has its *own* value, and that by this very fact, it licenses its necessity status. This is the so-called *theory of democratic intrinsic value* (DIV) (Estlund, 2008: 11). DIV theorists claim that democracy is justified because it realizes certain political ideals (Machin, 2009: 103).

For DIV theorists, the essence of democracy consists of giving each individual an *equal-say of advancing or expressing their interests*, and such alleged right is to be respected by others (see Claim 1.1). Democracy becomes necessary, because only the art of democracy could bring about equal consideration of individual's interests, where individuals are empowered in a sense that they recognize themselves as part of the collective society and realizes the importance of the spirit of justice (Christiano, 2008: 86).

The principle of equal-consideration, as will be explained in detail, relies on the language of *rights, justice* and *rational reasoning*. In order to fully expound the foundation of DIV theory, it is necessary to examine the relationship between these said notions with democracy. The problem, however, is that the 'outcome/procedure' and 'form/substance' two-dimensional matrix seems to be inadequate for our assessment (see Analysis 1.1). For the two-dimensional matrix only has force when we examine PEC together with DDM features. Yet, these features are simply the *orbiter* claims extended from PEC. Thus, a comprehensive investigation of PEC will need to delve much deeper from the existing analytical framework.

Analysis 1.1. Two-dimensional Analytical Framework.

	Procedures	Outcomes
Substance	Intrinsic Value	
	• Aggregative Version • Deliberative Version of DP	Democratic Instrumentalism
Form	Democratic Proceduralism (DP)	• Epistemic Proceduralism • Rational Proceduralism

Before we introduce our new analytical framework, I must first proceed to clarify why the paper gives little weight to the notion of *political legitimacy*. We could, as some theorists do, differentiate the differences between political authority, political legitimacy, obligatory aspect and authoritativeness of it, and then reverse-engineer the requirements needed for licensing democracy as a necessary condition of it. *Pace* Buchanan (2002), in my view this is not suffice to discharge the DIV theory, because DIV theorists are not trying to claim democracy as satisfying those conditions of political

legitimacy, nor are they attempting to claim legitimacy constitutes another condition of political legitimacy. What they are really saying is that democracy is a 'trump card' – *a necessary and sufficient condition, for the constitution of the concept of political legitimacy, and the requirements needed for any forms of political entity to satisfy it* – in which they do not acknowledge it *de jure*, but is nonetheless engaging it *de facto* without knowing it. Hence, it may be convenient to think of examining the question from political legitimacy, and see whether democracy fits within the concept or not, but this will not give adequate explanation as to how democracy becomes, and potentially dominates, other conditions which is the main argument of the DIV theory.

That being said, a brief explanation as to the definition of political legitimacy is needed. Political legitimacy can be seen as a justifying force of a political entity. Political legitimacy is needed for the compliance of the individuals for the rules of the political institutions. Other theorists, such as Buchanan (2002), argue that any political entity that claims legitimacy must protect basic human rights, which is a more substantial charge than simply providing justificatory force for compliance (2002: 703).

Some theorists take the focus to be the relational aspect between legitimacy, authority and obligatory aspects of a polity. For example, political authority pre-exists political legitimacy, and may be seen as a necessary condition for licensing the latter (Peter, 2010: § 2.1). Political legitimacy justifies and warrants political authority, where political authority may only be legitimate if the agents could prove that their political power is morally justified in the procedural, applicatory, and enforcing of the rules which require political legitimacy to do so (Buchanan, 2002: 695). It is well regarded that political legitimacy, in one way or another, grants the foundation of the other two aspects. Thus, understanding the relationship between democracy and political legitimacy may *ipso facto* help to shed light of the other two. Hence, this paper will mainly be focussing on the legitimacy aspect here onwards.

B. *Rationality-Normativity Proportion Framework (RNP)*

As mentioned above, the new assessment framework is needed because, firstly, the two-dimensional matrix (see Analysis 1.1) does not adequately capture the dimensions of rights, justice and rational reasoning, which are essential to PEC. Secondly, the language of intrinsic value is often vague and abstract due to the complexity of these concepts. Some new framework that could address these two concerns will be useful for the understanding of PEC.

The essence of any intrinsic value theory should be that it has some kind of *self-contributory effects*. Meaning, by its very intrinsic properties, it creates value for society. In other words, the properties themselves are constitutive to the value output (Schroeder, 2008: SEP §2.1). This paper does not intend to delve into the related debates with regarding value theory

(*Ibid*: SEP §3.1), what we are concerning here is *how* we could evaluate an intrinsic value theory effectively, so that we could see whether the principle-in-question is intrinsically coherent and is worthy for others to consider it.

Analysis 1.3. Framework of Rationality-Normativity Proportion (RNP).

A principle or a claim about right cannot be constituted rationally if it is not capable of being reasoned by other individuals. In my point of view, the fundamental role for any principle or claim, including their related extensional arguments, is that it is established for others to observe and obey (Richardson, 2013: SEP 2.2). However, no one would be able to follow or obey an act or a piece of rule if there is no reason to follow and reflect upon it (Wallace. 2014: SEP 3).

Strand 1 – Whether a principle or a claim about right, and its extended claim(s), is capable for others to follow, a *rational weight* must be attached to it.

If a person who has passion about an alleged principle, Principle X, yet nonetheless finds no reason for that passion. Others may share her passion yet there would not be any available reflection upon Principle X since no reason is in place. Moreover, such principle will be unable to be maintained because of the arbitrariness of it.

Be that as it may, having reason is sometimes inadequate. For example, if a principle, Principle Y, lacks moral or ethical force, we may question whether Principle Y is in fact normatively significant to grant justification for others to follow. Assuming *arguendo*, a person thinks eating apples is a moral thing to do, and intends to establish a principle that promotes eating apples. Be it true that eating apples are healthy for us or not, the principle will not be suffice to be licensed as normatively significant for anyone to follow.

Furthermore, the language of principles or rights is very sensitive to conclusionary force, and thus, we must be careful as to how we categorise and use it, so to prevent any unnecessary floodgate of rights or principles (Wenar, 2011: SEP § 5.2). Moreover, an excessive use of rights language may encourage a bad atmosphere of breeding a culture of rights' entitlement instead of contemplating the need of duties. Hence, this adds to the argument that we should keep the language of rights as minimal as possible.

Strand 2 – Whether a principle or a claim about right, and its extended claim(s), should be followed, one would need to weigh its *normative significance*.

In the political domain, Strand 1 and Strand 2 are inadequate for granting a principle valuable unless it has the capacity to give room for other political ideals to manoeuvre. Of course, this is a big assumption that the political domain is in fact made up of pluralistic values instead of one. But if we look at the issue on the empirical level, we will soon find the domain are indeed packed with other ideals – economic and civil ones. Dasgupta and Maskin (1999) argue that, in order to achieve justice, principles are needed

to allow fine-tuning and must be compatible with other values, so that competitions and integrations of ideas are available for the maintenance of a healthy political system (1999: 80-81).

