

The Idea of Justice: A Comparative Study of the Ideas of John Rawls, Robert Nozick and Amartya Sen

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DECLARATION

I hereby declare that the work embodied in this thesis entitled “**The Idea of Justice: A Comparative Study of the Ideas of John Rawls, Robert Nozick and Amartya Sen**” is an original work. It is carried out by me under the supervision of Prof. Md. Moazzam Ali, Department of Political Science, University of Hyderabad.

I hereby declare to the best of my knowledge that this work has not been submitted either in part or in full to any university or institution for the award of any degree or diploma.

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It is to certify that Mayengbam Nandakishwor Singh has completed this thesis entitled “**The Idea of Justice: A comparative Study of the Ideas of John Rawls, Robert Nozick and Amartya Sen**” under my supervision and guidance in partial fulfilment of the requirements for the award of the Doctor of Philosophy in Political Science.

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Preface

The ideas of justice propounded by John Rawls and Robert Nozick have generated wide ranging discussions which are intellectually exciting but not free from controversies at times. It would not be much of an exaggeration to claim that no other work on the idea of justice commands as much attentions as the work of John Rawls. The same is true of Robert Nozick.

In this thesis, a serious endeavour is made to carry out a comparative study of the ideas of John Rawls and Robert Nozick on justice. In doing this, the purpose is to examine the significant dimensions of ideological differences or gulfs between these two thinkers that had shaped their ideas of justice which represent two diametrically opposite lines of thinking albeit they both come from liberal school of thought. And thus, this thesis takes into account the intricate nuances of differences between Rawls and Nozick on the idea of justice.

Several studies on Rawls and Nozick on their ideas of justice have been done over the years and this trend is likely to continue further. However, there has not been any comprehensive comparative study, to my knowledge, which deals with the inherent differences between Rawls and Nozick on the ideas of justice. In this sense, this thesis is written in an entirely different manner as its main focus is to fill this void.

Amartya Sen has come up with his idea of justice from a different perspective. Sen has published a book on his idea of justice in the recent times and we have taken care to study the contents of the book. A study on the idea of Justice by Amartya Sen is also included in this thesis. It is not designed to be a major theme of this thesis; it is an additional sub-chapter of this thesis. The main objective of figuring Sen's idea of justice in this thesis is to examine how differently Amartya Sen has articulated the idea of justice. It is hoped that inclusion of Sen's idea of justice would enrich this study.

The present thesis comprises of six chapters. Chapter 1 deals with the meaning of justice, origins, dimensions, interpretations of some prominent schools on the idea of justice. Chapter 2 is about John Rawls's ideas of justice based on his three major original texts wherein we study as to how Rawls has propounded his theory of justice. Chapter 3 is on Robert Nozick's theory of justice in which we analyse the theoretical framework through which Nozick develops his libertarian idea of justice. Chapter 4 is about a comparative analysis of Rawls and Nozick on the ideas of justice. It is a main chapter of this thesis and in this, a study of differences between Rawls and Nozick on the idea of justice is carried out by specifying

some important dimensions. Chapter 5 is a study about Amartya Sen on the question of justice wherein we attempt to explore how Sen has conceptualised his idea of justice from a different perspective. In the conclusion part, a broad summarisation of the all the chapters written is given. Along with it, we have also enunciated other common similarities and differences among these three thinkers.

For the purpose of comparison, we have made use of original writings of these three thinkers. Relevant secondary sources have also been consulted. A comprehensive bibliography is attached at the end of this thesis.

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Chapter 1

Evolution of the Idea of Justice: An Overview

The understanding of the term justice eludes unanimity. The term justice continues to defy consensus in terms of understanding. To define justice accurately has been an ongoing exercise in the realm of political theory. It is an uphill task to define justice in precise terms. The reasons for these are varied. What is considered to be justice or injustice differs from person to person, from society to society. Different societies, different communities have developed different notions of justice, different ideas about what constitutes justice and what constitutes injustice. What could be regarded as a justice at a particular given time in a particular society need not necessarily be so in other different societies.¹ Further, what compounds difficulties is the fact that the concept of justice is not static but evolutionary. In many ways, it is incremental. For example, the idea of justice conceptualised during the Greek period is no more considered correct in the modern times. Today we have various connotations of the idea of justice which are quite different from the traditional conceptions of justice. Any formulation of the idea of justice has been influenced by multiple social milieus, moral ethos, etc.² Any study of justice may have to take note of absolute and relative aspects of the term justice. There are some aspects of justice which are considered to be absolute. For example, certain cases like rape, murder and bribery are not justified in any given society. Cases such as these are commonly conceived to be unjust and unjustifiable. On the contrary, the sense of justice is also relative. Conceptions of justice propounded by some scholars are relative to specific framework. No theory of justice has been considered to be absolute and universal. Nevertheless, the idea of justice persists in arousing the interest of thinkers all over the world. So, we find several contrasting or competing theories of justice in any given period of time. There have been many conceptions of justice like the Greek concept of justice, the Roman concepts of justice, the Utilitarian concept of justice, Rawls's theory of justice, the entitlement theory of justice advocated by Libertarian thinker, such as

¹ In this context, we can argue that there is no absolute agreement on what the idea of justice stands for. Andrew Heywood rightly argues that there has been far less agreement about what justice stands even though political thinkers have portrayed the "good society" as a "just" society through the ages. See for details, Andrew Heywood, *Political Theory* (New York: Palgrave Macmillan, 2004), 173.

² For instance, what is "just?" cannot be exactly fixed in different situations as the term the "just" embodies different senses. N. M. Nathan argues that "even if we fix on one particular sense of 'just', there is a multiplicity of ways in which the value of an action can be held to depend on whether or not it is just in that sense, or on the degree of justice or injustice, in that sense, which can be attributed to it." See N. M. L. Nathan, *The Concept of Justice* (London: The Macmillan Press Ltd, 1971), 1.

Robert Nozick, the Marxist ideas of justice, the Communitarian concept of justice, the Anarchist view of justice and so on.

Meaning of the term Justice

The word “justice” has been derived from the Latin word “Jus.” The idea of justice has been defined and understood in multiple ways. According to Paulette Kidder, “Justice is a moral quality of individuals and institutions, whereby they give equality of respect to persons and strive to preserve the rights of all.”³ For him, justice is essentially the sense of morality whereby the rights of individuals are preserved and they are equally respected.⁴

For Prof. Ernest Barker, justice is the idea of joining and fitting, the idea of a bond or tie. Barker says, “Primarily, the joining or fitting implied in this root idea is that between man and man is an organised system of human relations. But we may also conceive of the ‘just’ and ‘justice’ as connected with, and expressed in, a joining or fitting between value and value in a general sum and synthesis of values.”⁵ Barker further states that “we recognise a number of different values as necessary to an organised system of human relations. There is the value of liberty: there is the value of equality: there is the value of fraternity, or cooperation. All these values are present in any system of law; but they are present in different degrees at different periods of time, and there is a constant process of adjustment and readjustment between their claims. The claims of liberty have to be adjusted to those of equality; and the claims of both have also to be adjusted to those of co-operation. From this point of view the function of justice may be said to be that of adjusting, joining, or fitting the different political values. Justice is the reconciler and the synthesis of political values.”⁶

In a broader sense, the term justice implies the impartial application of general principles or rules to everyone. Justice is opposed to rules which are partial and arbitrary in nature. As Morris Ginsberg says, “Justice in the broadest sense consists of the ordering of human relations in accordance with general principles which are applied impartially to all.”⁷

³ See Paulette Kidder, “Justice” in William A. Darity Jr., ed., *International Encyclopedia of the Social Sciences*, 2nd edition, vol. 4 (London: Thomson Gale, 2008), 237.

⁴ It must be noted that the concept of justice does not always reflect the idea of morality. Justice and morality are two different concepts. In fact, the idea of justice involves certain aspects like moral judgment, distribution of rewards, allotment of punishments etc. However, it is not to undermine the fact that the idea of justice has moral aspects too.

⁵ For details see, Ernest Barker, *Principles of Social and Political Theory* (Calcutta: Oxford University Press, 1976), 102.

⁶ Ibid.

⁷ See Morris Ginsberg, “The Concept of Justice.” *Philosophy* 38, no. 144 (April, 1963): 104.

The idea of justice can be studied both from relativist and absolutist spectra. The sense of justice is different in different situational context. As ideas and opinions of human beings differ, even the same person may arrive at different conceptions of justice in a different circumstance. Therefore, it is not easy to describe what justice is in absolute sense. However, there are certain aspects in every human society which are considered to be absolutely unjust. Arnold Brecht explains the relative and absolute aspects of justice. Arnold Brecht points out that our ideas of justice may change in accordance with the different systems of values to which we respond positively. According to Arnold Brecht, there are two distinct levels in our idea of justice. One is the 'traditional' idea of justice; other is the 'transtraditional' idea of justice.⁸ The 'traditional' idea of justice accepts the fundamental institutions which constitute the basis of our daily social life. It does not question social institutions, particularly like family, monogamy, private property, inheritance, contract, etc. Individuals naturally accept the traditional institutions in his arguments.⁹ In the traditional ideas of justice, the unquestioned fundamental social institutions are the beginning of individuals' thinking. This means one's thinking starts from unquestioned social institutions.¹⁰ On the contrary, the transtraditional idea of justice detaches itself from the existing institutions, either in whole or in part. It criticises them according to principles which are taken from a transtraditional scheme of evaluation. This may be done in dependence on group ideas that are accepted and carried on by the individual in some condition of submission or merely in deference to opinions of a stronger personality, a friend or the priest, etc.¹¹ In fact, the transtraditional idea on what is just and unjust varies according to the subjective scheme of values in every case. This means, according to the transtraditional idea of justice, any person will have different idea of justice once his or her conviction is changed.¹² Further, Arnold Brecht also argues that certain elements in our ideas of justice are universal. Arnold Brecht points out five postulates of justice which are considered to be universal. First, justice in the objective sense demands objective truth. Second, justice seeks generality of the system of values. Third, justice does not approve arbitrary decimations among equal cases. Fourth, justice does not advocate

⁸ See Arnold Brecht, *Political Theory: The Foundation of Twentieth Century Political Thought* (New Jersey: Princeton University Press, 1959), 148.

⁹ *Ibid.*, 148-49.

¹⁰ *Ibid.*, 150.

¹¹ *Ibid.*, 148.

¹² *Ibid.*, 155.

arbitrary restriction of freedom. Fifth, justice does not demand to inflict punishment or moral reproach when it is impossible to fulfil a law or command.¹³

Underpinning the difficulties involved in defining the term justice, Agnes Heller in his book *Beyond Justice* attempts to distinguish different concepts of justice. First is the “formal concept justice.” The formal concept of justice means “the consistent and continuous application of the same norms and rules to each and every member of the social cluster to which the norms and rules apply.”¹⁴ Second is the “ethical concept of justice.” The ethical concept of justice is referred to as “righteousness”. This means that a person is righteous if he or she observes moral norms irrespective of social sanctions. This concept of righteousness is basically the concept of morality.¹⁵ Third is the concept of “dynamic justice.” In dynamic justice, any norms and rules can be rejected as unjust and alternative norms and rules can be offered. Norms and rules can be held just by some while others can argue against them as unjust. It is opposed to static justice in which “norms and rules are taken for granted.”¹⁶ Fourth is the “socio-political concept of justice.” According to this concept, the question of justice and injustice is to be addressed ‘within the framework of the scientific or quasi-scientific understanding of society.’ The socio-political concept of justice has enabled us to examine and get a crystal insight about the functioning of socio-political bodies as well as their organs.¹⁷ Moreover, the socio-political concept of justice again comprises of two major concept of justice. First, “retributive justice” which refers to social sanctions effected according to norms and rules of the society when these social norms and rules are infringed.¹⁸ And secondly, “distributive justice” that concerns with sharing good and bad things, benefits and burdens among members of society, or it refers to the distribution of material resources and goods.¹⁹ Fifth is the “incomplete ethico-political concept of justice.” Such concept of justice does not seek to establish a single ideal pattern or single ethics for ways of life. It advocates the existence of ways of life together with ties of symmetric reciprocity.²⁰

Ch. Perelman has also tried to elucidate the meaning of justice by differentiating between the “formal justice” and “concrete justice.” According to Ch. Perelman, “formal justice is the

¹³ Ibid., 396.

¹⁴ See Agnes Heller, *Beyond Justice* (Oxford: Basil Blackwell, 1987), 5.

¹⁵ Ibid., 49, 53.

¹⁶ Ibid., 117.

¹⁷ Ibid., 153.

¹⁸ Ibid., 156.

¹⁹ Ibid., 180.

²⁰ Ibid., 220.

principle of action according to which the persons who belong to ‘one and the same essential category ought to be treated in the same way.’ It follows from this that the administration of justice assumes a classification or ordering of persons in accordance with the essential characteristic that serves as its basis.’²¹ Ch. Perelman further argues that the formal justice does not lay down the categories that are essential for the administration of justice. On the contrary, “concrete justice” has different formulas like, “to each the same thing,” “to each according to his merits,” “to each according to his needs,” and “to each according to his legal entitlement” etc.²² Concrete justice is administered in accordance with some formulas.

From some of the meanings of the term justice discussed above, we come to know that it is a difficult exercise to define justice in a commonly acceptable way. Different scholars have various viewpoints about the ideas of justice.²³ Some of the scholars attempt to give the specific framework, without exactly defining justice, as to how justice can be understood. Some scholars emphasise the point that justice can be conceptualized in different dimensional forms. And in some of the meanings of justice, the idea of treating individuals equally with same general principles is underscored. They underscore the moral duty on the part of individual and institution to treat everyone in equal terms by observing common rules and principles for all. However, the definitions of the justice expressed above do not address some of the basic aspects like how the concept of justice transforms from time to time, how dimensions of justice can be conceptualized, etc. In the contemporary times, it is broadly understood that while traditional idea of justice is primarily concerned with virtues, fulfilment of duties and worth of individuals, etc; modern concept of justice is more inclined towards the societal transformation with the view to realize social values.

Dimensions of the Idea of Justice

The nature of justice is broadly understood in two distinct categories. They are ‘procedural justice’ and ‘substantial justice’. Procedural justice is also known as formal justice. In a general sense, procedural justice is concerned with the process of how rules or principles are

²¹ See for details, Ch. Perelman, *The Idea of Justice and the Problem of Argument* (London: The Humanities Press, 1963), 29.

²² *Ibid.*, 16-28.

²³ Different scholars have formulated different basis for the idea of justice. Some of the notable criteria on which the idea of justice is defined are: justice according to merit, justice according to ability, justice according to need, justice according to entitlement, justice according to worth or desert, justice according to fair principles, justice according to rights or utility, etc.

made and applied. It is not directly concerned with the contents of the decisions themselves.²⁴ Procedural justice basically means that if just procedures are followed, then the outcome will be automatically just. On the contrary, Substantial justice is also known as concrete justice. Substantial justice is concerned with the rules themselves as to whether they are just or not. It is basically concerned with the outcomes themselves. Substantial justice holds the idea that the rules or outcomes should be primarily just.

Further, there are some significant dimensions of justice. They are: the legal dimension of justice, the political dimension of justice, the social dimension of justice and the economic dimension of justice.

The legal dimension of justice: The legal dimension of justice basically refers to the process in which law distributes penalties for wrongdoings and allocates compensation in the case of injury or damage.²⁵ It seeks to have impartial justice and equal protection of laws to everyone. Moreover, legal dimension of justice can be interpreted either with procedural justice or substantive justice. According to procedural justice, obedience to the law ensures justice.²⁶ And with regard to substantial justice, it underscores the examination of legal validity to ensure justice.

The political dimension of justice: The political dimension of justice is concerned with the guarantee of the equal liberty of thought and expression, the right to criticise the government and its policies and programmes to all citizens. In a broader sense, it also deals with the citizens' equal political rights to take part in political process and political activities. The political dimension of justice also deals with the idea of securing political equality among citizens.

The social dimension of justice: The social dimension of justice is concerned with the elimination of all kinds of social discriminations in a society. The social dimension of justice advocates total removal of any kind of social discriminations and privileges related to birth, race, caste, creed, sex and so on. It seeks to promote social equality and social rights among citizens.

²⁴ Andrew Heywood also clearly explains this distinction. According to Andrew Heywood, procedural justice is related to how the rules are made and applied. Substantial justice is concerned with the rules themselves and whether they are just or unjust. See Heywood, *Political Theory*, 173-74.

²⁵ See David Miller, *Social Justice* (Oxford: Clarendon Press, 1976), 22.

²⁶ See Robert Booth Fowler and Jeffrey R. Orenstein, *Contemporary Issues In Political Theory* (New York: Praeger Publishers, 1985), 96.

The economic dimension of justice: Economic dimension of Justice broadly means having fair distribution of economic resource among citizens. According to C. B. Macpherson, Aristotle distinguished between the “household or simple market economy” in which production and exchange were for use, and a more advanced market economy in which exchange was initiated by the merchant using his money capital to do buying and selling at a profitable price to amass or to increase his wealth, a system in which money is the starting point and the goal of exchange.²⁷ Macpherson further argues that there is also in Aristotle’s doctrine the beginning of the two branches of the concept of economic justice. One is “commutative justice” which means justice in acts of exchange at a just price. Another is “distributive justice” which refers to the distribution of the whole product among the citizens of the society so that every household have some income needed for the good life.²⁸

The Origin of the Idea of Justice

There is no universally accepted theory that fully explains the origin of the idea of justice. Different thinkers have propounded different viewpoints about the genesis of justice. David Hume, for instance, believes that “the sense of justice and injustice is not derived from the nature, but arises artificially, tho’ necessarily from education, and human conventions.”²⁹ Hume believed that mankind is inventive and the rules of justice are artificial. Justice owes its origin to convention. In fact, Hume argued that the idea of justice and injustice arise from the convention. According to Hume, convention here means “a general sense of common interest, a sense which members of the society express to one another, and a sense by which the conduct of members can be regulated by certain rules.”³⁰

Unlike Hume, for Friedrich Nietzsche, justice originates among those persons who are approximately equally powerful. It means justice is exchanged among equally powerful persons. According to Nietzsche, “Justice (fairness) has its origin among people approximately equal power where there is no clearly discernible superiority and a struggle would lead to ineffectual damages on both sides, the thought arises of coming to an understanding and negotiating the claims of both sides: the character of exchange is the

²⁷ See C. B. Macpherson, *The Rise and Fall of Economic Justice and Other Papers* (London: Oxford University Press, 1985), 5-6.

²⁸ *Ibid.*, 6.

²⁹ See David Hume, *A Treatise of Human Nature* (Oxford: Oxford University Press, 1978), 483

³⁰ *Ibid.*, 484-90.

original character of justice.”³¹ Robert John Ackermann observes that justice, for Nietzsche, originates in the sphere of social justice as a law in which the stronger seeks to manage any reactive and violent disruptions by the weak in society. In the process, the stronger always seek to curb any resentment of the weak.³²

According to Arnold Brecht, there were mainly four grounds in the nineteenth century from which principles of justice were derived. They were: divine law, law of nature, reason and social contract. But he also admits that these four grounds failed to supply all the norms necessary to provide and preserve justice.³³

Ernest Barker gives a detail account of what he supposes as the origin of justice. For Barker, religion, nature, economics, and ethics are the origin of justice. (a) According to Barker, “religion” is one of the origins of justice. Barker’s point is that since ethical principles are considered to be the source of justice, religion is also one of the sources of the idea of justice. Barker argues that even today several churches hold the belief that it is the God who gave the idea of justice to mankind. Even the laws that sustain the state are derived from the notion of justice given by God. Thus, Barker gives the example of St. Thomas Aquinas who believed that it is God who expressed both the particular rule of right and general rule of right for mankind. All man-made laws are the product of human reason implanted by God.³⁴

(b) According to Barker, “nature” is considered as one of the origins of justice. In this context, Barker refers to the Stoics conception of the nature. He argues that the Stoic conception of nature is a conception belonging to a mixed world of religious belief and moral philosophy.³⁵ Nature is the combination of religion and ethics. In relation to this, there is a premise in which stoicism was based.³⁶ The premise is that men are by nature rational beings and men possess reason. And from this premise the basic concepts such as liberty, equality and fraternity have arrived. And these three concepts form the idea of justice. This means the idea of justice is the synthesis of liberty, equality and fraternity which originated from the nature.

³¹ See Friedrich Nietzsche, *Human, All Too Human, I*, translated by Gary Handwerk (Stanford: Stanford University Press, 1995), 70. Also see, Walter Kaufmann, “The Origin of Justice.” *The Review of Metaphysics* 23, no. 2 (December, 1969): 226.

³² See Robert John Ackermann, *Nietzsche A Frenzied Look* (Amherst: The University of Massachusetts Press, 1990), 99.

³³ See Brecht, *Political Theory*, 136-37.

³⁴ See Barker, *Principles of Social and Political Theory*, 103.

³⁵ *Ibid.*, 106.

³⁶ *Ibid.*, 107.

(c) Barker states that “economics” is one of the origins of justice. To explain this assertion, Barker takes up the theories of Marx, Proudhon and Duguit. For Marx, all history is a history of class-struggle. According to Marx, “state is the executive committee of the exploiting class.” In the capitalist society, the economically powerful bourgeois class dominates and exploits the proletariat or working class. Justice for Marx is the removal of economic inequality through communism. Contrary to this, Proudhon drew his notion of justice from an economic source—“mutualite” which is of occupational groups complementary to one another and knit together by mutual need and the bond of mutual service.³⁷ For Proudhon, the notion of justice drawn from the source of economics will be a notion based on the interest of the whole society and of all its complementary groups. However, Duguit assumes that a national society must primarily be regarded as an economic society in which there are different occupational groups, producing different things. They are bound to one another by mutual need of one another’s products and mutual exchange. This need of co-operation will bring the principle of solidarity which in turn furnishes the idea of justice.³⁸

(d) Barker points out that ‘ethics’ is also regarded as one of the origins of justice. This means the source of the idea of justice is the moral standard of the community. Barker says “the moral standard of the community, precipitated in and enforced by the general moral conscience, will be the source of a notion of justice, containing a system or synthesis of values, which will be in its turn the impersonal source of positive law.”³⁹ Moreover, Barker is of the view that for a law to be valid, it must conform to the demands of the general moral conscience.⁴⁰

Relationship between Justice, Right, Equality, Liberty and Law

Justice shares close connection with other important concepts such as right, equality, liberty and law.⁴¹ There have been contested views about the relationships among these concepts.

The idea of justice is closely related with the idea of right. Justice is closely connected to respect for individuals’ rights. The idea of justice is essentially identified with the rights of individuals. Some modern scholars usually discuss the ideas of justice with reference to

³⁷ Ibid., 111.

³⁸ Ibid., 112.

³⁹ Ibid., 117.

⁴⁰ Ibid.

⁴¹ In this context, it can be mentioned that scholar like D. D. Raphael is also of the view that justice is “a complex concept that pervades social thought to an unrivalled extent” and justice is “basic to law, ethics, and politics alike.” See, D. D. Raphael, *Concept Of Justice* (Oxford: Clarendon Press, 2001), 1.

rights. In the ancient times, the Greeks and the Roman law had propounded specific ideas about justice. But they did not put much importance on the conception of individual rights.⁴² Both Plato and Aristotle had not emphasised much about the importance of rights in their theories of justice. For instance, Plato's theory of justice emphasises the specialisation of functions among the three classes in society. Plato's idea is of building an ideal state based on such setting. Plato's justice embodies the concept of duties, but not of rights. In the contemporary times, John Rawls and Robert Nozick have developed their respective theories of justice by showing the utmost importance of individual rights. Both the thinkers look at justice and right as two inseparable entities.

The idea of Justice is connected with equality. It can be argued that the idea of justice underlies the idea of equality. Justice cannot be fulfilled correctly as long as equality among citizens is not preserved. However, the idea of justice is not same with equality. Both concepts are different. J. R. Lucas explains this lucidly in his book *On Justice*. J. R. Lucas argues that justice can run counter to equality. Justice is concerned with deciding between people, and therefore cannot deal with everyone all the same. And equal treatment of all is often argued to be unfair as it fails to do justice to the individual's case.⁴³ J. R. Lucas further states that "it is not enough that one should be treated the same as other people similarly situated. It is also required that proper account should be taken of the difference between cases and relevant factors should be taken into consideration in determining what treatment should be accorded to the individual in question. Else, his individuality is denied. In a different argument it can be seen that justice demands not merely that we treat like cases alike, but equally important, that we treat different cases differently."⁴⁴ Thus the idea of justice differs from equality even though they are closely connected.

Justice is also connected with liberty. Idea of justice cannot be meaningful unless individuals have their basic liberties. As long as liberty is denied to individuals, the sense of justice continues to lose its relevance. In fact, when we say that people are fighting for their liberty, there underlines an inherent sense that they are fighting for their justice. Justice and liberty are two important aspects in political theory. Nevertheless, the idea of justice is more complex than liberty.

⁴² Alan Ryan also expresses a similar line of argument in this aspect. See Alan Ryan, "Introduction," in *Justice*, ed. Alan Ryan (New York: Oxford University Press, 1993), 2.

⁴³ See J. R. Lucas, *On Justice* (Oxford: Clarendon Press, 1980), 171-75.

⁴⁴ *Ibid.*, 175-76.

There is also a relation between justice and law. H. L. A. Hart is of the opinion that as justice and law are so close some thinkers even identify justice with conformity to law.⁴⁵ In the similar fashion, Dennis Lloyd in his book *The Idea of Law* argues that the idea of law has been always associated with the idea of justice.⁴⁶ According to Dennis Lloyd, the general perception is that the purpose of law is to deliver achieve justice. The idea of law is frequently treated as synonymous with justice in the sense that what law seeks is to deliver justice, and justice is what law delivers. In fact, law is supposed to be applied equally to all citizens. Any law which is applied without any discrimination to all may be regarded as the embodiment of justice.⁴⁷ However, justice and law are not same. Dennis Lloyd illustrates the difference with an example; a law may permit a person to inflict severe loss or injury on another without that other having any right of redress. A decision to this effect is legally just though it may be regarded (even by the court itself) as morally most unjust. On the other hand, if the court were, contrary to established law, to decide in favour of the plaintiff notwithstanding, this might be morally just but it would still amount to legal injustice.⁴⁸ Moreover, the idea of justice is much wider than the law. Therefore, when we say that the idea of justice is closely connected with law, we probably mean the legal dimension of justice.

The Idea of Justice: An Account of its Historical Evolution

There has been a continuous process of evolution about the idea of justice. It is precisely because the term justice is ever a contested concept. Starting from the Greeks to the present day, the idea of justice has manifested in different conceptual forms. In this section, we shall study the conceptual evolution of the ideas of justice in a synoptic form.

For Plato, justice means doing or performing one's duty. According to Plato, there are three classes in the state. They are the ruling class, the warrior class and the producing class. When these three classes stick to their respective duties, justice comes to exist in the state. Justice for Aristotle meant equal share to the equals and unequal to the unequals. Aristotle's idea is that the distribution of power and position should be proportionate according to the worth of the individual. Aristotle also distinguishes between "distributive justice" and "commutative justice." Distributive justice refers to the distribution of assets among members of a

⁴⁵ See H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1978), 157.

⁴⁶ See Dennis Lloyd, *The Idea of Law* (England: Penguin Books, 1981), 116.

⁴⁷ *Ibid.*, 119.

⁴⁸ This example is taken from the same book by Dennis Lloyd quoted above, *Ibid.*, 129.

community. Aristotle argues that the distribution of goods should be in proportion to merit or desert of the members. On the other hand, commutative justice is about the issues that arise from the transactions between people, including market or other forms of reciprocal exchange, and all civil and criminal disputes.⁴⁹

The Roman concept of Justice is legalistic. The primary end of law and society is justice for Romans. For instance, Cicero argued that “if justice is to be in the state, behind all laws and customs of men, a supreme and permanent law exists to which everyone else must conform.”⁵⁰ In the medieval age, justice had been identified with the notion of the act on God’s behalf. A king or prince had to provide justice to those whom he ruled because he acted on God’s behalf. This duty provided rulers with a powerful way to legitimate their actions.⁵¹ Thus, justice came to be identified with the will of God. St. Augustine linked justice with Christian thought. St. Augustine believed that justice was not created by the civil authority. It was created by the ecclesiastical which was independent of the state. St. Augustine believed that justice could not exist in “non-Christian states.”⁵²

In modern political philosophy, some trace of the idea of justice can be found in the social contract theories, if not in the full fledged fashion. The English philosopher Thomas Hobbes argued in *Leviathan* that prior to the establishment of a government, people lived in a “state of nature,” a state of constant war in which their lives and property were not safe and secure. For Hobbes, in the state of nature, the sense of justice and injustice did not exist. Hobbes argues that there could be no justice without covenant. Justice is that which is meted out by the leviathan. John Lock argued in his *Second Treatise of Government* that even in the state of nature people had a natural “right to life, liberty, and property.”⁵³ Once the “commonwealth” is established, the rulers are obligated to protect or preserve these natural rights of individuals.⁵⁴ For Locke, justice is not conceivable without personal property. Thus,

⁴⁹ See Vittorio Bufacchi, “Theories of Justice,” in *The Encyclopedia of Democracy 2*, ed. Seymour Martin Lipset (London: Routledge, 1995), 686.

⁵⁰ See Lawrence C. Wanlass, *Gettell’s History of Political Thought* (London: George Allen and Unwin Ltd, 1970), 85.

⁵¹ See Warren C. Brown, “Justice in Medieval Thought,” in *Encyclopedia of Political Theory 2*, ed. Mark Bevir (London: Sage Reference, 2010), 740-41.

⁵² See Wanlass, *Gettell’s History of Political Thought*, 100.

⁵³ See Peter Laslett, *John Locke Two Treatises of Government* (Cambridge: Cambridge University Press, 1980), 101.

⁵⁴ Paulette Kidder argues that justice, for Locke, predates the establishment of the government and places some constraints upon the actions of those in power. See Kidder, “Justice,” 237.

the security of each individual's personal possessions is the essence of Lock's justice.⁵⁵ Rousseau's idea on justice is rather vague. Rousseau says, "All justice comes from God, he alone is its source; and if we knew how to attain it at so great a height, we should need neither government nor laws. Undoubtedly, absolute justice exists, emanating from reason alone; but in order for it to be accepted among men, it has to be reciprocal. To consider things in human terms, the laws of justice, if lacking any natural sanction, are without effect among men. They merely benefit the wicked and harm the just when the just man observes them towards everyone while no one observes them towards him. Conventions and laws are necessary, therefore, in order to combine rights and duties, and to enable justice to fulfil its object."⁵⁶ For Rousseau, "general will" is the rule of what is just and what is unjust.⁵⁷

For the Marx, justice broadly means the end of exploitation and the creation of a communist society based on the principle of "to each according to his need, from each to his capacity." For Anarchist, justice exists where there is no state, no property, and no religion. For them, state is an unnecessary evil and the state is never compatible with the idea of justice. For utilitarianisms, justice is to be defined in terms of the overall happiness that individual actions, governmental policies and institutions produce. Utilitarians define Justice in terms of the utility.⁵⁸ For libertarians, justice is generally to do with individuals' absolute freedom to hold property or holdings. For libertarians, justice is not compatible with any extensive state, and therefore they advocate a limited state. Some libertarians link justice to entitlement. They emphasise on the importance of individual's right in self ownership. They also believe that free market is inherently just.

German philosopher Friedrich Nietzsche has given an interesting account of justice. For Nietzsche, the idea of justice or morality is what a superman desires or does. Nietzsche argued that man has the tendency to protect himself and dominate others. He wants to be claimed to be powerful. He also firmly believed that powerful persons would rise in the midst of struggle. And the person who establishes his domination over others is the superman. Justice or morality is determined by the powerful persons. They prescribe the rules of justice

⁵⁵ See, E. Clinton Gardner, "John Locke: Justice and the Social Contract," *Journal of Law and Religion*, 9, no. 2 (1992), 360.

⁵⁶ See Jean-Jacques Rousseau, *Discourse on Political Economy and the Social Contract*, translated by Christopher Betts (Oxford: Oxford University Press, 1994), 73.

⁵⁷ See Rousseau, *The Social Contract and other later political writings*, translated by Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 6.

⁵⁸ According to Philip Petti, utilitarian defenders claim that utilitarian justice offers not just the criteria of justice whereby institutional arrangements can be assessed but also a criterion of morality whereby the actions of individuals can be evaluated. See Philip Petti, *Judging Justice* (London: Boston and Henley, 1980), 110.

and the weak have no say about it. They have to obey what the supermen wish them to do. In this regard, Lee Spinks argues that justice, for Nietzsche, is not the natural expression of a basic human necessity. Justice is the creation of the dominant force in society which seeks to handle the revengeful desires by the weak and inferior.⁵⁹ Nietzsche argued that “historically speaking, justice on earth represents the battle against reactive sentiment, the war waged against the same on the part of active and aggressive forces, which have partly expended their strength in trying to put a stop to the spread of reactive pathos, to keep it in check and within bounds, and to force some kind of compromise with it.”⁶⁰ In fact, Nietzsche’s argument is that in any sphere of human life, when justice prevails, the stronger always look for ways to end any resentment of the weak.

In the contemporary times, discourses on the idea of justice have occupied a central position in liberalism. Amongst several other liberal theories of justice, the ideas of John Rawls and Robert Nozick have been widely discussed and hugely influential. John Rawls and Robert Nozick, through their respective theories of justice, tried to provide justifications for some of the fundamental tenets of liberalism (we shall discuss them in detail in the following chapters). Interestingly, a new trend of thinking called communitarianism also has emerged within the fold of liberalism, primarily as a reaction to the ideas of Rawls and Nozick.⁶¹ Communitarianism disapproves of the liberal premises such as “rational individual who chooses freely.” According to communitarianism, human behaviour can be understood only with reference to their social, cultural, and historical contexts; not outside them. Some communitarians contend that morality cannot be universal. This means, communitarians argue, morality cannot be defined in any universally acceptable terms. For them, universal and absolute justice is not possible. Further, the values and the idea of justice that people hold are derived from different or diverse communities, and therefore their concepts cannot be universal or absolute.⁶²

In the recent times, there are discussions on the idea of global justice. Thinkers like Thomas Nagel and Amartya Sen are exploring the possibilities as well as the limitations of formulating the idea of global justice.

⁵⁹ See Lee Spinks, *Friedrich Nietzsche* (London: Routledge, 2003), 76.

⁶⁰ See Friedrich Nietzsche, *On the Genealogy of Morality*, ed. Keith Ansell Pearson, translated by Carol Diethe (Cambridge: Cambridge University Press, 1994), 53.

⁶¹ David Conway argues that it is known as communitarianism because of the importance it attaches to community. See for details, David Conway, *Classical Liberalism* (London: Macmillan Press, 1995), 65.

⁶² See Shlomo Avineri and Avner De-Shalit, “Introduction,” in *Communitarianism and Individualism*, eds. Shlomo Avineri and Avner De-Shalit (Oxford: Oxford University Press, 1992), 2-4.

Interpretations of Some Prominent Schools on the Idea of Justice

In this section, we shall make an attempt to examine as to how some of the major schools define the idea of justice. For this purpose, we have selected some prominent schools in political theory. The schools are: the Greek idea of Justice, the Libertarian idea of justice, Communitarianism and Justice, Utilitarian conception of Justice, Anarchist view on Justice, Marx's perspective on the idea of Justice and the idea of justice from the East. In this, we shall also examine the specific ideas of some prominent thinkers about justice from each school.

The Greek Idea of Justice

Ancient Greek thinkers considered justice to be one of the cardinal virtues. Plato's idea of justice can be found in his book *The Republic*. Plato propounded his theory of justice succinctly. Ernest Barker explains that justice, for Plato, is "the will to concentrate on one's own sphere of duty, and no to meddle with the sphere of others; and its habitation, therefore, is in the heart of every citizen who does his duty in his appointed place. It is the original principle laid down at the foundation of the state 'that one man should practise one thing or duty only and that the thing to which his nature was best adapted.'"⁶³ As George H. Sabine argues, justice for Plato is the bond which holds a society together, a harmonious union of individual each of whom has found his lifework in accordance with his natural fitness and training.⁶⁴ Plato makes an analogy between the "human organism and social organism" in formulating his theory of justice. According to Plato, human organism contains three elements—"reason, spirit and appetite." Corresponding to these three elements in human soul, there are also three classes in the social organism—the ruling class or philosophers who are the representative of reason; the auxiliary or warriors class who are the representative of spirit and the producing class that represent appetite. For Plato, when these three classes performed their respective duties in which they are naturally fit, justice comes into exist in the state. As Rachel G. K. Singpurwalla argued that what Plato claimed in the *The Republic* is that each thing has a function, which it can do best as they are fit in that. The example of it can be that the function of the eye is to see.⁶⁵

⁶³ See Ernest Barker, *Greek Political Theory-Plato and His Predecessors* (London: Methuen and Co LTD, 1918), 203-4.

⁶⁴ See George H. Sabine, *A History of Political Theory* (Bombay: Oxford and IBH Publishing Co, 1993), 64.

⁶⁵ See Rachel G. K. Singpurwalla, "Plato's Defense of Justice in the Republic," in *The Blackwell Guide to Plato's Republic*, ed. Gerasimos Santas (Oxford: Blackwell Publishing House, 2006), 264.

Further, Plato's made it clear that his idea of justice exists both in the individual and the state. From the point of individual, justice means self control which makes a man refrain from pursuing his selfish motives and doing things which are undesirable. It makes individual stick to what they are best suitable by their natural endowments and perform their duties. Socially, justice means "self control on the part of various classes of society." This makes each class mind its own function, duties and not meddle with the functions of other classes. Plato also claimed that justice resides in the state and it is more visible in the state. For Plato, justice that resides in the state comprises of four elements. They are: "wisdom, courage, temperance and justice." Plato argued that state do not come out of an oak or rock, but from the characters of the men that dwell therein. It is the product of human soul.⁶⁶ Thus, state has four virtues—justice, wisdom, courage and temperance. And the virtues of the state are the virtues of its members when they are acting as members. Wisdom must be the "virtue of the ruling class," courage must be the "virtue of the soldiers," and self control must be that of "producing class."⁶⁷ And justice is the will to fulfil one's duties and not to interfere with the sphere of others' duties. Plato's view is that the justice of the state and the justice of individual are interdependent. Justice of the state depends upon each class in the state performing their duties and functions properly. In the same way, the justice of the individual requires that each of the three elements in the individual soul keep within their proper bounds. From the point of Garrett Ward Sheldon, the state, for Plato, is the "individual writ large." Plato's justice is concerned with the proper ordering of different elements within each. This means justice is about recognition of these different elements and acceptance of inequality among individuals and classes in society.⁶⁸ In this regard, Robert W. Hall clearly points out that, for Plato, the virtues of the state comes about when its three integral classes are in the proper functioning; similarly virtues of the individual come when there is the right functioning of the three generic parts of his soul.⁶⁹

In simple words, justice, for Plato, is about the non-interference of duties among the various classes of society and also among various elements in individuals' soul.⁷⁰ In this sense, Plato's conception of justice reflects a principle of functional specialisation. Plato's justice

⁶⁶ See Barker, *Greek Political Theory*, 188.

⁶⁷ *Ibid.*, 203.

⁶⁸ See Garrett Ward Sheldon, *The History of Political Theory-Ancient Greece to Modern America* (New York: Peter Lang, 1993), 18.

⁶⁹ See Hall W. Robert, *Plato* (London: George Allen and Unwin, 1981), 61.

⁷⁰ In connection with this, Plato maintained that a city could not be just unless it recognized and institutionalised the basic natural differences between people. Plato had the view that people are naturally different. See Julia Annas, *An Introduction to Plato's Republic* (Oxford: Clarendon Press, 1981), 118.

definitely gives the idea that each individual should contribute to society in accordance with their natural capacities. One reason why Plato advocates the division of three classes with specified duties is that such classification will not only prevent political chaos and turbulence, but this also will maintain harmonious unity in the state. Moreover, Plato's justice is not individualistic because it does not encourage a man to think of himself in isolation with personal interest and ambitions.

Aristotle, another Greek philosopher, expounded his idea of justice in his book *Politics*. Aristotle describes justice as a "complete virtue." According to Aristotle, just means what is lawful or what is fair and equal.⁷¹ In this sense, for Aristotle, a just and law abiding citizen is one and the same. Since law abidingness is a complete virtue, justice is also a complete virtue.

Aristotle made some distinctions while explaining the idea of justice. As pointed out by Ernest Barker, first Aristotle distinguished between "General justice" and "Particular justice." General justice is the same as goodness. It is our righteousness. Particular justice is concerned with the specific form of goodness which consists in behaving fairly.⁷² According to some interpretations, the first distinction Aristotle made is between "Universal justice" and "Particular justice." According to Sir David Ross, the distinction is between Universal justice which is just as the lawful and Particular justice which is the just as the fair and equal.⁷³ Universal justice is a complete justice because it is the actual exercise of complete virtue in its fullest sense. It is complete because he who possesses it can exercise his virtue not only in himself but towards his neighbours also.⁷⁴

Further, Aristotle divided Particular Justice into two. They are: "Distributive justice" and "Rectificatory justice." Distributive justice is about the "distributions of honour or money or the other things among those who have a share in the constitution."⁷⁵ In contrast, corrective justice plays "a rectifying part in transactions between man and man."⁷⁶ Aristotle explained that distributive justice consists in proper allocation of goods, services, honour, offices etc., to each person according to his worth or desert. Aristotle's point is that as each citizen contributes to realise common life, each citizen must get the proportionate share. But the

⁷¹ See Sir David Ross, *Aristotle* (London: Methuen and Co Ltd, 1923), 209.

⁷² See Ernest Barker, *The Politics of Aristotle* (London: Oxford University Press, 1977), 362.

⁷³ See Aristotle, *The Nicomachean Ethics of Aristotle*, translated by Sir David Ross (London: Oxford University Press, 1975), 106.

⁷⁴ *Ibid.*, 108.

⁷⁵ See Barker, *The Politics of Aristotle*, 362-63.

⁷⁶ *Ibid.*

problem remains that different men have different claims about the share of distribution since they make different contribution. For example, as Aristotle argues, the wealthy have a claim because they have the greater share of territory, and the territory is something common. And they are more trustworthy in agreements. Similarly, the majority has a claim against a minority, because the majority taken together is superior, wealthier and better than the minority.⁷⁷ Then given such a situation, it is difficult to decide about different claims if they happen simultaneously. But Aristotle appears to suggest that the most virtuous person will have more authority.⁷⁸ In fact, Aristotle's distributive justice is also known as proportionate equality because it is concerned with the proper allocations of rewards, rights and duties, etc. to persons in accordance with their worth.

And regarding the rectificatory or corrective justice, Aristotle again distinguished two kinds of transactions as "voluntary transaction and involuntary transaction." Voluntary transactions are selling, purchasing, lending with or without interest, lending for hire, pledging. They are called voluntary because they are voluntarily entered upon. Of involuntary transactions, some are furtive, theft, adultery, poisoning, assassination, murder, robbery with violence, abusive language, and enticement of slaves.⁷⁹ Abraham Edel is of the view that Aristotle's corrective justice operates largely with respect to private transactions. Corrective justice operates in the domain of fraud, injury, and what we would regard as criminal wrongs, with the purpose of restitution. Corrective justice intends for the restoration of what has been damaged or injured to the aggrieved person.⁸⁰

Furthermore, Aristotle drew a distinction between "Absolute justice and Political justice." Absolute justice is justice between man and man. Political justice exists in a political association.⁸¹ Then Political justice has two parts. They are the natural part and the legal part. The natural part is that which has everywhere the same force, and which is not created by our thinking. According to Aristotle, fire is an example of natural justice which burns everywhere. The legal part is about legal enactment.⁸² The example of legal justice is any legal sanction given to a prisoner.

⁷⁷ See Aristotle, *Politics*, Book 3, Chapter 13, 105.

⁷⁸ *Ibid.*, 106-7.

⁷⁹ See Hans Kelson, "Aristotle's Doctrine of Justice," in *Aristotle*, ed. Subrata Mukherjee and Sushila Ramaswamy (New Delhi: Deep and Deep Publication, 1998), 182.

⁸⁰ See Abraham Edel, *Aristotle and His Philosophy* (London: Croom Hall, 1982), 300.

⁸¹ See Ernest Barker, *The Politics of Aristotle* (London: Oxford University Press, 1977), 364.

⁸² *Ibid.*, 365. See also, Fred D. Miller, Jr, *Nature, Justice, and Rights in Aristotle's Politics* (Oxford: Oxford University Press, 1995), 74-5.

Finally, we can infer that as Aristotle expounded his idea of justice in a large framework, it is necessary to examine the various classifications of justice that Aristotle made. For Aristotle, justice is generally connected with law. The just is not different from the lawful. This means that justice is doing what is lawful.⁸³ Aristotle is of the view that justice is complete virtue, which means justice includes all virtues and justice represents the entire virtue.⁸⁴ To summarize the kinds of justice that Aristotle discusses: General justice is about doing what is lawful and fair; Particular justice is concerned with citizens' fair share of goods, services, rewards, etc; Distributive justice is about the distribution of wealth, honour, rewards, etc. among citizens based on merits; Corrective justice is concerned with the fair transaction between citizens; Political justice is the justice among fellow citizens who are lawful; Natural justice is the one that is same everywhere, and Conventional justice is created by local conventions approved by law.

Libertarianism and the Idea of Justice

The term Libertarianism basically refers to the idea of free will over and against determinism.⁸⁵ Libertarianism asserts that the freedom of the will is contrasted with determinism.⁸⁶ In fact, libertarians emphasise on the importance of individual liberties. According to Michael A. Principe, “the term libertarianism has increasingly been associated with advocacy of the kind of individual rights that limit state intervention into the lives of individuals and warrant the functioning of a largely unhindered free market.”⁸⁷ David Boax defines libertarianism as “the view that each person has the right to live his life in any way he chooses so long as he respects the equal rights of others, and that libertarians defend each person's right to life, liberty, and property—rights that people have naturally, before governments are created.”⁸⁸ Generally, the core belief in libertarianism is that individuals

⁸³ According to Francis H. Eterovich, Aristotle's idea of justice is the will to do what is lawful and fair. Its opposite, injustice includes all unlawful and unfair deeds. See Francis H. Eterovich, *Aristotle's Nicomachean Ethics: Commentary and Analysis* (Washington D.C: University Press of America, 1980), 90.

⁸⁴ *Ibid.*, 91.

⁸⁵ “Libertarianism is the form of liberalism which believes in freeing people not merely from the constraints of traditional political institutions, but also from the inner constraints imposed by their mistaken attribution of power to intellectual things.” See Roger Scruton, *Dictionary of Political Thought* (London: Pan Books, 1982), 271.

⁸⁶ See R.C. Weather, “Libertarianism,” in *The Oxford Companion to Philosophy*, ed. Ted Honderich (Oxford: Oxford University Press, 2005), 516.

⁸⁷ See Michael A. Principe, “Libertarians,” in *Encyclopedia of Activism and Social Justice*, ed. Gary L. Anderson and Kathryn G. Hern (Thousand Oaks London: Sage Publications, 2007), 858.

⁸⁸ See David Boax, *Libertarianism: A Primer* (New York: Free Press, 2010), 2.

have the “right to do whatever they want as long as they do not infringe upon the same rights of others.” In fact, libertarians think of themselves as the champions of individual liberty.⁸⁹

Libertarianism offers a different account of justice. Libertarianism believes in the theory of laissez faire. Libertarianism advocates the view that economic activity or affairs must be free from the any unnecessary political constraints and compulsions. Libertarians strongly prefer a minimal state or night-watchman state instead of an extensive state. James Sterba argues that “the libertarian argument for the minimal or night-watchman state begins with the premise that voluntary agreements represent an ultimate idea for social interaction. Libertarians contend that this ideal finds its expression in a market economy where buyers and sellers, employers and employees voluntarily agree to exchange the goods they possess. Libertarians believe that the requirements for voluntary agreements between persons with unequal resources can be easily satisfied in a market economy.”⁹⁰ For libertarians, any agreement that individuals come to agree in a free market is voluntary and the outcome of any mutual agreement is just. State has very limited role to play in the affairs of individuals. The legitimate role of a state is to prevent any fraud that may emerge in the voluntary transactions among individuals in a free market. Libertarianism does not advocate any kind of extensive state that indulges in any welfare functions. In a broader sense, libertarians believe that justice exist in a free market where individuals exchanges their goods and services voluntarily. Libertarians do not believe that any extensive state and its policies, which are against the consent of individual, can bring justice in society. Libertarian conception of justice is vehemently opposed to any type of coercions. For libertarians, the conception of justice goes hand in hand with individual liberty. Moreover, the libertarian conception of justice emphasises on the importance of property one posses and the natural liberty to use them as one wishes. The libertarian idea of justice never supports any policy of equal distribution of property in society. They do not favour any kind of governmental welfare measurers or involuntary charity in the name of ensuring justice in society.