Strand 3 – A principle or claim about right can only operate smoothly to if it could leave space for alteration, embrace different values and coordinate with them in a practical fashion.

A principle or claim must strike a balance between all three strands. If it satisfies this balance, it is accorded with the *status of worthy consideration*. Such status will give us an indication as to whether PEC is *prima facie* intrinsically valuable or not.

C. *Mille Passuum Iter Incipit Gradum (Mile Journey Begins with a Step)*

We began our journey by addressing the necessary definitions and operational terms with regarding democracy and political legitimacy. From there, we come to see that the two-dimensional matrix does not equip us well to analyse DIV theory. We then examined briefly the features of what might be constitutive to an intrinsic value theory. We used that brief examination to construct a framework, *viz.*, RNP framework, which gives us a better focus for the assessment of principles and rights.

3 ANALYSIS OF THE PRINCIPLE OF EQUAL-CONSIDERATION

The objective of this section is to examine whether the principle of equal-consideration (PEC) does, or does not, provide a solid basis for the extensional claims of the democratic intrinsic value theory (DIV). We begin by examining the supportive though *orbiter* claims of PEC, and the 'pros and cons' of each. The Rationality-Normativity Proportion Framework (RNP) will be used to further analyse the claims. This section will conclude by claiming that the criticisms and the RNP analysis indicate that there are problems with regarding the foundation of PEC[1].

A. *Orbiter claims of Principle of Equal-Consideration*

Claim 1.1 – Principle of Equal-Consideration (PEC).

P1: Citizen(s) has a right to express, participate, deliberate his or her view, and *ipso facto* be respected, considered and taken into account by others, including political institutions.

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[1] In order to make this section easier to follow, page 21-22 of this paper summarize all the claims in this section, and evaluate those claims with the RNP framework accordingly.

P2: Democracy, in the form of democratic decision-making procedure (DDM), takes the right in P1 seriously by distributing political standing, political powers and abilities for advancement of interests equally among citizens.

C1: Thus, democracy is a necessary condition for political legitimacy.

The PEC principle comes in various forms, it is sometimes referred to as 'equal regard for all citizens' (Wall, 2007: 419), 'equal consideration of interests' (Christiano, 2003: 44), or 'equal standing among one's fellow citizens' (Estlund, 2008: 11), just to name a few. The different labels, however, can be traced back to any description of right to express, participate and deliberation, and they all have one thing in common which is to show that democracy is necessary for, and of, political legitimacy.

This paper intends to examine four main categories of *orbiter* arguments which the origin of each could be traced back to the PEC principle itself. They are, (i) *PEC promotes egalitarian's values*: that is PEC recognizes the value of treating each individual equally, and this should be recognized in all kinds of domain including political domain; (ii) *PEC promotes rational-reasoning*: individuals are able to recognize their status in society, improve their understanding of disagreements and differences of each other because of the capacity of rational reasoning that PEC entitles them to; (iii) *PEC produces, or tends to produce, just decisions*: DDM procedure, animated by PEC principle, brings fairness and promotes the value of justice; and, (iv) *PEC protects rights and secures good-quality outcomes*: DDM protects individuals' rights and secures good-quality outcomes in a manner no other forms of procedure could. This paper will examine each in turn.

(i) *PEC promotes egalitarian's values*

Egalitarian theorists claim that individual is born equal. Individuals, being equal, should be entitled to express their views, interests and concerns on equal terms, and have their rights being observed and respected by others (Buchanan, 2002: 712). The egalitarian's ideal is presented as the *equality argument for democracy* (EAD) in DIV theory.

The EAD argument has two claims, first, democracy is intrinsically valuable because it acknowledges the fact that each individual's life is equally important because democracy is the only form of government that could bring that ideal to society. Since each individual is regarded as equal, political institutions must translate this into a currency of equal standing (as shown in Claim 1.1, P2), so that the voice of the individual can be heard within the political domain. Failing to do so is constituted as a breach of PEC. Thus, democracy is said to be necessary in making sure that PEC is safeguarded (Wall, 2007: 419).

EAD is known to have conceptual problems. First of all, EAD is rested on an assumption that equal distribution is necessary for authority to do so,

which is a self-contentious matter. Equal-consideration can be seen as another form of equal opportunity, where individual is given an equal opportunity to say and be heard. Some theorists have argued that equal opportunity is problematic because it does not capture the element of responsibility and luck (Cohen, 1989: 911). Others focus on the currency of distribution and the manner of distribution, and argue that preferences and powers but not taste should constitute the reason for distribution (*Ibid*: 916). Hence, the equal opportunity assumption that gives rise to equal consideration is opened to challenge.

Others seen EAD to have created a more substantial problem, namely, why a selected few could rule the majority of us (Machin, 2012: 101). Wall (2007), on the other hand, argues that the issue of inequality is not to be read as inequality between individuals' political talents or abilities, but the equal distribution of power itself (Wall, 2007: 421). However, Wall (2007)'s analysis only adds to the first concern with regarding equal opportunity assumption of EAD.

The EAD argument, which contains the PEC principle, does provide normative significance for others to follow. This is because equal-treatment or equal-respect gives rise to the fundamentality of acknowledging people as equals. However, EAD's assumption of equal distribution poses problems with regarding the rationality proportion of our RNP framework, where reasoning of equal opportunity is self-contentious. Moreover, what is interesting to note is that Strand 3 of RNP is not touched on by EAD advocates, and further examination is needed.

We now turn to a procedural-extensional claim of EAD. The 'majority-rule' voting mechanism is said to be an effective method in determining policy, which is also said to preserve the ideal of equality in a form of political resource, i.e. vote, making EAD intrinsically valuable for policy making (Christiano, 2003: 45). *Pace* Christiano (2003), this paper argues that there are logical inconsistencies about the claim which has been a result of the main feature of DDM procedure being, the '*majority-rule*'.

Analysis 1.4 – Logical Inconsistency Argument against DDM (LID).

Claim 1.1 – P2: Democracy, in the form of democratic decision-making procedure (DDM), takes the right if equal-consideration seriously by distributing political standing, political powers and abilities for advancement of interests equally among citizens.

A1: This is done by political institutions respecting citizens' rights in Claim 1.1-P1.

A2: In order for DDM procedure to operate, voting mechanism is needed to make meaningful determination of outcome(s) (see Christiano (2003)).

A3: Each individual's 'say' is translated onto a ballot paper for voting.

A4: Each person may have a very slightly different view on the political matter. In other words, C_1 votes L for $reason_x$, C_2 votes L for $reason_{x-1}$, C_3 votes L for $reason_{x-2}$, … C_n votes L for $reason_{x-n}$.

A5: For the political institution to determine whether the political matter is passed or rejected in a DDM procedure, a standard of measurement is employed, *viz.,* a majority rule (>50% or = 50%), and that rule must be satisfied.

A6: If C_1, C_2, C_3 … C_k votes for 'Yes', and C_1 to C_k constitutes a group >50%, the political institution entitles them the label, 'majority', and the rest votes 'Nah', constitutes the 'minority'.

A7: (From A6) Political institution does not recognize the subtle difference(s) each individual may have by labelling them *as a group*, i.e. majority or minority.

C1: (From A1 to A7) Hence, the subtle differences of each individual has not been acknowledged or recognized, fully and in whole, at the *individual level* (at A4).

C2: (Claim 1.1 - P2 and C1) Thus, the right in Claim 1.1 (P1) is not fully crystallised and respected via the use of democratic decision-making (DDM).

What C2 shows is that individuals' voices are not actually fully recognized. Premise A6 indicates that an illusion has been created by the fact that their right of equal-say is said to be respected in the process of determining the policy-in-question. Not only is the right has not been respected, but the recognition of differences that DIV theorists so believe to be true causes a bigger problem – a distortion of the internal *and* external standpoints. In short, the illusion causes an individual to believe that he is the same as another individual within the group yet, in fact, they could be very different. More disturbingly, the fact that the external standpoint is now being distorted (see below at Analysis 1.6) means that the individuals are now unable to hold an objective view on the matter.

Some theorists may object to my analysis, claiming that such view is thin for the deliberative or even for the aggregative conception of democracy. Be that as it may, one must concede to the fact the reason why DIV theory is claimed to have its force is because the DDM procedure promises to give everyone equal say and interests. But what our analysis shows is that this is not the case. The DDM procedure, by utilizing 'majority-rule' does not fully recognize their say. DIV theorists may go on and argue that we cannot simply look at the outcome of it, we must look at the process which also adds value to individuals. Once again, our analysis, as will be examined in detail below, shows not; it distorts the individual's standpoint of assessing the political matter. Others may argue that this is simply the acknowledgement of the logic of disagreement, and is a compromise policy of such. But this only adds to the paradoxical nature of PEC, *which we are supposed to respect each individual's say in full, but also to embrace and compromise our deep disagreements.*

The 'majority-rule' mechanism is also problematic in others aspects. For example, Shapiro and Hacker-Cordon (1999), citing Przeworski's work, argue that 'majority-rule' does not take into account the future value of dead-weight loss, where citizens, when they vote, will make sure market's reaction to the policy is calculated (1999: 4-5). Przeworksi (1999) also notices DIV theorists have neglected the fact that DDM procedure could simply be a mere mean of the state selling political products in exchange for votes (1999: 34).

Even if the objections above all fail, DIV theorists would still have to reason as to how Premise A5 would have avoided the Arrow Impossibility Theorem (AIT), which states that every cycle may be defeated by another majority in the following cycle (Shapiro and Hacker-Cordon, 1999: 6; Dowding, Goodin and Pateman (DGP), 2004: 5). Dasgupta and Maskin (1999) believe that the 'majority-rule' have many good qualities being, satisfying the Pareto principle, where preferred preference ranks over the second-most preferred preference, treating each vote equally, anonymously and symmetrically – are all very attractive to the principle of good governance (1999: 73), but it will not discharge the AIT objection, even if a super-majority rule is used (*Ibid*).

DDM's 'majority-rule' mechanism is also problematic where the majority acts *bona fide* yet the result of the procedure often favours only one side, and thus, making a continuously persisting minority (the so-called 'persistence of minority' (POM) problem) (Christiano, 2008: 290). POM is said to solve it by relying on a *moderate version of proceduralism* which consists of a list of minimum conditions that will accommodate the minority's values (*Ibid*: 297-298).

Nonetheless, this is problematic because *pure proceduralists* may argue that the majority has selected some policies that do not recognize the minority simply reflects the working of the procedure in filtering out unwanted values (Christiano, 2008: *Ibid*). Instrumentalists might hold the view that the best quality outcome is satisfied because it reflects the majority's interests. Moreover, it is irrational from the RNP framework's point of view, to challenge Premise A5 for curing POM, since this will contradict the purpose of having the procedure at the first place, i.e. to determine a political matter.

In section 1, we introduced the logic of disagreement and the infinite regression that has caused many political theorists to puzzle as to how we could try to come up with a procedure that could resolve disagreements without opening up the regression (see Analysis 1.0). We saw that the only way to deal with this problem is to come up with a compromise policy that embraces this regression. DIV theorists, such as Christiano (2008), argue that the publicity requirement will help to meet the standard of justice without stirring up the regression (see page 3). The claim can be formalized as below:

Analysis 1.5 – Democracy Realizing Public Equality (PED).

P1: Disagreement exists on a substantive level; we disagree not only about what policy to take, nor simply about the power/capacity of having these policies, but also of what resolution procedure may come to regulate disagreements (Application of Analysis 1.0, Logic of Disagreement).

P2: Democracy is a unique and exclusive way in resolving the logic of disagreement by adopting a procedure that *publicly embodies equality* (Application of *nemo iudex in causa sua*; Christiano, 2008: 76, 101-102).

C1: Hence, Democratic decision-making procedure (DDM) enables individuals to be treated equally, and to be seen as treated equally (From P1 and P2, and Application of Claim 1.1, PEC).

C2: Thus, DDM procedure is *intrinsically just*.

PED, however, is undoubtedly a weak claim. At the heart of Premise P2 lies the requirement of 'publicly embodies equality', what Christiano (2008) did not mention is that such requirement is a *procedural condition*, meaning all forms satisfied such procedural function can in turn be deemed to satisfy legitimacy condition. Functional constituencies in Hong Kong, for example, is known to have satisfied such requirement by a public election that is elected by the members of a sector (e.g. professionals, commercial sectors, or religious and political sects), which satisfy the main tenets Christiano (2008) has set out for public embodiment of equality, yet would not, I assume, be constituted as democratic in his sense.

Christiano (2008) may object to my above example by saying that the Hong Kong example gives rise to unfairness, for it opens to 'invidious comparisons' between citizens (Estlund, 2008: 11). But this analysis itself is invidious, because the charge confuses the fact that these individuals within a functional constituency in Hong Kong is granted with a status of *eligibility*, and the standard for such eligibility is open for anyone who is qualified to become a member of it – the equal comparison still operates at that level. It is by equal-exclusion that others are now no longer to be considered to be part of the functional constituency. This equal-exclusionary effect will be examined in detail in section 3 of this paper.