F. A. Hayek, the Austrian born economist and philosopher, and who is regarded as one of the exponents of libertarian ideas opines that justice is an attribute of human conduct, a predicate of agents. “A person acts justly when he undertakes a just action.”⁹¹ Hayek is a sceptic about

⁸⁹ James Sterba also argues along this line that libertarians think of themselves as the defenders of liberty. See James Sterba, “Libertarianism,” in *Encyclopaedia of Philosophy*, 2nd ed., ed. Donald M. Borchert (New York: Thompson Gale, 2006), 334.

⁹⁰ Ibid.

⁹¹ See Adam Swift, *Political Philosophy* (Malden, MA, USA: Polity Press, 2006), 19.

social or distributive justice. In his book *Law, Legislature and Liberty: The Mirage of Social Justice*, F. A. Hayek contends that “in a society of free man, the concept of social justice is strictly empty and meaningless.”⁹² For “in a society of free man whose members are allowed to use their own knowledge for their own purposes, nobody’s will can determine the relative incomes of the different people, or prevent that they be partly dependent on accident. In a free society in which the position of the different individuals and groups is not the result of anybody’s design, the differences in reward simply cannot be meaningfully described as just or unjust.”⁹³ Further, while putting his strong doubt about whether it is possible to preserve a market order while imposing upon it some pattern of remuneration in the name of social justice by an authority or the state possessing the power to enforce it, Hayek points out the dangerous ramification in the following words: “The more dependent the position of the individuals or groups is seen to become on the actions of government, the more they will insist that the governments aim at some recognizable schemes of distributive justice; and the more governments try to realize some preconceived pattern of desirable distribution, the more they must subject the position of the different individuals and groups to their control. So long as the belief in ‘social justice’ governs political action, this process must progressively approach nearer and nearer to a totalitarian system.”⁹⁴ Hayek also argues that the term ‘social justice’ used today is not social in the sense of social norm, because; today the concept is developed as a conception which is to be imposed upon society. Even the term “distribution” involved in social justice is misused as it “inevitably suggests a personal distributing agent whose will or choice determines the relative position of the different persons or groups in society.” So, Hayek argues that the demand for social justice does not require government to observe some principle of action according to uniform rules.⁹⁵ It is because, Hayek further reasons, if social justice is to be established in society, individuals must be forced to follow not only the general rules and regulations but also the particular instructions and demands which are imposed upon them by some state authority.

Further, on stressing the importance of individual freedom in relation to justice, Hayek, in his book *The Constitution of Liberty*, voices that “insofar as the efforts of individuals are to be guided by their own views about prospects and chances, the results of the individual’s efforts are necessarily unpredictable, and the question as to whether the resulting distribution of

⁹² See F.A. Hayek, *Law, Legislation and Liberty: The Mirage of Social Justice*, vol.2 (London: Routledge, 1976), 68.

⁹³ *Ibid.*, 69.

⁹⁴ *Ibid.*, 68.

⁹⁵ *Ibid.*, 78-82.

income is just has no meaning.”⁹⁶ According to Hayek, justice does not call for any government to determine the conditions of individuals’ lives to be equal. It does not require any state to provide the equal life conditions of people. And therefore, what is to be included in a man’s private sphere is not to be determined by the will of any man or group of men, because doing so would simply mean the transfer of the coercive power to other’s will.⁹⁷ So, he says that the recognition of the private property is an essential condition for the prevention of coercion. Thus, Hayek argues that any coercive redistribution by the state beyond the meeting of common basic needs involves an unjustifiable interference with individual liberty. In his book *The Road to Serfdom*, Hayek puts forward the argument that the state’s ambition to realize ‘social justice’ implies centralised authority making people do things they might not want to do, interfering with their freedom to do what they like with their resources. So Hayek argues that in a “planned and socialist economy,” all the efforts of individuals directed towards improving their position will have to aim at influencing in their favour the authority which has all power.⁹⁸ Therefore, Hayek strongly argues that to entrust the state with distributive powers is to pose serious threats to liberty and rule of law.

Robert Nozick argues that the holdings of a person are just if they are in accordance with the principles of the entitlement theory of justice. He identifies three ways in which people can acquire a property or holding. They are: initial acquisition, voluntary transfer and rectification.⁹⁹ For Nozick, justice is not about agreeing fair principles. Rather, it is about respecting people’s “right to self ownership” and their right to hold property, leaving them free to decide for themselves what they do with what is theirs. The proper role of the state is not to meddle with the distribution of resources so as to produce some ideally fair distribution.¹⁰⁰ Nozick is in favour of the minimal state. Nozick argues that state has limited functions: “protection against force, theft, fraud and enforcement of contracts etc.” So, Nozick believes that the very idea of “distributive justice” is misleading because redistributive state uses some people as means to other people’s end. Thus, Nozick claims that “taxation of earnings from labour is on par with forced labor.”¹⁰¹ The idea is that taxation is a way of forcing people to work for others. When somebody is taxed on their income, what is done is that their productive abilities are forcefully used to help others. Therefore, Nozick

⁹⁶ See F.A. Hayek, *The Constitution of Liberty* (London: Routledge, 1999), 99.

⁹⁷ *Ibid.*, 139.

⁹⁸ See F.A. Hayek, *The Road to Serfdom* (London: Routledge and Kegan Paul, 1979), 80.

⁹⁹ See Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Basil Blackwell: 1974), 151.

¹⁰⁰ See Swift, *Political Philosophy*, 30.

¹⁰¹ See Robert Nozick, “Distributive Justice,” in *Reading in Social and Political Philosophy*, ed. Robert M. Steward (New York: Oxford University Press: 1986), 219.

is against any “patterned principles” of justice. It is because; patterned principle continuously interferes with people’s lives. It certainly infringes the liberty of individuals. (A detail discussion of Robert Nozick’s theory of justice will be in chapter 3).

Murray N. Rothbard, an American libertarian theorist, believes that it is natural law and natural rights which define what is just and unjust. Murray N. Rothbard argues, in his book *The Ethics of Liberty* that “the state is incompatible with the fundamental principles of justice.”¹⁰² As defined by Rothbard, “a state is an organization which possesses either or both of the following characteristics: (a) it acquires its revenue by physical coercion (taxation); and (b) it achieves a compulsory monopoly of force and of ultimate decision-making power over a given territorial area. Both of these essential activities of the State necessarily constitute criminal aggression and depredation of the just rights of private property of its subjects (including self-ownership). For the first constitutes and establishes theft on a grand scale; while the second prohibits the free competition of defense and decision-making agencies within a given territorial area-prohibiting the voluntary purchase and sale of defense and judicial services.”¹⁰³ Without justice, Rothbard concluded, “the state was nothing but a band of robbers.”¹⁰⁴

Rothbard maintained that a theory of justice must be arrived at which goes beyond government allocations of property titles, and which can, therefore, serve as a basis for criticizing such allocations. Rothbard outlines a theory of justice in property rights which has two fundamental premises: (1) “the absolute property right of each individual in his own person, his own body”; this may be called the “*right of self-ownership*”; and (2) “the absolute right in material property of the person” who first finds an unused material resource and then in some way occupies or transforms that resource by the use of his personal energy.¹⁰⁵ The first principle asserts the “absolute right of each man, by virtue of his being a human being, to ‘own’ his own body; that is, to control that body free of coercive interference. Since the nature of man is such that each individual must use his mind to learn about himself and the world, to select values, and to choose ends and means in order to survive and flourish, the right to self-ownership gives each man the right to perform these vital activities without being hampered and restricted by coercive molestation.” And with regard to the second premises,

¹⁰² See Murray N. Rothbard, *Ethics of Liberty* (New York: New York University Press, 1998), xviii.

¹⁰³ *Ibid.*, 172-73.

¹⁰⁴ *Ibid.*, xix.

¹⁰⁵ See Murray N. Rothbard, *Egalitarianism as a Revolt Against Nature and Other Essays* (Auburn: Ludwig Von Mises Institute, 1974), 96.

Rothbard argues that “even if every man has the right to self ownership, individuals are not floating wraiths; they are not self subsistent entities; they can only survive and flourish by grappling with the earth around them. Individuals must stand on land areas; they must also, in order to survive, transform the resources given by nature into consumer goods into objects more suitable for their use and consumption. Man, in other words, must own not only his own person, but also material objects for his control and use.”¹⁰⁶ Thus, Rothbard argues, “It is difficult to see the justice of depriving him of ownership in favour of people who have never gotten within a thousand miles of the land and who may not even know of the existence of the property over which they are supposed to have a claim. It is even more difficult to see the justice of a group of outside oligarchs owning the property, and at the expense of expropriating the creator or the homesteader who had originally brought the product into existence.”¹⁰⁷

Ayn Rand, an American novelist, expressed libertarian idea of justice in some of her writings. According to Ayn Rand, justice is concerned with one’s own self interest. Justice is about judging people according to what they are and treated them accordingly. Justice means judging people rationally and act upon them based on that judgement. This means treating people in accordance with what they deserve is justice. Ayn Rand says, “Justice is the recognition of the fact that one cannot fake the character of men as one cannot fake the character of nature, that one must judge all men as conscientiously as one judge inanimate objects, with the same respect for truth, with the same incorruptible vision, by as pure and as rational a process of identification—that every man must be judged for what he is and treated accordingly.”¹⁰⁸ In fact, Ayn Rand strongly refutes the idea of liberal egalitarian notion of justice. She argues that by nature men are not endowed equally in all physical faculties and thus their abilities and choices are also different. And since mens’ personal attributes cannot be redistributed, the products of their attributes or virtues cannot be redistributed for any cause. In relation to this, she is very critical of John Rawls’s *A Theory of Justice* which advocates an egalitarian concept of justice. She argues, “The new ‘theory of justice’ of John Rawls demands that men counteract the ‘injustice’ of nature by instituting the most obscenely unthinkable injustice among men: deprive ‘those favoured by nature’ (i.e., the talented, the intelligent, the creative) of the right to the rewards they produce (i.e., the right to life)—and

¹⁰⁶ Ibid., 97-9.

¹⁰⁷ Ibid., 103.

¹⁰⁸ See Ayn Rand, *For the New Intellectual* (New York: A Signet Book, 1961), 105.

grant to the incompetent, the stupid, the slothful a right to the effortless enjoyment of the rewards they could not produce, could not imagine, and would not know what to do with.”¹⁰⁹

Moreover, Ayn Rand believes that “the source of man’s rights is not divine law or congressional law, but the law of identity. A right is a moral principle defining and sanctioning a man’s freedom of action in a social context.” So she says that “a right is the sanction of independent action that can be exercised without anyone’s permission.”¹¹⁰ She is also a strong champion of capitalism. Capitalism means, according to her, “a full, pure, uncontrolled, unregulated laissez-faire capitalism where there is separation of state and economics.” In her book, *Capitalism: The Unknown Ideal*, she says that “capitalism is a social system based on the recognition of individual rights, including property rights, in which all property is privately owned.”¹¹¹ In a capitalist society, government has the duty of protecting individuals’ rights and there is no use of force against each other. Man establishes his relationship with others voluntarily. Men freely cooperate with others based on mutual consent. Men act according to their own convictions and interest etc. In a free market, man work with those who are willing to trade with him. Moreover, she argues that “the moral justification of capitalism lies in the fact that it is the only system consonant with man’s rational nature, that it protects man’s survival qua man, and that its ruling principle is justice.”¹¹²

John Hospers, an American philosopher who is widely known as a libertarian thinker, in his book *Human Conduct* says that the “more specific sense of justice has to do with getting what one deserves.”¹¹³ Although J. Hospers acknowledges the fact that the term justice does not always carry the same meaning, he is of the view that justice has to do with desert. To illustrate his point, John Hospers argues that, for instance, if one gets the grade one deserves in a course, one has been justly treated as far as grade is concerned; if one gets a lower grade than one deserves, one has been unjustly treated. Similarly, the wage one deserves is a just wage, and if offenders get the punishment they deserve their treatment is just.¹¹⁴ Besides, John Hospers’s argument is that justice is concerned with how human beings are treated by

¹⁰⁹ See Harry Binswanger, ed., *The Ayn Rand Lexicon: Objectivism From A to Z* (New York: New American Library, 1986), 234.

¹¹⁰ See Binswanger, *The Ayn Rand Lexicon*, 212-14. Ayn Rand’s expression on ‘rights’ can be found in her novel *Atlas Shrugged*. See Ayn Rand, *Atlas Shrugged* (New York: Random House, 1957), 972.

¹¹¹ See Ayn Rand, *Capitalism: The Unknown Ideal* (New York: New American Library, 1966), 19.

¹¹² *Ibid.*, 20.

¹¹³ See John Hospers, *Human Conduct Problems of Ethics* (New York: Harcourt Brace Jovanovich, Inc, 1961), 305.

¹¹⁴ This example is given in John Hospers’s aforementioned book. *Ibid.*

other human beings. For him, case like racial discrimination is not just. However, if someone is born with some unfortunate ailments, it cannot be termed as unjust. Further, John Hospers argues that justice is “past-looking, not future-looking.” It is because, Hospers argues, justice requires that people should be treated in accordance with their deserts which are dependent on their past record. Justice is individualistic. It is because it is unjust to punish the whole community for a crime committed by an individual. Thus, Hospers argues that “collectivistic thinking” is probably the main source of injustice. Justice is to look at each person’s individual merits or demerits, not the average of group as a whole, nor behaviour of some of its members. There is no collectivistic justice as such. Justice has to do with the way one person is treated in relation to another. Therefore, John Hospers’s fundamental argument is that justice requires that everybody must be treated equally which means nobody should get any special treatment, no one person should be preferred to another or chosen above another for irrelevant reasons.¹¹⁵

Communitarianism and Justice

Communitarianism advocates the idea that the community is the most important elements of a society or culture.¹¹⁶ As Amitai Etzioni argues, “communitarians give much emphasis on the moral and political value of community. Communitarians usually maintain the viewpoint that society should articulate what is good that such articulations are both need and legitimate. They pay much attention to the relationship between the self and the community. They argue that those individuals who are well-integrated into communities are better able to reason and act in responsible ways than those who are isolated from the communities.”¹¹⁷ Communitarians argue that individuals should give their loyalty to the community. Community views should not be challenged. Individuals are not unencumbered selves. In the recent times, communitarianism has emerged as one of the most formidable critics of liberalism, especially against the ideas of John Rawls and Robert Nozick.¹¹⁸ There is a fundamental point of schism between communitarianism and liberalism. It is about the nature of the self. Communitarianism insists upon the idea that individuals obviously begin their

¹¹⁵ Ibid., 306-9.

¹¹⁶ See Elaine E. Englehardt, “Communitarianism,” in *International Encyclopedia of the Social Sciences*, 2nd ed., ed. William A. Darity Jr (New York: Thomson Gale, 2008), 38.

¹¹⁷ See Amitai Etzioni, “Communitarianism,” in *Encyclopedia of Community*, ed. Karen Christensen and David Levinson (London: Sage Publications, 2003), 224.

¹¹⁸ The earlier communitarian critics of liberal political theory were inspired by Marx, whereas the recent critics are inspired by Aristotle and Hegel. Also see, Amy Gutmann, “Communitarian Critics of Liberalism,” *Philosophy and Public Affairs* 14, no. 3 (Summer, 1985): 308.

lives and gain their self-conceptions as member of communities.¹¹⁹ Communitarians share a belief that liberalism is excessively individualistic and atomistic, often ignoring dependence on communal ties and relationships.¹²⁰ In the words of Michael Walzer, “Liberalism, it is commonly said, is founded on the idea of a personal self, a solitary and sometimes heroic individual confronting society, who is fully formed before the confrontation begins.”¹²¹ Further, communitarians hold the view that liberals’ overemphasis on rights of individuals tend to reduce persons to self-interested, rights bearing atoms who only demand negative freedom in order to pursue individualistic goals.¹²² In this context, however, liberals’ reply to communitarians is that communitarians have not portrayed any optimistic view about liberal conception of individuals. Moreover, liberals’ argument is that communitarians have not been successful in offering alternative solutions to the social and other problems.¹²³

Communitarians argue that liberal theories of justice do not give sufficient importance to the value of community at all. For communitarians, idea of justice must be defined with reference to the community. Communitarians strongly believe that it is not possible to arrive at a universal theory of justice. It is because the values which members of different communities hold are widely different. They are never universally uniform. As Chandran Kukathas and Philip Pettit rightly argue, “Communitarians hold the view that a society is composed of a diversity of moral traditions, different values and society cannot be governed by liberal principles of justice. For them, liberal justice is not a coherent ideal and it is implausible practically. They do not accept the view that justice is the first virtue of social institutions. Communitarians point it out that a society is not to be governed by norms regulating individual conduct in a way which enable individuals free to choose their own ways of life. Instead, they advocate that a society should be governed by a concern for the common good

¹¹⁹ Communitarians do not hold similar view with the liberal on the question of “right being prior to the good.” For the liberals, right is prior to the good. However, communitarians are of the view that the right is not prior to the good. It is because the function of right is to protect certain interest. But it is essential to understand the good of human beings without which certain interest cannot be identified. For communitarians, any idea of the good is meaningful only from the point of community.

¹²⁰ See Will Kymlicka, “Communitarianism,” in *Encyclopedia of Philosophy*, ed. Donald M. Borchert (New York: Thomson Gale, 2006), 367.

¹²¹ See Michael Walzer, “The Communitarian Critique of Liberalism,” *Political Theory* 18, no. 1 (February, 1990): 20.

¹²² See William M. Curtis, “Communitarianism,” in *Encyclopedia of Political Theory* 1, ed. Mark Bevin (London: Sage Reference, 2010), 251.

¹²³ Also, liberals believe in the idea that leading a good life according to the values one endorses is the most essential interest of every human being. Our life cannot get better by being led from the outside according to values the person does not endorse. Valuable life has to be led from inside according to one’s belief about value. See Will Kymlicka, “Liberalism and Communitarianism,” *Canadian Journal of Philosophy* 18, no. 2 (June, 1988): 183.

in which the good of community itself is pre-eminent.”¹²⁴ In fact, communitarians hold the view that a society is just to the extent that its basic structure reflect, in some respect, the shared values of its members.¹²⁵ However, it must be mentioned that there is no concrete communitarian theory of justice. Communitarians too share different views about justice. Will Kymlicka points out this clearly. ‘Some communitarians believe that justice should be based on the shared understanding of society and community should be seen as the source of principles of justice. Other communitarians argue that justice should not focus more on individual rights. Instead, justice must give importance to the common good of the community. And there are also some communitarians who argue that principles of justice are not needed as community replaces the need for principles of justice.’¹²⁶

Some of the prominent communitarian thinkers are arguably Michael Sandel, Michael Walzer, and Charles Taylor. These communitarian thinkers have not seriously attempted to propound a concrete theory of justice. Most of their views are in the form of criticisms against liberal theories of justice.

Michael Sandel, an American Political Philosopher, has presented some of the very powerful criticisms on Rawls’s theory of justice. First of all, Sandel is critical of Rawls’s idea of the “original position.” For Rawls, “parties in the original position behind the veil of ignorance” do not know their place in society, their class position, social status, their natural assets, their abilities, their intelligence, their strength, their conception of good and so on. Sandel questions the feasibility of arriving at the principles of justice in the original position. According to Sandel, the original position requires individuals too many detachments from human circumstances and it is not possible to arrive at the “two principles of justice.” The veil of ignorance excludes much information which are necessary to generate any meaningful principles of justice. Having required to detach from many contingencies at the first place, the persons in the original position would not have the motivation to deliberate for the principles of justice. Thus persons in the original position look too abstract.¹²⁷ Sandel also questions the bargaining nature of parties to choose the principles of justice. Rawls argues that ‘the principles of justice are the result of a fair agreement or bargain.’ However, Sandel points out

¹²⁴ See Chandran Kukathas and Philip Pettit, *Rawls: A Theory of Justice and its Critics* (California: Stanford University Press, 1990), 95.

¹²⁵ See Frank Lovett, “Theories of Justice,” in *Encyclopedia of Political Theory 2*, ed. Mark Bevir (London: Sage Publications, 2010), 737.

¹²⁶ See Will Kymlicka, *Contemporary Political Philosophy* (New York: Oxford University Press, 2008), 210.

¹²⁷ See Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), 27-8.

that in any bargaining, there would be differences in the interest or preferences or power or knowledge etc of the bargainers. But in the original position, there is no scope for differences as parties are not known to many vital information about themselves. Thus, in such circumstance, it would be difficult to think how parties bargain in order to choose the principles of justice. So Sandel asserts that there can be no basis for agreement about the principles of justice as there is no basis for bargaining or discussion.¹²⁸ Moreover, Sandel's argument is that persons cannot be completely detached from the members of the society they belong. The kind of person that Rawls imagines to be in the original position is what Sandel calls "the unencumbered self." The unencumbered self, according to Sandel, means "a self understood as prior to and independent of purposes and ends." The unencumbered self are capable of being the members in the cooperative community. But they are denied the membership in constitutive community because such community is bound by prior moral ties.¹²⁹

With regard to Rawls's "difference principle", Sandel has a strong counter-argument. Rawls's difference principle carries the idea that the assets and endowments that I have are only accidentally mine, and therefore these assets are common assets for all. Society has a prior claim over the common assets. However, Sandel argues that if a person does not have any privileged claim over assets which are accidental and "arbitrary from the moral point of view," going by Rawls's difference principle, then the same logic must also be applicable to everyone. It means that if an individual does not have a privileged claim on the assets which are accidental, then it also follows the argument that everyone cannot have the privileged claim over the assets. In words of Michael Sandel: "Simply because I, as an individual, do not have a privileged claim on the assets accidentally residing "here", it does not follow that everyone in the world collectively does. For there is no reason to think that their location in society's province or, for that matter, within the province of humankind, is any less arbitrary from a moral point of view. And if their arbitrariness within me makes them ineligible to serve my ends, there seems no obvious reason why their arbitrariness within any particular society should not make them ineligible to serve that society's ends as well."¹³⁰ Moreover, Sandel argues that since the difference principle is basically a principle of sharing, it presupposes "some prior moral tie among those whose assets are to be shared." However,

¹²⁸ Ibid., 129.

¹²⁹ See Michael Sandel, "The Procedural Republic and the Unencumbered Self," *Political Theory* 12, no.1. (February, 1984): 86.

¹³⁰ Ibid., 89.

Sandel questions as to on what moral basis this sharing should be done. Rawls is not clear on this regard. Therefore, Sandel further argues that “deploying an individual’s assets for the sake of the common good would seem an offence against the plurality and distinctness of individuals that Rawls’s theory of justice seeks.”¹³¹

And finally, Sandel is against the liberal idea of independent self. Sandel argues that we cannot be entirely independent from our identity, from our aims, from our attachments, from our families, from our community, from our nation etc. Our allegiance to them cannot be separated. So Sandel says, “To imagine a person incapable of constitutive attachments such as these is not to conceive an ideally free and rational agent, but to imagine a person wholly without character, without moral depth.”¹³²

Michael Walzer, an American Political Philosopher, in his book *Spheres of Justice* argues that the concept of distributive justice is a large idea.¹³³ There is no single universal mechanism of distributive arrangements. There are multiple ways of distribution in the matter of distributive justice. In fact, Walzer strongly argues that “to search for uniform criteria for all distributions is to misunderstand the subject matter of distributive justice.”¹³⁴ Therefore, Walzer’s argument is that “justice is a human construction. Justice cannot be made in one way only. The principles of justice are themselves pluralistic in form. Different social goods ought to be distributed for different reasons in accordance with different procedures, by different agents. All these differences derive from different understandings of the social goods themselves.”¹³⁵

In fact, Walzer explains his idea of justice in the form of “complex equality.” In other words, Walzer calls his account of justice as the theory of complex equality. Complex equality is different from the “simple’ egalitarian conceptions.”¹³⁶ Simple equality is a simple distributive condition. For Walzer, the idea of complex equality begins from an understanding of the various social goods. Then, we relate to one another through those social goods. In Walzer’s words, “Equality is a complex relation of persons, mediated by goods we make, share, and divide among ourselves; it is not an identity of possessions. It requires then,

¹³¹ Ibid., 90.

¹³² Ibid.

¹³³ See Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (USA: Basic Books, 1983), 1.

¹³⁴ Ibid., 4. Michael Walzer argues that even state power is not that so pervasive ever to control all kinds of patterns of distributions.

¹³⁵ Ibid., 5-6.

¹³⁶ See Joshua Cohen, “Review of *Spheres of Justice* by Michael Walzer,” *The Journal of Philosophy*. 83, no. 8 (August, 1986): 458.

a diversity of distributive criteria that mirrors the diversity of social goods.”¹³⁷ Further, Walzer argues, “Complex equality means that no citizen’s standing in one sphere or with regard to one social goods can be undercut by his standing in some other sphere, with regard to some other good. Thus, citizen X may be chosen over citizen Y for political office, and then the two of them will be unequal in the sphere of politics. But they will not be unequal generally so long as X’s office gives him no advantage over Y in any other sphere—superior medical care, access to better schools for his children, entrepreneurial opportunities, and so on.”¹³⁸ According to Glen Stassen, Walzer’s idea of complex equality essentially means power in one sphere of life should not allow people to dominate other sphere. There are different understandings of justice in different spheres. Thus distribution in one sphere cannot determine the distribution in other spheres.¹³⁹

Thus, Walzer argues that justice is relative to the “shared understandings of the members of a given society.” Since human beings produce culture, we make meaningful worlds and inhabit in them. For Walzer, there is no way to rank and order these worlds with regard to their understanding of social goods. We do justice by respecting each other’s particular creations. Justice is not rooted in one particular sphere. Justice is rather rooted in distinct understandings of social goods like places, honours, jobs, things of all sorts. These understanding of social goods constitute “a shared way of life.” So Walzer argues that acting unjustly is to override these understanding.¹⁴⁰

Charles Taylor, a Canadian social theorist, basically disapproves of the liberal idea of individualistic man outside society. In his essay “Atomism,” Charles Taylor’s view goes along with the Aristotelian view that “man is a social animal, indeed a political animal, because he is not self-sufficient alone, and in an important sense is not self-sufficient outside a polis.”¹⁴¹ Taylor’s argument is that the liberal view of the self is atomistic and individualistic. It can undermine liberal society itself. In the book *Hegel and Modern State*, Charles Taylor states that we can attain our highest and most complete moral existence as members of a community.¹⁴² Taylor’s idea is that man requires to become a part of a

¹³⁷ See Walzer, *Spheres of Justice*, 18.

¹³⁸ Ibid., 19.

¹³⁹ See Glen Stassen, “Michael Walzer’s Situated Justice,” *The Journal of Religious Ethics* 22, no. 2 (Fall, 1994): 382.

¹⁴⁰ See Walzer, *Spheres of Justice*, 312-14.

¹⁴¹ For details see Charles Taylor, “Atomism,” in *Communitarianism and Individualism*, eds. Shlomo Avineri and Avner De-Shalit (Oxford: Oxford University Press, 1992), 32.

¹⁴² See Charles Taylor, *Hegel and Modern Society* (Cambridge: Cambridge University Press, 1979), 84.

community in order to realize the highest moral standards. Atomistic self which he also refers as “disengaged identity”¹⁴³ should not be the basis of any moral theory.

Utilitarian Conception of Justice

Utilitarianism stands for the “greatest good for the greatest number.” This is also known as “the greatest happiness principle.” According to J. J. C. Smart, “Utilitarianism can be generally described as the doctrine that states that the rightness or wrongness of action is determined by the goodness and badness of their consequences.”¹⁴⁴ C. H. Wellman argues that utilitarian justice holds the view that actions, policies and institutions are to be judged in terms of the extent to which they maximise overall happiness or well being.¹⁴⁵ Utilitarians argue that institutions are to be judged by how well or poorly they contribute to human welfare, happiness or utility.¹⁴⁶ Thus, the utilitarian idea of justice is concerned with the maximization of the welfare of larger numbers.

Jeremy Bentham, the English utilitarian thinker, did not address the concept of justice in a great detail. Bentham’s fundamental argument is about the promotion of happiness and avoidance of pain. Bentham’s argument reflects the principle of utility. Bentham writes, “By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or to oppose that happiness.”¹⁴⁷ For Bentham, the utility principle refers actions, policies or things that promote the “greatest happiness of the greatest number.” According to Bentham, happiness is defined with reference to the presence of pleasure and the avoidance of pain. He says, “Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to

¹⁴³ For Charles Taylor’s use of the term ‘disengaged identity, see Charles Taylor, *Human Agency and Language-Philosophical Papers 1* (Cambridge: Cambridge University Press, 1985), 7.

¹⁴⁴ See J. J. C. Smart, “Utilitarianism,” in *Encyclopedia of Philosophy*, 2nd ed., ed. Donald M. Borchert (London: Thomson Gale, 2006), 603.

¹⁴⁵ See C.H. Wellman, “Justice,” in *The Blackwell Guide to Social and Political Philosophy*, ed. Robert L. Simon (Oxford: Blackwell Publishers, 2002), 60.

¹⁴⁶ See Matt Matravers, “Distributive Justice,” in *The Social Science Encyclopedia*, 3rd ed., eds. Adam Kuper and Jessica Kuper (London: Routledge, 2009), 537.

¹⁴⁷ See Jeremy Bentham, “An Introduction to the Principles of Morals and Legislation,” in *Utilitarianism and On Liberty*, ed. Mary Warnock (Oxford: Blackwell Publishing Ltd, 2003), 18.

demonstrate and confirm it.”¹⁴⁸ Moreover, Bentham claimed that maximising pleasures and the avoidance of pain are the ends that the legislator has in view. A legislator has to work on the basis of pleasure and pain.¹⁴⁹

Bentham argues that the principle of utility is “the measure of ‘right and wrong’ and regards it as constituting the standard by which both conventional morality of society and the law should be judged.”¹⁵⁰ From his principle of utility, it can be observed that Bentham’s idea of justice is to be derived from the contribution that acts or policies or institutions make towards the general well-being of the society. Bentham does not advocate the view that the concept of justice would determine the principle of utility. In fact, his argument is that the principle of utility itself would determine what is just or unjust. Bentham considers the idea of justice to be merely a subordinate aspect of utility.¹⁵¹ Bentham does not accept the view that justice is the end of governance. According to him, everyone knows what pleasure is, everyone knows what pain is. However, justice is the subject matter of dispute on every occasion.¹⁵² In addition, Bentham is also noted for his ideas of punishment. Bentham believes that all punishment in itself is evil. Bentham points out that punishment ought not to be given where there is no ground; where it is inefficacious; where it is too expensive; where it is needless. However, Bentham also suggest that greater the offence, greater the punishment. Punishment should not be greater than the degree of the offence committed.¹⁵³

John Stuart Mill, an English utilitarian thinker, in his book *Utilitarianism*, says “Justice implies something which it is not right to do, and wrong not to do, but which some individual person can claim from us as his moral right.”¹⁵⁴ J. S. Mill claims that justice is demarcated from other areas of morality. J. S. Mills Says, “Justice implies something which it is not only right to do, and wrong not to do, but which some individual person can claim from us as his moral right.”¹⁵⁵ Further, J. S. Mill elaborated that “when we call anything a person’s right; it means that he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion.”¹⁵⁶ In this way, Roger Crisp argues that

¹⁴⁸ Ibid., 17.

¹⁴⁹ Ibid., 41.

¹⁵⁰ See H. L. A. Hart, *Essays On Bentham* (Oxford: Clarendon Press, 1982), 86.

¹⁵¹ Ibid., 51.

¹⁵² See James Steintrager, *Bentham* (Ithaca: Cornell University Press, 1977), 113.

¹⁵³ See John Plamenatz, *The English Utilitarians* (Oxford: Basil Blackwell, 1966), 79-80.

¹⁵⁴ See John Stuart Mill, *Utilitarianism* (Chicago: The University of Chicago Press, 1906), 75.

¹⁵⁵ Ibid., 75.

¹⁵⁶ Ibid., 80.

Mill ties the notion of justice closely to that of rights.¹⁵⁷ Similarly, Fred R. Berger argues that rights in J. S. Mill's view are a device for maximising utility and protecting crucial aspects or conditions for individuals' happiness.¹⁵⁸

According to Wendy Donner, J. S. Mill did not propound the idea that justice is entirely different from the principle of utility. For Mill, justice and utility are not in conflict, but on the contrary rules of justice must be based on well-being of the people.¹⁵⁹ Further, J. S. Mill argues that the principle of utility holds that "an action is right in proportion as it promotes happiness." On the other hand, "an action is wrong if it promotes unhappiness." For J. S. Mill, while happiness means pleasure and not pain; unhappiness means pain and absence of pleasure.¹⁶⁰

Then J. S. Mill explained the various modes of human actions which are considered to be just or unjust. (1) it is mostly considered unjust to 'deprive anyone of his personal liberty, his property, or any other thing which belongs to him by law.' "It is just to respect, unjust to violate, the legal rights of anyone"; (2) "the legal rights of which he is deprived may be rights which ought not to have belonged to him. The law which confers on him these rights may be bad law"; (3) "it is universally considered just that each person should obtain that which he deserves, and unjust that he should obtain a good or be made to undergo an evil which he does not deserve"; (4) "it is confessedly unjust to break faith with anyone"; and (5) it is "inconsistent with justice to be partial."¹⁶¹ Besides, Mill asserts that the concept of justice supposes two things. They are: (a) a rule of conduct and (b) a sentiment which sanctions the rule. The first must be common to everyone and it must be intended for their good. The second refers to the idea that those who infringe the rule must undergo punishment.¹⁶²

Anarchists View on the Idea of Justice

Stefan Dolgert defines anarchism as "a theory and way of life rooted in the belief that individuals should be free to pursue their own interests without coercion, especially by the

¹⁵⁷ See Roger Crisp, *Mill on Utilitarianism* (London: Routledge, 1997), 158. Also see, John Skorupski, *Why Read Mill Today?* (London: Routledge, 2006), 35.

¹⁵⁸ See Fred R. Berger, *Happiness, Justice, and Freedom The Moral and Political Philosophy of John Stuart Mill* (Los Angel: University of California Press, 1984), 139

¹⁵⁹ See Wendy Donner, "Mill's Utilitarianism," in *The Cambridge Companion to Mill*, ed. John Skorupski (Cambridge: Cambridge University press, 1998), 285.

¹⁶⁰ See John Stuart Mill, "Justice and Utility," in *Arguing About Political Philosophy*, ed. Matt Zwolinski (New York: Routledge, 2009), 178.

¹⁶¹ See Mill, *Utilitarianism*, 64-8.

¹⁶² *Ibid.*, 79.

state and its laws and institutions” and the term is derived from the ancient Greek word ‘anarkhia’ which means no rule.¹⁶³ Anarchism believes that the individual should be free to pursue his or her own interest without any coercion by the state. Michael Taylor observes that anarchy is, roughly speaking, “a condition of statelessness.”¹⁶⁴ Anarchism rejects any kind of “authoritarian government and maintains that voluntary institutions are best suited to express man’s natural social tendencies.”¹⁶⁵ Anarchists reject the state as unnecessary and undesirable evil. State symbolizes political coercion over individuals. According to Daniel Guerin, anarchists regard the state as the most deadly of the perceptions which have blinded men through the ages.¹⁶⁶ For the anarchists, justice exists where there is no state and no property.

William Godwin, a British theorist, did not give his idea of justice in a single uniform way. In his book *An Enquiry Concerning Political Justice*, Godwin expressed his idea of justice in a diffused way. Godwin seemed to believe that the idea of justice is to be understood in accordance with the given circumstances. First, Godwin expressed that justice is the “impartial treatment of every man in matters that relate to his happiness.” This suggests the idea of equality among individuals and not harming other persons. Then Godwin expressed justice as a “rule of conduct originating in the connection of one percipient being with other.” Justice is the principle that regulates one’s conduct accordingly. Furthermore, Godwin also expressed that justice is reciprocal in which everyone credits others what is entitled to them and in return they receives what is entitled to them.¹⁶⁷

Godwin also argued that human beings are perfectible and that it is government that stands in the way of their achieving that perfection.¹⁶⁸ Godwin believed that man is virtuous and truthful. Human laws are no infallible. Man should use their understanding to determine what is just. Man should act according to their own reasons.¹⁶⁹ So, Godwin believed that “an individual must be mentally independent, in the sense that he grounds his beliefs and actions on his own assessment of their merits. If others determine his acts or opinions for him, he is

¹⁶³ See Stefan Dolgert, “Anarchism,” in *International Encyclopedia of the Social Sciences*, 2nd ed., ed. William A. Darity Jr (New York: Thomson Gale, 2008), 111.

¹⁶⁴ See Michael Taylor, *Community, Anarchy and Liberty* (Cambridge: Cambridge University Press, 1982), 4.

¹⁶⁵ See George Woodcock, “Anarchism,” in *Encyclopedia of Philosophy*, 2nd ed., ed. Donald M. Borchert (New York: Thomson Gale, 2006), 176.

¹⁶⁶ See Daniel Guerin, *Anarchism From Theory to Practice* (New York: Monthly Review Press, 1970), 14.

¹⁶⁷ See William Godwin, *Enquiry Concerning Political Justice* (London: Oxford University Press, 1971), 69-75.

¹⁶⁸ See May Todd, “Anarchism,” in *Encyclopedia of Activism and Social Justice*, eds. Gary L. Anderson and Kathryn G. Hern (London: Sage Publications, 2007), 103.

¹⁶⁹ See Woodcock, “Anarchism,” 177.

not an individual, because then his mind and theirs are indistinguishable.”¹⁷⁰ According to George Woodcock, Godwin’s view is that authority is against nature and he is against the practice of government. All social ills exist because men are not at liberty to act according to reason.¹⁷¹

Mikhail Bakunin, the Russian anarchist theorist, argued that state is an evil. It is a transitory institution. State is not society, but one of its historical forms.¹⁷² In his “Four Anarchist Programmes,” Bakunin argued that “together with the state, the whole structure of law-making and government, from the top downwards must be perished, for its sole aim has always been the establishment of the systematic exploitation of the people’s labour for the benefit of the ruling classes. The abolition of the law and state would inevitably lead to the abolition of inheritable property and the juridical concept of the family based on such property, for both are inimical to human justice.”¹⁷³

In another piece of writing “On Federalism and Socialism,” Bakunin proclaimed that socialism is justice. “By justice in this regard, we do not mean the kind of justice which is provided by legal codes and Roman jurisprudence, based to a great extent on violent acts, established by force, consecrated by time and the blessings of every church, Christian and pagan alike, and accepted in those terms as absolute principles, of which the others are just logical extensions. We mean the justice which is based solely on human conscience, is found in all men, even in children, and which translates simply as equity.”¹⁷⁴ According to Bakunin, this kind of justice is universal and it must be the foundation of a new world. Without it, there would be no liberty, no republic, no prosperity, and no peace. It must therefore preside over all our deliberations. And, this kind of justice compels people to take up the cause of the ill treated people and work for their economic, political and social emancipation.¹⁷⁵

Pierre-Joseph Proudhon, the French philosopher, argued that justice as right reason and justice as right feeling being are identical. We do not need God, any religion, any theology in order to know how we should behave justly. All we need to do is to identify the universal

¹⁷⁰ See Alan Ritter, *Anarchism A Theoretical Analysis* (London: Cambridge University Press, 1980), 41.

¹⁷¹ See George Woodcock, *The Anarchist Reader* (Glasgow: William Collins Sons, 1977), 35.

¹⁷² See, Mikhail Bakunin, “State and Society,” in *Michael Bakunin Selected Writings*, ed. Arthur Lehning (London: Jonathan Cape, 1973), 151. Also see, G.P. Maksimov, *The Political Philosophy of Bakunin* (New York: The Free Press, 1964), 206.

¹⁷³ See M. Bakunin, “Four Anarchist Programmes,” in *Michael Bakunin Selected Writings*, ed. Arthur Lehning (London: Jonathan Cape, 1973), 175.

¹⁷⁴ See Michael Bakunin, “On Federalism and Socialism,” in *Michael Bakunin Selected Writings*, ed. Arthur Lehning (London: Jonathan Cape, 1973), 107-8

¹⁷⁵ *Ibid.*, 108.

ecosystem of mutually balancing tensions and tolerances and people knowing their obligation to each other.¹⁷⁶ Proudhon was convinced that mankind had always sought justice, and to some degree known it.¹⁷⁷ Thus, Proudhon believed that justice is innate in man and it is immanent in them. Man is a social animal. Man is an integral part of a collective being. In a society, man not only feels his integrity and dignity, but also finds in himself a morality which can rise superior to itself. This conscience is sufficient for the man and society. There is no need for any authority to deliberate ethics or morality in society. So, society has no need of a Church to supply ethics, its morality. Society has its justice built-in and society will give it increasingly valid expression through revolution.¹⁷⁸ Besides, in his book *What is Property?* P. J. Proudhon argues that “property is robbery.”¹⁷⁹ Further, Proudhon argues that the “authority of man over man is not just, because the authority of man is only the authority of the law, which ought to be justice and truth. The private will counts for nothing in government, which consists, first, in discovering truth and justice in order to make the law; and, second, in superintending the execution of this law.”¹⁸⁰

Peter Kropotkin, Russian anarchist, expressed his idea of justice in a sketchy form. For Kropotkin, the sense of justice constitutes as one of the basic principles of moral sentiments. Justice is the recognition of equity and the striving of human beings for equality in society.¹⁸¹ Kropotkin interchangeably links justice with equity and equality. According to N. Lebedev, Kropotkin’s ethical formula is “Without equity there is no justice, and without justice there is no morality.”¹⁸² In fact, Kropotkin’s idea of justice goes along with the principle that advocates “to treat others as one would like them to treat him or her under similar situations.” In his “Anarchist Morality,” Kropotkin argues that the principle of society is “Treat others as you would like them to treat you under similar circumstance.”¹⁸³ In the similar way, David Miller explains that Kropotkin’s notion of justice arises when members of a community recognizes the fact that every one of them has an equal claim to recognition and respect.¹⁸⁴

¹⁷⁶ See Edwards Hyams, *Pierre-Joseph Proudhon* (London: John Murray Ltd, 1979), 216.

¹⁷⁷ See William H. Harbold, “Justice in the Thought of Pierre-Joseph Proudhon,” *The Western Political Quarterly* 22, no.4 (Dec, 1969): 723.

¹⁷⁸ See Hyams, *Pierre-Joseph Proudhon*, 217-18.

¹⁷⁹ See Pierre Joseph Proudhon, *What is Property?* (Nashua, NH: Mesa View, Inc, 1840), 10.

¹⁸⁰ *Ibid.*, 21.

¹⁸¹ See Brian Morris, *Kropotkin The Politics of Community* (New York: Humanity Books, 2004), 164.

¹⁸² See N. Lebedev, “Introduction,” in *Peter Kropotkin, Ethics: Origin and Development*, translated by Louis S. Friedland and Joseph R. Piroshnikoff (London: George G. Harrap and Co., Ltd, 1924), 7.

¹⁸³ See Peter Kropotkin, “Anarchist Morality,” in *Kropotkin’s Revolutionary Pamphlets*, ed. Roger N. Baldwin (New York: Dover Publications, Inc, 1970), 97.

¹⁸⁴ See for details, Miller, *Social Justice*, 218.

Marx's Perspective on Justice

There are difficulties in examining Marx's idea of justice. There are some reasons for this. First of all, Marx did not theorise the idea of justice exclusively in his writings. There are no consistencies about his views on justice. And there are varied interpretations on Marx's notion of justice. In this regard, Kai Nielson rightly observed: "It is important not to forget that there are no canonical texts that can give us Marx account of justice. We have to deal not only with the fact Marx's writings were often in rough drafts and occasional texts, but with his profound Swiftian satire and mocking irony. It is very difficult to ascertain with any confidence what Marx's views on this subject actually were."¹⁸⁵ For our purpose, we shall focus on two major lines of interpretations on Marx's idea of justice: one line of interpretation which argues that Marx spoke of justice and the other line of interpretation that argues that Marx did not necessarily speak about justice.

(1) Now we shall take up the first line of interpretation that argues that Marx, in fact, spoke of justice. According to this line of interpretation, Marx's idea of justice has to do with his view regarding the "exploitation of the working class" that takes place in a capitalist society. It is argued that it was a concern for justice that led Marx to condemn capitalist distribution as exploitation.¹⁸⁶ Marx strongly argued that exploitation of the working class by the capitalist take place under capitalism. Marx observed that this phenomenon of exploitation is inherently linked to the "extraction of surplus value." "Under capitalism, exploitation takes the form of the extraction of surplus value by the class of industrial capitalists from the working class. Under this system, access to the surplus depends upon the ownership of property, and thus the exploited class of capitalism, the proletariat, sell their labour power to live."¹⁸⁷ Under the "capitalist system of production," the surplus values of the workers are appropriated by the capitalist class. The working class is not paid equivalent of their labour. Duncan Foley clearly explains this phenomenon. "In the system of capitalist production, the source of surplus value is unpaid labour of workers. On average a worker in a day or hour or any unit of labour time produces a certain money value, but the wage he receives is the equivalent of only a fraction of that value. Thus the worker is paid an equivalent for only a

¹⁸⁵ See Kai Nielsen, "Marx on Justice: The Tucker-Wood Thesis Revisited," *The University of Toronto Law Journal* 38, no. 1 (Winter, 1988): 30.

¹⁸⁶ See Donald van de Veer, "Marx's View of Justice," *Philosophy and Phenomenology* 33, no. 3 (March, 1973): 374.

¹⁸⁷ See Susan Himmelweit, "Exploitation," in *A Dictionary of Marxist Thought*, ed. Tom Bottomore (England: Basil Blackwell Publisher Limited, 1983), 157.

part of the working day, and the value produced in the other, unpaid part, is the surplus value. The form of the wage obscures this fact by making it seem that the workers is paid for every hour, but from the point of view of the labour theory of value a fraction of the labour is expended without the worker receiving an equivalent, and hence is unpaid.”¹⁸⁸ This is the kind of exploitation in a capitalist system of production. Marx argued that under capitalism, the real exploitation of working class is hidden and it continues without worker being duly compensated. In *Capital*, Marx says: “Capital is not only, as Adam Smith says, the command over labour. It is essentially the command over unpaid labour. All surplus values, whatever particular form, it may subsequently crystallise into, is in substance the materialisation of unpaid labour. The secret of the self-expansion of capital resolves itself into having the disposal of a definite quantity of other people’s unpaid labour.”¹⁸⁹

Will Kymlicka argues that the paradigm of injustice for Marx is exploitation, that is, the “exploitation of the worker by the capitalist.” Thus, the fundamental flaw of liberal justice is that it licenses the continuation of this exploitation, since it licenses the buying and selling of the labour.¹⁹⁰ Kymlicka further argues that for Marxists, ‘exploitation refers to the specific phenomenon of the capitalist extracting more value from the workers’ labour than is paid back to the worker in return for that labour. Capitalists only hire workers when they can extract this ‘surplus value’, and so this exploitative transfer of surplus value from the worker to the capitalist is found in all wage relationship.’¹⁹¹

In *Capital*, Marx writes: “The justice of the transaction between agents of production rests on the fact that these arise as natural consequences out of the production relationship. The juristic form in which these economic transactions appear as wilful acts of the parties concerned, as expressions of their common will and as contract that may be enforced by law against some individual party, cannot, being mere forms, determine this content. They merely express it. This content is just whenever it corresponds, is appropriate to the mode of production. It is unjust whenever it contradicts that mode.”¹⁹² Also, Marx profoundly argues that in “capitalist mode of production,” alienation of the worker occurs. Especially in *Economic and Philosophic Manuscripts of 1844*, Marx explains the idea of alienation.