Be that as it may, the procedural condition at Premise P2 is often confused with the *substantive right* condition at Premise P3*, viz.*, 'enabling us to be treated equally' that qualifies the procedure. This second objection of DDM procedure being intrinsically just (DIJ) can be summarised as follows:

O1: If we could find a particular procedure that fits the 'procedural condition', which in turn realizes the 'substantive right', call it Procedure X. Procedure X should suffice to substitute DDM procedure.

C3: Hence, P2 does not prove democracy to be unique, nor does it prove that it exclusively claim legitimacy of that procedural condition (From P1 and P2).

C4: Thus, DDM procedure could not and is not intrinsically just by adopting a publicity requirement (Application of C3 and C2).

The DIJ objection shows that the publicity requirement does not grant the intrinsic value to DDM procedure. At most, one could say that it gives rise to another procedural condition for political legitimacy – that is the publicity requirement itself in which, as shown above in the Hong Kong example, is not unique to democracy alone, epistocracy may also satisfy it.

What the DIJ objection also shows is that, as mentioned earlier in this paper, that DIV theorists often got their language on rights and other procedural conditions confused. Although the PED claim gives weight to normative significance for DDM and to PEC principle, it nonetheless fails to gain persuasive weight as to its rationality proportion due to the confusion between procedural condition and rights condition.

We should close this part of analysis by saying a few words about the fact that the egalitarians are not the only ones who share the view that there is a need for democracy because of egalitarian's ideals. Pluralists, for example, share the egalitarians' concern but with a different cause. They claim that if we cannot consider different views equally, the political landscape could not flourish. A pool of various political views, sprung from various angles in the political spectrum, will allow individuals to spread their political risks in different baskets, thus providing them choices that are priced at different degrees of liberty and rights. As a result, individuals are more informed as to how they want their civic society to become (Dasgupta and Maskin, 1999: 80-81).

However, this paper does not fully agree with the pluralists' view. The pluralists are right to say that it gives rise to a rich atmosphere of political ideas, but the focus of such outcome ought to be that various choices give rise to a better set of options to choose from, which is the purpose of any political project. It is simply too trivial to claim that democracy is necessary because of this educative function.

(ii) *PEC promotes rational-reasoning*

Apart from arguing that PEC promotes egalitarian's ideal, DIV theorists also claim that PEC, in the form of DDM procedure, promotes rational reasoning. It increases the efficiency in getting the accurate outcome(s) for the political matter in question. Democracy, in their view, can be seen as a 'second-order reason' to other first-order reasons which citizens ought to set aside so to conform with the decision made by the political institutions (Christiano, 2000: 523; Waldron, 1999: 196).

The claim that democracy is a 'second-order reason' (SOR) is founded on the so-called *standpoint of society* (Christiano, 2000: 526). The standpoint of society provides us with the ability to share different views each individual adopts within the society, allowing them to engage with meaningful deliberation (Christiano, 2000: 527-530). Hence, the second-

order reason is said to be attractive because the standpoint of society provides the political institutions a comprehensive view on what are the needs and interests of the citizenry (*Ibid*).

Pace Christiano (2000), this paper would argue that SOR claim is a fallacy extended from Analysis 1.4 of this paper. Christiano's coordination game needs a 'majority-rule' voting mechanism to operate with, and that, as this paper has analysed earlier, such idea creates confusions as to what individuals *within* the society should see the political matter in question but, moreover, individuals are *unable* to assess the situation *objectively* as follows:

Analysis 1.6 – Effect of Distortions derived from Democratic Decision-making Procedure (DDM) (EOD).

Analysis 1.4 – A7: The political institution does not recognize the subtle differences of each individual by labelling them *as a group, viz.,* 'majority' and 'minority'.

P1: The 'majority-minority' label could be seen from an *internal* (from individual(s) within a society) and/or *external* point of view (from individual(s) outside a society)[2].

P2: If an external agent (e.g. an alien) standing outside a society's DDM procedure, unknown of the deliberative process, forms a conclusion based on the result. He will see:

(i) A voting mechanism with 'Yes' and 'Nah';

(ii) >50% votes 'Yes' and <50% votes 'Nah'; and

(iii) 'Majority' whom have chosen 'Yes' votes for the policy to proceed. Policy proceeds. Or *vice versa*, the otherwise.

P3: Each person may have a very slightly different view on the political matter. In other words, C_1 votes L for $reason_x$, C_2 votes L for $reason_{x-1}$, C3 votes L for $reason_{x-2}$, … C_n votes L for $reason_{x-n}$. (Application of Analysis 1.4 - A4).

P4: Assuming *arguendo*, that Citizen 1 differs 99.9% from Citizen N, yet both being labelled as the majority camp, this may cause confusion to the external agent, which would have thought that they have *agreed on something* – but this is a distortion because:

(i) Logic of Disagreement (Analysis 1.0) contains an infinite regression; and

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[2] Analysis 1.4 deals with the problems related to the *internal point of view*, in particularly, with regarding the recognition of their 'equal-say' of those individual within a said 'majority-rule' society. Analysis 1.6 intends to deal with the *external point of view*, namely, the objectivity issue that individuals within the society relies on for their assessment on any state of affairs related to the political matter.

(ii) Citizen 1 and Citizen N differs on 99.9% of the said policy (e.g. Citizen 1 only agrees on the name of the policy, and say, Citizen N agrees all the way down to the spirit of the proposed policy).

C1: Thus, the distortion effect creates a distorted identity for the society which is slightly different from its true identity.

C2: Thus, individuals within the society are unable to form an *objective* assessment of their society by relying on an external source.

C3: Hence, claiming that citizens needed to follow this distorted, so-called 'second-order reason' as authoritative, is pervasive.

One may object to my analysis by arguing that there is no such thing as political truth. It has been well debated that rational consensus may be the only thing to constitute political truth (Estlund, 1993: 73). My view on 'voting without any cognitive content' could be traced back to noncognitivism, where noncognitivists see judgments have no true or false value but only an action to express preferences (*Ibid*). Other theorists, such as Rawls, are ready to accept that there is no truth and that an 'overlapping consensus' would suffice (*Ibid:* 78). However, such consensus would not be suffice to provide a comprehensive conception that will make it as a truth.

Others may object to the analysis by claiming, as Estlund (1993) does, we could ignore the constituents of what might be true, and simply focuses on the fact that everyone agrees to some kind of truth (1993: 79). Yet, this keeps one wondering how something could be true if none of us have any actual knowledge as to its truthfulness, let alone this is to be done in a collective scale.

Another simple objection to my analysis may be that the external agent can look into the process itself. But this merely defeats the DDM procedure being a quantifier of the decision out from the deliberation, which is meant to capture the product of the right of equal-consideration. Alternatively, we could argue that this objection would not change the fact that individuals within the process are unable to reason truthfully because of the lack of objective sources available both internally and externally (from Analysis 1.4 and Analysis 1.6).

Some DIV theorists affirm the 'majority-rule' mechanism by relying upon the Condorcet Jury Theorem (CJT) which states that each individual has a 50.1% chance of having the right answer in a jury trial, and if we increase the scale to the society level, 50.1% (the majority), we will certainly have a correct answer. Thus goes the motto 'majority is infallible'; attributing to the fact that majority-rule is effective and internal participants are often correct in making decisions (Przeworski, 1999: 27).

However, as Estlund (2008) observes, CJT is not 'infallible', in fact it does have its own conditional constraints. For example, CJT is based on a binary model, yet most political decisions are founded on several alternatives. Moreover, individuals often do make irrational choices and commit fundamental mistakes. CJT is only effective only when certain

probabilistic conditions are met (Estlund, 2008: 15-18; Przeworski, 1999: 28). Some theorists rely on the CJT theorem to claim that DDM procedure helps promoting 'participatory value' (Christiano, 2003: 8). But to think of applying CJT directly to the context, as shown above, is to neglect all the complexities of CJT theorem.

Moreover, not only are individuals often vote irrationally, they often vote for self-interests and for other 'socio-tropical' reasons which add to the inaccuracy of the result and the truthfulness of the individuals' will and intention (Roemer, 1999: 61-62). Another problem with regarding CJT is that it does not take into consideration the logic of disagreement operating within society, which would inevitably attract disagreements of individuals as to which standard of correctness should be applied for different sets of circumstances. Hence, this paper is not convinced that SOR, relying on CJT, satisfied the rationality proportion needed for individuals to follow.

In short, what theorists are concerned here is that individuals are unable to form good reasoning as to what policy they should adopt. This goes back to our earlier concern with regarding 'ruling by the wise' (Copp, 1993: 102). And that, if we could justify that there is a political truth, and some individuals are better equipped to access it than others do, theorists argue that this could justify the use of epistocracy (*Ibid*). Yet, of course, this lies with the big assumption of having 'political truth' in the first place, but the threat is a serious one – that individuals are capable of being irrational, just like the pre-WWII Germany.

This part of analysis will not be completed without examining the concept of *public reason*. For Rawls, the democratic decisions could not be legitimate unless they are derived from a constrained procedure (Peter, 2007: 130). Public reason sets out the criteria for the 'constitutional essentials' and the requirement of 'basic justice' (*Ibid*). In Rawls's view, political legitimacy must conform to the principles of justice, in the sense that it acknowledges citizens being reasonable and are capable of understanding political matters on rational terms, and that society functions if citizens share a system of cooperation (Peter, 2007: 135). The public reason requirement can be seen as setting out a general condition for legitimacy, which democracy may very well be one of the instruments in achieving this.

(iii) *PEC promotes justice*

As mentioned above, Rawls's public reason identifies the constraints that may give force to democratic instrumentalists' claim on democracy being an appropriate procedure in making policy. Be this as it may, Anderson (2008), arguing for the DIV theorists, maintains the strict intrinsic value position that other forms such as epistocracy fails to satisfy the public reason constraint. She argues that it only entitles a handful few to vote which is unjust for individuals to compare their epistemic powers in such fashion (Anderson, 2008: 132). Yet, as this paper will later suggest, this comparative

power may be justified by the so-called principle of equal-exclusionary effect (see section 3).

Moreover, Estlund (2008) argues that PEC, in the form of DDM procedure, promotes justice because individuals act like a jury when voting, and thus, produces neutral decisions that are insulated from invidious comparisons (Estlund, 2008: 11). Other forms of government, such as, autocracy would never be justified because they are inevitably opened to chronic informational problems, where the decisions made by the polity is subject to lack of systematic data possession and issues of transparency (Ibid).

This may be true, but one must also beware of what we have discussed earlier in part (i) of this section, where we pointed out that participatory virtue may deem to be low in value if, say, an epistocracy do a better job in providing goods that satisfies individuals' needs (DGP, 2004: 8). One may also argue from the *principle of good governance* that such distribution of goods must be accountable by the individuals themselves, so that the polity is not being captured by some political or non-political force (Shapiro and Hacker-Cordon, 1999: 7). Levi (1999) argues that the principle of good governance is best served with DDM procedure because, in essence, accountability goes to the citizens' perception of trustworthiness of the polity in question (1999: 126-127). Some theorists, such as Arneson (2004), argue that the effectiveness of accountability must be taken into account as to the remoteness of citizens' participation (2004: 7).

Some justice theorists argue that fairness is a *principle of justice*, and that realizing PEC will satisfy the principle of justice by entitling individuals with equal-say so that individuals will have the capacity to influence the political outcomes (Estlund, 2008: 5). This claim is often compounded with the claim that PEC promotes rational reasoning, as DIV theorists observe, by tolerating minorities, embracing differences between individuals, and learning to obey consensus of political matters, give rise to an ethic of reciprocity (Levi, 1999: 124-126). This, in turn, becomes an epistemic source for individuals to learn about respecting each other and their interests (*Ibid*).

This paper believes that there is force in considering PEC as one of the elements in achieving justice. Yet, once again, the PEC-Justice interaction only seems to go as far as stating that democracy is an appropriate instrument in determining political matter, and not as strong as saying it is intrinsically valuable (Dowding, 2004: 26-28). Hence, democracy cannot be granted as a necessary condition for political legitimacy.

(iv) *PEC protects rights and secures quality of outcomes*

The PEC principle could be translated into the language of rights. This paper does not intend to go into detail on the analysis of rights, but shall explain the parts that are useful for our investigation. There are many types of rights, some rights are *passive*, some are *active*; some may be

procedurally oriented, some are *substance oriented*. The Hohfeldian Incidents are said to give a comprehensive picture of the atomic structures of rights, where correlationship and oppositional forces of rights are captured in it (Wenar, 2011: § 1-7).

Amongst the DIV theorists, Waldron (1999) is perhaps the leading advocate in campaigning for the *right of democratic association* (RODA). What is interesting about RODA is that Waldron (1999) does not see it as a procedural right but that he sees it as a substantive one. The reason behind this is that RODA allows participants within the coordination game to alter the legal position of other individuals. It is very similar to the power-right in Hohfeldian's terms, which correlates to a duty of disability (Waldron, 1999: 284; Arneson, 1993: 120). Political authority and participating individuals are then to be complied with this correlated duty, and thus, makes RODA a substantive right instead of a procedural one (Christiano, 2008: 250). However, some non-DIV theorists, such as Arneson (2004), argue that there is no such right, because RODA alters and affects others on the individual level may be troublesome in explaining why one could do so to another (2004: 10; Arneson, 2009: 3). Be that as it may, one could argue that this, at most, could only be deemed to be an effective mean in achieving a better moral state, which is simply instrumental in nature and not intrinsically justified (Arneson, 1993: 121).