¹⁸⁸ See Duncan Foley, “Surplus Value and Profit,” in *A Dictionary of Marxist Thought*, ed. Tom Bottomore (England: Basil Blackwell Publishers Limited, 1983), 475-76.

¹⁸⁹ See Karl Marx, *Capital: The Process of Production of Capital*, vol. I (England: Penguin Books, 1982), 672.

¹⁹⁰ See Kymlicka, *Contemporary Political Philosophy*, 177.

¹⁹¹ *Ibid.*, 178.

¹⁹² See Karl Marx, *Capital: The Process of Capitalist Production as a Whole*, vol. 3 (New York: Penguin Books, 1981), 460-61.

According to Marx, workers are alienated in a Capitalist system, and it is a form of exploitation. Marx classifies four types of alienation: (1) ‘alienation of worker from the product of his labour’; (2) ‘alienation of the worker from the act of producing’; (3) ‘alienation of the worker from the nature in which he lives’; and (4) ‘alienation of the worker from other human beings.’ It must be also mentioned that, Marx did not explain the process of alienation by using the exact language of injustice being done to the working class by the capitalist class. However, the underlying meaning of “Marx’s theory of alienation” suggests the sense of justice for the working class that are denied under capitalism. Marx suggested that in a classless communist society, alienation will cease to exist in any form.¹⁹³

According to Allen Wood, Marx rejects the formal conception of justice. Allen Wood argues that justice, for Marx, is not about conforming to any judicial system or universal principle. Justice of an action or institution is determined by “the concrete requirements of a historically conditioned mode of production.” Justice cannot be determined based on abstract principles or hypothetical contracts. Any abstract principles of justice cannot assess the justice of a situation which is concrete. For Marx, justice can be determined in relation to the specific mode of production.¹⁹⁴

(2) Contrary to the above interpretation, the second line of interpretation claims that Marx did not speak about justice. According to Jon Elster, “Marx, in fact, explicitly denies that he is advocating a particular concept of justice. Marx asserts that theories of morality and justice are ideological constructions, which only serve to justify and perpetuate the existing property relations. Actions are said to be just or unjust according to a moral code corresponding to a particular mode of production. In capitalism, slavery and fraud are unjust; the extraction of surplus labour is not. There is no trans-historical, non-relativistic conception of justice.”¹⁹⁵ Moreover, John Elster is of the argument that “Marx was strongly repelled by sanctimonious phrases about justice that served only to legitimise the horrible practices of capitalism. Marx was very hostile to moral or moralizing conceptions of communism, believing them to be reactionary in effect if not in intent. Marx believed that historical development was governed

¹⁹³ In a nutshell, Marx’s idea seems to suggest that in the “capitalist mode of production,” the means of production is controlled by the capitalist class. As a result, there is the extraction of surplus value and there is alienation of working class. Thus, there is exploitation and there is injustice. For Marx, justice will exist when exploitation of workers is ended and a communist society is established.

¹⁹⁴ See Allen Wood, “The Marxian Critique of Justice,” *Philosophy and Public Affairs* 1, no. 3 (Spring, 1972): 257-58. Also see, Allen W. Wood, “The Marxian Critique of Justice,” in *Marx, Justice and History*, eds. Marshall Cohen, Thomas Nagel, and Thomas Scanlon (New Jersey: Princeton University Press, 1980), 16-17.

¹⁹⁵ See Jon Elster, *An Introduction to Karl Marx* (New York: Cambridge University Press, 1986), 92.

by laws of motion operating with iron necessity, so that moral condemnations were either pointless or superfluous.”¹⁹⁶

In the book *Making Sense of Marx*, Jon Elster observed that Marx’s “both theory of exploitation in *Capital* and the theory of distribution in the *Critique of Gotha Programme* embody principles of justice, but he did not know how to describe correctly what he was doing; he actually went out of his way to deny that the correct description was appropriate.”¹⁹⁷ Jon Elster argues that Marx may have just failed to understand his own view of justice. Thus, Jon Elster argues that while writing about exploitation, Marx had dismissed the idea of justice and fairness as bourgeois ideology.¹⁹⁸

It is also interpreted that the “communist society” as Marx envisages is a society which is beyond justice. For Marx, that there is no theory of justice and communism will be a society beyond justice.¹⁹⁹ In fact, in *The Communist Manifesto*, Marx says, “Undoubtedly, it will be said, ‘religious, moral, philosophical, and juridical ideas have been modified in the course of historical development. But religion, morality, philosophy, political science, and law constantly survived this change. There are, besides, eternal truths, such as Freedom, Justice, etc., that are common to all states of society. But communism abolishes eternal truths, it abolishes all religion and all morality, instead of constituting them on a new basis; it therefore acts in contradiction to all past historical experience.’”²⁰⁰

In *Critique of the Gotha Programme*, Marx spoke about ‘fair distribution.’²⁰¹ Marx did not exactly speak about justice. Marx anticipated two criteria of distribution for “post-capitalist society.” One is the “contribution principle” and other is the “needs principle.” The first criteria will apply during an earlier period of emergent communism. In this phase, each individual will receive an amount in proportion to his or her labour contribution. In this phase it does not permit class differences or privileges. However, “it allows those relatively well endowed, whether with physical or with intellectual ability, to benefit from the greater contribution they make.” In the later period, it will be possible to implement the needs

¹⁹⁶ Ibid., 93.

¹⁹⁷ See Jon Elster, *Making Sense of Marx* (London: Cambridge University Press, 1985), 216.

¹⁹⁸ Ibid.

¹⁹⁹ See Elster, *An Introduction to Karl Marx*, 92.

²⁰⁰ See Karl Marx and Frederick Engels, “The Communist Manifesto,” in *Karl Marx Selected Writings*, ed. David McLellan (London: Oxford University Press, 1977), 236. And also see, Jon Elster, ed., *Karl Marx: A Reader* (London: Cambridge University Press, 1986), 265.

²⁰¹ See Karl Marx and Frederick Engels, *Selected Works*, vol. 3 (Moscow: Progress Publishers, 1977), 16-20.

principle. Marx says, “In a higher phase of communist society, after the enslaving subordination of the individual to the division of labour, and therewith also the antithesis between mental and physical labour, has vanished; after labour has become not only a means of life but life’s prime want; after the productive forces have also increased with the all-round development of the individual, and all the springs of co-operative wealth flow more abundantly—only then can the narrow horizon of bourgeois right be crossed in its entirety and society inscribe on its banners: From each according to his ability, to each according to his needs.”²⁰² In fact, what Marx meant is that a full communist society cannot emerge directly from capitalism. In a first stage of post-capitalist society, people will still carry a capitalist mentality. Hence, in this stage, the principle of distribution is ‘to each according to his contribution.’ According to Marx, the contribution principle is flawed whereas the needs principle is not. It is because the contribution principle embodies a bourgeoisie conception of formal rights. It is insensitive to the actual needs of individuals. But in the higher stage of communism, this constraint will disappear. In this way, Marx elaborated how the transition from a society which is governed by rights to a society in which there will be no role of rights and justice.²⁰³

Allen Wood, in his essay “Marx and Equality,” explains a different interpretation of how Marx looked at the capitalist system. Allen Wood also argues that Marx does not criticize capitalist system for any sort of injustice or for violation of anyone’s rights. Marx does not think that capitalist distribution involves wrongs or injustice. However, Marx does believe that capital exploits and oppresses the workers, but he does not attack exploitation or oppression on the grounds of right or justice. It is because Marx does not view the abolition of class society as the rectification of injustice or the vindication of rights.²⁰⁴

²⁰² Ibid., 18-19.

²⁰³ See Elster, *An Introduction to Karl Marx*, 95-96.

²⁰⁴ See Allen Wood, “Marx and Equality,” in *Analytical Marxism*, ed. John Roemer (Cambridge: Cambridge University Press, 1986), 284-85. However, Garry Young has given a different view on Marx’s take on capitalist production. For Garry Young, capitalist production is both just and unjust as it liberates and enslaves. Garry Young further argues that what Marx believes is that positive attributes of capitalist production are in market, but not in the sphere of direct production. And only buyers and sellers are free, but the working class is enslaved. See Gary Young, “Doing Marx Justice,” in *Marx and Morality*, eds. Kai Nielsen and Steven C. Patten (Ontario: Canadian Association for Publishing in Philosophy, 1981), 268.

The Idea of Justice: Counterparts From the East

The idea of justice is widely debated in the East. For Confucius, the idea of justice appears to be associated with “righteousness.” In fact, it is not clear how Confucius exactly described the idea of justice. Oliver Leaman states that, for Confucius, justice represents the way of life we ought to seek to follow, which is opposed to private gain and advantage.²⁰⁵ According to Fung Yu-Lan, righteousness, in Confucianism, is about the oughtness of a situation. It suggests that certain things are morally right which every individual in society ought to do. If a person does them only for non moral considerations, then his actions cannot be considered to be righteous.²⁰⁶ Mencius expressed about righteousness. Mencius states, “So I like life, and I also like righteousness. If I cannot keep the two together, I will let life go and choose righteousness.”²⁰⁷ It means righteousness is more worth than a worthless life. As for Mencius, righteousness is man’s proper path.²⁰⁸

According to John M. Koller, a widespread tendency to presuppose universal moral justice is prevalent in Indian thought. It is perceived that the universe revolves around the moral justice. In this sense, justice is associated with the idea of karma, and thus persons are individually responsible for what they were, what they are, and what they will become. Individual’s past, present and future is determined by his own action.²⁰⁹

In the ancient India, the idea of justice was related to the concept of divinity or God. The idea of justice was identified with the sense of truth, morality and righteousness. According to S. N. Dhyani, in the Vedic period, the idea of justice was about the “embodiment of God itself” and God is there to uphold justice, truth and righteousness.²¹⁰ There was much emphasis on the significance of truth. The ancient scriptures also preached the values of truth, righteousness and justice.

The Buddhist idea of justice embodies the idea of equality for all. It is against the discrimination of any kinds based on birth, caste, gender and so on. Justice in Buddhism advocates that we not only respect and protect our own rights by lawful means, but we should

²⁰⁵ See Oliver Leaman, *Key Concepts in Eastern Philosophy* (London: Routledge, 2004), 157.

²⁰⁶ See Fung Yu-Lan, *A Short History of Chinese Philosophy*, ed., Derk Bodde (New York: The Free Press, 1966), 42.

²⁰⁷ See Lin Yutang, ed., *The Wisdom of China and India* (New York: Random House, 1942), 778.

²⁰⁸ *Ibid.*, 779.

²⁰⁹ See John M. Koller, *Oriental Philosophies* (New York: Charles Scribner’s Sons, 1970), 14.

²¹⁰ See S.N. Dhyani, *Law-Morality and Justice: Indian Development* (New Delhi: Metropolitan Books, 1984), 86.

also do the same to others.²¹¹ The Buddhism preaches the eight-fold path of morality—“right views, right resolve, right speech, right action, right livelihood, right effort, right mindfulness and right meditation.”²¹²

In the post-Vedic era, the practice of caste system came into force in a strict way. There was caste hierarchy in every society. During this period, the notion of justice closely associated with the practice of caste system. The notion of justice came to be identified with the enforcement of caste rules and practices. In Manusmriti, Manu pronounced that men who attend to their own occupations, performing each his own occupation, become dear to the world even though they are far away.²¹³ Manu pronounced that ‘justice must be preserved; justice must not be violated because violation of justice destroys us. The only friend who follows men even after death is justice.’²¹⁴ According to Kautilya, justice lies in when one strictly adheres to his respective duties as prescribed in the varnashramadharma.²¹⁵ In *Arthashastra*, Kautilya observed that in the court, judges are to be guided by law in delivering justice. The king is the final arbiter of justice in an appellate or revisionary capacity. And justice is to be made available to the subjects closer to their residences.²¹⁶ Kautilya also emphasised that the administration of justice is one of the cardinal functions of the king.

It is difficult to give a common Islamic notion of justice as there had many Muslim rulers who had adopted different administrative mechanisms in India. Our focus here would be on general Islamic notion on justice based on some readings. In the Islamic view, according to D. R. Jatava, development and justice, economic progress, social justice and welfare all go together.²¹⁷ In Islam, idea of social justice is based on the equality and fraternity of all Muslim citizens of a country. “Islam recognises absolute equality between men irrespective of any distinction of colour, race or nationality.” Islam believes in the principle that all human beings as brothers to one another.²¹⁸ Islam also believes in the equal distribution of natural assets. Islam does not prescribe any occupational system based on birth or social

²¹¹ See P. Lakshmi Narasu, *The Essence of Buddhism* (Delhi: Bharatiya Publishing House, 1976), 72.

²¹² See Damien Keown, *Buddhism* (Oxford: Oxford University Press, 1996), 57. Also see, Paul Carus, *The Gospel of Buddhism* (Tucson: Omen Communications Inc., 1972), 33.

²¹³ See Edward W. Hopkins, ed., *The Ordinances Of Manu*, translated by Arthur Coke Burnell (New Delhi: Oriental Books Reprint Corporation, 1971), 183.

²¹⁴ See F. Max Muller, ed., *The Sacred Books of the East-The Laws of Manu*, vol. 25, translated by G. Buhler (Delhi: Motilal Banarsidass Publishers Private Limited, 2006), 255.

²¹⁵ See B. P. Sinha, *Readings in Kautilya's Arthashastra* (Delhi: Agam Prakashan, 1976), 117.

²¹⁶ See M. B. Chande, *Kautilyan Arthashastra* (New Delhi: Atlantic Publishers and Distributors, 2004), 50.

²¹⁷ See D. R. Jatava, *Social Justice: In Indian Perspective* (Jaipur: ABD Publishers, 2006), 62.

²¹⁸ See A. Mannan, *Social Justice Under Islam* (New Delhi: Reference Press, 2005), 284-85.

hierarchy. Under Islam, there is no rule which prescribes any inherited social status. Under Islam, a man's place is determined by his actions.²¹⁹ The notion of justice under Islam stresses on inner faith in God, teaching holy book *Quran*, moral training etc. According to Haran Yahya, "The true justice described in the Qur'an commands man to behave justly, not discriminating between people, protecting others' rights and not permitting violence, no matter what the circumstance, to side with the oppressed against the oppressor and to help the needy."²²⁰

During the British rule in India, the western concept of justice came into exist. The British brought whole lot of changes in India. They brought western English education, idea of equality, "rule of law," the idea of secularism etc. which were not there earlier. They also introduced various modern institutions. Under the British rule, the education was open to all. They introduced employment opportunity open to all. Besides introducing western political and legal systems, they also brought several modern means of transport and communication in India. They also introduced modern judicial system for delivering justice in India. In India, the idea of legal justice had its origin in the British rule.

In the context of modern India, we shall selectively discuss the ideas of M. K. Gandhi and B. R. Ambedkar on justice. Ghandi's notion of justice stresses on fellow-feelings, compassion and mutual love. Ghandi says, "Pure justice is that which is inspired by fellow-feelings and compassion. We in India call it the eastern or the ancient way of justice."²²¹ Gandhi was against the western concept of justice. According to him, modern western idea of justice has no place for fellow feelings and compassion. In western idea of justice, it is just that everyone should look after his own interest and expect others to take these into account. Ghandi terms western idea of justice as "satanic or despicable idea of justice." Ghandi also argues that any action is just which does not harm either party to a dispute.²²² Ghandi also believed that man is blessed with a sense of justice. God has endowed man with understanding, with a sense of justice.²²³ Gandhi's notion of justice goes against any form of coercion. Ghandi says, "Social justice, even to the least and the lowliest is impossible of attainment by force."²²⁴ Ghandi

²¹⁹ Ibid., 52.

²²⁰ See Harun Yahya, *Justice and Tolerance in the Qur'an* (Istanbul: Shafiq Books, 2003), 12.

²²¹ See *The Collected Works of Mahatma Gandhi*, XIV (October 1917-July 1918), (Delhi: The Publications Division, Ministry of Information and Broadcasting, Government of India, 1965), 232.

²²² Ibid., 232-33.

²²³ See *The Collected Works of Mahatma Gandhi*, VIII (January-August, 1908), (Delhi: The Publications Division, Ministry of Information and Broadcasting, Government of India, 1962), 337.

²²⁴ See M. K. Gandhi, *India of My Dream* (Ahmedabad: Navajivan Publishing House, 1947), 23. Also, see *Harijan*, 20-4-1940.

believed that social justice can be attained by “training of the lowliest by non violent means.” Gandhi was against all kinds of unjust socio, political, economical order. Gandhi opposed the practice of untouchability in society. According to Gandhi, “Untouchability as at present practised is the greatest blot on Hinduism. It is against the shastras. It is against the fundamental principles of humanity, it is against the dictates of reason that a man should, by mere reason of birth, be for ever regarded as an untouchable, even unapproachable and unseeable.”²²⁵

B. R. Ambedkar’s idea of justice is to do a lot with his abhorrence towards caste inequality prevalent in society. Ambedkar was advocating for the abolition of caste system in India. Ambedkar was for the establishment of social justice in society. Ambedkar’s idea of justice is against the hierarchical caste practices. Ambedkar rebuts the Varna system because it promotes social inequality and establishes hierarchical status in social order. It assigns the highest and sacred status to only one the Brahmins, and relegates the rest to the inferior lower status.²²⁶ Thus, Ambedkar rejects both the philosophy of Hinduism and Gandhism. Ambedkar did not see any fundamental difference Hinduism and Gandhism. Ambedkar argued that there is caste in Hinduism, there is caste in Gandhism.²²⁷ In fact, for Ambedkar, the idea of justice is based on the fulfilment of liberty, equality and fraternity. According to Ambedkar, “justice is another name for liberty, equality and fraternity.”²²⁸ In the independent India, the constitution of India, for which B. R. Ambedkar was the chairman of the drafting committee, stresses the need to secure social, economic, and political justice in all strata of society.

However, a mention must be made here that writing about the idea of justice in Indian context is a complex exercise. This exercise is much complex because of its inherent difficulties. Given its widely diverse multitude of cultures, religions, caste structures, languages, economic disparities, histories, to name a few; and the negligible commonalities among all, it continues to be a fruitless attempt to explain what commonly makes up of the entity called India. Whether the notion of India is constructed purely on the political basis or

²²⁵ See *The Collected Works of Mahatma Gandhi*, LIII (January-March 1933), (Delhi: The Publications Division, Ministry of Information and Broadcasting, Government of India, 1972), 262. Also see, *Harijan*, 11-2-1933.

²²⁶ See L. S. Ainaur, “Abolition of Caste-Ambedkar’s Perspective,” in *Ambedkar and Social Justice*, vol. 1 (New Delhi: The Director Publications Division Ministry of Information and Broadcasting Government of India, 1992), 163.

²²⁷ See B. R. Ambedkar, “What Congress and Gandhi Have Done to the Untouchables,” in *Dr. Babasaheb Ambedkar Writings and Speeches*, vol. 9, ed. Vasant Moon (Education Department, Government of Maharashtra, 1991), 296.

²²⁸ See B. R. Ambedkar, “Philosophy of Hinduism,” in *Dr. Babasaheb Ambedkar Writings and Speeches*, vol. 3, ed. Vasant Moon (Education Department, Govt. of maharashtra, 1987), 25.

on geographical terms or on cultural aspects or on historical account, etc. is conceivably vague till this day.²²⁹ And with such enormous complexities, to define the idea of justice in the context of India per say is more of a difficult endeavour.

To sum up, we have studied some fundamental aspects about the idea of justice in this chapter. We have noted that it is not easy to give the exact definition of the term justice. We have discussed some important reasons for the difficulties in defining the term justice. Besides, we have also examined the dimensions of justice and its origin. Along with this, we have studied the interpretations of justice by some of the most prominent schools of thinking. Some of the schools whose interpretations that we have selected for discussions are: the Greek idea of justice, Libertarian notion of justice, Communitarianism notion of justice, Utilitarian conception of justice, Anarchist view on justice, Marx's perspective on justice, and the idea of justice from the East. From the study of these interpretations, we have also seen how difficult and equivocal the idea of justice is to arrive at a universally acceptable term. Each interpretation has its own reasons to support their argumentations. Therefore, we can infer from this study that no single definition or interpretation can possibly explain the idea of justice in the most comprehensive fashion. Nevertheless, it is not to deny the importance of the idea of justice. Even if it is almost impossible to arrive at an absolutely unequivocal conception of justice, the fundamental question remains as to why that numerous scholars and thinkers continue to engage in defining or formulating the idea of justice through the ages. The answer to this question is not easy. However, it must be mentioned that despite the fact that concept of justice is equivocal, the primacy that justice commands is so enormous and everlasting. Several scholars and theorists have been constantly engaging in the exercise of formulating a correct idea of justice for ages. This is because justice always remains to be the most important and unavoidable question in every society. As Harry Brighthouse argues, "Justice is one of the central virtues of any social order. It matters enormously how individuals distribute the burdens required to maintain social organisation and the benefits that accrue from it, because none among individuals should suffer worse lives from being treated wrongly by others, and none of us should benefit from wrong treatment of others."²³⁰ Also, Rainer Forst in his book *Context of Justice* argued that "justice is the highest political-moral virtue by which legal, political, and social conditions as a

²²⁹ Academician Sunil Khilnani also puts forward the view that the idea of India lacks any common identity or any basis of unity that are the essence of the modern nation state. Even the question of being an Indian is deeply contested till today. For details, see Sunil Khilnani, *The Idea of India* (New Delhi: Penguin Books, 2004), 152-94.

²³⁰ See Harry Brighthouse, *Justice* (Cambridge: Polity Press, 2004), vi.

whole—the basic structure of society—can be measured.”²³¹ In fact, providing as well as safeguarding justice to its citizens is commonly seen as the pivotal end of the state. It is in this context that any state or any society can be assessed.²³² Emphasising the importance of the idea of justice, Arnold Brecht wrote succinctly that questions such as “what is just, what is unjust?” are basic in the realm of political and judicial philosophy. Arnold Brecht argues: “Among the proper ends of state and government, justice has been given a high, if not top, rank at all times.”²³³ Thus, it can be concluded that justice is a living idea. The idea of justice is associated with multiple aspects of human life. The very fact that political philosophers from the time of ancient Greek down to the contemporary times have been relentlessly attempting to articulate the idea of justice amply shows that justice commands a tremendous prominence till today.

²³¹ See for details, Rainer Forst, *Contexts in Justice* (Los Angeles: University of California Press, 1994), xi.

²³² Regarding the importance of justice, James E. Bayley rightly points out that even if there is no single fixed meaning of the idea of justice, it is used to evaluate states and societies. For details see, James E. Bayley, “Human Nature And Justice,” in *Social Justice*, ed. Randolph L. Braham (Boston: Marting Nijhoff Publishing, 1981), 2.

²³³ See Brecht, *Political Theory*, 136.

Chapter 2

The Idea of Justice: A Study of Ideas of John Rawls

In this chapter, an attempt is made to study John Rawls's idea of justice. There are three sections in this chapter each devoted to one of John Rawls's major works. The major works of John Rawls, namely *A Theory Of Justice*, *Political Liberalism*, and *The Law Of Peoples*, are examined separately in each section. The reason for discussing John Rawls's ideas of justice in the three sections is to highlight important modifications he made in his ideas of justice over a period of time.

(a) John Rawls's Idea of Justice in *A Theory Of Justice*

John Rawls propounds his idea of justice as "fairness." Rawls's main argument in his concept of "justice as fairness" is that the basic idea in the idea of justice is "fairness." In other words, what Rawls tries to argue is that "fairness" is the basic idea in the concept of justice. For Rawls, "the fundamental point to the idea of justice is the concept of fairness."¹ This also means that what Rawls presents is an analysis of the idea of justice from "the point of fairness." So, the point that Rawls makes is that idea of justice can be conceptualized in terms of fairness. But what is noticed is that in Rawls's conceptualization, justice is not the same as fairness. This means when Rawls conceptualized his idea of "justice as fairness," he does not mean that justice is same as "fairness." Rawls is of the argument that the concept of justice and fairness are different. The term justice and fairness are two fundamentally different concepts. Rawls says, "It might seem at first sight that the concepts of justice and fairness are the same, and that there is no reason to distinguish them, or to say that one is more fundamental than the other. I think that this impression is mistaken."² In fact, Rawls's primary argument is that the idea of justice can be understood "in terms of fairness."

John Rawls conceptualizes his theory of justice with a theoretical framework which is somewhat abstract in nature. To expound his theory of justice, Rawls starts with the description of the background condition for the social cooperation. Rawls argues that "society is a cooperative venture for mutual advantage."³ Social cooperation makes life better for individuals. In the society, however, there is a conflict of interests among individuals. It is

¹ See John Rawls, "Justice as Fairness," in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 47.

² Ibid.

³ See John Rawls, *A Theory of Justice* (New Delhi: Universal Law Publishing Co. Pvt. Ltd, 2010), 4.

because there are no proper criteria for sharing the benefits of social cooperation that would be considered as fair. There is lack of any social agreement through which the “fair terms of social cooperation” can be determined. Everyone in society prefers to get the larger share in the distribution of benefits produced by their cooperation.⁴ In such a circumstance, there arises a need for choosing a certain set of principles that will determine the agreement on the proper distributive shares. Rawls calls this background conditions that give rise to these necessities “the circumstances of justice.”⁵ Rawls’s idea is that the set of principles that are required will determine the “fair terms of social cooperation.” And these set of principles would be the “principles of social justice that would assign rights and duties in the basic structure of society and would define the appropriate ways of distributing the benefits and burdens of social cooperation.”⁶ Then Rawls describes how these set of principles will be chosen. For this purpose, Rawls applies a thought experiment. This means Rawls invokes a hypothetical choice situation. Rawls seeks to imagine a situation in which individuals who are free and rational are situated in an “initial situation of equality” which he terms as the “original position.” In such an initial situation of equality, individuals who are to choose the principle of justice are not aware of certain information like their natural contingencies and fundamental facts about themselves. The logic behind such restrictions to parties in the initial situation is to ensure that nobody is in the advantageous and favourable position in choosing the principles of justice. It is because if any individual is allowed to possess any knowledge about himself, for instance, his natural endowment, he will definitely choose the principles that will suit his own interest. And the result will be that the principles of justice chosen will not be considered as fair to everyone. Therefore, Rawls’s argument is that since parties are in the similar situation, the principles of justice will be chosen after a fair agreement. Since no one in the “initial situation of equation” has any scope to choose the principles in their own favour, everyone will naturally choose the set of principles that will be in the interest of everyone in society. And the resulting principles of justice will be considered as fair. Thus, Rawls argues that the process in which the principles of justice would be chosen is fair.⁷

⁴ In fact, Rawls believes that the existing societies are not well ordered as there is no principles that can define the fair terms of social cooperation. Ibid., 5.

⁵ For Rawls, “the circumstances of justice” refers to the normal conditions under which human cooperation is both possible and necessary. Rawls argues that every person under normal circumstance develops “a sense of justice,” and human society is characterized by the circumstance of justice. Ibid., 126.

⁶ Ibid., 4.

⁷ In this regard, Rawls remarks, “The question of fairness arises when free persons, who have no authority over one another, are engaging in a joint activity and among themselves settling or acknowledging the rules which define it and which determine the respective shares in its benefits and burdens.” See Rawls, “*Justice as Fairness*,” 59.

Then, Rawls argues that free and rational parties in the initial choice situation will choose “two principles of justice.” The first principle is about the equal “basic liberty” which stipulates the idea that equal right to most basic liberty should be there among individuals in society. The second principle holds the idea that any “social and economic inequalities” are to be considered just only if they result in benefiting everyone, especially the unfortunate ones in society. According to this line of argument, it cannot be considered as an injustice when few persons in society earn greater benefits as long as they share some of their benefits to improve the situation of the unfortunate.⁸ This means inequality is still to be considered fair if it improves the situation of “the worst off in society.” In addition to this, the second principle also says that everyone should have a fair chance of opportunity to compete for public offices and position without any discrimination in society. Then, after having chosen the principles, these principles will regulate all the socio, economic and political arrangements in society. This means once these principles are chosen, they are to apply to the major socio, economic and political institutions of the society. Rawls calls these major institutions as “the basic structure of society.” The reason why Rawls argues that the principles of justice apply to the basic structure of society is because it is the crux of human society. These major institutions determine men’s rights and duties. They influence men’s life prospects. Therefore, arrangement of constitution, laws, legislature and judiciary will be in accordance with the “two principles of justice.” Rawls, in fact, considers the “basic structure of society” as the primary subject in his conception of “justice as fairness.” So when these institutions are arranged in accordance with the principles of justice, which are the result of fair process of bargaining or agreement, these institutions will be just institutions.

Further, Rawls argues that any society that satisfies “the two principles of justice” will be stable. Rawls, in this context, invokes the idea of “a well ordered society.” “A well ordered society” is the society in which its major institutions function in accordance with the “two principles of justice.” In such a society, everybody feels their “sense of worth” and they acquire the “sense of justice.” Thus, Rawls’s argument is that when these social institutions work in tandem with the two principles of justice, free and rational individuals will be convinced that they are cooperating to one another on fair terms. It is because their social cooperation is based on those set of principles which they agree upon in the initial situation. Now their social cooperation is fair as everyone is assured to gain equal benefits from it.

⁸ In fact, Rawls says, “But there is no injustice in the greater benefits earn by a few provided that the situation of persons not so fortunate is thereby improved”. See Rawls, *A Theory Of Justice*, 15.

Rawls also argues that free and rational parties in the initial situation will not choose the utilitarian principle. The “principle of utility” is not compatible with the idea of social cooperation. It is because, Rawls argues, the principle of utility does not support the concept of social cooperation by free and equal persons for mutual benefits.⁹ According to Rawls, utilitarian principle does not consider the “distinction between persons seriously.” Utilitarian thinking justifies the sacrifice the rights of few for the greater benefits of larger numbers in society. This, in Rawls’s view, is the violation of individuals’ rights. Rawls’s point is that each person has an inviolable right. Contrary to utilitarian principle, Rawls argues that the interests of everyone in society are taken care of while choosing the two principles of justice. “Free and rational” individuals choose the principles of justice that will benefit everyone in society. There is no scope of violating anybody’s right while applying the two principles of justice.

Overall, it must be argued that it is not Rawls’s attempt to equalise the term “fairness” with the idea of justice. Rawls’s aim is to conceptualise the idea of justice from the point of fairness. Hence Rawls calls his idea of justice as fairness. Rawls has not specifically defined what the term “fairness” means. Rawls, rather, constructs certain framework through which he tries to conceptualize his idea of “justice as fairness.” Thus, what Rawls argues in his theory of justice is that a certain set of principles will be required in society in order to solve the distribution problem in social cooperation.¹⁰ Then the set of social principles that will be chosen in the initial situation by free and rational persons will be fair principles. This is because, the process followed in choosing those principles of justice are fair. And once these principles are chosen, they will determine all the major socio, economic and political arrangements in society. And when these major institutions in society satisfy these principles of justice, they will be regarded as just institutions. In this aspect, Rawls also adopts the “pure procedure principle of justice” which basically advocates the idea that following fair procedure will result in fair outcomes. Rawls’s argument is that in the “initial choice situation,” individuals choose the “two principles of justice” which are regarded to be fair. When major institutions of society are arranged in accordance with the two principles of justice, the outcome will be most likely fair. In other words, when these principles determine

⁹ Ibid., 14.

¹⁰ The idea of social cooperation is one of the basic thrust in understanding Rawls’s theory of justice. It is because fundamental arguments of his ideas of justice largely circle around the background of the idea of social cooperation. If there is no necessity of the social cooperation as Rawls emphasises, there will be no question of Rawls’s theorising the need to choose two principles of justice. And hence, there would be no question of Rawls’s theory of justice. In fact the genesis of choosing his two principles of justice generates from the idea of social cooperation.

the nature and rules of institutions in society, the outcome is most likely to be just and fair. Thus, Rawls's argument is that when principles of justice chosen in a fair manner apply to the "basic structure of society," justice will exist in society. Such an idea of justice is to be understood in the sense of fairness.

Rawls on the Two Principles of Justice

Rawls argues that two principles of justice would be chosen by the "parties in the original position" after considering other principles. First principle: "each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all."¹¹ Second principle: "social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity."¹²

The first principle is also called as "basic liberties principles." The first principle stipulates that every citizen is to have the same basic rights and the equal liberties.¹³ The first principle implies that every citizen of a just society is to have the same basic rights to the certain "basic liberties." According to Rawls, the basic liberties of citizens are: "political liberty (the right to vote and to be eligible for public offices) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold personal property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law."¹⁴ Rawls states that "these liberties are all required to be equal by the first principle, since citizens of a just society are to have the same basic rights."¹⁵

John Rawls's "second principle of justice" has two parts. They are both (a) to the greatest benefit of "the least advantaged," consistent with the "just savings principles." This is also known as the "difference principle" (b) "attached to offices and positions open to all under conditions of fair equality of opportunity." This is also known as "fair equality of opportunity principle." The first part suggests that "social and economic inequalities" are not

¹¹ See Rawls, *A Theory Of Justice*, 60, 302.

¹² Ibid., 302.

¹³ According to Robert B. Talisse, 'the liberty principle stipulates that every person is to have a system of equal basic liberties, and the liberties conferred by this system are to be as extensive as possible.' See Robert B. Talisse, *On Rawls* (United Kingdom: Wadsworth Thomson Learning, 2001), 42.

¹⁴ See Rawls, *A Theory Of Justice*, 61.

¹⁵ Ibid.

necessarily unjust provided they are to benefit “the least advantaged.”¹⁶ Rawls’s main argument in this principle is that persons with exceptional talents, or intelligence, or beauty do not deserve their endowments, and therefore they do not deserve the social and economic advantages they generate. These endowments are simply natural facts.¹⁷ According to the “difference principle,” “all social primary goods—liberty and opportunity, income and wealth, and the bases of self respect—are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantages of the least advantaged.”¹⁸ In this connection, Philippe Van Parijs states that the core point in Rawls’s difference principle is that “social and economic inequalities should be evaluated in terms of how well off they leave the worst off.”¹⁹

Regarding the “just saving principle,” Rawls says that “each generation must not only preserve the gains of culture and civilisation, and maintain intact those just institutions that have been established, but they must also put aside in each period of time a suitable amount of real capital accumulation”²⁰ Each generation is required to save for future generations. Rawls’s idea is that “parties in the original position” must choose a just saving principles that would assign “an appropriate rate of accumulation” for the future generation.²¹

The second part of the second principle requires that “offices and positions” must be open to all. Rawls states that “positions of authority and offices of command must be accessible to all.”²² In this regard, Samuel Freeman explains that by “fair equality of opportunity,” Rawls means “the absence of restrictions on entry into desired social and political positions,” and it means “positions are to be held open to everyone to compete for on grounds of qualifications relevant to performing the tasks of that position, regardless of people’s racial, ethnic, or gender group, religious or philosophical views, or social or economic position.”²³ Thus, according to Rawls, the second principle broadly suggests that while the “distribution of

¹⁶ Rawls defines “the least advantaged” broadly in two senses. In one sense, the least disadvantaged means those belonging to the income class with lowest expectations. See, John Rawls, “Distributive Justice: Some Addenda,” in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 157. In the second sense, “the least advantaged” includes persons whose family and class origins are more disadvantaged than others, whose natural endowments have permitted them to fare less well, and whose fortune and luck have been relatively less favourable. See, John Rawls, “A Kantian Conception of Equality,” in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 258-59.

¹⁷ See Rawls, *A Theory Of Justice*, 102.

¹⁸ *Ibid.*, 303.

¹⁹ See Philippe Van Parijs, “Difference Principle,” in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), 200.

²⁰ See Rawls, *A Theory Of Justice*, 285.

²¹ *Ibid.*, 287.

²² *Ibid.*, 61.

²³ See Samuel Freeman, *Rawls* (London: Routledge, 2007), 88.

wealth and income” is not required to be equal, but it must ensure that they are to the advantage of “the least advantaged.” At the same time, positions of authority and offices of command must be open and accessible to all.²⁴ In fact, Robert B. Talisse is of the view that while Rawls’s equal opportunity principle requires all offices and positions which may generate economic and social advantages to be open to all, the “difference principles” suggests the point that “social and economic inequalities” are not necessarily unjust if it improves the conditions of “the least well off.”²⁵

Further, Rawls’s argument is that the two parts of the second principles are complementary to each other. The “fair equality of opportunity” complements the “difference principle.” Rawls states that “the role of the principle of fair opportunity is to insure that the system of cooperation is one of pure procedural justice. Unless it is satisfied, distributive justice could not be left to take care of itself.”²⁶ Also, the “difference principle” works with “fair equality of opportunity principle.” In the words of Samuel Freeman, “It is only in a society where fair equality of opportunity principle to compete for open positions is satisfied that distribution designed to maximise the share of the worst off will satisfy the requirement of distributive justice.”²⁷ Thus, Rawls’s idea is that all principles are interrelated. In this regard, Rainer Forst rightly explains that the second principle which consists of “fair equality of principle” and “difference principle” is required for the realization of individual rights and liberties that the first principle propounds.²⁸

Then, Rawls states that the principles of justice are to be ranked in “lexical order.”²⁹ The first principle is to be held prior to the Second.³⁰ The first principle which is also known as the “basic liberties principle” is prior to the second principle. According to Rawls, “a departure from the institutions of equal liberty required by the first principle cannot be justified by, or compensated for, by the greater social and economic advantages.”³¹ Therefore, the requirements and the claims of the basic liberty are to be satisfied first. Only when it is

²⁴ See Rawls, *A Theory Of Justice*, 61.

²⁵ See Talisse, *On Rawls*, 42-43.

²⁶ See Rawls, *A Theory Of Justice* 87.

²⁷ See Freeman, *Rawls*, 92.

²⁸ See Rainer Forst, *Context of Justice: Political Philosophy beyond Liberalism and Communitarianism* (Los Angeles: University of California Press, 1994), 140.

²⁹ According to “Lexical order,” the first principle in the ordering must be satisfied before we move on to the next, and so on. It further means that a principle does not come into play until the prior principles to the next are either fully justified or met.

³⁰ See Rawls, *A Theory Of Justice*, 61. Also see, T. M. Scanlon, “Rawls’ Theory of Justice,” in *Reading Rawls*, ed. Norman Daniels (Oxford: Basil Blackwell, 1975), 179-80.

³¹ See Rawls, *A Theory Of Justice*, 61.

achieved, other principle will work. For Rawls, liberty cannot be violated. And within the second principle, the principle of “fair equality of opportunity” is prior to the “difference principle.” In short, “fair opportunity principle” is prior to the “difference principle.”³² This means, according to Rawls, “Infringements of fair equality of opportunity are not justified by a greater sum of advantages enjoyed by others or by society as a whole.”³³ In this connection, Paul Graham observes that resources cannot be distributed to the worst-off if that entails violating fair equality of opportunity.³⁴

Rawls states that the principles of justice primarily apply to the “basic structure of the society.” By “the basic structure of the society,” Rawls means the “major social institutions” in society, that is, “the political constitution and the principle economic and social arrangements.”³⁵ And they are to govern the assignment of rights and duties and to regulate the distribution of social and economic advantages. For Rawls, the “basic structure of society” is the primary subject of justice as its effects on individuals are enormous and present everywhere.³⁶ So, the major institutions in society define the rights, duties, obligation of individuals etc and in this way, their influence to individual life prospect is pervasive.

Rawls further argues that two principles of justice match individuals’ “considered judgements” in “reflective equilibrium.” According to Rawls, “considered judgements” are “those judgements in which our moral capacities are most likely to be displayed without distortion.”³⁷ These principles match “considered judgements” because individuals have carefully examined these principles and have arrived at what they believe is “an impartial judgement.” And, the “reflective equilibrium” is a process in which one can either modify or revise one’s existing judgements until eventually that leads to reasonable conditions and yields principles matching one’s considered judgement. Rawls’s argument is that these principles of justice are chosen after individuals have considered various other conceptions.³⁸ Further, Rawls also argues that the principles of justice chosen are to be public, and in the “original position,” the parties are to assume that principles are chosen for “a public

³² Ibid., 303.

³³ Ibid., 302.

³⁴ See Paul Graham, *Rawls* (England: Oneworld Publications, 2007), 57.

³⁵ See Rawls, *A Theory Of Justice*, 7.

³⁶ Ibid., 96.

³⁷ Ibid., 47.

³⁸ Ibid., 48.

conception of justice.”³⁹ Parties assume that these principles will be known to everyone once they are chosen.

Besides, Rawls also presents two principles for individuals. One principle for individual is the “principle for obligation.”⁴⁰ The other principle for individual is the “natural duties.” In brief, the principles for individuals are the principles for obligation and natural duties that apply to individuals. These principles are also chosen in the “original position” by the parties.⁴¹ Further Rawls argues that the conception of “justice as fairness” is not complete without these principles of individuals. And for Rawls, these principles “define citizens’ institutional ties and how one is bound to one another.”⁴²

According to the principle of obligation, a person is required to do his part as per the rules defined by an institution. Two conditions are required for it: “the institution satisfies the two principles of justice,” and “one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one’s interests.”⁴³ In other words, this principle holds the idea that a person is under an obligation to fulfil his duties as specified by the rules of a fair institution and he has voluntarily accepted the benefits of the arrangements it offers. Rawls basic point is that individuals have an obligation to do their part in the social cooperation. Nobody is to gain from the cooperation without doing his fair part. This means each individual receives fair share when everyone perform their part.⁴⁴ On the other hand, the principle of “natural duty” means the duty “to support and to comply with just institutions.”⁴⁵ This duty has two parts: first part is that individuals are “to comply with and to do their share in just institutions when they exist and apply to them,” and second part is that individuals are “to assist in the establishment of just arrangements when they do not exist.”⁴⁶ As per this principle, ‘individuals have a natural duty to do what is required of him if the basic structure of society is just.’⁴⁷

³⁹ Ibid., 133.

⁴⁰ Ibid., 112.

⁴¹ Ibid., 110.

⁴² Ibid., 333.

⁴³ Ibid., 111-12.

⁴⁴ Ibid., 112.

⁴⁵ Ibid., 334.

⁴⁶ Ibid.

⁴⁷ Ibid.

Rawls on the Idea of the Original Position

Rawls describes the “original position” in many places in his book. According to Rawls, the “original position is the appropriate initial status quo which insures that fundamental agreements reached in it are fair.”⁴⁸ Rawls says that the idea of “original position is to set up a fair procedure so that any principles agreed to will be just.”⁴⁹ The original position is a “purely hypothetical situation.”⁵⁰ The original position is neither equivalent with a general assembly, nor it is a “gathering of all actual or possible persons.”⁵¹ And the original position is not actually similar with the classical social contract theories. In the words of Ronald Dworkin, “What the original position differs from classical social contract theories is its description of the parties.”⁵² So, Rawls’s “original position” is a hypothetical choice situation that facilitates the fair process of choosing the principles of justice.

Rawls’s main thrust is that the principles of justice are chosen in the “original position behind a veil of ignorance.” This is to ensure that “no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances.”⁵³ In the “original position” behind the “veil of ignorance,” the parties do not know certain particular facts. “No one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like. Nor, again, does anyone know his conception of the good, the particulars of his rational plan of life, or even the special features of his psychology such as his aversion to risk or liability to optimism or pessimism. More than this, I assume that the parties do not know the particular circumstances of their own society. That is, they do not know its economic or political situation, or the level of civilization and cultures it has been able to achieve. The parties in the original position have no information as to which generation they belong.”⁵⁴ However, there are some facts that “parties in the original position” know. They know that ‘their society is subject to the circumstances of justice, they

⁴⁸ Ibid., 17. Also see, John Rawls, “A Theory of Justice,” in *Arguing About Political Philosophy*, ed. Matt Zwolinski (New York: Routledge, 2009), 197.

⁴⁹ See Rawls, *A Theory of Justice*, 136.

⁵⁰ Ibid., 120.

⁵¹ Ibid., 139.

⁵² See Ronald Dworkin, “The Original Position,” in *Reading Rawls*, ed. Norman Daniels (Oxford: Basil Blackwell, 16).

⁵³ See Rawls, *A Theory of Justice*, 12. Also, it is noted by David Conway that what distinguishes Rawls’s “original position” from the traditional notions of the state of nature is that people choose their principles from behind a “veil of ignorance.” See also, David Conway, *Classical Liberalism* (London: Macmillan Press Ltd, 1995), 31.

⁵⁴ See Rawls, *A Theory Of Justice*, 137.

know the general facts about human society, they understand political affairs and the principles of economic theory, they know the basis of social organizations and the laws of human psychology and they also know whatever general facts that affect the choice of the principles of justice.⁵⁵ In simple words, “parties in the original position” do not know their place in society, their class position, their social status, their fortune, their abilities, their intelligence, their strength, and their conception of good, their the particulars of his rational plan of life, their generation and so on. Nevertheless, the parties know that their “society is subject to the circumstance of justice,” they know “general facts about human society,” they know the “basis of social organization” and “the laws of human psychology” and they are aware of “political affairs and economic theory.”

According to Brian Barry, Rawls’s idea of a “veil of ignorance” refers to “the limitations on knowledge.”⁵⁶ Rawls argues that such limitations on particular information are so important because without these limitations on knowledge, the bargaining powers of the “parties in the original position” would be difficult to exercise freely. For instance, “if any knowledge of particulars is allowed, then the outcome is bound to be biased by arbitrary contingencies.”⁵⁷ Thus in the “original position” under the “veil of ignorance,” no one is in a position to pursue the principles to his advantages. As Richard C. Bayer rightly observes that “ignorance of these things guarantees impartiality in the choice of principles,” and “without veil of ignorance, all would pursue their self-interest, and no agreement would be possible.”⁵⁸ Thus, Rawls argues that the “veil of ignorance” ensures a unanimous choice of “a particular conception of justice” is possible.⁵⁹ As “No one knows his situation in society nor his natural assets, no one is in the position to tailor principles in his advantage.”⁶⁰ So, the reason why Rawls invokes the idea of the original position as well as the veil of ignorance for the parties to choose the principles of justice is that since parties are situated in the same position, no one has any extra advantage to design principles to favour his particular interest. And the principles of justice thus chosen would be regarded fair as they are the result of a fair process of agreement or bargain.⁶¹

⁵⁵ Ibid.

⁵⁶ See Brian Barry, *The Liberal Theory of Justice* (Oxford: Oxford University Press, 1973), 10.

⁵⁷ See Rawls, *A Theory Of Justice*, 141.

⁵⁸ See Richard C Bayer, “Christian Ethics and A Theory of Justice,” *Journal of the American Academy of Religion* 64, no. 1 (Spring, 1996): 48.

⁵⁹ See Rawls, *A Theory Of Justice*, 140.

⁶⁰ Ibid., 139.

⁶¹ Ibid., 12.

Furthermore, Rawls says the “parties in the original position” are “rational and mutually disinterested,” in the sense that they take no “interest in one another's interests.”⁶² The “parties in the original position” are equal and everyone exercises the same rights in choosing the principles of justice.⁶³ Besides, Rawls states that certain constraints are there in the situation of the persons in the original position. First, the principles of justice should be general. This means, Rawls argues, “understanding of these principles should not require a knowledge of contingent particulars, not a reference to individuals or associations.”⁶⁴ Secondly, the principles of justice are to be “universal in application.” They must hold for “everyone in virtue of their being moral persons.”⁶⁵ Thirdly, the principles of justice are subject to “publicity.” The parties are choosing principles for “a public conception of justice.” This means that principles of justice are to be publicly acknowledged.⁶⁶ Fourthly, “a conception of right” must impose “an ordering on conflicting claims.” It means the principles of justice have the role “to adjust with competing demands.”⁶⁷ Finally, finality of the principles should be there. Rawls argues, “The parties are to assess the system of principles as the final court of appeal in practical reasoning. There are no higher standards to which arguments in support of claims can be addressed; and reasoning successfully from these principles is conclusive.”⁶⁸

Rawls’s Arguments for the Two Principles of Justice

There are some specific reasons as to why Rawls argues that the “parties in the original position” will choose the two principles of justice. First, Rawls argues that under the two principles of justice chosen by the parties in the original position, there is no possibility for any individual to gain special advantages for himself over others. There is also no ground in which individuals would acquiesce any special disadvantages. And while individuals will not reasonably expect more share than an equal share in the “division of social goods,” they will not rationally agree to get the less. Therefore, they would acknowledge the principle of justice that would spell an ‘equal distribution of primary social goods.’⁶⁹

⁶² Ibid., 13.

⁶³ Ibid., 19.

⁶⁴ Ibid., 131-32.

⁶⁵ Ibid., 132.

⁶⁶ Ibid., 133.

⁶⁷ Ibid., 133-34.

⁶⁸ Ibid., 135.

⁶⁹ Ibid., 150.

Second, Rawls argues that the “parties in the original position” would adopt the “maximin rule” in choosing two principles of justice. “The maximin principle says to rank alternatives by their worst possible outcomes and we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the others.”⁷⁰ According to this rule, one is “to identify the worst outcome of each available alternative and then to adopt the alternative whose worst outcome is better than the worst outcomes of all the other alternatives,” and Rawls argues that the “maximin rule directs the parties to avoid other alternatives whose worst outcomes are below the guaranteeable level.”⁷¹ Rawls gives some reasons why parties would choose these two principles of justice using the “maximin rule.” First of all, in the “original position under the veil of ignorance,” parties are deprived of crucial information. In such situation, they cannot simply arrive at any credible outcome. And Rawls’s argument is that it would be rational for the parties to adopt the “maximin rule.”⁷² Thus, parties would choose these two principles that will ensure everyone’s fair interests.

Third, it is an important choice for the parties because the principles of justice which they are supposed to choose will apply to the “basic structure of their society.” The choice of the principles of justice will decide many factors in their lives. In fact, the choice of principles will determine one’s future life prospects. The principles of justice will ensure a just share of primary goods which are essential to pursue their ends in.⁷³ Moreover, the first principle guarantees that the basic liberties of citizens are to be equal. The second principles ensure that the distribution of wealth and income are to everyone’s advantage, and positions of authority and public offices must be accessible to all. And the priority of the first principle over the second principle implies that basic liberties of citizens must be guaranteed first.

Fourth, Rawls argues that “For an agreement to be valid, the parties must be able to honour it under all relevant and foreseeable circumstances. There must be a rational assurance that one can carry through.”⁷⁴ According to Rawls, the two principles of justice fulfil these conditions. The two principles of justice have two confirming grounds. The first confirming ground is “the strains of commitment.” Samuel Freeman describes Rawls’s idea of the strains of

⁷⁰ Ibid., 152-53.

⁷¹ See John Rawls, *Justice As Fairness: A Restatement*, ed. Erin Kelly (New Delhi: Universal Law Publishing Co. Pvt. Ltd, 2011), 97-98.

⁷² In this regard, Thomas Pogge rightly observes that Rawls is of the firm belief that it would be rational for the “parties in the original position” to deliberate according to the “maximin rule.” See, Thomas Pogge, *John Rawls: His Life and Theory of Justice* (Oxford: Oxford University Press, 1994), 68-9.

⁷³ See Freeman, *Rawls*, 170.

⁷⁴ See Rawls, *A Theory Of Justice*, 175.

commitment as the “willing compliance with requirements of justice.”⁷⁵ In Rawls’s words, “The parties have a capacity for justice in the sense that they can be assured that their undertaking is not in vain. Assuming that they have taken everything into account, including the general facts of moral psychology, they can rely on one another to adhere to the principles adopted. Thus they consider the strains of commitment. They cannot enter into agreements that may have consequences they cannot accept. They will avoid those that they can adhere to only with great difficulty. Since the original agreement is final and made in perpetuity, there is no second chance. In view of the serious nature of the possible consequences, the question of the burden of commitment is especially acute. A person is choosing once and for all the standards which are to govern his life prospects. Moreover, when we enter an agreement we must be able to honour it even should the worst possibilities prove to be the case. Otherwise we have not acted in good faith. Thus the parties must weigh with care whether they will be able to stick by their commitment in all circumstances.”⁷⁶ And the second conforming ground is the “condition of publicity.” The condition of publicity implies that “When the basic structure of society is publicly known to satisfy its principles for an extended period of time, those subject to these arrangements tend to develop a desire to act in accordance with these principles and to do their part in institutions which exemplify them.”⁷⁷ Besides, publicity of the two principles enhances their self respect and securing their self respect is vital because “a sense of their own worth” is necessary “to pursue their conception of the good.”⁷⁸ In fact, Rawls argues that the two principles stipulate respect among individuals. In Rawls’s words, “Thus a desirable feature of a conception of justice is that it should publicly express men’s respect for one another. In this way they insure a sense of their own value. Now the two principles achieve this end. For when society follows these principles, everyone’s good is included in a scheme of mutual benefit and this public affirmation in institutions of each man’s endeavours supports men’s self-esteem. The establishment of equal liberty and the operation of the difference principle are bound to have this effect.”⁷⁹

Fifth, the two principles of justice have some advantages. Under these principles, parties are guaranteed to their basic rights and they protect themselves against worst eventualities.⁸⁰ Under these principles, they would not agree any loss of their freedoms for the sake of others’

⁷⁵ See Samuel Freeman, “Introduction: John Rawls—An Overview,” in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), 20.

⁷⁶ See Rawls, *A Theory Of Justice*, 176.

⁷⁷ *Ibid.*, 177.

⁷⁸ *Ibid.*, 178.

⁷⁹ *Ibid.*, 179.

⁸⁰ *Ibid.*, 176.

greater happiness.⁸¹ Most importantly, the principles of justice ensure that no one treats another person as a means to an end. Rawls states that in the “original position,” all have equal rights, they regard themselves as ends and the principles they accept will be designed to safeguard their claims. And according to these principles, everyone has equal rights to liberty.⁸² Moreover, the two principles would generate its own support and it would be stable. The basic liberties of everyone are secured and the “difference principle” ensures that everyone gets benefits from the social cooperation. Only those inequalities can exist that promote to benefit the least fortunate persons in society.

Rawls argues that, apart from the classical utilitarian principles, the parties would reject intuitionism. For Rawls, intuitionist theories consist of “a plurality of first principle which may conflict to give contrary directives in particular types of cases,” and they have no priority rule to weigh these principles. As a result, one is “to strike a balance by intuition.”⁸³ According to Joel Feinberg, John Rawls’s argument is that his theory of justice is superior to intuitionism because ‘intuitionist theories deny that plurality of moral principles can be reduced to one ultimate and superior one, and they also deny that priority rules can be formulated which assign weights to conflicting considerations so that we can determine in particular case which has priority.’⁸⁴

Rawls’s idea of Primary Social Goods

The primary goods are the “things that every rational man is presumed to want.”⁸⁵ According to Rawls, “primary goods are things which it is supposed a rational man wants whatever else he wants.”⁸⁶ Rawls says that “regardless of what an individual’s rational plans are in detail, it is assumed that there are various things which he would prefer more of rather than less. With more of these goods men can generally be assured of greater success in carrying out their intentions and in advancing their ends, whatever these ends may be.”⁸⁷ In fact, Rawls’s assumption is that even if men have different rational plans to their ends, they still need certain primary goods to pursue their ends.⁸⁸ Thus, Rawls’s point is that even if the persons in the “original position” are not aware of their conception of the good, they still want more

⁸¹ Ibid.

⁸² Ibid., 180.

⁸³ Ibid., 34.

⁸⁴ See Joel Feinberg, “Justice, Fairness and Rationality,” *The Yale Law Review* 81, no. 5 (April, 1972): 1007.

⁸⁵ See Rawls, *A Theory Of Justice*, 62.

⁸⁶ Ibid., 92.

⁸⁷ Ibid.

⁸⁸ Ibid., 93.

primary goods. And this awareness prompts individuals to advance their interests in the initial situation.⁸⁹

According to Rawls, primary goods are: (a) “the basic liberties”: for instance, “freedom of thought and liberty of conscience, freedom of association, and the freedom defined by the liberty and integrity of the person, as well as, by the rule of law, and finally the political liberties” (b) “freedom of movement and choice of occupation against a background of diverse opportunities” (c) “powers and prerogatives of offices and positions of responsibilities, particularly those in the main political and economic institutions” (d) “income and wealth” (e) “the social bases of self-respect.”⁹⁰

Rawls argues that the parties to assess principles of justice rationally in terms of primary goods.⁹¹ Rawls therefore gives an explanation as to why he argues that every rational person would want to have primary goods.

First, the basic liberties like freedom of thought, liberty of conscience etc are required to develop one’s capacity to pursue their conception of the good in a rational way. These liberties are to develop and exercise the sense of right and justice under free political and social condition.⁹² Second, freedom of movement and free choice of occupation are required for the pursuit of their ends and to change them.⁹³ Third, powers and prerogatives of offices of responsibilities are needed for “self-governing and social capacities of the self.” Fourth, income and wealth are for achieving wider ends. Fifth, the social bases of self-respect are important for their own worth and self-confidence.⁹⁴

Then, Rawls further highlights some other features of the primary goods. According to principles of justice, everyone in “a well-ordered society” enjoys same basic liberties and equality of opportunity. However, there are some permissible differences in their share of the

⁸⁹ Ibid. Also, Rawls also argues that the “Aristotelian Principle” also helps to specify what the “primary goods” are. For Rawls, the “Aristotelian Principles” suggests that ‘human beings enjoy the exercise of their realized capacities, and this enjoyment increases the more the capacity is realized, or the greater its complexity.’ Ibid., 426. Also see, Chandran Kukathas and Philip Pettit, *Rawls* (Stanford: Stanford University Press, 1990), 55.

⁹⁰ See John Rawls, “Social Unity and Primary Goods,” in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 362.

⁹¹ Ibid., 366.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

primary goods. Those primary goods are: “powers and prerogatives of offices and positions of responsibilities, income and wealth, and self respect.”⁹⁵

Further, Rawls says, “The use of primary goods, however, relies on a capacity to assume responsibility for our ends. This capacity is part of the moral powers to form, to revise, and rationally to pursue a conception of the good”⁹⁶ Apart from this, Rawls states that the share of primary goods is not for the measurement of citizens’ “psychological well-being.” “Justice as fairness” does not support the idea of comparing and maximising satisfaction while relying on primary goods.⁹⁷

With regard to the question as to how the different primary social goods are weighted, Rawls clarified that “The fundamental liberties are always equal, and there is fair equality of opportunity; one does not need to balance these liberties and rights against other values. The primary goods that vary in their distribution are the powers and prerogatives of authority, and income and wealth.”⁹⁸ And “justice as fairness” requires that there should be equal distribution of all primary goods unless an unequal distribution results in favour of the least well off. “Men share in primary goods on the principle that some can have more if they are acquired in ways which improve the situation of those who have less.”⁹⁹ In this connection, Rawls openly argues that “injustice is simply the inequalities that are not to the benefit of everybody.”¹⁰⁰

Rawls about Just Institutions

John Rawls explains the process of how the principles of justice are to apply to “the basic structure of the society.” For this, Rawls sets out “a four-stage-sequence” which is a device for applying the principles of justice.¹⁰¹ According to Samuel Freeman, Rawls’s “four-stage-sequence” is the framework for deliberating about and applying principles of justice.¹⁰² Rawls states that a citizen needs to make three judgments before applying the principles of

⁹⁵ Ibid., 363.

⁹⁶ Ibid., 369.

⁹⁷ Ibid., 370.

⁹⁸ See Rawls, *A Theory Of Justice*, 93.

⁹⁹ Ibid., 94.

¹⁰⁰ Ibid., 62.

¹⁰¹ Ibid., 200.

¹⁰² See Freeman, *Rawls*, 202.

justice: a judgement of the justice of legislation and social policies, a judgment of a just constitutional arrangements and acceptance of a certain just constitution.¹⁰³

The first stage is the “original position” where parties choose the two principles of justice. Rawls’s idea is that once the principles of justice are chosen, the parties return to their actual place in society and then assess their claims based on the principles chosen.¹⁰⁴ The next stage is the “constitutional stage.” The parties move to a constitutional convention. In this stage, they are to choose a just constitution and they are to arrange a system for the constitutional powers of government and the basic rights of citizens. The just constitution is the one that “satisfies the principles of justice and is best calculated to lead to just and effective legislation.”¹⁰⁵ The next stage is the “legislative stage.” In this stage, assessment of the justice of law and policies is to be done according to the principles of justice. Laws and statutes must satisfy the principles of justice and any proposed bills are to be judged by a representative legislature who is not known to the particulars about himself.¹⁰⁶ The last stage is the “judicial stage.” In this stage, judges and administrators apply rules to person “in virtue of their characteristics and circumstances.”¹⁰⁷

In short, Rawls’s “four-staged-sequence” can be described as: the first stage is the “original position” in which persons are to choose the principles of justice. The second stage is the “constitutional convention” in which parties are to decide the political forms as well as choose a constitution. The third stage is the “legislative stage” where they are to make laws, policies and rules in accordance with the principles of justice. They ensure that statutes satisfy the principles of justice.¹⁰⁸ The fourth stage is the “judicial stage” which deals with the judges and administrators applying rules and laws to particular cases. In fact, Rawls clearly emphasises that the “four-stage-sequence” is part of the theory of “justice as fairness.”¹⁰⁹ It means that the “four-staged-sequence” is the next step to follow after having chosen the two principles of justice. It is the device to apply the principles of justice to the “basic structure of society.”

¹⁰³ See Rawls, *A Theory of Justice*, 195-96.

¹⁰⁴ *Ibid.*, 196.

¹⁰⁵ *Ibid.*, 196-97.

¹⁰⁶ *Ibid.*, 198.

¹⁰⁷ *Ibid.*, 199.

¹⁰⁸ Rawls also outlines that the “first principle of equality of liberty” is the primary standard for the constitutional convention, whereas, the second principle comes into play at the legislative stage. *Ibid.*

¹⁰⁹ *Ibid.*, 200.

Rawls also says that the availability of knowledge in “four stage sequence” is different.¹¹⁰ Rawls further elaborates this. In the “original position,” persons do not know particular facts about themselves and the “only particular facts known to the parties are those that can be inferred from the circumstances of justice.”¹¹¹ In the constitutional stage and the legislative stage, they know the general facts about their society but not the particularities of themselves. Any knowledge that may generate bias, distortion and antagonism among men is ruled out.¹¹² At the last stage, there is no “veil of ignorance” and all restrictions are lifted.¹¹³

Further, Rawls explains about the political justice. Political justice, for Rawls, is the justice of the constitution.¹¹⁴ The political justice has two aspects: “the constitution is to be a just procedure satisfying the requirements of equal liberty,” and “it is to be framed so that it is the one more likely than any other to result in a just and effective system of legislation.”¹¹⁵ Rawls supposes that a constitutional regime can be arranged for citizens’ equal participation. Rawls sketched out his model of a constitutional democratic regime. There should have a just constitution. A representative body selected for limited terms has the authority to determine basic social policies. They are accountable to the electorate. The representative body is a legislature with lawmaking powers. The principles of justice are among the main criteria to be used in judging a representative’s record and the reasons he gives in defence of it. All citizens have the right to take part in political affairs. All citizens are to have an equal access to public offices. Each is eligible to join political parties, to run for elective positions, and to hold places of authority. Elections are to be held regularly and it should be fair and free.¹¹⁶ There should be constitutional protections for some significant liberties like freedom of speech and assembly, and liberty to form political associations. There must have the principle of loyal opposition without which the politics of democracy cannot be properly conducted or endure for long.¹¹⁷ A form of fair rivalry should be set up for political office and authority. Rawls also cautioned that devices such as ‘constitutionalism, bicameral legislature, separation of powers, checks and balances, a bill of rights with judicial review can be consistent with equal political liberty if similar restrictions apply to everyone.’¹¹⁸ A democratic regime

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid., 221.

¹¹⁵ Ibid.

¹¹⁶ Ibid., 222.

¹¹⁷ Ibid., 222-23.

¹¹⁸ Ibid., 224.

guarantees freedom of speech and assembly, and liberty of thought and conscience. Besides, political parties must not depend on private economic interests. It can be done “by allotting them sufficient tax revenues to play their part in the constitutional scheme.”¹¹⁹ If it is not, Rawls reasons, the voice and interest of those socially and economically advantaged groups will be considered more. And as a result, the interests of the less favoured members of society are more likely to be ignored.¹²⁰

In addition, Rawls also argues that there is a role for “civil disobedience” in a “nearly just society.” It is because there may be violation of justice. Rawls defines civil disobedience as “a public, nonviolent, political act done with the aim of bringing about change in the law or policies of government.”¹²¹ Rawls specifies some broad conditions on which civil disobedience is called for. They are: existing political parties are indifferent to the minority, attempts to repeal laws are futile, legal protests have no effect, the majority ignore the legitimate concerns of the minority etc. In fact, Rawls argues that justified civil disobedience may serve to stabilise “a nearly just society” or “a well ordered society.”¹²²

Rawls on the Stability of Justice as Fairness

John Rawls claims that “justice as fairness” is more stable than any other alternatives available. For this end, Rawls invokes the idea of “a well-ordered society.” According to Rawls, “a well-ordered-society” is designed “to advance the good of its members” and a public conception of justice effectively regulates it.¹²³ Rawls defines “a well-ordered society” as “a society in which everyone accepts the same principles of justice and the basic structures of the society satisfy the principles of justice.”¹²⁴ Rawls states that “justice as fairness is framed to accord with this idea of society.”¹²⁵

Rawls argues that “justice as fairness” generates its own support. “Justice as fairness” is more in line with the “principles of moral psychology.” As a result, “justice as fairness” is likely to

¹¹⁹ Ibid., 225-26.

¹²⁰ Ibid., 226.

¹²¹ Ibid., 364. Here, Rawls also admits in *A Theory of Justice* that he follows the definition of H. A. Bedau on civil disobedience. Interestingly, Rawls differentiates “civil disobedience” from “conscientious refusal” in which the latter is noncompliance with a more or less direct legal injunction or administrative order. While civil disobedience is a political act, conscientious refusal is not necessarily based on political principles as it may be founded on religious or other principles. Unlike civil disobedience, conscientious refusal is not an act in the public forum. Ibid, 368-69.

¹²² Ibid., 383.

¹²³ Ibid., 453.

¹²⁴ Ibid., 453-54.

¹²⁵ Ibid., 454.

be more stable.¹²⁶ To illustrate this point, Rawls explains how “moral development” is formed in “a well ordered society.” Rawls does this by distinguishing between “the morality of authority,” “the morality of association,” and “the morality of principles.” According to Rawls, “justice as fairness” is tied to the account of “moral development.”¹²⁷

The first stage of moral development is “the morality of authority.” This stage is about how moral development of the child is formed. The parents love the child. The parents’ care expresses their love for the child. The parents love the child and in time the child comes to love and to trust his parents. They also show their love by having pleasure in their presence and supporting the child’s “sense of competence and self esteem.” The parents encourage the child’s efforts to master the task of growing up and they welcome his assuming his own place. Over the time, supported by parents’ affection and encouragement, the child comes to trust his parents and acquire confidence in his surroundings. Parents also exemplify superior knowledge and power, and set forth appealing examples of what is demanded. The parents must set out rules with reasons and they must also follow these precepts. In the process, the child tends to accept the injunctions and strives to be like the parents.¹²⁸

The second stage of moral development is “the morality of association.” In this stage, a person, as he is growing up, works out a conception of the whole system of cooperation that defines the associations and the ends which it serves. He also recognizes that different points of view exist. He also tries to see things from others’ perspective. Having understood another’s situation, a person also regulates his own conduct. In the process, he acquires the attachments with others and then a capacity for fellow being is realized. He also develops friendly feelings, trust and confidence towards his associates. Over the time, after having established ties with others, a person would possess a sense of guilt over his failure to do his part. At the same time, a person’s goodwill is also honoured. In the due course, with the reciprocal effects of everyone, a kind of equilibrium is reached among themselves. The newer members of the association also learn from them. Then, there is “the morality of association” in which one regards others as equals, as friends, as associates, and they take part in a cooperation based on a common conception of justice which is good for everyone.¹²⁹

¹²⁶ Ibid., 456.

¹²⁷ Ibid., 461.

¹²⁸ Ibid., 462-67.

¹²⁹ Ibid., 467-72.

The third stage is “the morality of principles.” In this stage, a person having attached with many individuals and communities, develops a wish to be a “just person.” In this stage, the idea of “acting justly, and advancing just institutions” attracts him. In “a well-ordered society,” citizens engaging in political affairs, legislative, judicial and other similar offices are not only required to apply the public conception of justice, they also need to consider others’ opinions. It is to adjust various competing claims in a reasonable way. After they realize that social cooperation can promote their good, they want to apply and to act upon the principles of justice.¹³⁰

Rawls argues that “justice as fairness” is more stable than other conceptions of justice.¹³¹ Rawls elaborates this argument by giving some reasons. First, Rawls argues that “justice as fairness” is in line with the “principles of moral psychology.” Then Rawls describes the three psychological laws. The first law is how the child comes to love the parents after recognizing their love and care for him in a family. The second law is about how this person develops his ties, feeling and loyalty towards others in the association. The third law about how this person comes to acquire a sense of justice which everyone commonly shares and acts upon it.¹³² Rawls’s argument is that these “principles of moral psychology have a place for a conception of justice.”¹³³ This means that “justice as fairness” is tied with the three laws of moral psychology. These three laws are reciprocal and it makes “justice as fairness” more stable.¹³⁴ Also, Rawls says, “In a social system regulated by justice as fairness, identification with the good of others, and an appreciation of what others do as an element in one’s own good might be very strong.”¹³⁵ It is because a sense of mutuality is already in the principles of justice. And in such a society, a person will develop a sense of “own worth.”¹³⁶ Rawls also believes that individuals need to develop a sense of justice for stability and in “a well-ordered society,” they have a “sense of justice.”¹³⁷ According to Rawls, “A sense of justice is an effective desire to apply and to act from the principles of justice and so from the point of

¹³⁰ Ibid., 472-79.

¹³¹ As Edward F. McClennen observes, Rawls’s idea is that “justice as fairness” expresses a stronger and more unconditional concern for the good of all persons. Under “justice as fairness,” everyone is guaranteed an equal liberty. They are also assured about their claims not to be neglected for any cause that will benefit others. See Edward F. McClennen, “Justice and the Problem of Stability,” *Philosophy and Public Affairs* 18, no. 1 (Winter, 1989): 25.

¹³² See Rawls, *A Theory of Justice*, 490-91.

¹³³ Ibid., 491.

¹³⁴ Ibid., 498.

¹³⁵ Ibid., 501.

¹³⁶ Ibid., 501.

¹³⁷ Ibid., 456, 497.

view of justice.”¹³⁸ Thus, Rawls argues that persons in “a well-ordered society” not only know that institutions are just, but they also share a similar a sense of justice. And since this sense of justice is known to public, “justice as fairness” is stable.¹³⁹

Rawls’s Critique of Utilitarianism

Another significant aspect of Rawls’s theory is his attempt to challenge the dominant theory of utilitarianism. In fact, Rawls openly admits this fact that he intends to point out several flaws in utilitarian thinking and throw a formidable challenge against it through his theory of justice. Rawls tries to show that his theory of justice is superior to utilitarianism. Therefore, Rawls exclaims that his aim is “to present a theory of justice that can be an alternative to utilitarian thought.”¹⁴⁰

For Rawls, utilitarian thought consider that a society is to be arranged when its institutions maximise the overall well being. Utilitarian thought does not make any “distinction between the principle of choice for one man and the principle of choice for an association,” and utilitarian thought regards the “principle of choice for an association of men as an extension of the principle of choice for one man.”¹⁴¹ The utilitarian thought defines “good independently from the right,” and “the right as that maximises the good.”¹⁴² This means, utilitarian thought considers those “institutions and acts are right” which produce the maximum good.¹⁴³ Rawls call such line of utilitarian thinking as teleological theory. In teleological theory, one judges “the goodness of things without referring to what is right.”¹⁴⁴ Rawls rejects this teleological theory because it defines right acts in terms of maximising the good. It does not consider equal rights for individuals.¹⁴⁵

Rawls argues that the utilitarian view of justice does not consider how the “sum of satisfaction” or happiness is distributed among individuals.¹⁴⁶ For utilitarian view, the correct distribution is that which yields the maximum satisfaction. This means, for utilitarianism,

¹³⁸ Ibid., 567.

¹³⁹ Ibid., 567-69.

¹⁴⁰ Ibid., 22.

¹⁴¹ Ibid., 24.

¹⁴² Ibid., 24.

¹⁴³ Ibid.

¹⁴⁴ Ibid., 25.

¹⁴⁵ As Will Kymlicka remarks, according to utilitarianism, “maximizing the good is primary, not derivative.” ‘Its primary duty is not to treat individuals as equals, but to bring about valuable state of affairs. And utilitarianism is basically concerned with the state of affairs rather than with persons.’ See Will Kymlicka, *Contemporary Political Philosophy* (New York: Oxford University Press, 2008), 33.

¹⁴⁶ See Rawls, *A Theory Of Justice*, 26.

society must distribute in any form so as to achieve maximum satisfaction. In a utilitarian view, the violation of the liberty of some is justified by “the greater good shared by many.”¹⁴⁷ However, Rawls’s argument is that right and liberty of anybody cannot be justified for the greater happiness of others.

Rawls argues that utilitarianism does not regard the separate rights of individuals seriously. But Rawls criticizes utilitarian thought of not seriously taking the distinction between men. Rawls’s argument is that utilitarianism does not take seriously the “distinction between persons.”¹⁴⁸ Utilitarianism compromises the rights of individuals based on the results of acts that maximise the greater happiness in society.

Then, Rawls attempts to show as to how his justice as fairness is different from utilitarian thought. Rawls claims that in a “just society,” each member has an inviolability founded on justice which none can override. In a just society, “the basic liberties are taken for granted and the rights secured by justice are not subject to political bargaining.”¹⁴⁹ However, utilitarianism compromises the loss of individual freedoms for the greater good in society.

According to Rawls, while the utilitarianism “extends to society the principle choice for one man,” “justice as fairness” assumes the “principles of social choice.”¹⁵⁰ Rational parties in the “original position” will not choose the utility principle. Parties would choose the two principles justice which will define the “fair terms for social cooperation.” The reason is that “From the standpoint of contract theory one cannot arrive at a principle of social choice merely by extending the principle of rational prudence to the system of desires constructed by the impartial spectator.”¹⁵¹ Rawls also claims that utilitarianism is not individualistic because “it applies to society the principle of choice for one man.”¹⁵²

Rawls also argues that while utilitarianism is a kind of teleological theory; “justice as fairness” is a deontological theory. “Justice as fairness” does not specify the good to be completely free from the right, and it does not consider the right as maximising the good. Rawls argues that “justice as fairness is deontological theory” because it does not advocate

¹⁴⁷ Ibid. Also see, Samuel Scheffler, “Rawls and Utilitarianism,” in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), 429.

¹⁴⁸ See Rawls, *A Theory Of Justice*, 27.

¹⁴⁹ Ibid., 28.

¹⁵⁰ Ibid.

¹⁵¹ Ibid., 29.

¹⁵² Ibid.

the idea that just institutions will maximise the good.¹⁵³ In “justice as fairness,” the maximising principle which is the basis of the utilitarian thought is not used.

According to Rawls, utilitarianism does not consider right to be prior to the good. But in “justice as fairness,” the concept of right is considered to be prior to the good.¹⁵⁴ This means in “justice as fairness,” there is no scope for the violation right for individuals. Rawls also states that “principles of right” and of justice put restrictions on conceptions of one’s good.¹⁵⁵

Thus, John Rawls overall argument against utilitarianism is that utilitarianism seeks to maximise overall happiness or utility in society and they do not take individuals’ rights seriously.¹⁵⁶ According to utilitarian thinking, any policy, scheme is justifiable if they result in maximising the overall happiness of the larger persons in society. This means utilitarian thought justifies the sacrifice of rights of few individuals for the greater good of others. In this sense, utilitarian thought does not take the rights of every individual seriously. However, Rawls’s argument is every person exercises equal rights and liberties in “justice as fairness.” When “free and rational persons” come together to choose the principles of justice in the initial situation, they have equal rights to bargain for the selection of the principles of justice. Moreover, in the process of selecting the principles as well as applying the principles in the main institutions of society, everyone is assured of getting a “fair share” from the benefits of social cooperation. And there is no scope of violation of anybody’s right. So, Rawls argues that right is prior to the good in “justice as fairness.” In this way, Rawls presents his theory of justice to be different from utilitarianism.

(b) John Rawls’s Idea of Justice in *Political Liberalism*

In *Political Liberalism*, Rawls argues that “justice as fairness” which he propounded in *A Theory of Justice* has a serious problem. The problem is about the stability of “a well ordered society.” In *A Theory of Justice*, Rawls’s argument based on his assumption is that a well ordered society that satisfies the “two principles of justice” will be stable. As Rawls argued, two principles of justice are chosen by free and rational persons in a fair manner and everyone agrees with the two principle justice. When major social institutions determine

¹⁵³ Ibid., 30.

¹⁵⁴ Ibid., 31.

¹⁵⁵ Ibid., 31.

¹⁵⁶ According to David Middleton, Rawls is of the argument that ‘utilitarians would be happy with an overall increase in utility or happiness, even if its distribution is terribly uneven and many people could not share in it.’ See David Middleton, “Searching for Justice,” in *Living Political Ideas*, eds. Geoff Andrews and Michael Saward (Edinburgh: Edinburgh University Press, 2005), 103.

terms of arrangements for social cooperation according to the two principles of justice, everyone will comply with the rules. In this way, the two principles of justice will ensure stability in a well ordered society. In other words, Rawls's idea is that since two principles of justice apply to the "basic structure of society," persons will accept the terms of arrangements for social cooperation determined by the major social institutions and thus stability will be there in a well ordered society. However, in *Political Liberalism*, what Rawls argues is that the idea of stability in a well ordered society is questionable. Rawls explains the reason as to why he thinks that having a "just and stable society" is doubtful as he conceived earlier. Rawls argues that in a modern democratic society, there are multiple "comprehensive religious, philosophical, and moral doctrines."¹⁵⁷ For Rawls, a modern democratic society is "marked by a plurality of reasonable but incompatible comprehensive doctrines" which Rawls also terms as "fact of reasonable pluralism."¹⁵⁸ There is no agreement in any of these doctrines among citizens generally. These doctrines are in conflict most of the time. In such a scenario, Rawls argues that it is hard to think that citizens of a modern democratic society divided by such conflicting doctrines will come to accept the idea of "justice as fairness" as propounded in *A Theory of Justice*. This means that without the possible acceptability of "justice as fairness," the question of stability in a "well ordered society" is doubtful. Therefore, Rawls argues that the idea of a just and stable society that he envisaged in *A Theory of Justice* is not realistic. This is the basic question Rawls addresses in *Political Liberalism*.¹⁵⁹

Rawls introduces three distinct concepts in *Political Liberalism* to address this problem. They are: the idea of "a political conception of justice," the idea of an "overlapping consensus" and the idea of "public reason." (i) "A political conception of justice," according to Rawls, is a "freestanding conception" which is independent of metaphysical, philosophical and general moral conceptions. This means a political conception of justice is to be understood independently of any comprehensive, philosophical, religious and moral doctrines. For a democratic society to be stable, Rawls argues it is to be regulated by "a political conception

¹⁵⁷ In *Political Liberalism*, Rawls appears to use the ideas of "a well ordered society" and a modern democratic society interchangeably. This suggests the point that Rawls is trying to make his idea of justice more practical.

¹⁵⁸ According to Rawls, the problem of stability is because of the presence of the "fact of reasonable pluralism." The "fact of reasonable pluralism" implies that there is no comprehensive doctrine fully or partially, on which all citizens can agree to settle the basic question of political justice. See Rawls, *Justice As Fairness*, 32.

¹⁵⁹ Here, a significant point can be clarified that Rawls's *Political Liberalism* is not at all an attempt to reply to the criticisms of communitarians against his *A Theory of Justice* as it is assumed by some. John Rawls, in fact, made his position clear in the introduction part of *Political Liberalism*. Similar views which advocate the denial of such assumption can be found in the writings of Brian Barry and Samuel Freeman.

of justice.” Rawls’s stand is that it is possible for “reasonable people” to agree on “a liberal conception of justice.” It is because there are certain ideas and principles which citizens in a democratic society commonly share. Citizens have a sense of justice grounded in their different “comprehensive doctrines.” Citizens in a democratic society will share a political conception of justice. Rawls also argues that a political conception of justice can gain an “overlapping consensus” among reasonable citizens. (ii) An “overlapping consensus” is a “consensus of conflicting comprehensive doctrines.” For Rawls, it is a consensus of reasonable comprehensive doctrines on a liberal political conception of justice in a democratic society. Rawls invokes the idea of an overlapping consensus because every citizen cannot be expected to accept a political conception of justice in the first place. Rawls invokes this idea under the belief that reasonable citizens in a democratic society can affirm the “freestanding political conception of justice” from the point of reasons specific to their comprehensive views. It is because a political conception of justice can be justified according to reasons which are already in each comprehensive view. In other words, Rawls’s assumption is that if reasonable citizens can accept a political conception of justice based on reasons grounded in their “reasonable comprehensive doctrines,” there will be an overlapping consensus on the political conception of justice. (iii) “Public reason” is the reason of democratic people who share equal citizenship. Public reason applies to citizens, official forums, legislators, executives when they engage in political deliberations in the public forum. It also applies to judiciary. Public reason does not apply to any personal deliberation. Public reason seeks citizens to be able to justify their political decisions to one another. Public reason does not seek to address unreasonable doctrines to justify public policies. Rawls believes that when these three conditions are fulfilled, a democratic society will be stable. A democratic society must fulfil these three conditions to be just and stable.

In short, Rawls’s fundamental argument in *Political Liberalism* is that a modern democratic society is characteristic of a diversity of conflicting philosophical, religious and other moral doctrines; and it is not realistic to think that citizens will come to agree upon a conception of justice. Since a conception of justice that Rawls propounded in *A Theory of Justice* is not likely to be accepted, the idea of stability in “a well ordered society” is not feasible. In order to ensure stability in a modern democratic society, Rawls argues that democratic society must meet three conditions. First, “justice as fairness” must be reconceptualised as “a political conception of justice.” Second, reasonable citizens should gain an “overlapping consensus” of a political conception of justice. Third, any political decisions must be deliberated and

justified in public forum. Thus, the major shift developed in *Political Liberalism* is that Rawls has reformulated “justice as fairness” in terms of a political conception. This means that “justice as fairness” conceptualized in *A Theory of Justice* is philosophical. In *Political Liberalism*, Rawls’s main focus circles around the question of stability of a modern democratic society. In this sense, Rawls’s framework of idea of justice is narrower than what he presents in *A Theory of Justice*. In one way, it can be also observed that Rawls’s effort in *Political Liberalism* is to make “justice as fairness” more realistic. This is the reason why Rawls is addressing the question of stability in a modern democratic society in *Political Liberalism*.¹⁶⁰

However, in *Political Liberalism*, Rawls left some issues unaddressed. Rawls has not explained as to what exactly constitutes of the term “political.” It is not clear whether Rawls is using the term political in a general sense. Rawls’s explanation about the process of affirming an “overlapping consensus” of “a political conception of justice” is not clear. Rawls has not made it clear as to how public discussions will be finalised. And Rawls has not discussed the role of two principles of justice further in *Political Liberalism*. In fact, most of the ideas that Rawls introduces in *Political Liberalism* are more or less hypothetical.

Rawls’s Formulation of A Political Conception of Justice

In *Political Liberalism*, John Rawls starts with the argument that “a modern democratic society is marked by a diversity of religious, philosophical, and moral doctrines.”¹⁶¹ These doctrines are often opposing and they are not reconcilable. There is no agreement in any of these doctrines among citizens. And it is not likely that citizens will affirm any of these doctrines in future too. Thus, Rawls remarks, “A modern democratic society is characterised not simply by a pluralism of comprehensive religious, philosophical, and moral doctrines but by a pluralism of incompatible yet reasonable comprehensive doctrines. No one of these doctrines is affirmed by citizens generally. Nor should one expect that in the foreseeable future one of them, or some other reasonable doctrine, will ever be affirmed by all, or nearly all, citizens.”¹⁶² Rawls argument is that citizens might even agree on principles of justice as

¹⁶⁰ It must be also noted that Rawls does not emphasize the idea that “justice as fairness” is to be conceptualized as “a liberal conception of justice” in his book *A Theory of Justice*. But in *Political Liberalism*, Rawls’s point is that justice as fairness is to be understood as a liberal conception of justice.

¹⁶¹ Rawls argues that there is a fact of a plurality of reasonable but incompatible comprehensive doctrines which he calls as “the fact of reasonable pluralism” in a modern democratic society. See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), xvii.

¹⁶² *Ibid.*, xvi.

free and reasonable persons, but they have difference on the matters of religion, philosophical doctrines and moral principles. As a result, it is doubtful that citizens will come to accept the conception of justice expressed in *A Theory of Justice*.¹⁶³ Therefore, John Rawls's attempt in *Political Liberalism* is to address a basic question as to "how a just and stable society of free and equal citizens," who are deeply divided by reasonable religious, philosophical, and moral doctrines is possible to exist. In Rawls's words, "How is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines?"¹⁶⁴

For this purpose, Rawls introduces the idea of a "political conception of justice." In *Political Liberalism*, Rawls defines "justice as fairness" as "a political conception of justice" not as a metaphysical conception. The reason why "justice as fairness" is to be political conception is because Rawls intends to avoid controversies and any controversial philosophical and metaphysical claims.¹⁶⁵ This means, for Rawls, "justice as fairness" is not for the application of a general moral conception to the "basic structure of society." so, "justice as fairness" is intended as "a political conception of justice" for a democratic society.¹⁶⁶ Thus, Rawls argues, "The aim of justice as fairness, then, is practical. It presents itself as a conception of justice that may be shared by citizens as a basis of a reasoned, informed, and willing political agreement. It expresses their shared and public political reason. But to attain such a shared reason, the conception of justice should be, as far as possible, independent of the opposing and conflicting philosophical and religious doctrines that citizens affirm."¹⁶⁷ This is where Rawls makes a major change from his earlier idea on "justice as fairness."

Rawls argues that "a political conception of justice" should be presented as free from any "metaphysical, religious, philosophical, moral and epistemological doctrines." A political conception of justice must not seek for the agreement on these comprehensive doctrines. But

¹⁶³ As Samuel Freeman observes, 'While individuals might agree on principles of justice under conditions where individuals have freedom of thought, conscience, and association, it is unrealistic to expect that they will ever all agree in their religious, philosophical, or ethical beliefs. It is then unrealistic to expect that citizens in a well ordered society will all agree on the supreme intrinsic good of autonomy, or even the intrinsic good of justice.' See Samuel Freeman, "Congruence and the Good of Justice," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), 304.

¹⁶⁴ See Rawls, *Political Liberalism*, 4.

¹⁶⁵ Frank I. Michelman rightly points out that Rawls's transforms "justice as fairness as political in the sense of its expositional independence from comprehensive ethical and philosophical doctrines." For details, see Frank I. Michelman, "The Subject of Liberalism," *Stanford Law Review* 46, no. 6 (July, 1994): 1819.

¹⁶⁶ See John Rawls, "Justice as Fairness: Political not Metaphysical," in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 390.

¹⁶⁷ See Rawls, *Political Liberalism*, 9.

Rawls does not exactly define “a political conception of justice.” Rawls explains that “a political conception of justice” has three characteristic features. First, it applies to the “basic structure of society,” its main political, social, and economic institutions as a unified scheme of social cooperation. “The basic structure means a society’s main political, social, and economic institutions, and how they fit together into one united system of social cooperation from one generation to the next.”¹⁶⁸ Secondly, a political conception of justice presented is as “freestanding view.” This means a political conception of justice is presented “independently of any wider comprehensive religious or philosophical, and moral doctrines, “ and it does not provide a “specific religious, metaphysical, or epistemological doctrine beyond what is implied by the political conception itself.”¹⁶⁹ Thirdly, “the content of a political conception of justice is expressed in terms of certain fundamental ideas seen as implicit in the public political culture of a democratic society.” This public culture comprises the political institutions of a constitutional regime and, for Rawls, comprehensive religious, philosophical, and moral doctrines do not come under the public political culture as they are part of social culture.¹⁷⁰ Thus, when Rawls says that a conception of justice is political, it means three things. First, a political conception of justice is to apply to the “basic structure of society.” Second, it is presented as a “freestanding view” which means it is independent of any comprehensive religious or philosophical or moral doctrines. Third its contents are elaborated in terms of fundamental political ideas seen as implicit in the “public political culture of a democratic society.”¹⁷¹

Along with “a political conception of justice,” Rawls also invokes the idea of the “political conception of the person.” Rawls’s idea is that since “justice as fairness” is intended to be a political conception of justice, the concept of person is also to be a political conception. The conception of the person is to be political. “A political person” is free. Rawls argues that citizens are free in three respects. First, “citizens conceive of themselves and one another as having the moral power to have a conception of good.”¹⁷² Second, “citizens regard themselves as self-authenticating sources of valid claims. They regard themselves as being entitled to make claims on their institutions so as to advance their conceptions of the

¹⁶⁸ Ibid., 11.

¹⁶⁹ Ibid., 12-3.

¹⁷⁰ Ibid., 13-4.

¹⁷¹ Ibid., 223. Rawls also clarifies that that “a political conception of justice” is a political conception but it is also a moral conception in a different sense. “The political is a subset of the moral, defined by its limited subject matter. So, he states that while the political conception of justice is a moral conception, it is a moral conception worked out for a specific kind of subject, namely, for political, social, and economic institutions.” Ibid., 11.

¹⁷² See Rawls, *Political Liberalism*, 30.

good.”¹⁷³ And third, they are considered as “capable of taking responsibility for their ends and this affects how their various claims are assessed.”¹⁷⁴ Most importantly, Rawls argues that persons have “two moral powers.” They are: “the capacity for a sense of justice” and “the capacity for a conception of the good.” According to Rawls, the capacity for a sense of justice is the “ability to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of social cooperation,” and the capacity for a conception of the good is “the ability to form, to revise, and rationally pursue a conception of one’s rational advantage or good.”¹⁷⁵ The important point here is that free citizens who have these moral powers are capable of social cooperation which is the central idea in developing “a political conception of justice.” Rawls’s argument is that given the fact that citizens are free and they have two moral powers, political persons have the capacity for fair terms of social cooperation. And a political conception of justice determines the “fair terms of social cooperation.” So, Rawls points out that the free political persons can seek for “a political conception of justice” in a democratic society.

Further, in *Political Liberalism*, Rawls also brings up the ideas of the “reasonable person” and the “rational person.” Rawls argues that reasonable person and rational person are not same. Then Rawls explains how the idea of the reasonable is different from the idea of rational. According to Rawls, reasonable persons are “willing to propose principles,” they are “willing to accept fair terms of cooperation” and to abide by them. They also believe on the idea of reciprocity and mutuality.¹⁷⁶ Rational persons have the “powers of judgment and deliberation in seeking ends and interest peculiarly its own,” and they are concerned with “how these ends and interests are adopted and affirmed.” They also know how their ends and interest are prioritised. They also apply the effective means to their ends.¹⁷⁷ However, Rawls is of the view that these two are complementary ideas within the “idea of fair cooperation.” Both the “reasonable and the rational” cannot stand without one another.¹⁷⁸ Further, Rawls’s argues that reasonable persons are “willing to cooperate with others” and accept the terms of social cooperation which are fair. But there are also “reasonable disagreements” among the reasonable persons. The reasonable disagreement among reasonable persons is because of the presence of “the burdens of judgement.” According to Rawls, “the burdens of judgement”

¹⁷³ Ibid., 32

¹⁷⁴ Ibid., 33.

¹⁷⁵ Ibid., 19.

¹⁷⁶ Ibid., 49-50.

¹⁷⁷ Ibid., 50

¹⁷⁸ Ibid., 52.

can be the cause of the sources of reasonable disagreement among reasonable persons. The burdens of judgement refer to “the sources of reasonable disagreement among reasonable persons. And these sources are referred to as the burdens of judgement.” Rawls argues that “the burdens of judgement cause obstacles or problems in the correct exercise of our powers of reason and judgements in the ordinary course of political life.”¹⁷⁹ According to Rawls, some of the obvious sources for reasonable disagreement include ‘conflicting and complex evidence, assigning difference weights to considerations agreed to be relevant; vagueness of concepts and differing interpretations of them; different ways of assessing evidence due to different experiences; different kinds of normative considerations of differing forces on both sides of issues; pluralism of values and the fact that many hard decisions may seem to have no answer etc.’¹⁸⁰ But the reasonable persons recognize the “burdens of judgement.” And it is in this context, Rawls introduce the idea of “reasonable comprehensive doctrine.” The reasonable comprehensive doctrines have some features: it covers the “major religious, philosophical, and moral aspects of human life in a more or less consistent and coherent manner,” it is an “exercise of practical reason” and it is “not necessarily fixed and unchanging.”¹⁸¹ Rawls argues that reasonable persons “affirm reasonable comprehensive doctrines.”¹⁸² Reasonable persons also accept that other reasonable persons will affirm comprehensive doctrines differently. In fact, the reason why Rawls introduces the idea of the “reasonable persons,” the “rational person” and “reasonable comprehensive doctrine” is because these ideas are important foundation to arrive an “overlapping consensus” of “a political conception of justice” in a democratic society.

Rawls’s idea of an Overlapping Consensus

The purpose of introducing the idea of an “overlapping consensus” is to sort out the question of stability in a modern democratic society. The idea is that reasonable citizens can garner an “overlapping consensus” of “a political conception of justice” so that a stable democratic society can be established. For Rawls, an overlapping consensus is a consensus which can be affirmed by citizens holding conflicting religious, philosophical and ethical doctrines. According to Rawls, the idea of an “overlapping consensus” is “a consensus in which a

¹⁷⁹ Ibid., 55-6.

¹⁸⁰ See Rawls, *Justice As Fairness*, 35-36.

¹⁸¹ See Rawls, *Political Liberalism*, 59.

¹⁸² Ibid.

diversity of conflicting comprehensive doctrines endorses the same political conception.”¹⁸³ Rawls believes that citizens can gain an “overlapping consensus of a political conception of justice” in a democratic society. A liberal political conception of justice can be the “focus of an overlapping consensus” among persons who are deeply divided by several comprehensive doctrines.¹⁸⁴

Thus, political conception of justice is the focus of an overlapping consensus. Rawls says, “This political conception needs to be such that there is some hope of its gaining support of an overlapping consensus, that is, a consensus in which it is affirmed by the opposing religious, philosophical, and moral doctrines likely to thrive over generations in a more or less just constitutional democracy, where the criteria of justice is that political concept itself.”¹⁸⁵ On the question of how an overlapping consensus of a political conception of justice can be affirmed, Rawls is of the belief that reasonable citizens in a democratic society can affirm a political conception of justice based on the reasons which are peculiar to their comprehensive views.¹⁸⁶ This means citizens can affirm a political conception of justice according to the reasons which are already affirmed in their comprehensive views.

Regarding the nature of the introduction of the idea of an “overlapping consensus,” Rawls is of the view that there are two stages in “justice as fairness.” In the first stage, the task is to work out “justice as fairness as a freestanding political conception,” and it is to apply the “basic structure of society.” After this first stage is completed, the basic question of stability about “justice as fairness” is to be taken in the second stage.¹⁸⁷ This means the idea of an “overlapping consensus” is not required to introduce until the first stage is done. It is because the question of stability does not arise until the principles of justice are chosen.¹⁸⁸ Thus, it is in the second stage where the question of stability of “justice as fairness” is raised, Rawls introduces the “idea of an overlapping consensus.”

¹⁸³ See John Rawls, “The Domain of the Political and Overlapping Consensus,” in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 486.