Analysis 1.7 – Right of Democratic Association (RODA).

Claim 1.1 – P1: Citizen(s) has a right to express, participate, deliberate his or her view, and *ipso facto* be respected, considered and taken into account by others, including political institutions.

A1: P1 contains the 'right to express, participate and deliberate [each citizen's] view(s)'; and

A2: P1 contains '[each citizen's] view(s) respected, considered and taken into account by others'; and

A3: P1 contains '[A1 and A2 have the combined effect] taken into consideration by political institutions'.

P2: A1's right is substantial in nature because it is a power-right that can alter other individual's position with regarding their rights (Waldron, 1999: 284).

P3: Al's correlating duty needs to be respected by other individuals and political institutions (from A2 and A3).

C1: Thus, PEC principle in the form of DDM procedure helps to bring about and maintain this correlating duty and right for other individuals to respect and obey.

In section 1 of this paper, we have come across the warning sign that the language of rights must be carefully construed in order to avoid floodgates of unnecessary rights and its strong force of conclusive reasoning

(see page 6). RODA can be dictatorial in the sense where legislature may enact a piece of law that is morally wrong or procedurally unfair but may nonetheless call upon individuals to obey it because RODA applies in the more general level of obeying the legislature itself (Christiano, 2008: 250, 275).

This dictatorial feature is complicated once we suppose the right of obeying the legislative assembly derived from RODA is originated from some kind of special piece of right, which is itself a contentious matter. In many countries, such as the United Kingdom, the right of having a parliament is given by an ordinary bill that does not grant the legislature a special status of rights[3], so whether RODA does in fact apply on the general level is challengeable.

The language of rights of PEC is being challenged on another front, *viz.,* namely the libertarian's ideals. Libertarian theorists claim that the egalitarian's call for democracy may be troublesome because of the outcomes decided from the DDM procedure may interfere with the individual's view (Christiano, 2008: 112). In their view, each individual has a right to be fully control of their liberal and property rights (*Ibid*). If an individual chooses to opt out from society, he or she is entitled to do so, since such opting-out may simply be an exercise of the right of non-interference.

Egalitarians reject this conception by claiming that the libertarians create a system that is unitary in nature which imposes rules and limits liberty on the individual level *without* the like consent of which DDM procedure is said to have consisted of. Thus, the duties derived from the libertarians' system do not conform to the project of achieving justice (Christiano, 2008: 113). Having said that, this paper, as shown in Analysis 1.4 and 1.6, has argued that the claim of which DDM procedure recognizes fully the right of the individual is seen to be an illusion. It distorts the objectiveness of the external and internal standpoint that are crucial to the participants in assessing the political matter.

Furthermore, egalitarian theorists reject the libertarian system in claiming that it attracts the same problems of the egalitarian's system, *viz.,* the logic of disagreement. However, in my view, the libertarian's conception is more honest with their approach. They recognise the existence of disagreements, and then realistically give us a legitimate reason to conform to a system, without creating an artificial illusion that claims to bring about a

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[3] In *R (Jackson) v. Attorney General* [2005] UKHL 56, the Law Lords have expressed the concerns of an absolute parliamentary sovereignty. Lord Hope, for example, states that there are qualifications to the concept, and that the courts might have a role in 'defining the limits of Parliament [and its related Acts]'. The legislation in establishing the Parliament, in their lordships' view, is derived ordinarily no special than other legislations.

sense of social coherence in which participants will learn about goodness and other epistemic virtues if a certain procedure, *viz.,* is embraced.

Waldron (1999) and Christiano (2006) argue that justice can only be achieved when we act and cooperate with each other, by everyone compromising each and others' needs (1999: 196; 2006: 103). *Pace* Waldron (1999) and Christiano (2006), this paper differs. If we are going to achieve justice by gradually chipping away the individuals' interests and concerns, at what point will we stop saying the sacrifice is too much for the individual and that we should stop securing justice for the society as a whole?

Apart from the RODA, some instrumentalists, like Dworkin (1996) argues that the quality of political debates will be improved if the matter could be decided by an epistocratic entity, such as, the judicial courts. Epistocratic fora help to animate political debates in a more focus fashion. Thus, DIV theory which consists of the PEC principle, is not a necessary condition for political legitimacy, as the argument goes (Dworkin, 1996: 30).

Waldron (1999), arguing for the DIV theory, rebuts that objection by claiming that the political deliberations are not as simple as a judge deciding on the *ratio decidendi* of a court case. Political deliberation contains discussions that concern participants within the collective procedure in which will ultimately bind themselves (Waldron, 1999: 291). More importantly speaking, pro-judicial interventionalists in Waldron's view often make the wrong differentiation between outcomes *made about* democracy and outcomes *made by* democratic means (*Ibid*). In an outcome made about democracy, citizens could legitimately blame themselves of not taking the outcome seriously so to avoid the mistake. But for an outcome made by democratic means, it is constituted as a violation made by the polity, so individuals are not to be blame about (Waldron, 1999: 293-294).

Moreover, Waldron (1999) argues that the pro-judicial interventionalists make a big assumption that the court would indeed make the right judgments for the matter, which may not be the case. The court's reasoning could well be wrong which means the discussion that follows after the court's judgement may not be accurate, and could potentially make the discussion worse by distorting the deliberation (Waldron, 1999: 291).

Another way to look at the judicial-intervention claim (JIC) is that the intervention may simply be viewed as a consequence to the fact that the legislature fails to react and subsequently, fails to realize 'public equality', which the court is there to rectify the situation (Christiano, 2008: 279). In other words, the court is there merely to give the right decision that ought to have done it in the first place (2008: 280). Thus, the JIC objection does not seem to cause any harm to the PEC principle, says Christiano (2008).

DIV theorists do sometimes make particular bold statements which are not justified when we examine closely. For example, they claim that the *nemo debet esse iudex in propia* (no one shall be a judge in his own case) requires the decision to be made by somebody else not the legislature council (Waldron, 1999: 296-297). Although the claim is valid, non-DIV

theorists argue that this is simply a functional description of what happens after the DDM procedure, where adjudication is needed; what the DIV theorists should actually be concerned with is the motto '*quod omnes tangit ab omnibus decidentur*' (what affects ought to be approved by everyone) (*Ibid*: 298).