¹⁸⁴ In this connection, Martha Nussbaum observes that Rawls’s aim in *Political Liberalism* is to show that ‘a liberal political conception of justice can be the object of an overlapping consensus among people who hold a wide range of different religious and secular comprehensive conceptions of the good.’ For details, see Martha Nussbaum, “Rawls’s Political Liberalism: A Reassessment,” *Ratio Juris* 34, no. 1 (March, 2011): 11.

¹⁸⁵ See John Rawls, “The Idea of an Overlapping Consensus,” in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 421.

¹⁸⁶ Samuel Freeman clearly explains this concept. See, Freeman, *Rawls*, 367.

¹⁸⁷ See Rawls, *Political Liberalism*, 140-41.

¹⁸⁸ *Ibid.*, 65.

Further, Rawls attempts to address some objections that the idea of an “overlapping consensus” encounters. First objection is that an “overlapping consensus is a mere *modus vivendi*.” But Rawls argues that an overlapping consensus is not a mere *modus vivendi*.¹⁸⁹ An overlapping consensus is neither a mere consensus, nor it is a treaty between two persons. It is not a consensus accepting some institutions or authority.¹⁹⁰ An overlapping consensus is based on reasons that are already affirmed in other comprehensive doctrines. The second objection is that an overlapping consensus avoids “general and comprehensive doctrine.”¹⁹¹ However, Rawls’s argument is that “an overlapping consensus” is not indifferent to “comprehensive doctrines.” For instance, it is not indifferent to truth. An overlapping consensus neither avoids nor asserts any comprehensive doctrine. Citizens affirm some of the comprehensive doctrine and based on the reasons peculiar to them, they can “affirm a political conception of justice.” The third objection is that a workable political conception of justice must be “comprehensive and general.”¹⁹² But Rawls argues that “a political conception” need not be comprehensive. A political conception of justice serves a guiding framework for the deliberations in public reason. A political conception is not to be viewed as incompatible with other comprehensive doctrines. A political conception does not clash with other comprehensive doctrines. And, the final objection is that an “overlapping consensus is utopian.”¹⁹³ This means that there is no sufficient political, social, or psychological force to bring about an overlapping consensus. In response to this, Rawls outlines two stages. The first stage is a “constitutional consensus.” In this stage, constitution frames certain liberal principles of justice, political rights and liberties. Though there is agreement on some of the political rights and liberties, disagreements exist regarding the exact content and scope of those rights and liberties.¹⁹⁴ The second stage is the “overlapping consensus.” In this stage, political groups must enter the public forum for political discussion. They must explain to those who do not share views. Judges having the power of judicial review need to develop “a political conception of justice” according to which laws and constitution are to be interpreted.

¹⁸⁹ Ibid., 147. Also, George Klosko clearly explains the difference. A *modus Vivendi* is conceived on the model of a truce, the outcome of political bargaining. In contrast, an overlapping consensus is a moral conception to which people subscribe for moral reasons. See George Klosko, “Political Constructivism in Rawls’ Political Liberalism,” *American Political Science Review* 91, no. 3 (September, 1997): 636.

¹⁹⁰ See Rawls, *Political Liberalism*, 147.

¹⁹¹ Ibid., 150.

¹⁹² Ibid., 154.

¹⁹³ Ibid., 158.

¹⁹⁴ Ibid., 159.

Moreover, the legislation that guarantees certain basic freedoms must be there.¹⁹⁵ In this process, certain basic political rights and liberties can become an overlapping consensus.

It must be mentioned that Rawls has not formulated the clear process through which the idea of an “overlapping consensus” can be arrived in a democratic society. What Rawls emphasises is that reasonable citizens can gain “an overlapping consensus of a political conception of justice” based on the reasons peculiar to their other comprehensive doctrines. And an overlapping consensus of a political conception of justice can ensure stability in a democratic society.¹⁹⁶ As Shaun P. Young rightly points out, Rawls’s idea of an overlapping consensus of a political conception of justice means “the adherents of a plurality of competing, conflicting, and often irreconcilable moral, religious, and philosophical beliefs are able to agree upon a conception of justice to regulate society’s main political, social and economic institutions, that is, the basic structure of the society.”¹⁹⁷ Rawls insists on securing an overlapping consensus to achieve and preserve the political stability essential to a just and stable liberal democracy.¹⁹⁸

Rawls and the Idea of Public Reason

In *Political Liberalism*, Rawls introduces the idea of “public reason.”¹⁹⁹ Rawls introduces the idea of public reason in order to ensure a stable democratic society. Rawls defines public reason as the “reason of its citizens, of those sharing the status of equal citizenship,” and it is the “reason of equal citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and in amending their constitution.”²⁰⁰ Public reason is the reason of democratic citizens who collectively exercise their reason in deliberating matters directly related to constitution, laws and matters of justice. Rawls is of the view that it is the character of democratic people to engage in public reason as the subject of the public

¹⁹⁵ Ibid., 165-66.

¹⁹⁶ As Brian Barry argues, Rawls maintains that the stability of justice can be assured “only if the principles of justice derived within the political conception can be shown to be an element in an overlapping consensus of reasonable comprehensive views.” See Brian Barry, “John Rawls and the Search for Stability,” *Ethics* 105, no.4, (July, 1995): 875.

¹⁹⁷ See Shaun P. Young, “The Concept of Political Liberalism,” in *Political Liberalism*, ed. Shaun P. Young (Albany: State University of New York Press, 2004), 5.

¹⁹⁸ Ibid.

¹⁹⁹ There is a major difference, besides many, between John Rawls and Jurgen Habermas about the conception of the public reason. The idea of public reason, for Habermas, includes the unofficial arenas of political public sphere. But for Rawls, public reason is connected with governmental and quasi-governmental venues and functions. In this respect, Rawls’s idea of public reason is more restrictive than that of Habermas’s. See, Thomas McCarthy, “Kantian Constructivism and Reconstructivism: Rawls and Habermas in Dialogue,” *Ethics* 105, no. 1 (October, 1994): 49-52.

²⁰⁰ See Rawls, *Political Liberalism*, 213-214.

reason concerns the good of all citizens. This means public reason is a character of a democratic society and it is effective when there is democratic value. Any person who does not accept the constitutional democracy with its criteria of reciprocity will not engage in public reason.²⁰¹ For Rawls, the public reason is public because “it is the reason of the public; its subject is the good of the public and matters of fundamental justice; and its nature and content is public.”²⁰²

There are some features of public reason. Rawls argues that public reason does not necessarily apply to all political questions. Public reason applies only to those aspects which Rawls calls “constitutional essentials” and “questions of basic justice.” The constitutional essentials can be defined as “those fundamental principles that specify the general structure of government and political process: the powers of the legislature, executive and the judiciary; the scope of the majority rule; equal basic rights and liberties of citizenship that legislative majorities are to respect: such as the right to vote and to participate in politics, liberty of conscience, freedom of thought and of association, as well as the protections of the rule of law.”²⁰³ The “matters of basic justice” relate to the “basic structure of society,” questions of basic economic and social justice, etc.²⁰⁴ However, Rawls did not clearly elaborate on it. Moreover, the idea of public reason does not apply to our personal deliberations or personal matters. It does not apply to the individuals reasoning about political matters as ‘members of associations, churches and universities’ etc. For instance, “public reason holds for citizens when they engage in political advocacy in the public forum.”²⁰⁵ Public reason holds for ‘members of political parties and for candidates in their campaigns for election, for citizens on how they are to vote in elections.’²⁰⁶ For Rawls, public reason applies in “official forums,” to “legislators when they speak on the floor of parliament,” and to the “executive in its public acts and pronouncements,” and to the “judiciary in a special way.”²⁰⁷ Rawls further clarifies that the idea of public reason applies to a supreme court with judicial review in a constitutional democracy. Rawls argues that the “justices have to explain

²⁰¹ Samuel Freeman also remarks that “public reason is reason addressed to persons as democratic citizens and not in their capacity as economic agents or as endorsers of a particular religion or other comprehensive conception of the good.” For details, see Samuel Freeman, “Introduction: John Rawls—An Overview,” in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), 39.

²⁰² See Rawls, *Political Liberalism*, 213.

²⁰³ *Ibid.*, 227.

²⁰⁴ Samuel Freeman argues that ‘Rawls’s first principle of justice provides a basis for determining constitutional essentials and the second principle provides a basis for deciding matters of basic justice.’ See Freeman, *Rawls*, 394.

²⁰⁵ See Rawls, *Political Liberalism*, 215.

²⁰⁶ *Ibid.*, 215.

²⁰⁷ *Ibid.*, 216.

their decisions as based on their understanding of the constitution and relevant statutes and precedents.”²⁰⁸ In short, for Rawls, public reason applies to citizens when they engage in deliberating public issues in the public forum, to public authorities, government officials taking part in public debates and voting on the floor of the legislature and to the judiciary in its decisions.²⁰⁹

Rawls argues that public reason is also different from “non-public reasons.” The non-public reasons are the ‘reasoning of associations, churches, universities, scientific societies and professional groups.’²¹⁰ Rawls refers to such places as the “background culture.” The reasoning in such places does not fit to be to be public reason. According to Rawls, reasoning in such arenas are “public with respect to their members, but non-public with respect to political society and to citizens generally.”²¹¹ For instance, few civil societies may discuss matters related to social issues. Such reason is public with respect to their member, but it is not public with regard to political society. Moreover, Rawls argues that that “non-public power” may be generally accepted in a democratic society such as the authority of churches over their members is accepted. But democratic citizens accept government’s authority. It is because government authority is scrutinised and guided by public reason.²¹² It is in this sense that Rawls argues that that “public reason aims for public justification.”²¹³

Another reason as to why Rawls introduces the idea of public reason relates to the question of “liberal political legitimacy” in a liberal democratic society.²¹⁴ Rawls’s idea is that exercise of political powers is to be accordance with “the principles and ideals that citizens endorse.” Any exercise of political power that contradicts citizens’ democratic ideals is not justifiable. Rawls says, “Our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational.”²¹⁵ Further, Rawls states that “liberal legitimacy” imposes “a moral

²⁰⁸ Ibid., 216.

²⁰⁹ Ibid., 252-53.

²¹⁰ Ibid., 220.

²¹¹ For details, see John Rawls, “Political Liberalism: Reply to Habermas,” *The Journal of Philosophy* 92, no. 3 (March, 1995): 140.

²¹² See Rawls, *Political Liberalism*, 221-22.

²¹³ See John Rawls, “The Idea of Public Reason Revisited,” in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 593.

²¹⁴ Samuel Freeman is also of the view that Rawls invokes the idea of public reason ‘by a way of a requirement of political legitimacy.’ See Freeman, *Rawls*, 372.

²¹⁵ See Rawls, *Political Liberalism*, 217.

duty of civility” on citizens. “The duty of civility” means “to be able to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason.”²¹⁶ For Rawls, “a moral duty of civility” requires citizens to have the duty of willingness to listen to others and to be confident while expressing their views in public.

On the question of the “content of public reason,” Rawls states that the content of public reason is formulated by “a political conception of justice.”²¹⁷ Rawls argues that political conception of justice is the basis of public reason. “The content of public reason is a political conception of justice.”²¹⁸ This political conception of justice is liberal in character which means it specifies certain basic rights, liberties, and opportunities; it assigns a special priority to these rights, liberties, and opportunities; it affirms measures assuring all citizens to make use of their basic liberties and opportunities.²¹⁹ For Rawls, the content of public reason is provided by a political conception of justice which again has two parts: the “substantive principle of justice for the basic structure,” and the “principles of reasoning and rules of evidence in the light of which citizens are to decide whether substantive principles properly apply and to identify laws and policies that best satisfy them.”²²⁰ So, while discussing “constitutional essentials and matters of basic justice,” reasons related to comprehensive religious and philosophical doctrines are to be avoided. Rawls insists that the ideas and ways of reasoning that affirm a particular view must be available to all citizens. It is because it is the way to verify or scrutinize any view in public. There will be no basis for public justification without this process.

Rawls points out that public reason has some difficulties. The public reason often generates more reasonable answer to any particular question. As there are many political values, disagreements are there and differences continue to exist.²²¹ Another difficulty is that it is not clear what “voting our sincere vote” means.²²² And finally, there is a difficulty to “specify

²¹⁶ Ibid., 217.

²¹⁷ Ibid., 223.

²¹⁸ Ibid., 253.

²¹⁹ Ibid., 223.

²²⁰ Ibid., 224.

²²¹ Ibid., 240.

²²² Ibid., 241.

when a question is successfully resolved by public reason.”²²³ Rawls left these difficulties open.

Rawls on the Priority of Right and the Ideas of Good

For Rawls, the idea of the “priority of rights” has a central role in “justice as fairness.” In *Political Liberalism*, Rawls emphasises a point that the right and the good are complementary to each other. According to Rawls, any idea of justice requires both the “idea of right” and the “idea of the good.” In Rawls’s words, “It may be thought, for example, to imply that a liberal political conception of justice cannot use any ideas of the good at all, except perhaps those that are purely instrumental; or else those that are a matter of preference or of individual choice. This must be incorrect, since the right and the good are complementary: no conception of justice can draw entirely upon one or the other, but must combine both in a definite way. The priority of right does not deny this.”²²⁴ Rawls argues that “a political conception of justice” must draw upon various “ideas of the good” provided it has some restriction.²²⁵ This means “a liberal political conception of justice” cannot freely use any ideas of the good without certain restrictions.²²⁶ In this regard, the main restriction is that the “ideas of the good” must not be incompatible with “a political conception of justice.”

Michael J. Sandel rightly points out that Rawls’s idea of right being prior to the good carries two sense: the right is prior to the good in the sense “that certain individual rights trump, or outweigh, considerations of the common good,” and the right is prior to the good in that “the principles of justice that specify our rights do not depend for their justification on any particular conception of the good life.”²²⁷ Sandel argues that it is the second aspect that Rawls focuses the idea of the “priority of right over the good” in political liberalism. But for Rawls, the priority of the right means that “admissible ideas of the good” must be within the limits of

²²³ Ibid., 244.

²²⁴ Ibid., 173.

²²⁵ Ibid., 175-76.

²²⁶ Rawls also denies the idea that the priority of right implies that justice as fairness can use only thin theory of the good. Rawls distinguishes the “thin theory of the good” from the “full theory of the good.” The thin theory of the good is restricted to the basic essentials of the parties. This theory is mainly to secure the premises about primary goods required to arrive at the principles of justice in the “original position.” Contrary to this, the full theory of the good incorporates the idea of the final ends that are worth pursuing for individuals’ own after having secured the principles of justice. This theory also includes moral virtues, moral worth and their differences. It uses the principles of justice in defining other moral concepts. See Rawls, *A Theory of Justice* (2010); Kelly, *Justice As Fairness* (2001); Freeman, *Rawls* (2007).

²²⁷ See Michael J. Sandel, “A Review of *Political Liberalism* by John Rawls,” *Harvard Law Review* 107, no. 7 (May, 1994): 1766. Also see, Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1998), 185.

the political conception of the justice. The priority of right also means that any pursuit of comprehensive conceptions of the good is admissible if it conforms to the political conception of justice. Only those ideas of the good which are compatible with the principles of justice can be pursued.²²⁸ Then, Rawls describes five ideas of the good used in “justice as fairness.” They are: (1) “the idea of goodness as rationality,” (2) “the idea of primary goods,” (3) “the idea of permissible comprehensive conceptions of the good,” (4) “the idea of the political virtues,” and (5) “the idea of the good of a well-ordered society.”²²⁹

The first idea is that of “goodness as rationality.” It supposes that in a democratic society, members have a “rational plan of life.” They plan all their “resources to pursue their conceptions of the good.” They are also concerned about the expectations of their needs and requirements in future. In this way, “rationality is a basic principle of political and social organization.”²³⁰

The second idea is that of “primary goods.” For Rawls, primary goods are things that every rational man wants to have. They are the goods that free and equal citizens need. Primary goods specify the needs of “free and equal citizens.” Rawls argues that citizens’ claims to primary goods are “appropriate claims.”²³¹

The third idea is that of “permissible conceptions of the good.” This means those goods which are permitted by the principles of justice. The priority right allows the pursuit of those conceptions of the good that conform to the principles of justice. Pursuits of the concepts of the good which do not go as opposed to the two principles of justice are permissible.²³² However, Rawls has not explained as to what “constitutes the permissible conceptions of the good” clearly.

The fourth idea is that of “political virtues.” For Rawls, certain political virtues are the ‘civility, tolerance, reasonableness and the sense of fairness.’ These political virtues are different from other comprehensive doctrines. These political virtues “specify the ideal of a good citizen of a democratic society.”²³³

²²⁸ See Rawls, *Political Liberalism*, 176.

²²⁹ See John Rawls, “The Priority of Rights and Ideas of the Good, in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 449.

²³⁰ See Rawls, *Political Liberalism*, 177. See also Rawls, “The Priority of Right and Ideas of the Good,” 451-52.

²³¹ See Rawls, *Political Liberalism*, 180.

²³² *Ibid.*, 193.

²³³ *Ibid.*, 194-95.

The fifth idea is that of the good of “a well-ordered political society.” For Rawls, “a well-ordered society” is society meant for all citizens. In a well ordered society, citizens accept “same political conception of justice.” Citizens support the just institutions. And citizens shared many ends which “provide the basis of the good of such a society.”²³⁴

Thus, on the idea of right being prior to the good, Rawls’s overall argument is that “the ideas of the good” must be political ideas. They are not to be the “comprehensive conceptions of the good.” The ideas of good that can be viewed as political must be considered. And any “idea of the good” that go against the two principles of justice must not be pursued.

Rawls’s Few Clarifications Incorporated in *Political Liberalism*

In *Political Liberalism*, Rawls has reformulated “justice as fairness” as a political concept without changing the central meaning as expressed in his earlier work. The whole framework of “justice as fairness” presented in *A Theory of Justice* remains same except that the concept of “justice as fairness” is to be conceptualised as political concept.²³⁵ According to Rawls, the task of political liberalism is ‘to work a conception of political justice for a constitutional democratic society that reasonable citizens can endorse.’²³⁶

Rawls has made few modifications in the two principles of justice. The principles are: “Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value,” and “Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to the greatest benefit of the least advantaged members of society.”²³⁷ In the first principle, Rawls uses “equal claim” in the place of “equal right” and the words “a fully

²³⁴ Ibid., 202.

²³⁵ In this context, Thomas Nagel is of the view that Rawls’s emphasis on “justice as fairness” to be a political conception is because Rawls intends to respond to criticisms which allege that “justice as fairness” relied on the conception of the self as an autonomous, unconstrained subjects of choice. For details see, Thomas Nagel, “Rawls and Liberalism,” in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), 82.

²³⁶ Rawls, *Political Liberalism*, xviii. In *Political Liberalism*, Rawls clarifies that the “fact of reasonable pluralism” is the natural result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime. Political liberalism does not intend to replace those comprehensive views. See Rawls, *Political Liberalism*, xvi.

²³⁷ Ibid., 291.

adequate scheme” replace the earlier words “the most extensive total system.”²³⁸ In the case of the second principle, there is a change in the order of the two parts. Rawls puts the “difference principle” in the latter order.

Further, Rawls clarifies that parties who are to choose the principles of justice in the “original position” are not actual persons. The parties in the original position are “merely artificial creatures.” And it is we who are “elaborating justice as fairness and examining it.”²³⁹ Along with this, Rawls has made a significant distinction between “rational autonomy” and “full autonomy.” Rational autonomy is not political. It rests on persons’ “intellectual and moral capacity to pursue their conception of the good,” and rational autonomy also lies in persons’ “capacity to cooperate with others.”²⁴⁰ On the contrary, full autonomy is political. It is not ethical. Full autonomy is realized by citizens “by participating in public affairs.”²⁴¹ Rawls makes this distinction to show that the “parties in the original position” are rationally autonomous, but not fully autonomous. They are the representatives of citizens. It is the citizens in “a well ordered society” who are fully autonomous.

Overall, Rawls’s aim in *Political Liberalism* is to formulate a practical conception of justice by which the problem of stability intrinsic in a modern democratic society can be sorted out. Rawls admits that this is one fundamental problem that he has failed to address in *A Theory Of Justice*. In *Political Liberalism*, Rawls’s attempt is to make “justice as fairness” more practical unlike his earlier framework which is philosophical in nature. In his endeavour, Rawls sets out three conditions for a modern democratic society to be just and stable. First, the “basic structure of society” is to be regulated by “a political conception of justice.” Second, the political conception of justice is to be the “focus of an overlapping consensus.” Third, public reason that concerns about “constitutional essentials and questions of basic justice” is to be conducted in terms of “the political conception of justice.”²⁴² However, it must be noted that the political conception of justice that Rawls propounds in *Political Liberalism* is too restricted. The feasibility of demarcating a political conception from other conceptions in a modern democratic society is vague.

²³⁸ According to Rawls, “a fully adequate scheme” is about specifying and adjusting the basic liberties so that citizens can fully exercise the two moral powers in two fundamental cases. ‘First case concerns the application of the principles of justice to the basic structure of society; the second case concerns the capacity for a conception of the good and the application of deliberative reason in guiding one’s conduct.’ See Rawls, *Political Liberalism*, 332-33.

²³⁹ Ibid., 28.

²⁴⁰ Ibid., 72.

²⁴¹ Ibid., 77-78.

²⁴² Ibid., 44.

(c) John Rawls on the Idea of Justice in *The Law Of Peoples*

In *The Law Of Peoples*, Rawls's aim is to present an outline by which "a liberal conception of justice" can be extended to other nonliberal societies. This means in *The Law of Peoples*, Rawls gives an account of how "justice as fairness" can be extended to different societies. John Rawls states that the "Law of Peoples" is an extension of "a liberal conception of justice" for a domestic regime to a "Society of Peoples."²⁴³ Rawls's framework is that first liberal peoples will specify the principle of the Law of Peoples and they will conduct their relations with other nonliberal peoples based on those principles as guidelines.²⁴⁴

Rawls argues that the "Laws of Peoples" concerns about the "foreign policy of a liberal democratic people" in relation to other "nonliberal peoples."²⁴⁵ One reason why Rawls develops the Law of Peoples is because his earlier idea of justice as fairness is concerned with domestic justice, but Rawls believes that the foreign policy for liberal democratic people is required to interact with other societies. As David A. Reidy rightly points out, John Rawls, in *The Law of People*, "turns his attention to the question of international justice."²⁴⁶ Rawls also introduces some new concepts and two such concepts are the "Law of Peoples" and the "Society of Peoples." According to Rawls, "The Law of Peoples means a particular conception of right and justice that applies to the principles and norms of international laws and practice."²⁴⁷ It also means the "particular political principles for regulating the mutual political relations between peoples." The term "Society of Peoples" means "all those peoples who follow the ideals and principles of the Laws of Peoples in their mutual relations."²⁴⁸

Rawls about The Law of Peoples and Liberal Democratic Peoples

Rawls's idea is that "liberal democratic peoples" will choose the "principles of the Law of Peoples." First, Rawls describes some characters of liberal peoples. First, liberal peoples have "a reasonably just constitutional democratic government."²⁴⁹ Second, liberal peoples as

²⁴³ See John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), 9.

²⁴⁴ It is interesting to note that Rawls has classified societies into five types: 'liberal societies, decent nonliberal societies, outlaw states, burdened societies and benevolent absolutism.' *Ibid.*, 4.

²⁴⁵ *Ibid.*, 83.

²⁴⁶ See David A. Reidy, "Rawls in International Justice: A Defense," *Political Theory* 32, no. 3 (June, 2004): 292.

²⁴⁷ See Rawls, *The Law of Peoples*, 3.

²⁴⁸ *Ibid.* Also, Rawls clarifies that he uses "peoples" rather than "nations" or "states" because he wanted to conceive of peoples as having different features from those of states, since the idea of states, as traditionally conceived with their powers of sovereignty was unsuitable.

²⁴⁹ See Rawls, *The Law of Peoples*, 23.

citizens are united by “common sympathies.”²⁵⁰ This means the coexistence of diverse reasonable cultural interests and needs of diverse ethnic groups is possible in a just liberal polity. Third, liberal peoples have a certain “moral character.”²⁵¹ This means liberal peoples are both reasonable and rational. Liberal peoples have a sense of cooperation with other peoples on “fair terms.”²⁵² Moreover, liberal peoples not only protect their territory but also ensure the security and safety of their citizens. They value their “free political institutions,” their liberties and “free culture of their civil society.” Liberal people try to maintain “reasonable justice” for all its citizens. And also, liberal people and other peoples having similar characters can co-exist in “upholding justice and preserving peace.”²⁵³

In the Law of Peoples, Rawls again invokes another “original position.” As we have seen in the “first original position” that the parties who are representatives of free and equal citizens choose the principles to regulate the “basic structure of the society.” In the “second original position,” the rational representatives of liberal peoples are to specify the principles of the Law of Peoples. In “the second original position,” the hypothetical contract is among the “rational representatives of liberal peoples.” So, behind the “veil of ignorance” they do not know certain facts like the ‘size of the territory, or the population, or the relative strength of the people whose fundamental interest they represent, natural resources etc.’²⁵⁴ Then they deliberate about the “principles of the Law of Peoples” in accordance with peoples’ interests.²⁵⁵ According to Rawls, the parties in the “second original position” are to specify the Law of Peoples based on “a liberal conception of justice.”²⁵⁶ The principles of the Law of Peoples will be chosen in the second original position. In fact, the basic difference between the “first original position” and the “second original position” is that the main purpose of the first original position is select the principles of justice in the domestic level, whereas, in the second original position, the concern is about the selection of the principles of the Law of Peoples in the internal level.

Rawls argue that eight principles of the Law of Peoples will be chosen. They are: “(1) Peoples are free and independent, their freedom and independence are to be respected by other peoples; (2) Peoples are to observe treaties and undertakings; (3) Peoples are equal and

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Ibid., 23-5.

²⁵³ Ibid., 29.

²⁵⁴ Ibid., 32-3.

²⁵⁵ Ibid., 30-5.

²⁵⁶ Ibid., 40.

are parties to the agreements that bind them; (4) Peoples are to observe a duty of non-intervention; (5) Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense; (6) peoples are to honour human rights; (7) Peoples are to observe certain specified restrictions in the conduct of war; (8) Peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime.”²⁵⁷ However, Rawls did not claim that these principles are complete.

Moreover, Rawls also argues that “well-ordered democratic liberal societies” have peace and stability. They give their allegiance to the Law of Peoples itself.²⁵⁸ Liberal peoples do not behave arrogantly and they have self-respect. They mutually respect one another and recognize equality among peoples. In fact, Rawls is of the argument that none of the more famous wars in history was between settled liberal democratic peoples. When liberal peoples go to war, it is only with “unsatisfied societies, or outlaw states.”²⁵⁹ Rawls argues that liberal people go to war when their security and safety is threatened. Liberal people have the reason to defend their freedom and oppose others who try to subjugate them. Besides, Rawls claims that liberal peoples have sense of public reason. Rawls differentiates the “public reason of liberal peoples” from that of the “public reason of the Society of Peoples.” Rawls says, “The first is the public reason of equal citizens of domestic society debating constitutional essentials and matters of basic justice concerning their own government; the second is the public reason of free and equal liberal peoples debating their mutual relations as peoples.”²⁶⁰ This further means the public reason of liberal peoples is realized when “judges, legislatures, executives, and government officials, as well as candidates for public office, act from the idea of public reason and explain to other citizens their reasons for supporting fundamental political questions in terms of the political conception of justice,” whereas the public reason of Societies of Peoples is realised whenever “chief executives and legislatures, other government officials, as well as candidates for public office, act from and follow the principles of the Law of Peoples and explain to other peoples their reasons for pursuing or revising people’s foreign policy and affairs of state that involve other societies.”²⁶¹

²⁵⁷ Ibid., 37.

²⁵⁸ Ibid., 45.

²⁵⁹ Ibid., 48.

²⁶⁰ Ibid., 55.

²⁶¹ Ibid., 55-6.

Rawls on The Law of Peoples and Decent Hierarchical Peoples

Rawls maintains that the Law of Peoples should be extended to “decent nonliberal peoples.”²⁶² For this, the liberal people are to have tolerance towards “nonliberal peoples.” For Rawls, toleration does not mean only to refrain from “exercising political sanctions.” It means “to recognize nonliberal societies as equal participating members in good standing of the Societies of Peoples, with certain rights and obligations, including the duty of civility requiring that they offer other peoples public reasons appropriate to the Societies of Peoples for their actions.”²⁶³ Rawls gives some reasons why liberal societies need to tolerate decent nonliberal societies. If liberal peoples feel that all other societies need to be liberal, then it will amount to disrespecting decent nonliberal peoples. And this feeling of disrespect “may wound self-respect of decent nonliberal peoples” and it may be the cause for “great bitterness and resentment.”²⁶⁴ Besides, Rawls is of the views that decent peoples respect human rights. Decent peoples do not deny their members the “right to be consulted in making decisions” and they allow a “right of dissent.”²⁶⁵ Changes take place in all societies and liberal peoples must encourage decent people to change in their own way. Rawls believes that “If a liberal constitutional democracy is superior to other forms of society, a liberal people should have confidence in their conviction and suppose that decent society, when offered due respect by liberal peoples, may be more likely to recognize the advantages of liberal institutions and take steps toward becoming more liberal on its own overtime.”²⁶⁶

The idea of decent peoples is Rawls’s theoretical construct. According to Rawls, decent society is not aggressive and they “engage in war in self-defense.” They care to protect their security and independence. Their representatives accept the idea of assisting one another only when it is necessary. Decent peoples have a “decent consultation hierarchy” that “ensures that all groups in society are decently represented by elected bodies in the system of consultation.”²⁶⁷ So, Rawls believes that decent societies can be the members in a reasonable Society of Peoples. However, Rawls suggests that the legal system of a decent hierarchical people must contain a “decent consultation hierarchy.” In Rawls’s words, “The basic

²⁶² In *The Law of Peoples*, Rawls uses the term “decent” to “describe nonliberal societies whose basic institutions meet certain specified conditions of political right and justice and lead their citizens to honour a reasonably just law for Society of Peoples.” *Ibid.*, 59-60.

²⁶³ *Ibid.*, 59.

²⁶⁴ *Ibid.*, 61

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*, 62.

²⁶⁷ *Ibid.*, 88. See also, Freeman, *Rawls*, 45.

structure of the society must include a family of representative bodies whose role in the hierarchy is to take part in an established procedure of consultation and to look after what the people's common good idea of justice as the important interests of all members of the people."²⁶⁸ For Rawls, persons in "decent hierarchical society" are decent and rational. In taking political decisions, different voices are to be heard and all persons have the right in the process of deliberation to express political dissent. The government is obligated to consider a group's dissent seriously and judges and other officials must be the willingness to address dissenting voices.²⁶⁹

Rawls is not in favour of offering incentives to "decent nonliberal societies" to become more liberal. For Rawls, incentives may lead to serious conflicts among liberal and decent peoples.²⁷⁰ Nevertheless, Rawls argues that if decent nonliberal peoples voluntarily request funds to become more liberal from organisations of reasonable peoples, their request can be considered. Rawls's point is that a liberal people should not grant any "subsidies to other peoples as incentives to become more liberal." A liberal democratic government can apply its "duty of assistance" to peoples who are burdened by unfavourable conditions.²⁷¹ Rawls's point of view is that decent societies should decide their own future.

Rawls's on The Law of Peoples and Non-Well-Ordered Peoples

Rawls formulates certain guidelines through which liberal and decent peoples should conduct themselves towards "non-well-ordered peoples." Rawls assumes that in the world there exist non-well-ordered peoples. One kind of non-well-ordered peoples is called "outlaw states" that refuse to "comply with a reasonable Law of Peoples."²⁷² The other kind is called "burdened societies" which "deals with unfavourable conditions" which means conditions mean the "conditions of societies whose historical, social, and economic circumstances make their achieving a well-ordered regime difficult."²⁷³ But the question that Rawls addresses is how well-ordered peoples should deal with non-well-ordered peoples. In this regard, Rawls defends well-ordered peoples' right to war. Rawls argues that well-ordered peoples, both liberal and decent go to war only 'when they reasonably believe that their safety and security

²⁶⁸ See Rawls, *The Law Of Peoples*, 71.

²⁶⁹ Ibid., 71-2.

²⁷⁰ In this case, Rawls is referring to organizations like the UNO, IMF, etc. Ibid., 84.

²⁷¹ Ibid., 85.

²⁷² Ibid., 90.

²⁷³ Ibid.

are seriously endangered by the expansionist nature of outlaw states.²⁷⁴ Rawls argues that a liberal society engages in war to defend itself, the freedoms of its citizens and its democratic political institutions. A liberal society does not require any war to gain economic wealth and natural resources.²⁷⁵ Then Rawls believes that both decent peoples and a society of “benevolent absolutism” have the right to self defense.²⁷⁶ Rawls suggests some principles about the conduct of war: ‘the aim of a just war waged by a just well-ordered people is a just and lasting peace among peoples, especially with the peoples’ enemy; well-ordered peoples do not wage war against each other, but only against non-well-ordered states whose expansionist aims threaten the security and free institutions of well-ordered regimes; in the conduct of war, well-ordered peoples must carefully distinguish three groups: the outlaw state’s leaders and officials, its soldiers, and its civilian population; the well-ordered peoples must respect the human rights of the members of the other side, both civilians and soldiers; well-ordered peoples are to foreshadow during a war both kinds of peace they aim for and the kind of relations they seek; and practical means-end reasoning must always have a restricted role in judging the appropriateness of an action or policy.’²⁷⁷ However, there is an exception in situations of supreme emergency which Rawls terms as “supreme emergency exemption.”²⁷⁸ According to this exemption, well-ordered peoples are allowed to “set aside the strict status of civilians that normally prevents their being directly attacked in war.”²⁷⁹ This means there are some exceptional cases where the rule of not targeting civilians are not followed.

Rawls’s idea is that “well-ordered societies” must try to bring the “outlaw states” into the “societies of well-ordered peoples.” For this, Rawls says that the well-ordered peoples have to assist burdened societies.²⁸⁰ This means that well ordered people have a “duty of assistance.” According to this “duty of assistance,” a well-ordered society does not need to be a wealthy and rich society. A well-ordered society is “to realize that the political culture of a

²⁷⁴ Ibid., 90-1. Also see, Paul Graham, “John Rawls,” in *Encyclopaedia of Political Theory* 2, ed. Mark Bevir (London: Sage Publications, 2010), 1167.

²⁷⁵ See Rawls, *The Law Of Peoples*, 91.

²⁷⁶ Rawls defines societies of “benevolent absolutism” as those societies that honour human rights, but deny their members any meaningful role in making political decisions. Such societies are not well ordered. Ibid., 4.

²⁷⁷ See Rawls, *The Law Of Peoples*, 94-96.

²⁷⁸ Ibid., 98.

²⁷⁹ Rawls argues that judgments about supreme emergency differ at times. For instance, Britain bombing of Germany during the Second World War could be justified; at the same time, use of atom bomb against Japan by the USA was justifiable. Ibid., 99-100.

²⁸⁰ See Thomas Nagel, “The Problem of Global Justice,” *Philosophy and Public Affairs* 33, no. 2 (April, 2005): 124. And also see, Pablo Gilabert, “Gobal Justice” in *Encyclopedia of Political Theory* 2, ed. Mark Bevir (London: Sage Publications, 2010), 559.

burdened society is all important and the aim to help burdened societies to be able to manage their own affairs reasonably and rationally and eventually to become members of the society of well-ordered peoples.”²⁸¹ This “duty of assistance” is different from a global egalitarian principle. The duty of assistance seeks “to raise the world’s poor until they are either free and equal citizens of a reasonably liberal society or members of a decent hierarchical society.”²⁸² The duty of assistance is contrast with cosmopolitan view. While for a cosmopolitan view, ‘the well-being of individuals is the aim, and not the justice of society.’ But for the duty of assistance, the justice and stability of liberal and decent societies is the important concern.²⁸³ Rawls does not advocate the global application of the “difference principle.”²⁸⁴ The reason is that in the absence of a world state, the global application of the difference principle is not feasible. In this regard, Samuel Freeman points out that the “difference principle is a political principle” and it requires “political authority with the normal powers of governments” for its application. But there is neither global political authority nor global legal system to apply the difference principle.²⁸⁵

Finally Rawls concludes with the belief that a “Society of Peoples” is possible. Rawls gives four facts that explain why he believes so. First, the “fact of reasonable pluralism”: this fact explains that in a liberal democracy, different conflicting comprehensive doctrines will support the idea of equality.²⁸⁶ Second, the “fact of democratic unity of diversity”: this fact explains that unity of political and social aspects need not be through any comprehensive doctrine.²⁸⁷ Third, the “fact of public reason”: this fact explains that in a pluralist liberal democratic society, citizens come across their agreements through public reason.²⁸⁸ Fourth, the “fact of liberal democratic peace”: this fact explains that well ordered democratic society do not engage in war against each other except for self-defence.²⁸⁹ As James Johnson rightly remarks, Rawls’s belief is that it is “possible to regulate relations among people justly.”²⁹⁰ Rawls’s broader framework about his idea of justice is based on his belief that it is possible to

²⁸¹ See Rawls, *The Law Of Peoples*, 106-11.

²⁸² *Ibid.*, 119.

²⁸³ *Ibid.*, 119-20.

²⁸⁴ *Ibid.*, 116. Rawls’s point is that the “difference principle” is for domestic justice in a democratic society. Difference principle is not feasible to apply among unfavourable societies.

²⁸⁵ See Freeman, *Rawls*, 444.

²⁸⁶ See Rawls, *The Law Of Peoples*, 124.

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*, 125.

²⁸⁹ *Ibid.*

²⁹⁰ See James Johnson, “Review of *The Law of Peoples* by John Rawls,” *Project Mouse* 9, issue 3 (Fall, 2003): 551.

have a “just and fair society” and it is also possible to establish relations between peoples around the world in a just and reasonable way.

To sum up this chapter, we have discussed John Rawls’s idea of justice based on his original texts. In *A Theory of Justice*, Rawls’s endeavour is to describe the concept of justice in terms of “fairness.” Rawls’s basic idea is that the underlying foundation behind the idea of justice is fairness. Alan Ryan rightly points out that what Rawls attempts in *A Theory of Justice* is to argue that the way to develop a theory of justice is to ask ourselves what sort of arrangements would be chosen through social contract which will generate fairness for everyone.²⁹¹ In the process Rawls presents how free and equal individuals would choose two principles of justice which will be acceptable to everyone. Rawls also argues that outcome would be considered fair when the two principles of justice chosen apply to the major institutions in society. Along with this, we have also seen how Rawls not only challenges the dominant utilitarian thought, but also argues that his theory of justice would be more stable. In *Political Liberalism*, John Rawls made some modifications.²⁹² Rawls argues that the idea of “a well-ordered society” of “justice as fairness” is not stable because of the presence of the “fact of reasonable pluralism.” In order to mitigate this problem, Rawls introduces three unique ideas in *Political Liberalism*. The three ideas are: “a political conception of justice,” the idea of “overlapping consensus” and the “idea of public reason.” Rawls firmly believes that a political conception of justice can be shared by everyone and it can garner the support of an overlapping consensus. A political conception of justice can be also the basis of public reason. In the *Law of Peoples*, we have seen that Rawls tries to extend his conception of justice to international arena. In the process, Rawls has explained as to how liberal societies should cooperate with other non-liberal societies. In fact, Rawls has again invoked the device of original position to generate the principles of the Law of Peoples. And thus Rawls presents eight principles which he believes would constitute “the principles of the Law of Peoples.”

²⁹¹ See Alan Ryan, “John Rawls,” in *The Return of Grand Theory in the Human Sciences*, ed. Quentin Skinner (London: Cambridge University Press, 1986), 104.

²⁹² Regarding the revisions that Rawls has devised, Charles R Beitz observes that while Rawls attempts to present a conception of social justice that would be the acceptable basis for social cooperation in *A Theory of Justice*, Rawls, in *Political Liberalism*, claims that his assumption is not realistic in modern liberal societies because of the presence of incompatible comprehensive doctrines. See Charles R Beitz, “Rawls’s Law of Peoples,” *Ethics*, 110, no. 4 (July, 2000): 671.

Chapter 3

The Idea of Justice: A Study of the Ideas of Robert Nozick

Robert Nozick expounds a different theory of justice. Nozick's theory of justice is about holdings. In other words, Nozick's theory of justice is concerned with individuals' holdings. For Nozick, idea of holdings refers to all the goods and private property that individuals have.¹ It is called the theory of justice in holdings. According to Nozick, justice means non-interference in the holdings of individuals. The term that Nozick uses for his theory of justice is also called the "entitlement theory of justice."

Nozick's main concern is about what constitutes just holdings in a society. To address this, Nozick propounds the entitlement theory of justice. According to Nozick, the entitlement theory justice has three principles. The first principle is called the principle of justice in acquisition. It spells out the conditions by which a person can appropriate unheld things. The second principle is called the principle of justice in transfer. It is concerned about the process under which a person can transfer holdings to another person. The third principle is called the principle of rectification. This principle is about the rectification of violations of the first two principles. Nozick's primary argument is that the holdings of a person are just if he is entitled to them by these three principles of justice in holdings.² If the holdings of a person do not conform to any of these three principles of justice, then it is not just. These three principles of justice specify just conditions under which a person can be entitled to the holdings. Nozick is of the view that these are the correct principles of justice in holdings.³ Thus, Nozick's conception of justice means non infringement in the individuals' rights to their holdings. In other words, it is about the non infringement in individuals' entitlement to their holdings. What Nozick argues is that individuals have the legitimate claim over their holdings and nobody has any right to interfere in their holdings. And justice, for Nozick, lies in respecting individuals' rights to their holdings. In this way, Nozick constructs his theory of justice within a libertarian framework.

¹ Nozick has not explained the exact meaning of holdings. For Peter Singer, Nozick's idea of holdings refers to the goods, money, and property of all kinds that people have. See Peter Singer, "The Right to be Rich or Poor," in *Reading Nozick*, ed. Jeffery Paul (Oxford: Basil Blackwell, 1981), 40. Similarly, Cheyney C. Ryan also describes Nozick's idea of holdings as private property. See, Cheyney C. Ryan, "Yours, Mine, and Ours: Property Rights and Individual Liberty," in *Reading Nozick*, ed. Jeffery Paul (Oxford: Basil Blackwell, 1981), 331.

² See Robert Nozick, *Anarchy, State, And Utopia* (New York: Basic Books, 1974), 150-53.

³ Jason Brennan argues that for Nozick, justice is about how people acquire their wealth. If people acquire their wealth in just ways, they are entitled to it. If not, they are not entitled to them. See for details, Jason Brennan, *Libertarianism* (Oxford: Oxford University Press, 2012), 131.

It must be also noted that Nozick propounds his theory of justice which can be an alternative to some of the widely held ideas about justice. Nozick is much against the idea of distributive justice.⁴ Nozick is strongly opposed to the term distribution. Nozick claims that this term suggest the idea that things in society are to be distributed through some central mechanism. So, Nozick argues that this term is misleading. According to Nozick, things in society cannot be distributed or redistributed in society by any authority. It is because things are already entitled to persons. In other words, what Nozick argues is that in a free society, persons have control over their resources. Persons get their holdings from other persons through voluntary exchanges. Therefore, there is no need for any central mechanism to distribute any resources already owned by persons. Nozick's argument is that as there is no distribution of one's life partner, there cannot be any distribution of resources in society.⁵ This means Nozick is not in favour of any state welfare functions even for the poor in society. Along with this, Nozick also criticises some of the distributive theories of theories of justice. According to Nozick, these distributive theories of justice prescribe some patterned principles to distribute goods and resources among individuals in society.⁶ These theories of justice do not take the historical background of how the holdings of persons come to exist. They only seek for the reason to justify the process of distribution in society. However, Nozick argues that under the entitlement theory of justice, there is no scope for distribution of goods or resources in society. According to the entitlement theory of justice, it is clear to persons as to who is entitled to what. It considers historical accounts of the holdings of persons seriously.⁷ Moreover, the entitlement theory of justice does not specify any patterned principle for distribution.

There is another important aspect for which Nozick has developed the entitlement theory of justice. Nozick intends to argue that a "correct theory of justice" does not need any "more extensive state." Nozick does not favour any powerful modern state. In other words, Nozick never justifies the extensive roles of a powerful robust state. Nozick argues that any more

⁴ Libertarians generally reject the idea of distributive justice as it entails welfare state that would meddle in the private affairs of individuals. Like other libertarians, Nozick also opposes distributive justice.

⁵ See Nozick, *Anarchy, State, And Utopia*, 150.

⁶ One example that Nozick gives is Rawls' theory of justice. For Nozick, Rawls's theory of justice is patterned principle of justice.

⁷ Nozick's argument is that for a distribution is to be just, the earlier distribution from which it arises has to be just. In the book *Philosophical Explanations*, Nozick argues that a distribution is just if it grows out of an earlier just distribution in specified ways whatever its pattern is. See Robert Nozick, *Philosophical Explanations* (Oxford: Clarendon Press, 1981), 48.

extensive state violates individual's rights.⁸ A more extensive state performs various distributive activities in society. And such a powerful state tends to interfere in people's lives. But for Nozick, only "a minimal state is justified" and legitimate. A minimal state has very limited functions such as "protection against force, theft, fraud, enforcement of contract," etc.⁹ A minimal state does not violate individuals' rights. Since a minimal state is confined to its limited functions; it does not indulge in any distributive activities in society. A minimal state does not does not coerce people for any purpose. Therefore, Nozick's argument is that since a more extensive state violates the rights of people, it will not respect the theory of justice in holdings. The entitlement theory of justice does not require a more extensive state. However, a minimal state does not encroach in individuals' rights. A minimal state does not interfere in the holdings of persons. The entitlement theory of justice will not get affected by the presence of a minimal state. And a minimal state is morally right. Thus, while other distributive theories of justice justify a more extensive state; Nozick's entitlement theory of justice justifies a minimal state.¹⁰

The Entitlement Theory of Justice

Robert Nozick propounds his idea of justice in the book *Anarchy, State, And Utopia*. Nozick's theory of justice is about individuals' rights in holdings.¹¹ It is about respecting individuals' rights to their holdings. Peter Vallentyne is of the view that Nozick expressed his conception of justice as a matter of respecting rights.¹² And Nozick's idea of holdings is concerned with individuals' rights to private property and self ownership. Nozick's theory of justice in holdings is also called as the "entitlement theory of justice." Nozick's entitlement theory of justice provides an account of what justice requires about holdings. And regarding the term entitlement, Nozick appears to suggest that entitlement means having absolute rights over one's holdings as far as holdings are acquired in accordance with the principles of

⁸ Robert Nozick argues that a more extensive state resembles a modern state. The terms Nozick uses to describe such a state are: a more extensive state, a powerful state, and a robust state. See Nozick, *Anarchy, State, And Utopia*, 276.

⁹ See Nozick, *Anarchy, State, And Utopia*, ix.

¹⁰ Robert Nozick's view is that distributive theories of justice like Rawls's theory of justice justify a welfare state. As Thomas Pogge rightly expresses, Nozick's argument is that a conception of justice like Rawls's requires an exceedingly interventionist state that continuously meddles in agreements among citizens. See for details, Thomas Pogge, *John Rawls: His Life and Theory of Justice* (Oxford: Oxford University Press, 1994), 179.

¹¹ According to Adam Swift, justice, for Nozick, is about respecting people's right to self ownership, and their right to hold property, leaving them free to decide for themselves with what is theirs. See Adam Swift, *Political Philosophy* (Cambridge: Polity Press, 2006), 30.

¹² Peter Vallentyne also argues that Nozick did not clearly explain his idea of justice. See Peter Vallentyne, "Nozick's Libertarian Theory of Justice," in *The Cambridge Companion to Nozick's Anarchy, State, And Utopia*, eds. Ralf M. Bader and John Meadowcroft (Cambridge: Cambridge University Press, 2011), 147.

entitlement theory of justice.¹³ Nozick's point is that the idea of entitlement constitutes an intrinsic part of the theory of justice in holdings.

According to Nozick, the entitlement theory of justice consists of three fundamental principles. They are: (1) the principle of justice in acquisition or the original acquisition of holdings; (2) the principle in transfer or the transfer of holdings; and (3) the principle of justice in rectification or a principle of rectification of violation of the first two principles.¹⁴

According to Nozick, the first principle of the entitlement theory of justice is about the appropriation of things which is unheld. This principle specifies conditions through which an individual can acquire things that is not owned.¹⁵ In other words, this principle specifies the conditions under which one can appropriate unowned resources at the first place. This means it spells out the conditions under which one can justly acquire an initial holding from a situation in which things are not held. Nozick clearly argues that it "includes issues of how unheld things may come to be held, the process, or processes, by which unheld things may come to be held, the things that may come to be held by these processes, and the extent of what comes to be held by a particular process, and so on."¹⁶ And it can be argued that the first principle of entitlement theory of justice specifies just ways of acquiring one's own holdings. Nozick argues that it creates the condition in which one can create one's property.¹⁷ In fact, what Nozick argues is that a person is entitled to his holdings if the acquisition of things is not through any unfair or illegitimate means like theft, forced appropriation, and swindle etc.

¹³ It is worth mentioning that Rawls has also formulated his conception of "entitlement" which is quite contradictory to what Nozick propounds. For John Rawls, entitlements which he refers to as legitimate expectations are specified by the public rules or agreements in the scheme of social cooperation. There is no specific criterion for any entitlement or legitimate expectations. Rawls argues that in "a fair scheme of social cooperation," individuals are entitled according to the public rules or agreements. For instance, there is a public rule which fixes a certain amount of salary for workers in a factory. Then, workers are entitled to that fixed amount upon the fulfillment of those rules or individuals have legitimate expectation to that amount. Thus, entitlements and legitimate expectations of individuals are based on the public rules specified in a social cooperation. For details, see John Rawls, *Justice As Fairness: A Restatement*, ed., Erin Kelly (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2011), 72. In fact, what distinguishes Rawls's idea of entitlement from Nozick is that for Rawls, individuals cannot claim their entitlement based on certain criteria like birth, social status, effort, talent etc. Rawls's idea of entitlement is not based on the idea of natural rights. But for Nozick, there are specific criteria for the individuals to claim their entitlements over their holdings.

¹⁴ See Nozick, *Anarchy, State, And Utopia*, 150-51.

¹⁵ Edward Feser observes that the first principle spells out the conditions under which one could justly come to appropriate as his own property some part of the natural world that had previously been unowned. See Edward Feser, *On Nozick* (Australia: Thomson Wadsworth, 2004), 67.

¹⁶ See Nozick, *Anarchy, State, And Utopia*, 150.

¹⁷ In the similar way, Michael Davis also argues that the first principle sets condition for creation of property. See Michael Davis, "Necessity and Nozick's Theory of Entitlement," *Political Theory* 5, no. 2 (May, 1997): 220.

According to Nozick, the second principle of the entitlement theory of justice is about the “transfer of holdings from one person to another.”¹⁸ The second principle specifies how one can acquire a holding which is previously held by other person. It explains how a holding can be transferred from one person to another in a just manner.¹⁹ Nozick argues that these processes include voluntary exchanges as well as gifts, etc.²⁰ In fact, for Nozick, transfer of things from one person to another is just if it is done through voluntary exchanges or mutual transactions in a free market. This principle also describes the processes how one can hold things from others without following a just process of transfer.²¹ Moreover, this principle gives the idea that when previously owned things are just, then the new acquisition through a just transfer is just. This means, for a just transfer of things, things must be also previously owned in a just manner. New acquisition of holdings also takes place through the principle of justice in transfer.

The third principle of the entitlement theory of justice is about the rectification of any violations of the principles of justice in acquisition and the principle of justice in transfer. This principle seeks to correct any violations of the first two principles. This means this principle is concerned about correcting the processes that do not conform to the principle of acquisition and the principle of transfer. This principle specifies the processes through which past injustice can be rectified. Nozick’s argument is that when a holding is acquired without following either the first principle or the second principle, then such a holding cannot be a just holding. In such situation, the principle of rectification seeks to rectify the violation of the first two principles.²² According to Nozick, it outlines the “rectification of violations of the first two principles.”²³

Thus, according to Nozick, justice in holdings is determined by these three sets of principles. These three principles determine justice in holdings. For Nozick, whether a set of holdings is

¹⁸ See Nozick, *Anarchy, State, And Utopia*, 150.

¹⁹ Edward Feser argues that the second principle explains ‘how one might come justly to acquire a holding previously held by some other person and thus how a person’s property can rightfully become another’s.’ See Feser, *On Nozick*, 67.

²⁰ See Nozick, *Anarchy, State, And Utopia*, 150.

²¹ Ralf M. Bader rightly argues that second principle of entitlement theory describes the kinds of processes whereby a new set of holding arises in the unjust manner. Fraud, theft and coerced transfers, etc. are some of such processes. See Ralf M. Bader, *Robert Nozick* (New York: The Continuum International Publishing Group Inc, 2010), 41.

²² Ralf M. Bader is of the view that this principle also tries “to address questions such as whether an injustice can be done to someone whose holding was itself based upon an unrectified injustice and the question as to how far back one must go to clean injustices done in the past.” See Bader, *Robert Nozick*, 42.

²³ See Nozick, *Anarchy, State, And Utopia*, 153.

in conformity with justice depends upon the ways in which it arose is in conformity with these principles. Therefore, according to the principles of justice in holdings, a holding is just if it has been acquired by the processes conforming to these principles of justice. The first principle of justice in holdings specifies the legitimate means of acquiring a holding. The second principle specifies the legitimate ways of moving holdings from person to another. So Nozick claims that “whatever arises from a just situation by just steps is itself just.”²⁴ The entitlement theory of justice suggests the idea that one must acquire any set of holdings from a just set of holdings. One cannot simply arrive at a just set of holdings from an unjust holding. In order to arrive at a just set of holding, the previous set of holding must be also held justly. Therefore, what Nozick’s entitlement theory of justice specifies is that “a person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding; a person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to that holding; and no one is entitled to a holding except by applications of the first two principles.”²⁵ But it must be mentioned that Nozick has not exactly described the process or condition of any of the three principles in detail.

However, Nozick’s point is that all situations do not conform to the first two principles of justice in holdings. This means that everyone does not follow strictly the principle of justice in acquisition and the principle of justice in transfer. It is because some persons engage in unjust practices. Nozick says, “Some people steal from others, or defraud them, or enslave them, seizing their product and preventing them from living as they choose, or forcibly excludes others from competing in exchanges. None of these are permissible models of transition from one situation to another. And some persons acquire holdings by means not sanctioned by the principles of justice in acquisition.”²⁶ There are other unjust processes of acquiring holdings by impermissible ways. And there also exists injustice as the result of the violation of the first two principles in the past. In such circumstances, a principle is required for the rectification. And the principle of rectification comes as a remedy. In rectifying the past injustice, the principle of rectification uses “historical information” about previous situations and how injustice has been done to people. This principle tries to rectify injustice according to the first two principles of justice in holdings. In the process of rectification, it

²⁴ Ibid., 151.

²⁵ Ibid.

²⁶ Ibid., 152.

also uses “information about the actual course of events” that results from injustices.²⁷ Thus, the overall outline of Nozick’s the entitlement theory of justice is that the holdings of a person are just in two ways. One is that “the holding of a person are just if he is entitled to them by the principles of justice in acquisition and transfer.” And the second way is that the holdings of a person are also just if he is entitled to them by the principle of rectification of injustice as specified by the first two principles.²⁸ This means the whole set of holdings in a society is just only when the holdings of each person are just.

It is also interesting to note that Nozick develops his entitlement theory of justice to show that a “correct theory of justice” does not require any “more extensive state.” In fact, Nozick underscores the view that any more extensive state or something like that is not needed to ensure distribution of resources or property in the name of justice. Most importantly, Nozick’s argument is that justice cannot be determined by any distribution. Justice neither needs any authority nor state to distribute resources to people. Justice does not call for any principles for redistribution in society. Nozick’s view is that a correct theory of justice does not seek for distribution. Therefore, in the entitlement theory of justice, Nozick completely rules out the need for any kind of distribution in society. In fact, Nozick completely rejects the idea of any distribution in society. Nozick has his own reservations about the notion of ‘distribution’ from the beginning itself. Nozick is of the opinion that the very notion of distributive justice is not neutral.²⁹ It is because the term ‘distribution’ suggests the idea that the goods that people possess are to be distributed by some authority.³⁰ And if that distribution is not sufficient, they have to be redistributed. Moreover, distributive justice suggests the idea that some central authority has the power over persons to decide about the nature of distribution of the resources in society. But Nozick’s argument is that any resource or wealth does not come out of nothing. Human beings put their effort to create their wealth. Any wealth comes to existence because human beings work hard to make it. Individuals themselves have the right to decide about their wealth. Therefore, Nozick’s argument is that human beings possess wealth or resources as the result of their effort. The wealth of human beings is not generated through any distribution or redistribution by any authority. Nozick completely rebuts the idea of distribution. For Nozick, individuals themselves will decide

²⁷ Ibid., 152.

²⁸ Ibid., 153.

²⁹ Ibid., 149.

³⁰ According to Jonathan Wolf, Nozick’s point is that distributive justice seems to presuppose that resources exist in a big social pool waiting to be justly allocated by some central authority. See Jonathan Wolf, *Robert Nozick: Property, Justice and the Minimal State* (Cambridge: Polity Press, 1996), 76.

about their resources. In this regard, Nozick remarks, “However we are not in the position of children who have been given portions of pie by someone who now makes last minute adjustments to rectify careless cutting. There is no central distribution. No person or group entitled to control all the resources, jointly deciding how they are to be doled out. What each person gets, he gets from others who give to him in exchange for something, or as a gift. In a free society, diverse persons control different resources, and new holdings arise out of the voluntary exchanges and actions of persons.”³¹ Thus, Nozick argues that a correct account of justice in holdings does not have any scope for the distribution. The correct idea of justice does not go along with the idea of distribution. Therefore, the correct idea of justice does not require any more extensive state mechanism. In a free society, persons have the rights over their resources. And the entitlement theory of justice is what Nozick propounds to be the correct theory of justice in holdings. According to Nozick, entitlement theory of justice advocates the idea that individuals have complete liberties with regard to their holdings. It does not recognize any necessity of the state intervention in the matters of individuals concerning resources or holdings. In this way, Nozick tries to establish his entitlement theory of justice as an alternative theory to various existing theories of justice that espouse distributive principles of justice.³²

It may be also observed that some of the ideas of Nozick’s theory of justice in holdings go closer with C. B. Macpherson’s theory of “possessive individualism” which underscores the essence of human freedom from dependence on the will of others. The theory of possessive individualism conceives individual as “essentially the sole proprietor of his own person and capacity, for which he does not owe anything to society. And society is based on exchanges between free and equal individuals who are the proprietors of their own capacities.”³³ In fact, some of Nozick’s arguments in the entitlement theory justice are in alliance with C. B. Macpherson’s ideas of possessive individualism.

Nozick’s entitlement theory of justice is also based on the idea of “self ownership.” In fact, the notion of self ownership is one of the main beliefs of libertarian thinking. The notion of self ownership implies the meaning that we own ourselves and we own the products of our

³¹ See Nozick, *Anarchy, State, And Utopia*, 149-50.

³² However, some writers are of the view that Nozick has not developed a full theory of justice. According to Ralf M. Bader, what Nozick does is to set out the formal structure of the entitlement theory of justice that specifies the kinds of principles justice in holdings requires. See Ralf M. Bader, *Robert Nozick* (New York: The Continuum International Publishing Group Inc, 2010), 37.

³³ C. B. Macpherson, *The Political Theory of Possessive Individualism* (London: Oxford University Press, 1962), 3, 263.

labour. Hence, we are entitled to the results of our efforts. In one way, the notion of self ownership is a direct challenge to Rawls's argument which says that we are not entitled to the benefits of our talents, skills, efforts etc because these are simply accidental facts. According to Michael Sandel, libertarian like Robert Nozick would argue that if we are not entitled to the fruits of our efforts and talents, then we do not own ourselves. If we do not own ourselves, then who else own us?³⁴ But for libertarians like Nozick, we are the owners of ourselves and we are not to be sacrificed for the well being of others.

Entitlement Theory and Other Distributive Theories of Justice

Nozick categorized theories of justice into two. They are: "end result theories" and "historical theories." The end state principle is concerned with the structure of the distribution. According to the end state principle, justice of any distribution is determined by its structure.³⁵ The "current time slice principles of justice" are also an end state principle. The "current time slice principles" hold that the "justice of a distribution is determined by how things are distributed as judged by some structural principles of just distribution."³⁶ According to current time slice principles, history of how holdings come into being does not count. The current time slice principles focus about distribution at a given time or period. For Nozick, the utilitarian theory and egalitarian account of justice fall under this category. For a utilitarian, the focus would be on the greater sum of utility. And for the egalitarian, the focus would be the equality. The focuses in both theories would on the happiness and equality. They both concentrate on the end result of the distribution.³⁷ So, Nozick argues that the current time slice principle is concerned with "who ends up with what" in judging the justice of a distribution.³⁸ The current time slice principles also do not take historical accounts of resources into consideration. They only focus on how holdings are to be distributed. So, the current time slice principles are not historical. These principles do not consider individuals' entitlements to holdings. Nozick is of the argument that "welfare economics is the theory of current time-slice principles of justice."³⁹

³⁴ See Sandel, *Justice What's The Right Thing To Do?* (England: Penguin Books, 2010), 69.

³⁵ According to Thomas Scalon, an end state principle says that the distribution of justice will depend on certain structural features of the situation it represents. See for details, Thomas Scalon, "Nozick on Rights, Liberty, and Property," in *Reading Nozick*, ed. Jeffery Paul (Oxford: Basil Blackwell, 1981), 108.

³⁶ See Nozick, *Anarchy, State, And Utopia*, 153.

³⁷ *Ibid.*, 154.

³⁸ *Ibid.*

³⁹ *Ibid.*

The historical principles of justice take seriously the historical accounts of entitlements. Nozick argues that “historical principles of justice hold that past circumstances or actions of people can create differentiate entitlements or differential deserts to things.”⁴⁰ According to historical principles of justice, historical facts are crucial to arrive at the justice of any distribution. Robert Nozick claims that the entitlement theory of justice is historical rather than end result theory of justice.⁴¹ This means that the justice of a set of holdings is determined by how it arises. The entitlement theory of justice does not consider any structure in determining the holdings. According to entitlement theory, what is important is whether people are entitled to holdings in accordance with the three principles of justice in holdings.⁴² Thus, according to Nozick, the entitlement theory of justice is quite contrasted with end-state principles of justice. According to the entitlement theory of justice, whether a distribution is just depends upon how it comes about. But for an end-result or end-state principles of justice hold that the justice of a distribution is determined by “how things are distributed as judged by some structural principles of just distribution.”⁴³ Nozick again divides the historical principles into two categories. One is the patterned and the other is the unpatterned. The patterned theories of justice requires that resources should be distributed along with “some natural dimensions, weighted sum of natural dimensions or lexicographic ordering of natural dimensions.”⁴⁴ This means, according to patterned theories, the just distribution is to be determined by some patterned principles. When a distribution is patterned, there are some dimensions based on which resources are to be distributed. In the words of Nozick, “A distribution is patterned if it accords with some patterned principle.”⁴⁵ The examples of patterned principles are those principles which say that any distribution of resources or wealth should be based on merit, need and so on.⁴⁶ And for Nozick, end-state principles are also patterned principles. For Nozick, most of the principles of distributive justice are

⁴⁰ Ibid., 155.

⁴¹ Ibid.

⁴² According to D. A. Lloyd Thomas, the entitlement theory of justice is concerned about what rights to holdings individuals have. The entitlement theory of justice does not assume anything about what is good or desirable. See D. A. Lloyd Thomas, *In Defence of Liberalism* (Oxford, UK: Basil Blackwell, 1988), 37.

⁴³ See Nozick, *Anarchy, State, And Utopia*, 153.

⁴⁴ Ibid., 156. Also see, Onora O’Neill, “Nozick’s Entitlements,” in *Reading Nozick*, ed. Jeffery Paul (Oxford: Basil Blackwell, 1981), 306.

⁴⁵ See Nozick, *Anarchy, State, And Utopia*, 156.

⁴⁶ Onora O’Neil clearly observes that the most celebrated patterned principles include “to each according to his merit,” “to each according to his need,” and “to each according to his contribution.” See for details, Onora O’Neil, “Nozick’s Entitlements,” in *Reading Nozick*, ed. Jeffrey Paul (Oxford: Basil Blackwell, 1981), 306.

patterned.⁴⁷ The distributive theories of justice of John Rawls and utilitarianism, etc. come under the patterned principles of justice.⁴⁸

On the contrary, the unpatterned theory of justice does not hold any patterns to determine the justice of any distribution. The unpatterned principles do not specify that a distribution is to be along with some dimensions. Nozick is of the point that the entitlement theory of justice is not patterned.⁴⁹ It is because under the entitlement theory of justice, there is no dimension through which the “principles of justice in holdings” are determined. And the entitlement theory if justice is not patterned principle. According to entitlement theory of justice, to determine the justice of holdings, any patterned principle is not required. Whether individuals are entitled to the holdings are determined according to the three principles of justice in holdings. Hence, the entitlement theory of justice is unpatterned.

Further, Nozick strongly criticizes the patterned principles. Nozick is absolutely opposed to any idea of distribution based on some patterned principles. Nozick’s argument is that our goods and wealth cannot be distributed according to some patterned principles. Nozick is of the view that “things have come into the world already attached to people having entitlement over them.”⁵⁰ So, Nozick’s case is that since holdings are entitled to persons, they are not to be distributed. Any holdings which are already entitled to someone cannot be available for any distribution based on some patterned principles. According to entitlement theory, things do not simply come from nowhere. Things are produced. Things have to be produced. Whoever produces is entitled to that product. In this way, any holdings come to individuals with entitlements attached to them already. And since the persons who produce are already entitled to the products, they cannot be distributed based on any patterned principles.⁵¹ Besides, another important reason why Nozick rejects patterned principles is because liberty upsets patterns. This means individuals have the liberties to use their wealth and goods according to what they choose. And their liberties will eventually destroy any patterns imposed upon them. To illustrate this point, Nozick gives his famous “Wilt Chamberlain

⁴⁷ See Nozick, *Anarchy, State, And Utopia*, 156.

⁴⁸ According to Michael Davis, all patterned theories of distributive justice may include those of John Rawls, the Marxists, and the Utilitarians. See Davis, “Necessity and Nozick’s Theory of Entitlement,” 221.

⁴⁹ See Nozick, *Anarchy, State, And Utopia*, 157.

⁵⁰ *Ibid.*, 160.

⁵¹ In this regard, Ralf M. Bader rightly observes that the entitlement theory of justice ‘rejects any separation between production and distribution. Manna does not fall from the heaven. Production gives rise to entitlement that precludes the distribution of the produced goods.’ See for details, Bader, *Robert Nozick*, 48.

example.”⁵² According to this example, Wilt Chamberlain is a famous and popular basketball player and he is greatly in demand by basketball teams. Wilt chamberlain attracts large fans whenever he plays. When he signs a contract with a home team, he puts one condition. The condition is that whenever he plays in each home game, certain amount from the price of each ticket of admission must go to him. So every time the season for play starts, many fans or people come and see him play by buying tickets. Whenever they buy their tickets, they also separately drop a certain amount of their admission price into a separate special box which is meant for Chamberlain. They do this, because all are happy about seeing Chamberlain play. In one season, huge fans come to see him play and as the result Wilt Chamberlain earns huge amount which is much larger than everyone earns. Wilt chamberlain earn enormously. Then the crucial question is whether Wilt Chamberlain is entitled to this large income. Isn't this unequal distribution of income just? Nozick's answer is that Wilt Chamberlain is entitled to what he earns. It is because each of these persons is not forced to play some share of their amount to Wilt Chamberlain. They all voluntarily spend certain amount of their money to Chamberlain as they choose to see him play. And they choose to give their share of amount to Wilt Chamberlain in exchange to watch him play basketball. Therefore it is just. They could have spent their money on some other activities. But they still choose to watch Wilt Chamberlain play. So Nozick's main argument here is that since each individual is entitled to his resources, he is entitled to dispose his resources as he chooses. Thus people are entitled to give some share of their amount to Wilt Chamberlain whenever they come to see him play. Therefore, they have no grounds for a complaint of injustice. At the same time, other people who had not made this choice have no grounds of complaint because they choose not to spend their amount to watch Wilt Chamberlain play basketball. Thus, the overall argument Nozick draws here is that it is highly likely that voluntary transfers will upset patterned principles. Moreover, Nozick's point is that liberty and any patterned principles will be always at odds. It is because liberties of individuals will always destroy any patterned principles. And the patterned principles also will interfere with people's lives. Nozick argues that “no end state principle or patterned principle of justice can be continuously realized without continuous interference with people's lives.”⁵³ “To maintain a pattern, one must either continually interfere to stop people from transferring resources they wish to, or continually (or periodically) interfere to take from some persons resources that

⁵² For this example, see Nozick, *Anarchy, State, And Utopia*, 161.

⁵³ *Ibid.*, 163.

other for some reason chose to transfer to them.”⁵⁴ Nozick argues that even the socialist society have to forbid acts between capitalists based on their mutual consent in order to maintain equal distribution. Nozick says, “The socialist society would have to forbid capitalist acts between consenting adults.”⁵⁵ Thus, Nozick argues that individuals’ liberty will always clash with the patterned principles. This means while individuals’ liberty tends to destroy any pattern principles, the pattern principles will always try to interfere with people’s liberty.⁵⁶ However, Nozick believes that the voluntary actions of the individuals are likely to thwart every patterned principle. Any patterned principle is not stable.⁵⁷ So, Nozick’s idea is that the entitlement theory respects individuals’ liberty. The entitlement theory of justice is compatible with the individuals’ liberty.

Thus, Nozick’s overall argument against the patterned principles is that they always tend to interfere in people’s lives. The patterned principles always clash with individual liberty. The patterned principles do not give people their liberty to choose what they want. The patterned principles concern about the criteria for determining the recipient of the holdings. Nozick argues that “even in exchanges where each person is simultaneously giver and recipient, patterned principles of justice focus upon the recipient role and its supposed rights.” Thus, Nozick terms the patterned principles of justice as the theories of “recipient oriented” justice.⁵⁸

Entitlement Theory of Justice and Taxation

Robert Nozick is against the system of taxation. Nozick disapproves any form of taxation of income from labour. According to Nozick, taxation is not voluntary. Taxation involves force against individuals to pay taxes. Taxation infringes individuals’ liberty. Nozick claims that “axation of earning from labour is on par with forced labour.”⁵⁹ It is because taking some share of someone’s earnings in the form of taxation is equal to forcing someone to work for some other purposes for which he is not willing. This means when someone is taxed from his

⁵⁴ Ibid.

⁵⁵ Ibid., 163.

⁵⁶ As Cheyney C. Ryan observes, Nozick’s argument is that ‘personal liberty and patterned principles will always be at odds with one another. Liberty tends to upset any given pattern once instituted. On the other hand, patterned principles will always restrict individual liberty in order to maintain it.’ See for details, Cheyney C Ryan, “Yours, Mine, and Ours: Property Rights and Individual Liberty,” in *Reading Nozick*, ed. Jeffery Paul (Oxford: Basil Blackwell, 1981), 325.

⁵⁷ See Nozick, *Anarchy, State, And Utopia*, 164.

⁵⁸ Ibid., 168.

⁵⁹ Ibid., 169.

earnings, one is forced to work extra for someone else. In other words, when someone is taxed, he is forced to work extra for others because taxation from his earning is used for others' purposes. Nozick is of the view that taxation involves a violation of the individual rights. Nozick's argument is that when someone is forced to pay tax, others are violating the rights of the individuals. Taxation of earning from labour also limits the alternatives in life that individuals must have. Nozick says, "the fact that others intentionally intervene, in violation of a side constraint against aggression, to threaten force to limit the alternatives, in this case to paying taxes or bare substances, makes the taxation system one of forced labor and distinguishes it from other cases of limited choices which are not forcings."⁶⁰

Nozick opposes any taxation of earnings from those who work extra and earn more income in order to gain happiness in their lives. To illustrate his argument against the taxation from earnings, Nozick describes the two contradictory situations of two groups of persons. The first group choose to work extra in order to gain more income even if they earn sufficient basic needs. They prefer other leisurely activities. They work harder to enjoy themselves other pleasurable activities. On the contrary, the second group choose not to work extra. But they prefer other leisure activities. They still prefer all goods and services in life for which they could work more. In these two contrasting scenario, Nozick's basic argument is that taxation of earnings from the first group is absolutely illegitimate. It is exactly like seizing the leisure of the first group for other purpose. Nozick's question is that why tax system should treat the first group and second group differently. Why the person who work hard must pay more tax. In Nozick's view, the first group must not be taxed more to facilitate the desires of the second group. It is like taking someone's goods in order to facilitate someone else needs.⁶¹ Further, Nozick's point is that there is no legitimate reason to tax some who work extra hard and earn more to enjoy some pleasurable activities while leaving out those persons who do not work extra without levying tax. Therefore, Nozick questions "Why should the man who prefers seeing a movie (and who has to earn money for a ticket) be open to the required call to aid the needy, while the person who prefers looking at a sunset (and hence need earn no extra money) is not? Indeed is not it surprising that redistributionists choose to ignore the man whose pleasures are so easily attainable without extra labour, while adding

⁶⁰ Ibid.

⁶¹ This example is taken from Nozick's book, *Anarchy, State, And Utopia*, 169-70.

yet another burden to the poor unfortunate who must work for his pleasure?”⁶² Thus, taxation also interrupts the choices and alternatives for those who work extra to earn more income.

Moreover, Nozick is of the view that taxation on income from labour involves forcing people to work for other people. Taxation also involves “appropriating the actions or activities of other people.”⁶³ When someone is forced to work extra, others are deciding his activities. They are also forcing him to work for the purpose he has no idea. In Nozick’s view, this process makes others “a part owner” in those who are forced to work. In addition to this, Nozick also argues that taxation system ensures that each person has “an enforceable claim to some portion of the total social product” which is produced by the labour of individuals.⁶⁴ But this amounts to a situation where each person has a claim to the products of other persons. It also amounts to seizing the results of someone’s labour independently which is not legitimate at all. Therefore, in Nozick’s view, taxation is against those who work extra hard for themselves.⁶⁵

However, Nozick’s argument is that the entitlement theory of justice does not support the idea of taxation of earnings from labour. According to the entitlement theory of justice, persons are entitled to their holdings as per the three principles of justice in holdings. There is no question of forcing individuals to pay tax for others. Moreover, entitlement theory is not patterned principle. There is no scope for distributing individuals’ earnings for other purposes. Entitlement theory does not involve in redistributing the resources of individuals in the name of welfare for society. And entitlement theory of justice is not at odd with individuals’ liberty. Entitlement theory also goes along with a minimal state which has very limited functions. The minimal state does not levy tax on individuals. Rather, individuals voluntarily pay to it for its service. Therefore, Nozick’s point is that entitlement theory of justice respects individuals’ rights and liberties. Entitlement theory does not interfere in the holdings of individuals. So, the entitlement theory of justice does not advocate the idea of

⁶² Ibid., 170.

⁶³ Ibid., 172.

⁶⁴ Ibid., 171-72.

⁶⁵ Will Kymlicka is of the view that Nozick, however, is in favour of only legitimate taxation in order to “raise revenues for maintaining the background institutions needed to protect the system of free exchange like the police and justice system which are needed to enforce people’s free exchange.” See Will Kymlicka, *Contemporary Political Philosophy* (New York: Oxford University Press, 2008), 103.

taxation of earnings from labour. Nozick even goes to argue that even those who do not openly oppose the idea of taxation will reject it when they are compelled to work for others.⁶⁶

Robert Nozick on John Lock's Theory of Acquisition

Robert Nozick has serious disagreements with John Locks' theory idea of acquisition. There is a difference between Nozick's principle of justice in acquisition and Lock's idea of acquisition. For John Locks, property rights originate from the unowned objects when someone mixes his labour with it. Someone comes to own property rights when he mixes his labour with an unowned object. In the *Two Treatise*, Locke argues that it is possible to acquire a property rights in something that was previously unowned by mixing one's labour with it.⁶⁷ According to Locke, every human being has a property in their own labour. And when one mixes his labour with the thing, property naturally belongs to him. In other words, what Locke means is that one's body is one's property, and whatever body produces becomes his own property. And thus, whatever the products of one's labour becomes one's property.⁶⁸ Besides Locke also made one condition that one can make one's own property provided "one leaves enough and as good for others" and what one takes is not left to spoil.

However, Nozick has a serious problem with Locke's views on property rights. First of all Nozick questions what constitutes the boundary of mixing someone's labour. Nozick gives an interesting example to rebut Locke's theory of property rights. Nozick asks when a private astronaut visits a planet and he cleans a place on it, will he be given the whole ownership of the planet according to Locke's proviso?⁶⁹ Then, Nozick further questions whether Locke's view on property rights is not a way of losing what one owns instead of gaining the other thing. Nozick questions how the maxing of labour gives rise to ownership of property. Nozick also questions as to what the mixing of labour clearly consists in. To illustrate his argument, Nozick gives an example: "If I own a can of tomato juice and spill it in the sea so that its molecules mingle evenly throughout the sea, do I thereby come to own the sea, or

⁶⁶ Regarding the taxation, Nozick's arguments are quite contrary to Rawls's whose difference principle necessitates taxation in society in order to improve the situation of worst off. But for Nozick, taxation from labour even for helping the needy in society is not right. Nozick argues that even those who do not oppose taxation will oppose when they are forced to work extra for the needy. For Nozick's argument, see Nozick, *Anarchy, State, And Utopia*, 169.

⁶⁷ See John Locke, "Second Treatise," in his *Two Treatises on Civil Government* (Cambridge: Cambridge University Press, 1960), 26.

⁶⁸ According to Lawrence C Becker, Locke's idea is that since one's body is one's property, and its product is also one's property and follows that the labour's product is also one's property. See Lawrence C Becker, *Property Rights* (London: Routledge and Kegan Paul, 1977), 33.

⁶⁹ For this example, see Nozick, *Anarchy, State, And Utopia*, 174.

have I foolishly dissipated my tomato juice?”⁷⁰ From this example, Nozick’s argument is that Locke’s idea of mixing one’s labour in order to generate the ownership of property can be counterproductive. This means mixing of one’s labour with unowned things does not necessarily result in generating one’s own property. Therefore, Nozick rejects Locke’s theory of acquiring property. Nozick refutes Locke’s idea that acquisition of property requires the mixing of labour with unowned objects. Instead, Nozick argues that the principle of justice in acquisition specifies conditions under which one can acquire unheld things in a just manner.

Moreover, Nozick rejects Locke’s condition of appropriating property which says that enough and as good be left in common for others. It also means the situation of others must not be worsened by somebody’s appropriation. According to Nozick, such a condition in appropriating property puts many restrictions on individuals. Such a condition restricts persons from acquiring property even through legitimate means. Nozick’s idea is that appropriation of private property also benefits everyone in society. Since everyone gets benefit out of private property, no such a condition should be imposed on any appropriation of property.⁷¹ Against such a condition of Locke, Nozick’s argument appears to suggest that rights to private property must be unlimited. Nozick does not approve of any condition that restricts individual’s right to private property. In this regard, Jonathan Wolf observes that “Nozick wants to establish natural, unlimited, rights to property, even in the face of scarcity. Nozick’s point is that even if there is not enough and as good land for another, there still may be, as a result of appropriation, other things which counterbalance the diminution in opportunity. There may arise new opportunities which compensate for the lost opportunity to appropriate.”⁷² Moreover, Nozick rejects other proviso that spells that appropriation of property should not worsen the situation of persons. Nozick’s point is that the situation of a person who is not in the position to appropriate property is not worsened when some able persons efficiently increase the social product. It is because the product is beneficial to all. Nozick gives an interesting example to prove this point. A medical researcher invents a new drug that can cure a lethal disease. This medical researcher puts some conditions for the sale of his drug. He refuses to sell the drug to those who do not accept his conditions. Now in such a scenario, Nozick argues, the medical researcher does not worsen the situation of

⁷⁰ See Nozick, *Anarchy, State, And Utopia*, 175.

⁷¹ Israel M. Kirzner argues that, for Nozick, Locke’s idea of acquisition of an unowned object from nature seems to be held justified only in the negative sense that such appropriation has not harmed others. See Israel M Kirzner, “Entrepreneurship, Entitlement, and Economic Justice,” in *Reading Nozick*, ed. Jeffery Paul (Oxford: Basil Blackwell, 1981), 404.

⁷² See Wolf, *Robert Nozick*, 108-9.

others. It is because the chemicals which medical researcher uses to produce the drug are easily available and he does not make it scarce.⁷³ This means others can also possess those chemicals. Though this example, Nozick tries to show that the invention of a new drug by the researcher using chemicals which are aplenty does not result in worsening the conditions of those who cannot use the drug.

Thus, Nozick's argument is that Lockean proviso is quite opposed to both the principles of acquisition and the principle of transfer. It is because if one follows Locke's condition of appropriating private property, an original acquisition of holdings cannot take place. Similarly, Lockean proviso also poses restrictions on appropriation of holdings through voluntary exchanges. In this regard, Nozick's proviso is that if an appropriation does not result in worsening the conditions of others, then it is justified. Appropriation of private property should not worsen the situation of others who are not in the position to own resources.⁷⁴ According to John E Roemer, Nozick's appropriation proviso goes on the line of "first come, first served."⁷⁵

Entitlement Theory and the State

According to Nozick, the entitlement theory of justice is not compatible with any more extensive state. The entitlement theory of justice does not require a more extensive state. It is because a more extensive state is bound to disrupt the process of the entitlement theory of justice. Nozick does not accept the claim that a more extensive "state is justified in order to achieve or produce distributive justice among its citizens."⁷⁶ Nozick criticises other theories of distributive justice which favour a more extensive state. Nozick's central argument is that any more extensive state activities violate the rights of individuals. Therefore, Nozick strongly defends the minimal state. He argues that a minimal state whose functions is to protect individuals against force, fraud, and theft, and enforces contracts, is totally compatible with the entitlement theory of justice. For Nozick, a minimal state that has limited functions of "protection against force, theft, fraud, enforcement of contracts, and so on," is justified.⁷⁷

⁷³ For this example, see Nozick, *Anarchy, State, And Utopia*, 181.

⁷⁴ According to Ralf M. Bader, Nozick's proviso is that an appropriation is justified on condition that it leaves no one worse off than they would have been had the resources remained unowned. It also means that the private ownership of a resource must be sufficiently beneficial to ensure that those who are not at liberty to use the resources are not worsened by the appropriation. See Bader, *Robert Nozick*, 39.

⁷⁵ John E Roemer, *Theories of Distributive Justice* (Cambridge: Harvard University Press, 1996), 207.

⁷⁶ See Nozick, *Anarchy, State, And Utopia*, xi.

⁷⁷ *Ibid.*, ix.

So, Nozick claim that the minimal state is inspiring. Robert Nozick justifies the minimal state.⁷⁸

Nozick argues that the minimal state emerges in a morally permissible way. Nozick explains the genesis of the minimal state. Nozick is of the argument that the evolvement of the state itself is moral and justifiable. Nozick argues that the state emerges by an “invisible hand process.”⁷⁹ The state evolves by a morally permissible way without violating anyone’s rights. This means, according to Nozick, a state arises by means of an “invisible hand processes” without violating any rights of individuals. Nozick argues that a state would arise out of a state of nature by means of a process that does not require any intention on the part of individuals to create a state.⁸⁰ A state would arise spontaneously without anybody trying to create it. When Nozick argues that a state would arise with the help of an invisible-hand explanation, he means that a state would naturally evolve from the “state of nature” while individuals do not intend to create it.⁸¹ Nozick argues that in the anarchic state of nature, individuals have natural rights. Individuals have inconveniences in the state of nature. Individuals have conflicting interests. In order to solve their inconveniences, group of individuals may join together to form “mutual protection associations.” And together they can defend their rights. Then, people might join together to form multi-protection associations. After that, these multi protection associations will evolve into professionalised protection agencies. There will be several such associations in certain geographical region. After some time, that, a single dominant protective agency will emerge. “A single dominant agency” will emerge because there are disadvantages of being client to several agencies. At the same time, advantages of being client of a large and powerful agency are also there. In

⁷⁸ In fact, Nozick is not approving of the all embracing role of the modern state. In connection with this aspect, Michael Sandel argues that the libertarians reject three common functions or policies of the modern state. First, libertarians reject any form of paternalism by the state. For libertarians, the state has no right to dictate what individuals should do with themselves. Secondly, libertarians oppose any moral legislation by the state. The state has no right to enact any coercive law to promote morality in society. Thirdly, libertarians reject any kind of redistribution of income and wealth in society. Libertarians argue that the state has no moral authority to tax the wealthy to help others. See Michael J. Sandel, *Justice: What’s The Right Thing To Do?* (England: Penguin Books, 2010), 60-1.

⁷⁹ An important distinction can be made between Adam Smith and Robert Nozick on their ideas of invisible hand. Adam Smith used it to describe the market behaviour. This means each person’s pursuit of his own self interest will benefit society as a whole although it is not part of his intention. But Nozick used it to describe the rise of the minimal state. The minimal state would merge from the anarchic state of nature in a process in which individuals do not intend to create it.

⁸⁰ See Nozick, *Anarchy, State, And Utopia*, xi.

⁸¹ Jonathan Wolf clearly explains Nozick’s idea of an invisible hand explanation. Nozick’s idea of invisible hand basically means while individuals are trying to improve their conditions in the state of nature, they will perform various activities. And these activities will eventually bring about a minimal state even though individuals do not intend to create the state. See Wolf, *Robert Nozick*, 42.

this way, there will be just one dominant protective agency. However, this dominant agency is not yet a state because “it appears to allow some people to enforce their own rights, and it appears not to protect all individuals within its domain.”⁸² And there are independents that enforce their own rights without being the members of the dominant protective association. Then, Nozick gives an interesting argument about the transformation of the dominant agency to the minimal state. Nozick argues that everyone may defend himself against any unknown or unreliable procedures. Individuals may punish anyone who tries to use any unreliable procedures against them.⁸³ The dominant protective agency applies this right for its clients. Then dominant protective association will not allow others anyone to defend against them because “dominant protective association judges its own procedure to be both reliable and fair.”⁸⁴ It will prevent independents from attempting to use unreliable procedures against it clients. In this way, the dominant protective association will turn into an “ultra minimal state.” But when independents are prohibited from enforcing their rights, the dominant agency must compensate them. The possible way to compensate is to offer them protective services. And thus, the ultra-minimal state becomes a minimal state when it provides protective services to those independents. Then the ultra-minimal has to be transformed into a minimal state. Nozick argues that ‘the transition from an ultra-minimal state to a minimal state must occur morally. It is because it would be morally impermissible for persons to maintain the monopoly in the ultra-minimal state without providing protective services for all. The operators of the ultra-minimal state are morally obligated to produce the minimal state.’⁸⁵ And thus, the minimal state will come to exist. Moreover, regarding the genesis of the state, Nozick does not agree with the ideas of social contract theorists. Nozick does not accept the idea of a state emerging out of the social contract. For social contract theorists, individuals come together in the state of nature and they create the state. But according to Nozick’s argument, the state arises spontaneously without anyone’s intention to create from the anarchic state of nature. Nobody seeks others consent to form the minimal state.⁸⁶ In this sense, Nozick can be hardly called as a social contract theorist. Instead, Nozick is a natural

⁸² See Nozick, *Anarchy, State, And Utopia*, 22-23.

⁸³ *Ibid.*, 108.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*, 52.

⁸⁶ According to Helga Varden, what Nozick argues is that “a series of rightful bilateral interactions between individuals can give rise to a just state without depriving anyone of their rights and without appealing to actual consent to a Lockean social contract.” See Helga Varden, “Nozick’s Reply to the Anarchist,” *Law and Philosophy* 28, 6, (2009): 590.

rights theorist.⁸⁷ Besides, Nozick also disapproves anarchist view that state is unnecessary evil and it should be abolished. Nozick's argument is that a state is not evil. The minimal state has limited functions to protect individuals' rights. The minimal state does not violate individuals' rights. Instead, the minimal state is there to protect individual rights. As Jonathan Wolf clearly points out, Nozick's main argument against anarchist is that it is rational to consent to the state. And even those who object to the state's existence have the moral duty to comply with, and the right to receive the protection of the state.⁸⁸ So Nozick is of the view that a state like entity would emerge by morally permissible ways even if anarchists are opposed to it. And the minimal state is the result of free and natural interaction of individuals.⁸⁹

Therefore, Nozick's overall argument is that the minimal state would arise by means of an invisible hand process.⁹⁰ The minimal state does not violate anybody's rights. In fact the minimal state does not possess any coercive power. The state has no power to interfere in individuals' rights. It is because, Nozick argues, "the rights possessed by the state are already possessed by each person in a state of nature." These rights are not provided to them by anyone. And the state has no special rights of its own.⁹¹ Most importantly, Nozick argues that the minimal state does not possess any distributive functions. The minimal state only limited functions which are not based on redistributive principles. Nozick argues that "the minimal state remains as the most extensive state that can be justified."⁹² Such a minimal state is compatible with the entitlement theory of justice. Since the minimal state does have distributive functions, the entitlement theory of justice does not have any problem with the minimal state. The fact that the minimal state has limited functions like "protection against force, theft, fraud, enforcement of contracts," etc. cannot interfere in the process of the

⁸⁷ The similar argument that Nozick is a natural rights theorist is also expressed by Jeffrey Paul. See for details, Jeffrey Paul, "The Withering of Nozick's Minimal State," in *Reading Nozick*, ed. Jeffrey Paul (England: Basil Blackwell, 1981), 68.

⁸⁸ See Wolf, *Robert Nozick*, 72.

⁸⁹ Gerald Gaus rightly explains Nozick's stand against the anarchists' view. According to him, what Nozick tries to demonstrate is that the political can arise without manifest rights violations, and that the realm of the political is not essentially unjust. The political is the natural result of free and normal human interaction. See Gerald Gaus, "Explanation, Justification, and Emergent Properties: an essay on Nozickian Metatheory," in *The Cambridge Companion to Nozick's Anarchy, State, And Utopia*, eds. Ralf M. Bader and John Meadowcroft (Cambridge: Cambridge University Press, 2011), 128-29.

⁹⁰ As David Miller argues that what Nozick believes is that the minimal state can be legitimate because it arose from a pre-political state of nature in morally permissible ways without anyone intending to create a state. See David Miller, "The Justification of Political Authority," in *Robert Nozick*, ed. David Schmidtz (Cambridge: Cambridge University Press, 2002), 18.

⁹¹ See Nozick, *Anarchy, State, And Utopia*, 118.

⁹² *Ibid.*, 274.

entitlement theory of justice. So the entitlement theory of justice can be realized with the presence of the minimal state. The minimal state does not clash with the principles of justice in holdings. One obvious reason why Nozick develops the entitlement theory of justice is to reject the idea that any theory of justice requires a more extensive robust state. According to Nozick, an entitlement theory of justice does not require any more extensive state.⁹³ And for Nozick, the minimal state is suitable for the framework for utopia. Utopia means an ideal place in which everyone is free to pursue his own conception of the good life without any external imposition.

To sum up, the entitlement theory of justice propounded by Nozick is about recognizing individuals' entitlement of holdings. According to the entitlement theory of justice, there is no role for the state to interfere with the holdings of the individuals. The state cannot take up any welfare programme by distributing the resources of the individuals. The entitlement theory espouses the idea that any action by the state or authority that is against individuals' holdings is not justified. Nobody including the state has the right to take any holdings from any person without his consent. In this sense, Nozick's theory of justice underlines individual liberty.⁹⁴ Nozick also emphasises the utmost importance of having one's free will and one's desire to live oneself in the real sense. To illustrate this point, Nozick gives the example of "experience machine." The experience machine is a much discussed example of Nozick.⁹⁵ What the experience machine says is that there is a machine that would give all the desired experiences that one wishes to have in life. Given a choice, Nozick argues that people would not plug into this machine for life because this is just an experience, but not the real. The experience machine detaches one from the real world. Individuals want to control over their lives, not being dictated by a machine. Plugging to this machine would mean that this machine is doing all for us, and we are not doing ourselves. According to David Schmidtz, Nozick's argument is that most people would not plug in the machine because plugging into the experience machine would mean missing the actual meaning of life. Since plugging in the machine mean missing one's actual activity, this also would mean missing one's meaning of

⁹³ Ibid., xi.

⁹⁴ G. A. Cohen also expresses his view that Nozick "proposes a definition of justice in terms of liberty." See G. A. Cohen, "Robert Nozick and Wilt Chamberlain: How Patterns Preserves Liberty," *Erkenntnis* 11, no. 1 (1975): 5.

⁹⁵ There are some interpretations on Nozick's example of the experience machine. One interpretation is that Nozick uses this example to refute utilitarianism. Another interpretation says that Nozick uses this to rebut ethical hedonism. Fred Feldman also explores four different possible reasons behind Nozick's invoking the experience machine. See for details, Fred Feldman, "What We Learn from the Experience Machine," in *The Cambridge Companion to Nozick's Anarchy, State, And Utopia*, eds, Ralf M. Bader and John Meadowcroft (Cambridge: Cambridge University Press, 2011), 64.

life.⁹⁶ Thus, Nozick tries to show the importance of having one's free will through the experience machine. Moreover, the entitlement theory of justice does not propound any egalitarian principle. Nozick's idea is that human beings are different by nature and there has to be natural differences in society.⁹⁷ The entitlement theory of justice does not approve any state sponsored welfare measures for the poor in society. Since the entitlement theory of justice is opposed to the idea of distribution, it obviously rejects any kinds of distributive policies. However, Nozick is not against any voluntary charity or donations of the affluent class to help the needy in society. It is for such views that Brian Barry heavily criticises Nozick. According to Brian Barry, Nozick's theory of justice suggests the idea that the state has no business to look after the poor, the sick, the old, the disabled and so on. They must be left at the mercy of private charity or those who are willing to help them. Brian Barry calls Nozick's such ideas as outrageous.⁹⁸

Robert Nozick's Interest in the Idea of Justice

Like many scholars who have presented their ideas of justice, Nozick has also taken interest on the idea of justice and expressed his theory of justice. There are some reasons that mould Nozick's interest on the idea of justice. It would be worth examining the reasons behind Nozick's interest in propounding the entitlement theory of justice.

1. Influence of Libertarian Ideas:

One important reason for Nozick's having interest on the idea of justice is his belief in libertarian ideas. Libertarianism refers to the idea of unhindered individual liberty, free will and limited state that does not violate individuals' rights. Libertarianism advocates individuals' free will and it is opposed to any kind of "determinism."⁹⁹ It is the core belief of the libertarians that each person has the freedom to do as he chooses provided he does not

⁹⁶ David Schmidtz, "The Meanings of Life," in *Robert Nozick*, ed. David Schmidtz (Cambridge: Cambridge University Press, 2002), 210.

⁹⁷ David Middleton remarks that Nozick does not favour egalitarianism because egalitarians are committed to take from the well off illegally to improve the condition of the poor in society. See for details David Middleton, "Searching for Justice," in *Living Political Ideas*, eds. Geoff Andrews and Michael Saward (Edinburgh: Edinburgh University Press, 2005), 107.

⁹⁸ See Brian Barry, "A Review of *Anarchy, State, And Utopia* by Robert Nozick," *Political Theory* 3, no. 4 (August, 1975): 331-32.