B. *RNP Analysis – PEC as a Principle for Worthy Consideration*

This part of the section is intended to summarize the essence of all the above claims and objections and fitting those propositions to our rationality/normativity proportion framework (RNP) for a thorough analysis of whether the principle of equal-consideration (PEC) is worthy for further examination. The paper is convinced that the PEC is attractive to a certain extent and has force for further examination.

PEC itself is a forceful claim as it contains an ideal that may perhaps be infallible, being that it entitles each individual the right to be equal. We then examined the first interaction with respect to the egalitarian's ideals (EAD). EAD claim is normatively attractive, yet, when we examine the rational component of EAD in detail, we find that the assumptions made thereof are contentious. The need of a ruling class which requires a certain degree of inequality as part of the political system contradicts the egalitarian's ideals.

The logical inconsistency argument (LID) against democratic decision-making (DDM) highlights the serious logical defects that are essential to the structure of DDM. Not only does DDM procedure fail to recognize individual's right of equal-say, it also creates an illusion for society by distorting the external *and* internal standpoint for participants of DDM to objectively assess the political matter. Thus, LID objection shows that DDM is logically problematic though being normatively significant.

Other structural defects of DDM include the persistence of minority (POM) objection, which only adds trouble to the existing logical problem of DDM. The public equality requirement (PED) is weak, where democratic intrinsic value theorists (DIV) confuse procedural condition and substantive right of equal-consideration, and thus, fail to provide a comprehensive proof of democracy as intrinsically just (DIJ). In turn, it does not satisfy the rationality requirement needed for RNP.

The 'second-order reason' (SOR) claim is normatively attractive for fixing the logic of disagreement (Analysis 1.0) because it allows room for manoeuvre for other values (which is important for achieving practical justice as required by Strand 3 of RNP), but is nonetheless proved unworkable. Condorcet Jury Theorem (CJT) also fails to be a non-constrained model for DDM procedure, as seen above.

The PEC-Justice relation is more of a challenge against other forms of government than affirming the value of DDM procedure. In that part of the section, we saw that there are other principles, such as, principle of good governance or principle of justice, that are also operating within the domain.

We concluded that part of the analysis by stating that PEC seems to be *one of the many instruments* that bring about equality.

I have argued in part three of this section, that the right of democratic association (RODA) may be seen as dictatorial and potentially be hostile to the libertarian's concerns. The rigour and sharpness of RODA has attracted theorists to call for an instrumental account of democracy. However, judicial-intervention claim (JIC) also shows potential justification for epistocracy.

With all these in mind, the PEC and its obiter claims are problematic in many ways, but none of these arguments seem to successfully affirm or negate the principle of equal-consideration. Our RNP framework indicates that PEC claims have a lot to improve in terms of its logicality. PEC is nonetheless normatively significant, which makes it worthy for consideration. What is interesting about our analysis is that Strand 3 of RNP framework is not often touched on, which could mean of showing signs that fine-tuning of the framework is needed. However, it may also be an indication that PEC may be fundamental that intrinsic value theorists could not find a way to dial it down to make room for other principles. We will now turn to examine the *ratio* of the principle itself.

4   PRINCIPLE OF EQUAL-EXCLUSIONARY EFFECT

In the above section, we saw that our RNP framework indicates that at the heart of the principle of equal-consideration consists of a fundamental singularity, which does not allow constraints or room for other principles to manoeuvre. The objective of this section is to find out what this fundamental singularity might be. This paper will argue that there is a sense of truth lying within PEC, but is nonetheless an illusion; what actually lies within PEC is in fact a *contradiction*. To dissolve this contradiction, I propose we look at it from another angle, viz., looking at the function of equal-exclusion, which is necessary for all political projects and it gives rise to the main condition of political legitimacy. To begin with, let us look at the following analysis:

Analysis 1.8 – Essence of Principle of Equal-Consideration.

P1: Person A says to Person B, 'I will not respect the right of equal-consideration, and thus, I shall not equally consider you.'

P2: By the very fact that Person A speaks to Person B that 'I will not respect the right of equal-consideration, and thus, I shall not equally consider you', Person A has already committed the act of equally considering Person B (From P1). This is because:

A1: The right of equal-consideration is observed when Person A *engages with* Person B. In other words, the right of equal-consideration is exercised at that moment of time.

A2: Saying to Person B that he or she (i.e. Person A) does not equally consider him or her (i.e. Person B) is merely the exercise of that right, i.e. to *elect the option* whether or not Person A *is* to consider Person B equally or not.[4]

P3: (From A1) A person who engages must exercise the right of considering someone *equally*. This is because:

A3: Imagine a state of affairs, where equal-consideration is at an extreme level where there is only Person A in the world and his bottle of water in front of him:

(i) Without equally considering the bottle of water (the features and the concept of the bottle), no *informed reason* will ever be available to Person A, because Person A would not have a truthful reality of all the features and all the related notions related to the bottle of the water in front of him, and;

(ii) Without equally considering the bottle of water, Person A would never be able to form a *non-arbitrary* reason, because his world view is either self-centric or narrow-minded in preset (for he does not consider anything equally), and;

(iii) Thus, no reason will be *complete* and be *impartial*, which is fundamental in granting Person A's subsequent reasons' validity.

P4: To do the otherwise, will attract Person A into another contradiction as to *why* Person A is engaging with the activity (since he has no valid reason to do so).

Analysis 1.8 shows that there is something contradictory within the principle of equal-consideration. Premise A3 seems to indicate that PEC is something akin to, to put it colourfully, a *parent of all arguments*. Without it, we would never be able to hold a valid deliberation or reasoning for our activities. The important thing to note about this feature is that DIV theorists who wholeheartedly embrace PEC principle is no longer seems to be arguing democracy as a necessary condition, but a *necessary and sufficient condition* for political legitimacy, which provides them the very reason for its intrinsiciness (i.e. democracy trumps over other principles).

However, what is problematic about this, is that it does not make sense. *For if a truth that tells you your reason is valid if and only if you are all informed and impartial though does not give you any prior set(s) of reasons to consider (because the very reason you are contemplating with, generates*

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[4] In other words, I can exercise my right of equal-consideration by merely letting someone to engage with me or *vice versa*. When I say to him or her 'I do not want to engage equally with you', I have equally-considered you, because if I did not equally-consider you at the beginning, I would not have had the chance to say such statement to you.

these other reasons) – such task is a task that is logically impossible to be achieved.