⁹⁹ Michael A. Principe defines libertarianism as a philosophical position that defends the idea of free will against determinism. See Michael A. Principe, "Libertarians," in *Encyclopedia of Activism and Social Justice*, eds. Gary L. Anderson and Kathryn G. Hern (Thousand Oaks, London: Sage Publications, 2007), 858.

infringe upon the rights of others.¹⁰⁰ Generally, libertarians believe that justice exist in a free market where individuals exchanges their goods and services voluntarily. Libertarians do not believe that any extensive state and its policies would bring justice in society. For libertarians, the conception of justice carries no meaning without individual liberty.¹⁰¹ Libertarian idea of justice is vehemently opposed to any type of coercions. The libertarian idea of justice emphasises on the primacy of property rights. The libertarian idea of justice does not support the idea of distribution of property. Moreover, libertarian concept of justice does not favour any kind of governmental welfare measurers in society against individuals' will. Libertarians hold the belief that the free market is inherently just, and justice exists in a free society. There is no doubt to say that Nozick's idea of justice is how libertarians describe about justice. Some libertarian thinkers have influenced Robert Nozick.¹⁰² One prominent libertarian thinker whose idea of justice has influenced Nozick is Friedrich A. Hayek. F. A. Hayek is of the view that in a society of free man, the concept of social justice is meaningless.¹⁰³ In a society of free man, the position of persons and groups are not determined by anybody. Any differences in rewards of people's effort cannot be described as just or unjust. Hayek' idea is that if individuals depend much on government, the government will aim to distribute goods and resources in the name of social justice. And as the result, it will be closer to a totalitarian system.¹⁰⁴ Hayek argues that conception of social justice is developed today to be imposed upon society.¹⁰⁵ So, social justice is not social in the real sense. The distribution involved in social justice requires all resources to be allocated by a central authority. So Hayek rejects the idea of social justice as mirage. In fact, Hayek's argument is that efforts of individuals are guided by their own views about prospects and chances. There is no question of justice or injustice in the result of their efforts. The idea of

¹⁰⁰ John Hospers describes libertarianism as "the philosophy of personal liberty—the liberty of each person to live according to his own choices, provided that he does not attempt to coerce others and thus prevent them from living according to their choices." See James P. Sterba, *Justice For Here and Now* (Cambridge, UK: Cambridge University Press, 1998), 41. See also, John Hospers, *Libertarianism* (Los Angel: Nash, 1971), 5.

¹⁰¹ Libertarians give primary importance to individual liberty. Libertarians are for the promotion of individual liberty. It is in this context that scholar like James Sterba argues that libertarians consider themselves to be the defenders of individual liberties. See James Sterba, "Libertarianism," in *Encyclopaedia of Philosophy*, 2nd ed., ed. Donald M. Borchert (New York: Thompson Gale, 2006), 334.

¹⁰² Libertarians are broadly classified into two groups. One group is right libertarians who hold the idea that natural resources are initially unowned and man can appropriate it without anybody's consent. The other is left libertarians who hold the view that natural resources are already owned and appropriation is legitimate only with other's consent. See, Peter Vallentyne, "Libertarianism," in *The Social Science Encyclopedia*, 3rd ed., eds. Adam Kupur and Jessica Kupur (London: Routledge, 2009), 578.

¹⁰³ See F. A. Hayek, *Law, Legislature and Liberty: The Mirage of Social Justice*, vol. 2 (London: Routledge, 1976), 68.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid., 78.

justice does not require any government to determine and provide conditions of people's lives equally for all.¹⁰⁶ Like Hayek, Nozick opposes the idea of distribution by any authority in society. Nozick argues that the idea of distribution is not neutral. Nozick strongly propound the idea that people do not need any state to distribute their resources. In a free society, persons own their resources. Individuals must be left with their holdings. Another prominent libertarian thinker who influenced Nozick is Murray N. Rothbard.¹⁰⁷ Nozick himself admits the fact that it is Murray Rothbard who stimulated his interest in "individualist anarchist theory." But it cannot be clearly established whether Murray Rothbard influenced Nozick on the idea of justice or vice versa. However, we still find some similarities in their ideas of justice. Murray Rothbard believes that it is natural law and natural right which define what is just and unjust.¹⁰⁸ Rothbard argues that the state is not compatible with the idea of justice. For Rothbard, "the state is nothing but a band of robbers without justice."¹⁰⁹ Individuals in society earn their income by selling goods and services, but the state obtains its revenues in the form of taxation by coercion. Like the robber, the state demands tax from people. According to Rothbard, "taxation is theft." Taxation is compulsory seizure of the property of individuals.¹¹⁰ Further, Rothbard is of the view that a theory of justice must be beyond government allocations of property rights. Rothbard outlines two fundamental premises for a theory of justice in property rights. One is the right of self ownership which is about the "absolute property of each individual in his own body." The other is called homestead principle which is about the "absolute right in material property of the person."¹¹¹ So, these two fundamental premises of a theory of justice in property rights suggest that man must own his body as well as material objects for his use.¹¹² Like Rothbard, Nozick is against any more extensive state. Nozick disapprove of any robust state. It is because such a state is not required in any society. Nozick also criticise the taxation system. Nozick's idea is that in a free society, people flourish with their holdings through voluntary exchanges. Nozick strongly defends the notion of self ownership.

¹⁰⁶ See F. A. Hayek, *The Constitution of Liberty* (London: Routledge, 1999), 99.

¹⁰⁷ It is observed that Murray Rothbard belongs to the school of "Anarcho-Capitalism." Anarcho-capitalism or libertarian anarchism holds the view that the state has no legitimate role at all and private firms can manage all in society.

¹⁰⁸ See Murray N. Rothbard, *Ethics of Liberty* (New York: New York University Press, 1998), 12.

¹⁰⁹ *Ibid.*, xix.

¹¹⁰ *Ibid.*, 162.

¹¹¹ See Murray N. Rothbard, *Egalitarianism as a Revolt Against Nature and Other Essays* (Auburn: Ludwig Von Mises Institute, 1974), 96-7.

¹¹² *Ibid.*, 99.

Thus, it is not wrong to say that Nozick's theory of justice is a libertarian justice. Nozick propounds his theory of justice from the libertarian point of view. Like many of the libertarian thinkers, Nozick also describes his theory of justice that mainly concerns about holdings, that is, the private property rights. Nozick also expresses his displeasure with the idea of a powerful state as such a state is likely to meddle with Individuals' holdings. Moreover, Nozick may have differences with some of the ideas expressed by F. A. Hayek and Murray Rothbard, but it cannot be ruled out that Nozick was influenced by these prominent libertarian thinkers besides others.

2. Disapproval of the Idea of Distributive Justice:

Nozick's strong disapproval of the idea of distributive justice is one of the foremost reasons behind his propounding the entitlement theory of justice. In other words, Nozick's attempt to justify his disapproval for the idea of distribution constitutes one major reason behind Nozick's interest in the idea of justice. Nozick's argumentation is that true justice does not call for any distributive activities by any agency. As a matter of fact, Nozick is quite against the idea of distributive justice. Nozick's point is that justice is to do with recognizing people's rights to holdings and their rights to self-ownership. He does not approve of the idea of taking away property from people and distribute it according to some pattern. Distribution of people's holding by state or some authority for other purpose amount to violation of individuals' rights. This is precisely the reason why Nozick has disagreement with the account of distributive justice. Nozick claims that "the term distributive justice is not a neutral one."¹¹³ For Nozick, the idea of distributive justice is not neutral and it is quite misleading. Moreover, Nozick argues that idea of distributive justice implies that holdings are to be distributed by the state or some central authority. It also presupposes the idea that income, wealth or social resources are to be distributed in society. However Nozick's point is that things are already entitled to persons and they cannot be redistributed. Holdings are already attached to individuals and they are not available for any distribution. Since persons labour to produce, they have the absolute rights over them and therefore they are entitled to their products. So no agency or authority has the right to take away their holdings. The idea of distribution also undermines separateness of human beings. It is because the idea of distributive justice implies the meaning that all persons are equally to benefit from any social

¹¹³ See Nozick, *Anarchy, State, And Utopia*, 149.

distribution.¹¹⁴ Nozick refutes any socialist ideas of distributive principles that aim to bring equality in society. Nozick's argument is that justice can be achieved without any distributive process. Further, Nozick does not believe in the view that distribution of income, wealth and opportunities is related to justice. Nozick rejects the idea that distribution will ensure justice in society. For Nozick, there is no guarantee that the result of distribution in society will generate justice. In other words, Nozick argues that any distributive process cannot establish justice in society because the act of distribution itself violates individual's rights. Thus in order to justify his rejection of the idea of distributive justice, Nozick propounds his theory of justice. The basic thrust of entitlement theory of justice is opposed to the idea of distribution. It does not advocate about bringing equality in society. Nozick's belief is that in a free society individuals will own different resources. Others also will get benefits from person's private property. Hence, Nozick argues that a proper theory of justice is the principles of justice in holdings. And such a theory of justice does not call for any kind of distribution. The entitlement theory of justice rejects any idea of distribution.¹¹⁵

3. Disagreements with Distributive Theories of Justice:

Another reason behind Nozick's interest on the idea of justice can be Nozick's criticism of existing distributive theories of justice. Since Nozick has serious disagreements with the idea of distribution, obviously he has problems with other distributive theories of justice. Nozick argues that all distributive theories advocate some principles for the distribution of resources. They have patterned principles through they aim to distribute wealth and resources in society. Distributive theories of justice are not consistent with individual liberties. It is because when these distributive theories attempt to maintain a pattern they try to interfere with individuals' liberty. At the same time individuals' liberty will also upset pattern principles. This means that people's liberty to choose as they want will also destroy any patterns.¹¹⁶ Thus, patterned principles of distributive justice and personal liberty will always be at odds with one

¹¹⁴ According to David Schmidtz, Nozick's argument is that the idea of distributive justice poses a bias against respecting the separateness of persons. This idea leads people to think of goods as having distributed by some mechanism for which all are responsible. But Nozick refutes of having such mechanism and such responsibility. See David Schmidtz, "History and Pattern," in *Natural Rights Liberalism From Locke to Nozick*, eds. E. F. Paul, F. D. Miller and J. Paul (Cambridge: Cambridge University Press, 2005), 163.

¹¹⁵ Julian Lamont is of the view that Nozick's conception of justice does not favour any government measures to improve peoples' lives. Its stand is that even aids to the less fortunate must be based on the voluntary actions of individuals. See, Julian Lamont, "Distributive Justice," in *Handbook of Political Theory*, eds. Gerald F. Gaus and Chandran Kukathas (London: Sage Publications, 2004), 228.

¹¹⁶ See Nozick, *Anarchy, State, And Utopia*, 163.

another.¹¹⁷ To illustrate this point, Nozick gives his famous “Wilt Chamberlain example” in which he shows how millions of fans break pattern by exercising their liberty. Besides, Nozick argues that proponents of distributive justice do not take historical accounts about the rise of holdings. They only focus on the criteria for distribution of holdings. Distributive theories of justice enforce distributive activities. And the implementation of patterns often requires taxation from people. But for Nozick, taxation is involuntary and it violates individuals’ liberty.

Then Nozick propound his theory of justice that can be an alternative to the distributive theories of justice. The idea is that since Nozick bitterly opposes other distributive theories of justice, his task is to present an alternative theory of justice that can provide some merits to his criticisms of distributive theories of justice. Nozick claims that the entitlement theory of justice is both historical and unpatterned. It is historical as it regards the historical background as crucial to arrive at whether a distribution is just or not. According to the entitlement theory of justice, holdings are justified in accordance with the three principles of justice in holdings. Any holding that does not conform to any of the three principles cannot be just. Unlike end state principle, the entitlement theory of justice does not prescribe any patterned principles. The entitlement theory of justice does not justify any distribution in society which is against individuals’ consent. According to Nozick, holdings come into existence with entitlement attached to individuals.¹¹⁸ Apart from this, Nozick also claims that the entitlement theory of justice emphasises on the importance of individuals’ liberty. The entitlement theory of justice does not have any scope for others to interfere in people’s lives.

4. Nozick’s View on the State:

Another most significant factor that draws Robert Nozick’s interest to the idea of justice is his views on the state.¹¹⁹ First of all, Nozick is opposed to any more extensive state. Nozick is of the argument that a more extensive state is so pervasive. It is redistributive in nature. Nozick objects any such claim that says that the state is everywhere and it regulates people’s

¹¹⁷ As Derek L. Phillips points out, Nozick’s arguments is that end state and patterned principles of distributive justice can only be achieved by a continuous interference with people’s lives. This is the weakness of such theories. See Derek L. Phillips, “Robert Nozick’s Anarchy, State, and Utopia,” in *Theory and Society* 3, no. 3 (Autumn, 1976): 452.

¹¹⁸ See Nozick, *Anarchy, State, And Utopia*, 160.

¹¹⁹ In fact, Hiller Steiner is of the view that Nozick’s account of the entitlement conception of just holdings ‘occupies a central position in his definition of, an argument for, minimal state.’ See for details Hillel Steiner, “Nozick on Appropriation,” *Mind* LXXXVII, issue, 1 (Basil Blackwell, 1978): 109.

lives.¹²⁰ Nozick does not approve of the multiple functions of the state permeating the private and public lives of individuals. Nozick is of the view that the ideas of state endorsed by some liberal thinkers are distributive in character with unlimited powers. Therefore, in Nozick's view, the modern states are so interfering and overreaching. Such a more extensive state is not compatible with the entitlement theory of justice. It is because such a powerful state performs several functions which are quite paternalistic and redistributive in the name of justice. He argues that "taxation of earnings from labour" is one fine example of how a more extensive state forces people to pay a portion of their earnings in the name of promoting justice. This, in Nozick's view, is a sheer violation of individuals' rights by the state. In this sense, Nozick does not support any welfare states measures.

However, Nozick justifies the minimal state. For Nozick, the minimal state is not a paternalistic state. The minimal state has very limited functions. The minimal state does not violate rights of individuals and therefore it is morally right. Nozick says, "Our main conclusions about the state are that a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate person's not to be forced to do certain things, and is unjustified; and that the minimal state is inspiring as well as right."¹²¹ Moreover, Nozick argues that the minimal does not have any power of its own that can interfere in individuals' rights. The rights of individuals are not given by the minimal state. So, there is no question of the minimal state taking away individuals' rights.¹²² Nozick argues that the 'rights possessed by the state are already possessed by each individual in the state of nature.' Since the minimal state has no special rights, it cannot infringe individual rights.¹²³ And unlike a more extensive modern state, the minimal state is not redistributive.¹²⁴ The minimal state does not compel some people to pay tax for others' purposes. Besides, Nozick also gives an interesting account of the origin of the minimal state. Nozick is of the opinion that the "state can arise

¹²⁰ Nozick rejects any idea that state is everywhere. Therefore, Nozick rejects the view that we find in David Held's book which expresses that 'the state-or apparatus of government appears to be everywhere, regulating the conditions of our lives from birth registration to death certification.' See for details David Held, *Political Theory and the Modern State* (Cambridge: Polity Press, 1984), 11.

¹²¹ See Nozick, *Anarchy, State, And Utopia*, ix.

¹²² Samuel Scheffler argues that Nozick's minimal state is built on the foundation of individuals rights. See Samuel Scheffler, "Natural Rights, Equality, and the Minimal State," in *Reading Nozick*, ed. Jeffrey Paul (Oxford: Basil Blackwell, 1981), 151.

¹²³ See Nozick, *Anarchy, State, And Utopia*, 118. See also James S Coleman, "Robert Nozick's Anarchy, State, and Utopia," *Theory and Society* 3, no. 3 (Autumn, 1976): 448.

¹²⁴ According to Geoffery Sampson, Nozick's view is that the night watchman state is non distributive and reasons for this are not discussed by earlier liberal thinkers. See Geoffery Sampson, "Liberalism and Nozick's Minimal Sate," *Mind* LXXXVII, issue, 1 (Basil Blackwell, 1978): 93.

without violating rights of individuals". Nozick argue that the minimal state originates with a series of steps. In each of the transitional phase, the minimal state does not circumscribe the rights of individuals. Nozick describes the stages of the evolution of the minimal state. First from state of nature, mutual protective associations will emerge. From mutual protective associations, a dominant protective association will come. Then from a dominant protective, an ultra-minimal association will emerge. And finally from an ultra-minimal state, a minimal state will come to exist. Nozick's point is that a minimal state would arise from anarchic state of nature without anyone trying to or intended to create it. This process is what Nozick calls as invisible hand process. And the functions of the minimal state are so limited that it is compatible with the entitlement theory of justice.

Thus, Nozick's account of the state can be a reason for his interest on the idea of justice.¹²⁵ It is because Nozick strongly believes that an extensive modern state is not compatible with the rights of individuals. As a result such an overreaching state cannot stand with entitlement theory of justice. However, Nozick justifies the minimal state is because it can go along with theory of justice in holdings. In one sense, Nozick's contestation is that all the distributive theories of justice seek some justifications for any more extensive state. But Nozick tries to show that a correct theory of justice in holdings does not require such a powerful state. The entitlement theory of justice requires only a minimal state. A minimal state cannot come on the way of the entitlement theory of justice.¹²⁶

5. Defence of Individual Rights and Self Ownership:

Another aspect that engrosses Robert Nozick's interest in the idea of justice is his defence of individual rights and "self-ownership." For Nozick, individual rights and the notion of self-ownership are so important that they are the backbone of the entitlement theory of justice. The entitlement theory of justice looks hollow without the inalienable individual rights and right to self-ownership. With his thesis of individual rights and the notion of self-ownership, Nozick expounds the autonomy of individuals which is again the foundation of his theory of

¹²⁵ Robert Nozick, however, does not give a proper definition of state though. It is not very clear whether he endorses the idea of Max Webber who treats state "as having a monopoly on the use of force in a geographical area, a monopoly incompatible with private enforcement of rights, as crucial to the existence of a state." See, Max Webber, *Theory of Social and Economic Organization* (New York: Free Press, 1947), 156.

¹²⁶ However, a point must be clear that Nozick is not at all against the state per say. He only objects to the oversize powerful state. Nozick is in favour of the minimal state. And this is the point where Nozick differs from anarchists.

justice.¹²⁷ Nozick's theory of justice does make any sense without the primacy given to individual rights and self-ownership.

Nozick holds the concept of right as the most important aspect of human beings. In Nozick's words, "Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do. How much room do individual rights leave for the state?"¹²⁸ Nozick's view is that rights are not violable. Rights are not given to individuals. Rights come to individuals naturally. Rights are natural. So rights cannot be overridden by anybody. Any violation of rights is not justifiable. Even the state has no power to interfere in individual rights. According to A. R. Lacey, Nozick holds the belief that each individual is a separate individual with inviolable rights to live as he chooses, provided only that he respects the similar rights of other individuals.¹²⁹ Moreover, individual rights act as the moral side constraints. The idea of moral side constraints says that there is protected space around the individual that cannot be encroached. This means individual rights are morally inviolable. And nobody can transgress this boundary.¹³⁰ Moreover, Nozick's view is that respecting individual's rights means respecting individuals' innate capacity to choose their lives. And not respecting their right means undermining their capacity to shape their life. No authority, no state can override individual's rights as doing so would amount to violating their autonomy.¹³¹ For a meaningful life, rights of individual must not be constrained for any purpose. In fact, individual rights must not be coerced. Any form of coercion and individual rights do not go together. The notion of coercion essentially goes against the individual rights. So, individuals should be left to themselves to decide as they choose. Even the free market economic system must be left to individuals.

¹²⁷ Similar views are also expressed by Ron Replogle. Ron Replogle argues that Nozick presents his entitlement theory of justice in holdings as a strict implication of the right-thesis and its most plausible explanation. See, Ron Replogle, "Natural Rights and Distributive Justice: Nozick and the Classical Contractarians," *Canadian Journal of Political Science* 17, no. 1 (March, 1984): 66.

¹²⁸ See Nozick, *Anarchy, State, And Utopia*, ix.

¹²⁹ See A. R. Lacey, *Robert Nozick* (Chesham: England, 2001), 20.

¹³⁰ In this regard, Samuel Scheffler rightly explains that for Nozick, an individual's rights define a moral boundary around the person. These boundaries constrain the permissible behaviour of every agent. See for details, Samuel Scheffler, "Natural Rights, Equality, and the Minimal State," in *Reading Nozick*, ed. Jeffrey, Paul (England: Basil Blackwell, 1981), 150.

¹³¹ As Randy E Barnett says, Nozick analogizes rights to a sort of boundary which circumscribes an area in moral space around individual. See Randy E Barnett, "Wither Anarchy? Has Robert Nozick Justified the Sate?" *Journal of Libertarian Studies* 1 (1977): 1.

Along with right, the idea of self ownership suggests that each individual is master of his own body. Each human being has the complete ownership of oneself.¹³² This conveys the idea that since one is the absolute owner of one's body, all the products generated by it also belongs to him. No one has any right to interfere in one's rightful ownership. Nozick's notion of self-ownership also underlies the idea that "individuals are ends in themselves"; they can never be treated as means. In this sense, Nozick subscribes to Immanuel Kant's idea. According to Kant, "Man, and in general every rational being, exists as an end in himself, not merely as a means for arbitrary use by this or that will: he must in all his actions, whether they are directed to himself or to other rational beings, always be viewed at the same time as an end."¹³³ Moreover, the notion of self ownership indicates the idea that individuals have the complete property rights which is essential to make their lives meaningful. Nozick's notion of self ownership essentially refers to one's body and therefore one's property rights. In this aspect, Nozick's view is slightly similar to that of John Locke. For Locke, "Every man has a property in his own person. This nobody has any right to but himself. The labour of his body and the work of his hands, we may say, are properly his."¹³⁴ Apart from this, idea of 'consent' has a significant place in Nozick's idea of self-ownership. Any act done to individuals without their consent cannot be considered legitimate. Therefore any exchange between persons based on their mutual consent is right.

Thus, we can argue that Nozick's ideas of individual rights and self-ownership are integral aspects of his entitlement theory of justice. Nozick's notion about the inviolability of individual rights and self-ownership provides a foundation on which the entitlement theory of justice is developed. This means when Nozick argues that rights are inviolable, it means the entitlement theory of justice cannot be violated. When Nozick argues in terms of holdings in his theory of justice, it basically means the basic individuals' rights and self ownership. Similarly, when Nozick is speaking about the individual rights and self-ownership, he is speaking about the individuals' rights to private property. Therefore, without the strong and

¹³² Richard J. Arneson explains that Nozick's notion of self ownership is 'the claim that each human adult person initially has full ownership rights over herself and no one initially has any property rights in any other person. Owning oneself means one is free to do with oneself whatever one chooses so long as one does not harm others in certain ways.' See for details, Richard J. Arneson, "Self Constraints, Lockean Individual Rights, and the moral basis of Libertarianism," in *The Cambridge Companion to Nozick's Anarchy, State, and Utopia*, eds. Ralf M. Bader and John Meadowcroft (Cambridge: Cambridge University Press, 2011), 23-4.

¹³³ See Immanuel Kant, *Groundwork of the Metaphysics Morals*, translated by H. J. Paton as *The Moral Law* (London: Hutchinson, 1956), 95.

¹³⁴ See John Locke, "An Essay Concerning the True Original, Extent and End of Civil Government," in *Social Contract Essay by Locke, Hume and Rousseau* (Oxford: Oxford University Press, 1974), 17.

inviolable notion of individual natural rights and self ownership, Nozick's entitlement theory of justice stands without foundation.

6. Criticisms of Rawls's Theory of Justice:

Nozick's challenge to "John Rawls's theory of justice" can be another reason behind Nozick's interest on the idea of justice. Nozick has thrown some basic challenges against Rawls's theory of justice. First of all, Nozick challenges Rawls's idea that the total output in society is the product of social cooperation and it must be distributed. But Nozick's argument is that the total output cannot be necessarily the result of social cooperation. Therefore, it cannot be available for any distribution.¹³⁵ Nozick's argument is that a person gets less than what he would get working separately. Even if persons in society cooperate, they work separately. And they are entitled separately. Moreover, Nozick argues that Rawls's scheme of social cooperation does not specify any process about persons' entitlement. Thus, Rawls has not clearly addressed the question of how joint social products are to be distributed equally among all.¹³⁶ Nozick argues that Rawls's difference principle does not act as a neutral principle between the worst endowed and the better endowed. The difference principle is designed in a way that ensures that "the less well endowed" ends up in getting more than "the better endowed." Nozick's argument is that the goods produced by the better endowed cannot be used to improve the situation of the less endowed in society. Nozick points out that there is no reason why the better endowed would not complain when they are required to get less than they would get to ensure that the less well off gets more.¹³⁷ Therefore, Nozick questions how the better endowed would accept the difference principle in the original position. Moreover, Nozick is of the opinion that Rawls' principles of justice cannot be universally applicable as they fail to apply to micro-situations. Rawls' principles of justice are to apply to the "basic structure of the society" only. Rawls's theory ignores the significance of parts in society. Besides, Nozick rejects Rawls's view that natural endowments and assets are "arbitrary from a moral point of view." Nozick argues that Rawls completely ignores how persons have developed their natural assets. Rawls has not examined how people have put their effort to

¹³⁵ David Green rightly explains Nozick's view on this aspect. David Green argues that, for Nozick, cooperation consist of a sequence of exchange, and ensuing total output is wholly accidental. This total product is not common property available for distribution. See David G Green, *The New Right* (Sussex: Wheatsheaf Books, 1987), 49.

¹³⁶ See Nozick, *Anarchy, State, And Utopia*, 186.

¹³⁷ See Robert Nozick, "Distributive Justice," in *Readings in Social and Political Philosophy*, ed. Robert M. Stewart (New York: Oxford University Press, 1986), 233.

improve their assets. Thus Rawls's view seeks to compromise the autonomy of individuals.¹³⁸ And it is in his aspect that Nozick argues that Rawls's views run against his own theory. On the one side, Rawls criticizes utilitarian theory for not taking the distinctions between individuals seriously; on the other side, Rawls firmly states that natural talents and abilities of individuals are "arbitrary from the moral point of view."¹³⁹ But for Nozick, people own their natural endowments and they produce goods by freely exercising their labour. Therefore they are entitled to the fruits of their labour.

Nozick's primary attempt is to dissect the inadequacies in Rawls's theory and argue that the entitlement theory of justice can be more practical than Rawls's theory. Nozick's point is that Rawls's theory of justice is not feasible from the practical point of view. At the same time, Nozick intends to argue that the entitlement theory of justice is more applicable than Rawls's. Nozick argues that the entitlement theory of justice does not propose the need for any social cooperation. The three principles of justice in holdings specify the clear process about holdings. None of the principle specifies any process which may undermine the separateness of persons. Under the entitlement theory of justice, talents and abilities of persons are considered as an asset to whole community. Nozick argues that everyone gets benefit from it. The entitlement theory of justice does not advocate the idea of distribution. And any transaction between persons in a free society is based on their voluntary exchange. Moreover, the entitlement theory of justice does not require any extensive state. But Rawls's theory would require a bigger state that would intervene in people's lives.

7. Rejection of Utilitarianism:

Nozick's stand against utilitarianism constitutes one of the reasons behind Nozick's having interest on the idea of justice. Nozick's view is that individuals are ends in themselves. They are not merely means to others' ends. Individual rights and liberties cannot be compelled to sacrifice for achieving the greater ends of society. This is in this aspect where Nozick rejects utilitarian thinking. Nozick opposes the utilitarian idea of justice which strongly subscribes to the idea that any actions, policies, programmes, governmental works, steps and institutions etc are to be assessed in accordance with the degree to which they result in maximising the

¹³⁸ See Nozick, *Anarchy, State, And Utopia*, 214.

¹³⁹ According to Rainer Forst, Nozick criticizes Rawls's view of regarding natural talents and assets as common assets as un-Kantian and in essence utilitarian; because, according to difference principle, persons with certain special talents are to be treated as "a means to the end of social equality." See, Rainer Forst, *Contexts of Justice* (London: University of California Press, 1994), 14.

overall happiness or well being. According to utilitarianism, justice of an action or policy is judged in terms of extent to which they maximise the overall happiness of society. For Nozick, utilitarian principle compromises individual rights. Nozick argues that utilitarianism does not take individual rights properly and it “instead leaves them as a derivative status.”¹⁴⁰ Further, Nozick argues that utilitarianism does not take the point that individuals are separate. Individuals are different having their own individual lives. Sacrificing some people for the good of others means disrespecting their separate individuality. Nozick refutes utilitarian assumption that society is a social entity. So Nozick argues, “But there is no social entity with a good that undergoes some sacrifice for its own good. There are only individual people, different people, with their own individual lives. Using one of these people for the benefit of others uses him and benefits the others. Nothing more. What happens is that something is done to him for the sake of others. Talk of an overall social good covers this up. (Intentionally?) To use a person in this way does not sufficiently respect and take account of the fact that he is separate person, that his is the only life he has.”¹⁴¹ So, nobody including government should force individuals to sacrifice for any social purpose. Moreover, Nozick argues that utilitarian justice does not consider the historical accounts of holdings while distributing goods. For a utilitarian principle, any distribution that produces greater happiness is more just than the one that is likely to produce less happiness in society. In cases where there is no difference between two distributions, then the one that is likely to produce more equality will be considered just. In this context, D. D. Raphael argues that, for utilitarians, justice of any distribution is determined according to the extent of general utility and sometimes equality.¹⁴²

Thus, Nozick’s point is that utilitarianism essentially presupposes an idea of compromising the rights of some individuals for the greater utility of others.¹⁴³ And with his rejection of such a utilitarian premise, Nozick’s tries to propound a theory of justice that can effectively counter utilitarianism. Nozick states that the entitlement theory of justice respects the “separateness of persons.” Contrary to what the utilitarianism stands, the entitlement theory of justice does not treat individuals as means. It does not prescribe any principle that aims at

¹⁴⁰ See Nozick, *Anarchy, State, And Utopia*, 28.

¹⁴¹ *Ibid.*, 32-3.

¹⁴² See D. D. Raphael, *Concepts of Justice* (Oxford: Oxford University Press, 2001), 215.

¹⁴³ An interesting observation can be made regarding Rawls’s and Nozick’s approach towards utilitarianism. The slight difference between them is that while Rawls not only criticized utilitarianism but also admitted that his aim is to provide an alternative to it; Nozick did not claim that his aim is to present an alternative to utilitarianism. Nozick gave the reasons for his rejection of utilitarian thinking.

utilising individuals for the benefit of others. And Nozick's standpoint is that the good of someone cannot be sacrificed for the good of others.

To sum up this section, several factors moved Nozick to take his interest on the idea of justice. Some of the notable reasons are his vehement objections to some of the existing ideas or theories. Nozick's attempt to present that his theory of justice would be more practical than those of which he tries to reject constitutes a major reason behind his interest on the ideas of justice. And some of the ideas which Nozick defends form the reasons behind his interest on justice. It can be also observed that the reasons discussed above are interrelated to one another. All these reasons form the theoretical framework of Nozick's idea of justice. One can also notice how Nozick effectively constructs these theoretical aspects to underpin the entitlement theory of justice.

Robert Nozick's Reactions to John Rawls's theory of Justice

Robert Nozick expresses both his appreciation and disagreements with John Rawls's theory of justice. Appreciating Rawls's theory, Nozick says "*A Theory of Justice* is a powerful, deep, subtle, wide-ranging, systematic work in political and moral philosophy. It is a foundation of illuminating ideas, integrating together into a lovely whole. Political philosophers now must either work within Rawls' theory or explain why not. And moreover, it is impossible to finish his book without a new and inspiring vision of what a moral theory may attempt to do and unite; of how beautiful a whole theory can be."¹⁴⁴ Then Nozick expresses a series of disagreements with some of the basic arguments that Rawls made in his theory of justice. In the process, Nozick points out some of the inadequacies in Rawls' theory of justice and argues how the entitlement theory of justice can be more effective.

The first reaction of Nozick is with regard to Rawls's idea of social cooperation. Rawls's idea is that a "society is a cooperative venture for mutual advantage" and social cooperation makes possible a better life for all than individuals would have if each were to live solely by his own effort. Nozick rejects Rawls's idea of social cooperation. Nozick argues that for Rawls the problem of distributive justice is how the "benefits of social cooperation are to be distributed" in society.¹⁴⁵ According to Nozick, this problem can be interpreted in two ways. One is how the larger total sum is to be allocated, and other is how the incremental amount

¹⁴⁴ See Nozick, *Anarchy, State, And Utopia*, 183.

¹⁴⁵ *Ibid.*, 184.

due to social cooperation, that is, the benefits of social cooperation to be allocated. But Rawls is concerned with the first formulation only, that is, how the “total sum is to be distributed” without even distinguishing these two interpretations of the problem. Rawls did not address the second formulation. But these two formulations of problems are different. Nozick argues that when combined with the noncooperative distribution of the sum total of what each individual gets acting separately, a “fair looking distribution” of the benefits of social cooperation under the second version may not yield a “fair looking distribution” of a larger sum total.¹⁴⁶ Nozick’s point is that a fair looking distribution of a larger sum total by cooperation may give a particular individual less than his due share, that is, the sum total of what he gets acting separately. This means in a fair looking social cooperation, person may get less than what he must get when acting independently. Therefore, Nozick argues that the idea of social cooperation Rawls propounds has a problem of distributive justice. However, Nozick argues that in a social noncooperation situation, each individual gets what he deserves. Individuals are entitled to what they get by their own efforts. And no one can claim of justice against their holdings. So, in noncooperation situation, it is clear “who is entitled to what,” and there is no requirement for any theory of justice.¹⁴⁷ In fact, Nozick’s argument against Rawls’s idea of social cooperation is that it does not make it clear as who is entitled to what. Social cooperation makes a situation in which individual’s entitlement of holdings is messed up. Nozick says, “On this view social cooperation introduces a muddying waters that makes it unclear or indeterminate who is entitled to what.”¹⁴⁸ So, Nozick suggests that the entitlement theory of justice is the correct one that is exercised in a noncooperative situation. Nozick further argues that individuals who produce independently in the non cooperation situation will not make claims of justice on each other.¹⁴⁹ This means in non cooperative situations any claim of justice would have no merit. In non cooperative situations, individuals get what they deserve and they are clear about their entitlements.

Nozick argues that Rawls’s concept of distributive justice has a serious problem that Rawls has not addressed. Nozick’s point is that everyone contributes differently in a social cooperation. But it is difficult to distinguish the contributions of different individuals who cooperate. Every product in the social cooperation is considered to be the product of everyone’s joint product. Then, each person has an equal claim in the joint product. But the

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid., 185-86.

¹⁴⁹ Ibid., 185.

persisting problem is how the total product of joint social cooperation is to be divided equally among all. This is the problem of distributive justice that Rawls does not address.¹⁵⁰ On the contrary, Nozick argues that in a different kind of social cooperation which is based on division of labour, specialization, comparative advantages, and exchange, each individual works independently to produce. They cooperate but work independently. In such kind of social cooperation, people make voluntary exchanges with others. Everyone has the freedom to do transaction with others based on their mutual consent. And every product of persons is distinct. There does not arise the question of how things are to be distributed.¹⁵¹

The second reaction of Nozick is about Rawls's idea on inequality. Rawls's claim is that "inequalities are justified if they serve to improve the position of the worst off group in society." Nozick's argument is that such "serviceable inequalities" would require "incentives" to certain people to perform various activities. But Nozick's question is to whom the incentives are to be paid and for which activities.¹⁵² Going by Rawls ideas, if all product are jointly produced, then it is not clear to whom certain incentives are given. Even it could not be known to who the incentives are to be given. It is not clear whether the provision of incentives is efficient or not.¹⁵³ In other words, it cannot be also clear how far incentives are effective. Nozick observes that Rawls ignores such basic aspects. For Nozick, inequalities are needed to fill positions that everyone cannot equally do.¹⁵⁴ Inequality is there in society. Individuals have different capacity and they perform different activities. Everyone cannot do all activities with equal efficiency. According to Nozick, Rawls fails to acknowledge this.

The third reaction of Nozick is about Rawls's "difference principle." Rawls's difference says that any social and economic inequalities are justified if it is to the benefit of "the least advantaged in society." Nozick's question is why Rawls's difference principle focuses on particular groups. Nozick asks "why individuals in the original position would choose a principle which focuses upon groups, rather than individuals."¹⁵⁵ The difference principle is concerned with the least advantaged in society. It excludes other groups in society. Nozick argues, "To be sure, this principle would reduce questions of evaluating social institutions to the issue of how the unhappiest depressive fares. Yet avoiding this by moving the focus to

¹⁵⁰ Ibid., 186.

¹⁵¹ Ibid.

¹⁵² Ibid., 188.

¹⁵³ Ibid., 188-89.

¹⁵⁴ Ibid., 188.

¹⁵⁵ Ibid., 190.

groups (or representative individual) seems adhoc, and it inadequately motivated for those in the individual position. Nor is it clear which groups are appropriately considered; why exclude the group of depressives or alcoholics or the representative paraplegic?¹⁵⁶ Rawls's difference principle does not give equal emphasis to all sections of society. Therefore, Nozick argues that the difference principle is not neutral between the worst endowed and the better endowed.¹⁵⁷ Even Nozick asserts that the better endowed and the worst endowed gain more by cooperating within their respective groups. But in the case of general cooperation between these two groups, the less well endowed certainly gain more than the better.¹⁵⁸ Besides, Nozick argues that Rawls's idea that goods produced by the well endowed must be used to improve the situation of the least advantaged goes against individual's self ownership. In this sense, the difference principle carries a sense of imposing constraints upon voluntary social cooperation in the name of fairness. The difference principle also ensures that "those already benefiting most from the general cooperation benefit even more."¹⁵⁹

Further Nozick questions Rawls's argument that the less well off should not complain at receiving less as inequality works in their advantages.¹⁶⁰ Nozick contests this view by arguing that Rawls fails to show that the better endowed man has every reason to complain about it. Nozick is of the opinion that the better endowed persons have clear reasons to complain about it. It is because the difference principle is designed to benefit the worst off group more in society. However, Nozick suggests that the better endowed persons would be better off under the entitlement theory of justice. So, the better endowed person may dispute the difference principle as it is unfair to them. And the difference principle favours the worst off.¹⁶¹ In addition to all, Nozick argues that the difference principle treats things to be falling from heaven like manna. It does not consider that about the entitlement attached to things. Persons in the original position will "treat anything to be distributed as manna from heaven."¹⁶² And the persons in the original position could not agree to any historical principle. Moreover, Nozick argues that the nature of the original position limits parties to the

¹⁵⁶ Ibid.

¹⁵⁷ Ibid., 192-3.

¹⁵⁸ Ibid., 195-97.

¹⁵⁹ Ibid., 194-95.

¹⁶⁰ Ibid., 195.

¹⁶¹ According to Jonathan Wolf, what Nozick argues is that the difference principle is biased in favour of the worst off. See Wolf, *Robert Nozick*, 120.

¹⁶² See Nozick, *Anarchy, State, And Utopia*, 198-99.

end state principles of distribution.¹⁶³ Any historical principles are not allowed to be considered in the original position. So, Nozick says, “The self-interested persons evaluate any non-state principle on the basis of how it works out for him; his calculation about any principle focus on how he ends up under the principle.”¹⁶⁴ Therefore, Nozick argues that Rawls’ theory is not capable of generating an entitlement or historical conception of distributive justice.¹⁶⁵ It is because if historical principles are considered, they will produce a result which is opposite to what Rawls tries to get. So in the whole process of selecting the principles of justice, it is presupposed that no historical principle is correct.¹⁶⁶ But Nozick wonders why parties in the original position will not consider the principles of the entitlement theory as one of the alternatives.

The fourth reaction is about the two principles of justice which Rawls argues that the “parties in the original position” will choose. Rawls’s idea is that the principles of justice are to be applied only to the major social institutions. They are to apply to the “basic structure of the society.” So Rawls’s idea is that they are not meant to apply in every situation. However, Nozick has a serious problem with this condition. Nozick argues that “microsituations” are also significant in society. Nozick argues, “Since we may have weak confidence in our institutions and judgements about the justice of the whole structure of society, we may attempt to aid our judgement by focussing on microsituations that we do have firm grasp of.”¹⁶⁷ So Nozick argues that Rawls’s principles of justice are not correct as they fail to apply to micro-situations. Nozick’s argument is that Rawls’s principles cannot ignore the small parts of the society. Sometimes small parts produce great results. The idea of whole structure is a complex one. It is made up of small parts. And Nozick argues that “the justice of a whole society may depend on its satisfying a number of distinct principles.”¹⁶⁸ Therefore, Nozick questions as to on what grounds the principles of justice need to apply only to the

¹⁶³ In John Meadowcroft words, Nozick’s argument is that Rawls’ idea of people in the original position choosing the principles of justice to arrange their society is “an artefact of a series of unjustified and often implicit assumption within Rawls’s world.” See for details, John Meadowcroft, “Nozick’s Critique of Rawls: distribution, entitlement, and the assumptive world of *A Theory of Justice*,” in *The Cambridge Companion to Nozick’s Anarchy, State, And Utopia*, eds. Ralf M. Bader and John Meadowcroft (Cambridge: Cambridge University Press, 2011), p. 181.

¹⁶⁴ See Nozick, *Anarchy, State, And Utopia*, 201.

¹⁶⁵ *Ibid.*, 202.

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*, 204.

¹⁶⁸ *Ibid.*, 205.

fundamental institutions of a society. But Nozick argues that one reason for discounting microsituations is because microsituations have particular entitlements built into them.¹⁶⁹

In addition, Nozick argues that Rawls's theory of justice itself describes "a process with a result."¹⁷⁰ Nozick argues that Rawls "does not present a direct deductive argument for his two principles of justice from other statements that entail them."¹⁷¹ This means that Rawls does not elaborate the clear deductive argument of arriving at the two principles of justice. But what Rawls did is to specify a process and argued that any principles that would emerge from that situation would constitute the principles of justice. Therefore, Nozick argues that Rawls's theory is an end state theory.¹⁷² On the contrary, Nozick argues that entitlement theory specifies a process for generating sets of holdings. The principles of justice in acquisition, the principle of transfer, and the principle of rectification underlie this process. These three principles of justice in holdings are "process principles." They are not end-state principles of distributive justice. It is because they specify an ongoing process. They do not specify any external patterned criterion they must meet.¹⁷³ Therefore, Nozick's point is that the two principles of Rawls's theory of justice are not process principles.¹⁷⁴

The fifth reaction is with regard to Rawls's formulation of moral development in a "well ordered society" for realizing the "principles of justice as fairness." Rawls sketches out some stages. In the first stage, persons who are raised in "a well ordered society" will develop "a sense of justice" and a particular psychology. In the second stage, persons have the psychology and a sense of justice. Then, the task for these persons is to choose principles which will govern the society they are to live in. But in this context, Nozick's question is whether the principles chosen in the second stage will be the same principles as chosen in the first principle. If the principles chosen in the second stage turn out to be different from the principles of the first stage, then what kind of principles will be chosen in the succeeding stages of the original position. In fact, Nozick raises doubts whether person in the succeeding

¹⁶⁹ Ibid., 206.

¹⁷⁰ Ibid., 207.

¹⁷¹ Ibid.

¹⁷² Ibid., 208.

¹⁷³ Ibid.

¹⁷⁴ As Derek L. Phillips rightly points out, Nozick's argument is that Rawls's theory of justice ignores the matters of entitlements. As the result, Rawls's theory of justice violates people's rights, and therefore it cannot be morally justified. See for details, Derek L Phillips, "Robert Nozick's Anarchy, State, and Utopia," *Theory and Society* 3, no. 3 (Autumn, 1976): 451.

stages will choose the same principles that Rawls argues persons will choose in the original position of the first stage.¹⁷⁵

The sixth reaction of Nozick is all about Rawls's views on natural endowments and assets. Rawls is of the view that "natural endowments and assets are arbitrary from a moral point of view" as natural talents and abilities have been developed over time by social circumstances and such contingencies are "just accident and good fortune." Nozick rejects Rawls's views on natural endowments and assets. Nozick criticizes Rawls on the ground that he fails to mention how persons have put their effort to develop their natural assets. For Nozick, some people work hard to develop their natural assets. They develop all their natural endowments further. And therefore they deserve to get the result of their effort. Therefore, it cannot be claimed that natural endowments are "arbitrary from the moral point of view." But some people do not improve their natural assets. They simply do not utilise their endowments at all. Therefore, Nozick's argument is that those work hard to improve their abilities must get greater reward than those who simply waste their abilities.

Nozick also argues that Rawls's view of looking at natural endowments and assets to be arbitrary from a moral point of view undermines the autonomy of a person. Nozick argues, "This line of argument can succeed in blocking the introduction of a person's autonomous choices and actions only by attributing everything noteworthy about the person completely to certain sorts of external factors. So denigrating a person's autonomy and prime responsibility for his action is a risky line to take for a theory that otherwise wishes to buttress the dignity and self respect of autonomous beings; especially for a theory that founds so much upon person's choices."¹⁷⁶ Nozick contests Rawls on the ground that Rawls's own theory has some similar features with the utilitarian position which Rawls himself criticizes. Further, Nozick argues that there is a self contradiction within two of Rawls's assertions. One is with regard to the difference principle that represents the idea that of regarding natural talents as a common asset and to share them to benefits everybody. The other is his criticism of the utilitarianism that it does not take seriously the "distinctions between persons." Now the problem is while Rawls criticizes utilitarian theory for not taking the distinctions of individuals seriously, Rawls also firmly states that natural talents and abilities of individuals are "arbitrary from the moral point of view" and they are to be distributed. According to

¹⁷⁵ See Nozick, *Anarchy, State, And Utopia*, 212.

¹⁷⁶ *Ibid.*, 214.

difference principle, Rawls advocates the distribution of natural assets in society. This means Rawls's not speaking in the tone that recognizes individuals own natural talents and natural endowments as their own. Instead Rawls is suggesting these natural assets to be distributed so that everyone will get benefit. This is the self contrast to Rawls's own arguments against the utilitarianism.¹⁷⁷ Moreover, Nozick rejects Rawls difference principle for the fact that it undermines the "separateness of persons." The difference principle requires the well off persons to sacrifice some of their benefits for the less well off in society. As a result Rawls's theory may end up with unfair result. But contrary to what Rawls thinks about the natural talents and abilities of individuals, Nozick argues that "persons' talents and abilities are an asset to a free community" and these are beneficial to all in society. Everyone gets benefit out of others' talents. People's talents not only benefit themselves but also everyone in society. In Nozick's words, "People's talents and abilities are an asset to a free community; others in the community benefit from the presence and better off because they are there rather than elsewhere or nowhere. Life, over time, is not a constant-sum game, wherein if greater ability or efforts leads to some getting more, that means that others must lose. In a free society, people's talents do benefit others, and not only themselves."¹⁷⁸ Finally, Nozick charges that Rawls's conception of justice simply underlies the deep notion of envy.¹⁷⁹

To sum up, the argument that Nozick puts forward is that Rawls's theory of justice has several shortcomings. It is not a complete theory of justice. Rawls's theory of justice is not capable of yielding process principles of justice. It is because Rawls's theory of justice does not consider the importance of entitlements and it is developed with a result. Rawls's theory cannot be a universal theory. It does not provide a comprehensive framework of justice that can apply to every situation. Nozick further argues that Rawls's theory is an end state principle. It is not a historical principle as it does not consider the historical account of the holdings of individuals. Rawls's theory regards things as manna from heaven. It does not fully recognise natural liberty as it advocates the idea that individuals' natural endowment and assets are arbitrary from a moral point of view. Therefore, Rawls's theory of justice is not morally justifiable. Most importantly, Nozick's argument is that Rawls's formulation of the

¹⁷⁷ According to Samuel Scheffler, what Nozick suggests is that Rawls could avoid this tension by placing an implausible degree of weight on the distinction between persons and their talents. See for details, Samuel Scheffler, "Rawls and Utilitarianism," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), 440.

¹⁷⁸ Nozick, *Anarchy, State, And Utopia*, 228.

¹⁷⁹ *Ibid.*, 229.

theory of justice would require a powerful state that will have distributive functions.¹⁸⁰ Such a robust state will encroach on individuals' rights. Therefore, Nozick is of the view that a just society cannot be simply designed or imposed as Rawls conceptualizes in his theory of justice.

¹⁸⁰ As Chandran Kukathas and Philip Pettit point out, Nozick's objection is that if Rawls's theory is to regulate society, it will have the intolerable effect of requiring the state to interfere continually in people's lives. See Chandran Kukathas and Philip Pettit, *Rawls* (Stanford: Stanford University Press, 1990), 88.