Objection may be raised by the DIV theorists claiming that my analysis took a rather thin and narrow definition of PEC. I disagree; my definition is exactly what Christiano and all other DIV theorists trying to establish, I simply *deflate* the scale of their works to the most extreme case. We could simply enlarge the scale and add all the conceptual elements about democracy, such as there are other values or matters derived from the process itself. But to think of it that way is merely to go back to the level of discussion we had earlier in section 2 of this paper, which does not constitute the heart of democracy. Others may see my contradiction claim as artificial. I beg to differ; because what this contradiction shows is that it is *meaningless* to talk of someone equally considers such and such, for we are always obliged to do so. Seeing equal-consideration as a foundation for political legitimacy is, thus, a genuine issue.

Here is a new focus I believe to be useful for any future analysis on this topic. I shall begin by introducing you to my *Cosmic Library Analogy* so that it is easier to understand:

Analysis 1.9 – Cosmic Library Analogy.

There is a Cosmic Library in the universe which contains all thoughts and ideas ever existed in this universe. They are presented as books (i.e. $Book_1$, $Book_2$, $Book_3$ .... $Book_n$). Each book has a right to be equally considered, just like us do. What that means is that by the very fact that the book is capable of being accessed by a reader is enough to constitute its right being respected.

Assuming *arguendo,* we now bring a reader (Reader A) into the Library. Reader A has a quest, just like political entities do, which he needs to engage with. Let say, Reader A is writing a paper on political philosophy. When Reader A proposes to have a project of writing up this paper, he immediately has a reason to license him to *exclude* other books for narrowing down his project (i.e. $Book_a...Book_{p-1}$). Notes that the exclusion of the books could be seen as (i) a reason of legitimate exclusion itself, or (ii) a reason of Reader A's Project. This gives rise to two standpoints: (i) the Cosmic Library's standpoint, or (ii) from Reader A's standpoint.

If we take the latter standpoint, Reader A looks to books that are relevant to his prohject, presumptively in the Philosophy section of the cosmic library. Reader A now narrows down his project to 'Democracy and Political Legitimacy' – this once again immediately equips him with a reason to narrow down his research by excluding the books, say ($Book_1...Book_{pp-1}$), which are not relevant to his project. This exclusionary function helps Reader A to bring about the *best possible* books that he thinks most appropriate. Be that (i) he lacks full information of the cosmic library, (ii) did not choose the right books, and (iii) he is opened to errors and mistakes etc. Yet, what this shows is that the most important thing for Reader A is to make

sure he operates his exclusion by *objectively excluding Books he, the subject, thinks fit.*

If we take the Cosmic Library's, presumably objective, standpoint, the Library *knows* what books are relevant to Reader A's project. Yet, incommunicable as it is, Reader A looks to books and narrows down his project just like he does above. If a book, written by a Professor, says, Professor Medicine. The book has information about the project but nonetheless located in a section which Reader A is unaware of. Professor Medicine's protest, about his book should be equally considered, would not be valid. This is because at P2 the reason for exclusion overrides the right of equal-consideration. Moreover, what this shows is that the standpoint that really worth considering is Reader A's standpoint in the activity of the project.

Essentially, the analogy wants to show is this: There is only one standpoint in our Library, just like in the political community, that is the reader's (which is the political institution or any entity that intends to engage with political activities). Moreover, right of equal-consideration is being overridden and has given priority to the exclusionary function though we still acknowledge the fact that the members of a set, be it a sub-set of a set (just like our narrower set of Reader A's political project) or simply the constitution of the main set, to be equal. However, the focus is now on whether the reader, or political institution, has excluded those books in an objective-equal manner. Thus, speaking of considering individuals equally in a political determinative project is *meaningless*, for the only thing that is worth concerning is the exclusionary effect:

Principle of Equal-Exclusionary Effect – *Any individuals or entities, who commit to a political determinative project, have the right to exclude a set or sub-set when it is done so in an objective manner (determined by the subject), so to produce the best outcome in achieving justice.*

The principle is by no means an affirmation to autocracy or epistocracy. In fact, one could see that democracy also applies the principle of equal-exclusionary effect, which is to not exclude anyone at the beginning and DDM procedure provides them a way to narrow the project in a manner that is claimed to be objective. Saunders (2010) has also mentioned a similar notion called 'equal impact' (2010: 114). But my principle of equal-exclusionary effect, goes deeper, it asks us to see political legitimacy as a project oriented exercise. The individuals in this exercise are both empowered to become the selector (i.e. reader or the political entity) and the book (i.e. individuals).

There are various objections that may be raised against my principle. For example, how does one select the political institution or the reader. My answer will be, within this exercise, everyone could be charged with their own political project, but the ones that could ever win to become the

legitimate rulers, are the ones who conform to the principle of equal-exclusionary effect.

Yet, what if there are two or more competitors, all engaging in different projects and yet all satisfying the exclusionary technique, would this rank them equal again, and thus, defeats the purpose of having political project that are determinative? First, to think of them ranking 'equally', merely commits us back to the problem of PEC. If there are more than one project engagers engaging in various projects (including contradictory ones) the one who gains legitimacy will be one that could gain *a temporal status of correctness*.

Imagine you are in a library, you and your colleague are about to present a debate, both of you go to the library and find materials. The debate may produce a winner, a loser or a *tie*. What is *valuable* is the fact that you two engage with the project, coming *with your own say*. Within the Cosmic Library, these projects come and go, just like political matters do not last forever, some policies may be simply implemented or shelved. Governments in the wheel of mankind, from time to time change from one ideology to another. Forms of government do the same – *it is simply the fact that no forms of government could ever be said to be necessary for legitimacy, at a point of time. At most, we could say is that it is relatively better than the others, at a said point of time, if it is conformed with a functional requirement such as the principle of equal-exclusionary effect.*

5   CONCLUSION

Our journey ends with a rather interesting note. We have not only resolved the question, but have *dissolved* it. We have come to acknowledge that political legitimacy is not a fixed notion, for it varies according to the validity of the political project in hand. Hence, talking about whether democracy or other '-cracy' gives rise or not to any condition for political legitimacy is a meaningless claim. What is important is that it fulfils its functional requirement, being equally excluding opinions or interests that are unnecessary to the process.

Be that as it may, our PEEE gives more flexibility in how we could evaluate the temporal status of legitimacy for a particular form of political entity, which PEC lacks to do so. However, what this paper is unable to do, due to the limitation of space, is to assess other forms of government by using PEEE, so to prove the validity of our principle. Yet, I believe, PEEE will give a better understanding for future study on this topic.

To conclude, we first discovered the need of having to work on with a new framework, which we did. We then discovered by our analysis and the survey of literature that there is something fundamental about PEC. We then proceeded to examine what that fundamentality is, and found out that there is a contradiction within it. We asked the reader to look at the situation from

a different view, *viz.*, PEEE. Finally, we came to understand that political legitimacy is not a fixed idea and democracy, indeed all forms of political entities, could never be said to be necessary for political legitimacy.

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