Chapter 4

The Ideas of John Rawls and Robert Nozick on Justice: A Comparative Study

While comparing the ideas of Rawls and Nozick on justice, we need to specify some of the fundamental dimensions. For the purpose of comparison, the following dimensions are looked into: justice as fairness and entitlement theory of justice; Rawls and Nozick on the idea of distributive justice in realizing justice; Rawls and Nozick on the role of the state in promoting justice; Rawls and Nozick on the notion of social cooperation and justice; and Rawls and Nozick on individual rights and liberties.¹

Justice as Fairness and Entitlement Theory of Justice

A comparative study of Rawls's "justice as fairness" and Nozick's "entitlement theory of justice" may be carried out by dividing the discussion into three parts. The basic difference between Rawls and Nozick on their ideas of justice is examined first. This is followed by a comparative analysis between Rawls's two principles of justice presented in his theory of justice and the three principles of justice that Nozick invokes in his theory of justice. Further, we explore the asymmetrical stands between Rawls and Nozick on the question of the "difference principle."

(I) Rawls looks at his idea of "justice as fairness." For Rawls, the basic idea in the concept of justice is fairness. Rawls conceptualizes his theory of justice with the description of the background conditions that require the establishment of certain "set of principles" that will determine the agreements for the proper distribution in society. Rawls's argument is that "society is a cooperative venture for mutual advantage" and individuals realize better lives through social cooperation.² In society, there are conflicts of interest among individuals as there are no criteria for sharing the benefits of social cooperation that would be regarded as fair. Everyone in society prefers to get the larger share in the distribution of benefits of social cooperation. Rawls argues that such a circumstance requires a certain "set of principles" that

¹ This comparative study is being carried out between Rawls's idea of justice as propounded in *A Theory of Justice* and Nozick's idea of justice as expounded in *Anarchy, State, and Utopia*. While Rawls has reformulated some of his ideas on justice in his subsequent works, Nozick had not come back substantially on the idea of justice in his later books. Nozick defended his position of not returning to this subject by arguing that he has other philosophical questions to ponder over. Interestingly Nozick expressed his views in his book *Socratic Puzzles*, "I did not want to spend the rest of my life writing 'The Son of Anarchy, State, and Utopia,' 'The Return of the Son of ...,' etc." See Robert Nozick, *Socratic Puzzles* (Cambridge: Harvard University Press, 1997), 2.

² See John Rawls, *A Theory Of Justice* (Universal Law Publishing Co. Pvt. Ltd: New Delhi, 2010), 4.

will set the “fair terms” for the distribution of shares in society. Then Rawls describes a hypothetical situation in which the principles of justice will be chosen. Rawls argues that individuals who are free and rational will be situated in an initial situation of equality which he terms as “the original position.”³ In such an “initial situation,” parties who are to choose the principle of justice are not aware of certain information like their natural contingencies about themselves. The logic behind such restrictions to parties in the initial situation is to ensure that nobody is in the advantageous position in choosing the principles of justice. It is because if any individual is allowed to possess any knowledge about himself, for instance, his natural endowment, he will definitely choose the principles that will suit his own interest. And the result will be that the principles of justice chosen would not be considered as fair to everyone. Therefore, Rawls’s argument is that since parties are in the similar situation, the principles of justice would be chosen after a fair agreement. Since no party in the initial situation of equality has any scope to choose the principles in their own favour, everyone will naturally choose the set of principles that will be in the interest of everyone in society. And the resulting principles of justice will be considered as fair. Thus, Rawls argues that the process in which the principles of justice will be chosen is fair.⁴ But it must be noted that Rawls does not argue that justice is similar with fairness. Rawls says, “It might seem at first sight that the concept of justice and fairness are the same, and that there is no reason to distinguish them, or to say that one is more fundamental than the other. I think that this impression is mistaken.”⁵ Rawls’s point is that the idea of justice can be conceptualized “from the point of fairness.” So Rawls calls his idea of justice as fairness. Rawls constructs a theoretical framework through which he tries to conceptualize the idea of justice in terms of fairness.⁶ Rawls’s basic argument is that a set of principles will be required in society to solve the problem of distribution in society. Then the set of social principles that will be chosen in the initial position by free and rational persons will be fair principles. Rawls argues that this process of choosing the principles of justice would be regarded as fairness. It is because individuals who are to choose the principles of justice are free and equal. They are not forced

³ According to Ian Adams and R.W. Dyson, what Rawls argues is that individuals are to devise the kind of society into which they might wish to move on leaving behind the original position. See Ian Adams and R.W. Dyson, *Fifty Great Political Thinkers* (London: Routledge, 2004), 221.

⁴ In this regard, Rawls remarks, “The question of fairness arises when free persons, who have no authority over one another, are engaging in a joint activity and among themselves settling or acknowledging the rules which define it and which determine the respective shares in its benefits and burdens.” See John Rawls, “Justice as Fairness,” in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 59.

⁵ *Ibid.*, 47.

⁶ However, Rawls also argues that the concepts of justice and fairness have a common element. Both the concepts contain the sense of reciprocity. See John Rawls, “Justice as Reciprocity,” in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 190.

to choose the principles in the process. They choose the principles among themselves. In Rawls words, “A practice will strike the parties as fair if none feels that, by participating in it, they or any of the others are taken advantage of, or forced to give in to claims which they do not regard as legitimate. This implies that each has a conception of legitimate claims which he thinks it reasonable for others as well as himself to acknowledge.”⁷ Therefore, “farness” that Rawls conceptualizes in his theory of justice can be understood in three aspects.⁸ One is that the process of choosing the two principles of justice would be considered as fair. It is because every free and rational person in the initial status has equal rights and liberties to take part in choosing the principles. Another aspect is that “the content of the two principles of justice” would be regarded as fairness because “parties in the original position” choose the principles that do not result in compromising anybody’s interest. And when these principles apply to the major social institutions in society, the outcome would be to the interest of everyone in society. Then the major institutions that function according to the two principles of justice will be regarded as fair.

On the other hand, Nozick develops a conception of justice which is about “holdings.” In other words, Nozick’s theory of justice is about holdings. Nozick’s idea of holdings refers to individuals’ goods and private property.⁹ According to Nozick, justice is about respecting individuals’ right to hold property. Nozick’s conception of justice means non infringement in individuals’ rights to their holdings. In this regard, Adam Swift clearly argues that Nozick’s theory of justice is about “respecting people’s right to self ownership, and their right to hold property, leaving them free to decide for themselves what they do with what is theirs.”¹⁰ Nozick’s basic argument is that individuals have the legitimate claims over their holdings. Nobody has any right to interfere in the holdings of individuals. Nozick calls his theory of justice in holdings as the entitlement theory of justice.¹¹ This means, for Nozick, the idea of entitlement constitutes an intrinsic part of his theory of justice. In fact, Nozick’s theory of justice is concerned about just holdings in society. For Nozick, what constitutes just holdings

⁷ See Rawls, “Justice as Fairness,” 59.

⁸ In this regard, D. D. Raphael also expresses the view that Rawls applies the term fairness both to “the content of his conception and to his method of reaching it.” See for details, D. D. Raphael, *Concepts of Justice* (Oxford: Oxford University Press, 2001), 197.

⁹ According to Peter Singer, Nozick uses the term holdings to describe the ‘goods, money, and property of all kinds that people have.’ See Peter Singer, “The Right to be Rich or Poor,” in *Reading Nozick*, ed. Jeffrey Paul (Oxford: Basil Blackwell, 1981), 40.

¹⁰ See Adam Swift, *Political Philosophy* (Cambridge: Polity Press, 2006), 30.

¹¹ Entitlement theory of justice is the name of the theory of justice that Nozick presents. According to Jeffrey Paul, Nozick develops a conception of justice which he calls as the entitlement theory. See Jeffrey Paul, “Introduction,” *Reading Nozick*, ed. Jeffrey Paul (Oxford: Basil Blackwell, 1981), 1.

is determined by three sets of principles: “justice in acquisition,” “justice in transfer” and “rectification of injustice in holdings.”¹² Any set of holdings is not just if they are not conforming to these principles of justice in holdings. And any holdings are just if they are in accordance with these principles of justice. Therefore, one cannot arrive at a just set of holdings from an unjust set of holdings. Moreover, Nozick argues that his theory of justice is historical principle of justice. The entitlement theory of justice considers historical account about holdings seriously. It seriously takes into account the historical process of “how a holding arises.” According to the entitlement theory of justice, historical facts about how an individual comes to acquire certain holdings are crucial. The entitlement theory of justice does not consider that any principle or structure is required to determine individuals’ holdings.¹³ And the entitlement theory of justice is not patterned principle. It is because the entitlement theory of justice does not specify any natural dimension to determine the holdings of individuals. What is important for the entitlement theory of justice is whether individuals are entitled to their holdings according to the “principles of justice in holdings.” Thus, justice for Nozick is a matter of respecting individuals’ right to hold holdings.¹⁴ Nozick develops his theory of justice within a libertarian framework. Like other libertarian thinkers who uphold the importance of private property rights, Nozick also conceptualizes his theory of justice based on individuals’ entitlement to their holdings.

Rawls’s theory of justice underscores the “fair procedure” of choosing the principles of justice. Rawls emphasises the manner in which the principles of justice are chosen by the free and rational persons in a hypothetical choice situation. For Rawls, agreement about the principles of justice among persons who are to choose the principles justice is crucial. And Rawls’s argument is that principles chosen would be regarded as fair by everyone. On the contrary, Nozick’s theory of justice is not about choosing certain principles of justice that will determine the just conditions of distribution or social cooperation. Nozick does not see the need to depend on any specific procedures for arriving at any specific principles of justice. Nozick’s theory of justice is not concerned with agreeing to any principles of justice which would be considered as acceptable to everyone. Nozick’s theory is concerned about

¹² See Robert Nozick, *Anarchy, State, And Utopia* (New York: Basic Books, 1974), 153.

¹³ As Jonathan Wolf rightly explains that for Nozick, justice of a person’s holdings is not determined by that person’s needs or merit. It is determined by facts about how the holdings are obtained in a just manner. See Jonathan Wolff, *Robert Nozick: Property, Justice and the Minimal State* (Cambridge: Polity Press, 1996), 9.

¹⁴ Peter Vallentyne also argues that for Nozick, ‘justice of a state of affairs is a matter of whether individuals have a right to their holdings, that is, the objects in their possession.’ See Peter Vallentyne, “Nozick’s libertarian theory of justice,” in *The Cambridge Companion to Nozick’s Anarchy, State, And Utopia*, eds. Ralf M. Bader and John Meadowcroft (Cambridge: Cambridge University Press, 2011), 151.

individuals' rights to their holdings. Nozick's entitlement theory of justice does not develop any hypothetical situation to arrive at the principles of justice.¹⁵ Further, Nozick also argues that Rawls develops his theory of justice based on some assumptions that eventually result in fulfilling Rawls's desired outcome. This means Rawls develops his theory of justice by conceiving a process with a result. Thus, Nozick argues that Rawls's theory of justice undermines the importance of the entitlement theory.¹⁶

In Rawls's idea of justice, "the basic structure of society" is the inextricable part. By the basic structure of society, Rawls means "a society's main political, social, and economic institutions, and how they fit together into one unified system of social cooperation from one generation to the next."¹⁷ For Rawls, "the primary subject of justice is the basic structure of society." This is because the effects of the basic structure of society to individuals are so profound and present everywhere. The basic structure of society defines men's rights and duties and influences their life prospects. Contrary to what Rawls propounds; Nozick does not provide any significant place for the "basic structure of society" in his entitlement theory. This means, for Nozick, there is no role for "the basic structure of society" concerning justice in holdings. It is because, Nozick believes, the main institutions of a society have very limited functions in determining justice in holdings. All that is significant is whether any holding is arrived in conformity with the principles of entitlement theory. Interestingly, it is also in this context that Rawls explicitly stated in his later works that libertarianism is "an unreasonable doctrine because it does not take the basic structure as the subject of justice."¹⁸

¹⁵ As Onora O'Neill a rightly points out, Nozick's entitlement theory of justice does not "specify just distribution by giving a rule for the size of individual shares, or by stating a mandatory profile or range of profiles for the pattern made by the sizes of individual shares." But it "specifies just distribution by listing procedures by which individuals may justly acquire title to particular resources." Thus Nozick calls it the entitlement theory. See Onora O'Neill, "Nozick's Entitlement," in *Reading Nozick*, ed. Jeffrey Paul (Oxford: Basil Blackwell, 1981), 307.

¹⁶ As John Meadowcroft explains, what Nozick argues is that Rawls' theory of justice is the product of a series of assumptions that frame the question of justice in a way that produces Rawls's desired outcomes. Rawls's theory of Justice is one which only time slice or end result principles of justice of the kind preferred by Rawls could possibly emerge. And Rawls's idea of justice precludes historical or entitlement principles of justice. See John Meadowcroft, "Nozick's critique of Rawls," in *The Cambridge Companion to Nozick's Anarchy, State, And Utopia*, eds. Ralf M. Bader and John Meadowcroft (Cambridge: Cambridge University Press, 2011), 194.

¹⁷ According to Rawls, the "basic structure of society" broadly consists of political constitution, independent judiciary, legal system, forms of government, recognized forms of property, structure of economy, competitive market, and family in some form. Interestingly, Rawls opines that family is a part of the basic structure of society. But while the principles of justice do not directly apply to the internal life of the family, they impose certain constraints in the family. For instance, the family cannot violate basic rights and liberties of its members. The principles of justice apply to other associations like universities, churches, professional associations, scientific associations, business firms, labour unions, public organizations etc. But they do not apply to the "internal life" of them. For details, see Rawls, *Justice As Fairness*, 162-65.

¹⁸ See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 262-65.

In Rawls's theory of justice, "the original position" plays a very significant role. Rawls's idea is that in "the original position," the parties do not know any particular facts about themselves in society. The "veil of ignorance" ensures that the parties in the original position choose the principles of justice that favour everyone. For Rawls, the idea of "the original position" is important because it provides the conditions in which parties will choose the principles of justice that will be regarded as fair. The "original position" provides the conditions for arriving at the fair principles of justice. Rawls's idea is that if persons are not deprived of specific information about themselves, chances of arriving at principles of justice that would be considered as fair are shallow. Moreover, Rawls's theory of justice is a kind of a "social contract theory." Rawls says that "in justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract."¹⁹ Justice as fairness is constructed on the line of a contract theory.²⁰ On the contrary; Nozick does not invoke any idea of initial choice situation like "the original position" to choose any principles of justice. In Nozick's theory of justice, individuals are not required to come together and choose the principles of justice in holdings. Therefore, Nozick does not consider "the original position" as a required device for his theory of justice. In fact, Nozick has strong disagreements with Rawls's idea of "the original position" and "veil of ignorance." Nozick's point is that if individuals possess natural rights, then a veil of ignorance cannot arbitrarily deprive individuals of their natural rights for the sake of choosing the principles of justice.²¹ Nozick does not believe that individuals would voluntarily give up their natural rights in the "original position." Nozick questions as why individuals in the "original position" would end up by choosing the "two principles of justice." Further, Nozick argues that any principles of justice that would be chosen in the original position cannot be considered fair. It is because what individuals in the "original position" do is to choose the principles that will distribute individuals' resources or wealth in society. In this aspect, Samuel Freeman rightly explains that, for Nozick, there is nothing fair about a contract that forces people to choose

¹⁹ See Rawls, *A Theory Of Justice*, 12.

²⁰ Regarding Rawls's social contract, Ronald Dworkin is of the view that Rawls' contract is hypothetical. Rawls's hypothetical contract is not a contract. Dworkin argues that hypothetical reasons cannot be the reason to justify the fairness of the contract. "Hypothetical contracts do not supply an independent argument for the fairness of enforcing their terms." See Ronald Dworkin, "The Original Position," in *Reading Rawls*, ed. Norman Daniels (Oxford: Basil Blackwell, 1975), 17-8.

²¹ In this regard, James S. Coleman rightly explains Nozick's position. He argues that Nozick's argument is that "if persons are to be regarded as beginning with a set of natural rights, then theoretical consistency does not permit arbitrarily depriving them of those rights by a veil of ignorance when they make a constitutional choice. For Nozick, if a social contract were to be made, it could be only made by a set of persons naturally endowed. It is because, each could anticipate by his endowments what position in society he would find himself in." See James S. Coleman, "Robert Nozick's Anarchy, State, and Utopia," *Theory and Society* 3, no. 3 (Autumn, 1976): 442.

redistributive principles that jeopardize their pre-existing property rights. Samuel Freeman further argues that, for Nozick, property rights are pre social and that distributive justice is established by non cooperative principle.²² In addition to this, Nozick is not regarded to be a social contract theorist. Nozick is regarded as a “natural rights theorist.”²³ Nozick gives utmost importance to individuals’ rights which cannot be violated. Nozick does not invoke the need to enter to any kind of social contract in his theory of justice.²⁴

(II) According to Rawls, “two principles of justice” would be chosen by individuals in the “original position.” They are: “each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all,” “social and economic inequalities are to be arranged so that they are (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.” The first principle implies that individuals in a just society are to have the similar basic rights to the certain basic liberties. Certain “basic liberties” are all required to be equal by the first principle. For Rawls, the basic liberties are ‘freedom of thought and liberty of conscience; political liberties and freedom of association, as well as the rights and liberties specified by the liberty and integrity of the person; and finally the rights and liberties covered by the rule of law.’²⁵ The second principle contains two parts. According to “the difference principle,” all “social primary goods—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least advantaged.”²⁶ And the “just saving principle” says that each generation must save some suitable amount of “real capital accumulation” for the future. The “Fair equality of opportunity” means that offices and positions must be open to everyone in society.²⁷ This means all the positions of authority and offices in society must be made

²² See Samuel Freeman, *Rawls* (London: Routledge, 2007), 142-43.

²³ Similar view is expressed by Jeffrey Paul. See Jeffrey Paul, “The Withering of Nozick’s Minimal State,” in *Reading Nozick*, ed. Jeffrey Paul (Oxford: Basil Blackwell, 1981), 68. David Middleton is also of the view that Nozick is not a social contract theorist, but he is a state of nature theorist. See, David Middleton, “Searching for Justice,” in *Living Political Ideas*, eds. Geoff Andrews and Michael Saward (Edinburgh: Edinburgh University Press, 2005), 107.

²⁴ John Rawls in *Political Liberalism* states that Nozick’s view is not a social contract theory. It is because ‘social contract theory envisages the original compact establishing a system of common public law which defines and regulates political authority and applies to everyone as citizens. Both political authority and citizenship are to be understood through the conception of the social contract itself.’ See details, Rawls, *Political Liberalism*, 265.

²⁵ See Rawls, *A Theory Of Justice*, 61.

²⁶ *Ibid.*, 303.

²⁷ *Ibid.*, 61.

accessible to all. There should not have any discrimination or restrictions to anybody to hold offices and positions in society.

On the other hand, Nozick's entitlement theory of justice consists of three principles. They are: "the principle of justice in acquisition," the principle of justice in transfer," the principle of justice in rectification."²⁸ The first principle is concerned with the conditions under which one can acquire things which are not owned. It deals with the process of how one can appropriate unheld things. The second principle is concerned with the processes of the "transfer of holdings from one person to another." It also deals with the processes of how a person can possess or acquire a holding from another person who holds it. The third principle deals with the "rectification of violations of the first two principles." It is concerned with how past injustices can be rectified. In a nutshell, these principles imply three meanings. First, if a person acquires a holding in accordance with the principle of justice in acquisition, then he is entitled to that holding. Second, if a person who acquires a holding from someone in accordance with the principle of justice in transfer, the he is entitled to the holding. And third, violations of the principles of justice in acquisition and transfer are to be corrected by the principle of rectification. Nozick argues that it can be done by using past information related to previous situations and injustices regarding the holdings.

In the case of Rawls's theory of justice, there is a "lexical ordering" in the principles of justice. The first principle is prior to the second. In the second principle, "fair equality of opportunity" is prior to the "difference principle." This means the prior principles must be fully satisfied first before applying the next principle. Rawls says, "This ordering means that a departure from the institutions of equal liberty required by the first principle cannot be justified by, or compensated for, by greater social and economic advantages. The distribution of wealth and income, and the hierarchies of authority, must be consistent with both the liberties of equal citizenship and equality of opportunity."²⁹ On the contrary, Nozick does not subscribe to the idea of arranging the principles of entitlements in a "lexical order." Nozick does not believe in the idea of giving priority to some principle. In Nozick's view, whether a principle should be prior to another principle is not important. Nozick gives equal importance to all the "three principles of justice in holdings." For Nozick, the three principles of justice in holdings provide the necessary conditions under which an individual is entitled to his holdings. Whether a person is entitled to his holdings are determined by the three principles

²⁸ See Nozick, *Anarchy, State, And Utopia*, 150-53.

²⁹ See Rawls, *A Theory Of Justice*, 61.

of justice in holdings.³⁰ Therefore, Nozick says that “the total set of holdings is just if each person’s holding are just.”³¹

Rawls further argues that two principles of justice match individuals’ “considered judgements” in “reflective equilibrium.” For Rawls, considered judgements are “those judgements in which our moral capacities are most likely to be displayed without distortion.”³² These principles match “considered judgements” because individuals have carefully chosen these principles. They believe that these principles are not likely to be distorted by their own interest. The “reflective equilibrium” is a process in which we can either modify or revise our existing judgements till we reach at the principles that match our considered judgement after reasonable considerations and adjustment with the judgments of others. Rawls’s argument here is that these principles of justice have reached after individuals have weighed various proposed conceptions.³³ Further, Rawls also argues that “the principles of justice are chosen subject to the knowledge that they are to be public.” This means that parties are under the assumption that they are choosing principles for “a public conception of justice.” They are to suppose that everyone will know about these principles which they are choosing. According to Rawls, “The point of the publicity condition is to have the parties evaluate conceptions of justice as publicly acknowledged and fully effective moral constitutions of social life.”³⁴ On the contrary, Nozick does not theorise about how the three principles of justice in holdings are made. Nozick does not describe any process by which these principles are chosen. In fact, Nozick does not envisage any choice condition in order for individuals to be able to arrive in some agreement for the principles of justice in holdings. What Nozick does is that he himself specifies what he considers to be the correct principles of justice in holdings.³⁵ There is no question of individuals coming together to choose the principles of justice. For Nozick, there is no requirement of “publicity” for the principles of justice in holdings. Nozick does not see the need for the public scrutiny of the three principles of justice. Besides, Nozick does not go along with the idea of entrusting some representatives

³⁰ In Nozick’s view, a person’s the entitlement to his holdings is determined in accordance with whether he acquires his holdings either by conforming to the “principle of justice acquisition” or by conforming to the “principle of justice in transfer.”

³¹ See Nozick, *Anarchy, State, And Utopia*, 153.

³² See Rawls, *A Theory Of Justice*, 47.

³³ *Ibid.*, 48.

³⁴ *Ibid.*, 133.

³⁵ In this regard, the argument is that Nozick himself specifies what he considers to be the correct principles of justice in holdings. Likewise, Peter Vallentyne also expresses the view that Nozick invokes an entitlement theory of justice specified by the three kinds of principles. See for details, Peter Vallentyne, “Nozick’s Libertarian theory of justice,” 151.

to choose the principles of justice in society. In short, Nozick does not apply any “hypothetical social contract” to arrive at the correct principles of justice in holdings.

According to Rawls, the “two principles of justice” apply to the “basic structure of society.” And these principles are to govern the “assignment of rights and duties and to regulate the distribution of social and economic advantages.” For Rawls, “the rights and liberties referred to by these principles are those which are defined by the public rules of the basic structure. Whether men are free is determined by the rights and duties established by the major institutions in society.”³⁶ Subsequently, Rawls also sets out a “four-stage sequences” that directs how the principles of justice are to be applied to the basic institutions. On the contrary, Nozick does not advocate the view that the “principles of justice in holdings” are to apply to the major institutions in society. In other words, Nozick does not believe in the idea that the principles of entitlement theory of justice are chosen to apply to any major institutions in society. For Nozick, the principles of entitlement theory of justice are to determine whether any holding of a person is just in accordance with these principles. Nozick says, “the holdings of a person are just if he is entitled to them by the principles of justice in acquisition and transfer, or by the principles of rectification of injustice (as specified by the first two principles).”³⁷ In fact, Nozick outrightly rejects Rawls’s idea that principles of justice apply to “the basic structure of society.” Nozick criticises Rawls’s idea that the primary subject of justice is the “basic structure of society.” Nozick’s argument is that the notion of the basic structure in society is not clear. Rawls is not clear which major institutions in society are to be considered as the basic structure. And without having defined the major social institutions that can be regarded as the basic structure of society, Rawls’s idea of applying the two principles of justice in the basic structure in society sounds hollow.³⁸ Therefore, Nozick does not consider any major institutions in society to be the primary concern of the idea of justice. Moreover, Nozick questions why the principles of justice are to be applied only to “the basic structure of society.” Nozick questions why the principles of justice should not be applied in the “micro situations” of society. Nozick’s argument is that the justice of a whole society may not be realized without taking into consideration the important roles played by distinct principles in society. In order to realize justice of a whole

³⁶ See Rawls, *A Theory Of Justice*, 63.

³⁷ See Nozick, *Anarchy, State, And Utopia*, 153.

³⁸ In this context, what Nozick argues is that Rawls’s concept of the “basic structure of society” is not very clear. Rawls does not explain clearly as what constitutes the “basic structure of society.” Rawls’s does not explain in his theory as to what direct relation the basic structure will have with the lives of individuals or how the basic structure in society will give impacts to individuals.

society, significance of other distinct parts may not be simply ignored. Nozick argues that “distinct principles may yield surprising results when they are combined together.”³⁹ Hence, Nozick argues that any idea of justice must not undermine the distinctive role played by the micro parts of society.

Thus, the basic difference in this aspect is that while the primary concern of Rawls’s theory of justice is “the basic structure of society,” Nozick does not consider the any major institutions in society as the primary focus of his theory of justice. While Rawls’s argument is that the principles of justice apply to “the basic structure of society,” for Nozick, the principles of justice are concerned with the idea of “holdings” in society.

(III) Rawls and Nozick have a series of fundamental disagreements with regard to the “Difference Principles.” For a clear understanding, we shall study this in three parts.

(a) Rawls’s “difference principle” implies the idea that “social and economic inequalities are to be arranged so that they are to the greatest benefit of the least advantaged.”⁴⁰ Rawls’s argument is that “the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society. The idea is that the social order is not to establish and secure the most attractive prospects of those better off unless doing so is to the advantage of those less fortunate.”⁴¹ According to the difference principle, any social and economic institutions are to be arranged so that “the least advantaged” in society get a greater share of benefits from income, wealth, and so on. In simple words, the difference principle requires that any socioeconomic inequalities must be to the greatest welfare of “the worst off group.” This means that socioeconomic institutions are to be designed in a way that would result in benefiting “the least advantaged” in society.⁴² Under Rawls’s difference principle, the most unfortunate group in society are not to be left from getting their share of benefits. And since those naturally advantaged do not deserve to enjoy the fruits of their natural endowments themselves, the less fortunate do equally deserve to the benefits of income, wealth, opportunities and so on.

³⁹ See Nozick, *Anarchy, State, And Utopia*, 204-5.

⁴⁰ For Rawls, the least advantaged are those who belong to the lowest income class, who are not better endowed and who are relatively unlucky and unfortunate.

⁴¹ See Rawls, *A Theory Of Justice*, 75.

⁴² According to Thomas Pogge, Rawls’s difference principle implies the idea that ‘a basic structure that creates socioeconomic inequalities must be to the greatest possible benefits of the lowest socioeconomic position. The basic structure must be such that no practicable alternative design of it would lead to a superior least advantaged socioeconomic position. The difference principle favours those designs of socioeconomic institutions that would produce the best possible worst socioeconomic positions.’ See Thomas Pogge, *John Rawls* (Oxford: Oxford University Press, 2007), 107.

Nozick questions Rawls's rationale behind the difference principle. Nozick questions as to why individuals in the "original position" would choose only the principles that only focus upon particular groups. Nozick question why the "difference principle" should be concerned only with the least advantaged sections in society. Nozick's point is that why the difference principle should not focus on individuals. According to Nozick, the difference principle does not cover groups of "depressives or alcoholics or the representative paraplegic."⁴³ In addition to this, Nozick argues that the difference principle operates with the aim to give the least advantaged more benefits than those who work hard. The difference principle requires that the better endowed are prevented from benefiting more from their efforts unless their work result in improving the condition of the worse off in society. Nozick's argument in this case is that the difference imposes the idea that those who are better endowed must sacrifice some of their income or wealth for the benefit of those who are less endowed in society. And thus, the difference principle denigrates the "separateness of individuals." It is in this context that Nozick argues that Rawls himself fails to provide his theory of justice as an alternative to the utilitarianism. Moreover, one of the fundamental reasons why Nozick opposes to Rawls's difference principle is to do with the idea of "self ownership." The idea of self ownership means one is the owner of one's self and one has the absolute rights to decide with one's life. Richard J. Arneson describes Nozick's idea of self-ownership as "owning oneself including one's body and one is free to do with oneself whatever one chooses so long as one does not harm others in certain ways."⁴⁴ Nozick's basic point is that each individual has a separate life and it cannot be sacrificed for any cause. Sacrificing the right of one person for the sake other persons is never justifiable. Individuals are ends in themselves, but not the mere means to others. It is wrong to use some persons as the resource of other persons. It is because compromising the rights of someone for the sake of greater ends in society implies the idea that such acts undermine the separateness of individuals. So, Nozick argues, "There is no social entity with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefits of others, uses him and benefits the others."⁴⁵ Therefore,

⁴³ One reason why Rawls ignores such groups may be because Rawls wanted to avoid the complexities they would pose in devising his theory of justice. The complexities could be about the finding of solutions to the problems of such groups within his theory.

⁴⁴ See Richard J. Arneson, "Side Constraints, Lockean individual rights, and the moral basis of libertarianism," in *The Cambridge Companion to Nozick's Anarchy, State, And Utopia*, eds. Ralf M. Bader and John Meadowcroft (Cambridge: Cambridge University Press, 2011), 23-4.

⁴⁵ See Nozick, *Anarchy, State, And Utopia*, 32-3. Nozick used this statement to reject utilitarian principle. The same statement is used here to substantiate his difference with Rawls's idea.

Nozick's point is that individuals have separate lives and they must be respected. However, Rawls's difference principle carries the idea of sacrificing some persons' rights for the sake of "the least advantaged in society." According to Nozick, the difference principle stands against the idea of self ownership.

Rawls clearly favours the provisions of "incentives" in relation to the difference principle. Rawls seems to advocate the view that only those incentives that result in benefiting the least advantaged are permitted. Rawls's idea is that incentives can be provided to those better off persons under the condition that those incentive result in improving the positions of the least well off in society. However, Nozick has a different viewpoint about the incentives. Nozick favours "voluntary exchanges" among individuals. According to Nozick, persons perform voluntary transactions with others in society. Nozick is of the view that Rawls is not clear to whom the incentives are to be provided and to which activities, the incentives are to be encouraged. Nozick argues that under Rawls's idea of social cooperation, products are supposed to be jointly produced. But in such circumstance where any product is inextricably joint, it cannot be known who is getting what incentives and how far those incentives are productive or efficient.⁴⁶

Further, Nozick's argument is that Rawls's "difference principle" is a kind of patterned or end-state principle. So, Nozick argues that the difference principle is not likely to be stable. It is because in reality the difference principle is likely to clash with the liberties of individuals. This means people would not accept when being imposed certain principle to share some of their income and wealth for the benefit of the least well off in society.⁴⁷

(b) According to Rawls's difference principle natural assets and talents are regarded to be common assets and the benefits from them are to be shared. Rawls says that the "difference principle represents an agreement to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be."⁴⁸ Rawls further claims that "Those who have been favoured by nature may gain from their good fortune only on terms that improve the situation of those who have lost out. The naturally advantaged are not to gain merely because they are more gifted, but only to cover the costs of

⁴⁶ Ibid., 188-89.

⁴⁷ Allen Buchanan also points out that Nozick's view against Rawls's difference principle is that it is liable to a "fundamental instability." It is because individuals' freedom to transfer goods to one another would lead to deviate from the difference principle. Any transfer of goods could interfere with the establishment required by the difference principle. See Allen Buchanan, "Distributive Justice and Legitimate Expectations," *Philosophical Studies: An International Journal for Philosophy in the Analytical Tradition* 28, no. 6 (December, 1975): 419.

⁴⁸ See Rawls, *A Theory Of Justice*, 101.

training and education and for using their endowments in ways that help the less fortunate as well. No one deserves his greater natural capacity nor merits a more favourable starting place in society.”⁴⁹ For Rawls, any assertion of a person to claim his superiority in any field and therefore claiming to deserve better shares or benefits in society has no moral ground. In other words, any claim by a person to deserve more credits for having superior qualities is not just. It is because, Rawls argues, any superior or better qualities that a person possesses has lots to do with his fortunate social circumstance or god luck or favourable environment in which he is born into. So, the better endowed persons have no moral basis to claim any more benefits or credit for their good qualities whatever. And thus, their natural assets must work for the betterment of others who are least well off in society. Rawls says, “The assertion of a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; his character depends in large part upon fortunate family and social circumstances for which he can claim no credit. The notion of desert seems not to apply to these cases. Thus the more advantaged representative man cannot say that he deserves and therefore has a right to a scheme of cooperation in which he is permitted to acquire benefits in ways that do not contribute to the welfare of others. There is no basis for his making this claim.”⁵⁰ Rawls’s basic argument is that “natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts.”⁵¹ Therefore, Rawls argues that the any natural endowments, natural assets, natural contingencies and their development or growth and nurture are “arbitrary from a moral point of view.”⁵² However, Rawls is not in favour of the total elimination of initial endowments of natural assets and talents and the contingencies. Rawls does not argue that they are to be abolished. What Rawls suggests is that these endowments and contingencies must be arranged to the advantage of the worst off in society. In Rawls’s words, “But it does not follow that one should eliminate these distinctions. There is another way to deal with them. The basic structure can be arranged so that these contingencies work for the good of the least fortunate.”⁵³ And the idea behind Rawls’s difference principle is that inequalities of birth and natural assets are accidental and therefore they must be compensated through proper

⁴⁹ Ibid., 101-2.

⁵⁰ Ibid., 104.

⁵¹ Ibid., 102.

⁵² Ibid., 311-12.

⁵³ Ibid., 102.

institutional arrangements in society. In Rawls words, “Since inequalities of birth and natural endowments are undeserved, these inequalities are to be somehow compensated for.”⁵⁴

However, Nozick strongly rejects Rawls’s assertion that people do not have any moral rights to claim more benefits from their natural endowments, natural talents and contingencies.” For Nozick, “things came into being already held, things come into the world already attached to people having entitlements over them.”⁵⁵ People are entitled to all the benefits from their assets and talents. There is no need for any principle that requires individuals’ assets to be shared. Therefore, Nozick asks, “If things fell from heaven like manna, and no one had any special entitlement to any portion of it, and no manna would fall unless all agreed to a particular distribution, and somehow the quantity varied depending on the distribution, then it is plausible to claim that persons placed so that they could not make threats, or hold out for specially large shares, would agree to the difference principle rule of distribution. But is this the appropriate model for thinking about how the things people produce are to be distributed? Why think the same results should obtain for situations where there are differential entitlements as for situations where there are not?”⁵⁶ Further Nozick objects Rawls’s idea that the “initial endowment of natural assets and the contingencies are arbitrary from a moral point of view.” Nozick’s argument is that people put their efforts to develop their talents and contingencies. Their natural talents and assets cannot be arbitrarily from any ethical or moral point of view. But Rawls simply ignores this fact. According to Nozick, “holdings partially depend upon natural endowments” and assets as they “depend on how these are developed and on the uses to which they are put.”⁵⁷ So Nozick’s point is that Rawls’s such kind of stand suggests the idea that persons are detached from their talents and assets. But Nozick argues that such thinking would undermine the “autonomy of individuals.” Such thinking also would undermine individuals’ autonomous choices and actions thereby attributing everything to some external factors. Nozick argues, “This line of argument can succeed in blocking the introduction of a person’s autonomous choices and actions (and their results) only by attributing everything noteworthy about the person completely to certain sorts of external factors. So denigrating a person’s autonomy and prime responsibility for his actions is a risky line to take for a theory otherwise wishes to buttress the dignity and self

⁵⁴ Ibid., 100.

⁵⁵ See Nozick, *Anarchy, State, And Utopia*, 160.

⁵⁶ Ibid., 198.

⁵⁷ Ibid., 216.

respect of autonomous beings; especially for a theory that founds so much upon person's choice."⁵⁸

Moreover, in contrast to Rawls's stand that difference principle regards natural talents and skills as a common asset and benefits from exercising these talents and skills are to the advantages of the worst off; Nozick's argument is that individual talents and skills cannot be regarded as the common assets whose benefits are to be distributed to everyone. However, Nozick has a different standpoint in this regard. Nozick argues that people's skills or talents are beneficial to everyone in society. Nozick believes that "people's talents and abilities are an asset to a free community." Everyone in the community get benefit from someone's talents and skills. Nozick argues that in "a free society, people's talents do benefit others, and not only themselves."⁵⁹

(c) If the difference principle, that carries an egalitarian character, is being contested by Nozick, then how Rawls and Nozick would look at the idea of "Equality."

Rawls has delineated his concept of equality in a rather complex format. First of all, Rawls's difference principle is conceived to be an egalitarian principle. But it must be noted that Rawls is not advocating the idea of "levelling equality" in society through his difference principle. Rawls's argument is that persons' inequality in birth and natural endowments are accidental. Persons' natural talents and contingencies are accidental and they cannot claim any credit for them. Even Rawls argues that person making effort to cultivate those natural talents and assets depends upon other factors for which they have no claim. Therefore, benefits from those talents and contingencies must work for the improvement of "the worst off" in society. According to Rawls's theory of justice, everyone in society should have an equal share in "social primary goods" like income and wealth. But Rawls's point is not about the equal division of income and wealth in society. Rawls's argument is that any inequalities can be allowed as long as such inequalities result in improving the conditions of "the least advantaged."⁶⁰ Thus, Rawls is not asking about the absolute equality in society. Rawls believes that there are differences in persons' natural capacity and talents and social and economic inequalities are inevitable. But Rawls insists that any inequality must be to the advantage of the least fortunate. Moreover, Rawls's point is that when individuals choose the

⁵⁸ Ibid., 214.

⁵⁹ Ibid., 228.

⁶⁰ See John Rawls, "A Kantian Conception of Equality," in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford university Press, 1999), 262.

principles of justice, they choose as “free and equal persons.” And the principles of justice they agree upon will also generate the idea of equality. According to Norman Daniels, Rawls’s basic idea of equality is that we “each have a capacity for a sense of justice and when a social contract among free and equal citizens is made, the contract must establish equality as a baseline and justify departures from it.”⁶¹ Interestingly, for Rawls, inequality is not about differences between offices, positions, rights, privileges and powers, etc. Inequality is about the benefits attached to them. Inequality is about the differences in distributions of benefits generated by them. Rawls says, “By inequalities, it is best to understand not any differences in the institutional structure between offices and positions and the rules defining their rights, duties, powers, and privileges, but differences in the benefits and burdens attached to them either directly or indirectly, such as prestige, wealth, and liability for taxation and compulsory services.”⁶² In addition, Rawls does not approve of the view that the idea of equality springs out of “envy.” For Rawls, “envy” is the “propensity to view with hostility the greater good of others even though their being more fortunate than us does not detract from our advantages” and envy consists of one’s willingness to deprive others of their greater benefits.⁶³ Rawls argues that one of the reasons for envy is the lack of one’s self confidence in one’s own worth and it is the least fortunate in society who tend to be envious of those who are better off. But in “a well ordered society,” the contents of the two principles of justice mitigate the causes of envy. For instance, along with the first principle ensures that every individual has the same rights to basic liberties; the second principle directs that opportunities are open for all and income and wealth benefit everyone in society. Therefore, Rawls argues that the idea of equality defined by the contents of two principles of justice does not come from the sense of envy.⁶⁴

On the contrary, Nozick argues that the entitlement theory of “justice in holdings makes no presumption in favour of equality.”⁶⁵ It does not subscribe to any idea of requiring an authority having power to alter the social institutions in the name of bringing equality in society. Nozick is of the view that even the state has no legitimate role to bring greater equality in society. Nozick strongly opposes to any idea of distribution of income and wealth through any central scheme to bring equality in society. Moreover, Nozick has some strong

⁶¹ See Norman Daniels, “Rawls’s Complex Egalitarianism,” in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), 247.

⁶² See John Rawls, “Constitutional Liberty and the Concept of Justice,” in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 75.

⁶³ See Rawls, *A Theory Of Justice*, 532.

⁶⁴ *Ibid.*, 538.

⁶⁵ See Nozick, *Anarchy, State, And Utopia*, 233.

reservation about the idea of equality of opportunity. Nozick argues that such equality can be provided in two ways: one is “by directly worsening the situations of those more favoured with opportunity,” and the other one is “by improving the situation of those less favoured.” In both cases, there involve the worsening the situation of some. Even in the case of second condition, it requires to take holdings from some in order to improve the situations of others.⁶⁶ Most interestingly, Nozick expressed his view that the idea of equality is connected with “envy and self-esteem.” According to Nozick, “envious person, if he cannot possess a thing that someone else has, prefers that the other person not have it either.”⁶⁷ To illustrate further, Nozick argues that envy constitutes “if you cannot have it, you would prefer that neither of you had it than that the other person has it and you do not.”⁶⁸ Nozick’s view is that the envious persons prefer others not have better welfare or progress in their lives. The envious persons prefer others not to flourish better than them. Therefore, the envious person definitely favours egalitarianism. Along with this, a person undermines his own self-esteem when he compares himself with others who are better. Hence, a person who loses his own self-esteem wants equality. But Nozick’s point is that others’ activities, characteristics should not affect one’s self-esteem.⁶⁹

Rawls’s argument is that major institutions in society must be arranged in such a way that every individual has equal right to the most fundamental liberties and all the opportunities in society must be assessable to all for competition without any accidental barrier. Along with it, income, wealth and social resources must benefit everyone in society, particularly those in the bottom. In this way, for Rawls, some kind of egalitarian society can be established without essentially compromising on the rights of individuals. Nevertheless, it must be noted that Rawls’s idea of equality is not about a complete levelling of socio economic status of individuals.⁷⁰ By contrast, Nozick’s stand appears to go along with the argument that the poor are poor not just because the rich are rich. The causes of these two phenomena are not directly related and one is not the corollary of the other. The rich get prosperous because they are skilful, industrious and so on. Therefore, for Nozick, inequality in society is a natural fact.

⁶⁶ Ibid., 235.

⁶⁷ Ibid., 239.

⁶⁸ See Robert Nozick, “An Interview with Robert Nozick,” interview by Albert Zlabinger. *The Libertarian Review* (December, 1977): 14.

⁶⁹ See Nozick, *Anarchy, State, And Utopia*, 240.

⁷⁰ Alasdair Macintyre is of the argument that Rawls’s “principle of equality” is with respect to needs: the needs of the worst off. And Nozick’s principle of equality is with respect to entitlement. See Alasdair Macintyre, “Justice as Virtue: Changing Conceptions,” in *Communitarianism and Individualism*, eds. Shlomo Avineri and Avner De-Shalit (Oxford: Oxford University Press, 1992), 56. However, we shall argue that Rawls’s idea of equality cannot be simply reduced to the need based idea of equality. Rawls has not made any principle as such.

However, it must be also taken into account that Nozick is not against the idea of equality.⁷¹ Nozick's argument is that if equality comes to exist in society by a process that does not infringe individuals' entitlements of holdings, then there is nothing wrong in it. If equality is brought by some voluntary means like voluntary assistance or voluntary cooperation, Nozick does not have any objection to that. Nozick's objection is against the imposition of certain principles upon individuals' rights to bring equality in society.

John Rawls and Robert Nozick on the idea of Distributive Justice

Rawls and Nozick took different stand on the idea of distributive justice.⁷² We will examine the difference between Rawls and Nozick on the idea of distributive justice. For this purpose, we will discuss Rawls's idea of distributive justice first. Then we will discuss Nozick's idea of distributive justice. This will be followed an analysis of the differences between Rawls and Nozick on the idea of distributive justice.⁷³

(1) Rawls has conceptualized a different idea of distributive justice. Rawls's idea of distributive justice is based on his assumption that men in a society are concerned with how the benefits which they jointly produced are to be distributed. There is conflict of interest among individuals as everyone wants to get more shares to further their ends in life. In such circumstance, there is a need for certain set of principles that will determine the proper ways of distribution. Rawls works out a hypothetical framework for this. Rawls argues that in an initial contractual position where individuals are deprived of information about their position, place in society, ability, fortune, strength, etc., individuals will choose two principles of justice. These "two principles of apply to the basic structure of society" and they will define the appropriate distributions of benefits.⁷⁴ In brief, the first principle is about the "basic equal liberty" for all. The second principle has two parts. The first part is concerned with the

⁷¹ Regarding Nozick's view on the idea of equality, Jonathan Wolff argues that Nozick is not in favour of inequality. Nozick is opposed to the imposition of any patterned distribution of resources. Nozick is against the idea of bringing equality by social planning. Nozick's question is how equality of wealth is related to justice in holdings. See for details, Wolff, *Robert Nozick*, 123.

⁷² Distributive justice generally means the distribution of resources (goods, income & wealth) among the members of society. According to J. R. Lucas, distributive justice is traditionally concerned with sharing of good and bad things, benefits and burdens, among members in society. See, J. R. Lucas, *On Justice* (Oxford: Clarendon Press, 1980), 163.

⁷³ Distributive justice is one of the most contested dimensions of justice. There are thinkers who advocate distributive justice as many as there are also thinkers who reject the idea of distributive justice. Moreover, there is no consensus about the principles propounded for the distributive justice. In this regard, David Miller also rightly argues that the principles of distributive justice are always in conflict. He identifies three broad principles of distributive justice. They are: distribution based on rights, distribution based on deserts and distribution based on needs. See, David Miller, *Social Justice* (Oxford: Oxford University Press, 1976), 27.

⁷⁴ According to Rawls, the "basic structure of society" broadly means the main political, social and economic institutions of society. See Rawls, *Political Liberalism*, 11.

inequalities in the distribution of income and wealth and the second part is about equality of opportunity.⁷⁵ It is through the first part of second principle, which is called as “the difference principle,” Rawls powerfully propounds his idea of distributive justice. Rawls’s difference principle says that social and economic inequalities are justified if they work for the benefit of “the least advantaged” in society. The difference principle represents the idea that all the benefits of the distribution of natural talents, abilities, fortunes and so on are to be shared among individuals. The fundamental idea of the difference principle is that those who have been favoured by the nature may gain from their talents or good fortunes only on the condition that these talents and good fortunes work to improve the condition of the least advantaged. According to difference principle, those who are naturally favoured are not to gain simply on the ground that they are gifted by nature. They can gain only to “cover the costs of training and cultivating their natural endowments to use for the improvement of the conditions of the least advantaged in society.” So Rawls’s argument is that any social and economic inequalities can be justified only on the condition that they are to the advantage of the worst off in society. Rawls argues that “all differences in wealth and income, all social and economic inequalities, should work for the good of the least favoured.”⁷⁶ In other words, what Rawls argues is that difference principle is about considering our natural assets and talents as common assets and sharing the benefits out of them. Those who are favoured by nature can gain from the benefits of their natural talents and skills only on the condition that they work to the advantage of the less fortunate in society. Those who are naturally favoured are not to gain from their good fortunes and talents simply on the reason that they are gifted. In connection with this, Rawls further argues that the notion of “desert” does not apply to the idea of distributive justice. Rawls is of the argument that those who are endowed with natural talents and assets do not deserve those natural endowments. According to Rawls, the natural endowments are simply natural facts and persons cannot claim any credits. Therefore, Rawls argues, “It seems widely agreed that no one deserves his place in the distribution of native endowments, any more than one deserves one’s initial starting place in society. Also a man’s deserving the superior character that enable him to cultivate his abilities is equally problematic; for this character depends upon fortunate family and social circumstances for which he can claim no credit. The notion of desert seems not to apply to these cases. Thus the

⁷⁵ Rawls argues that “these principles regulate the distributive aspects of institutions by controlling the assignment of rights and duties throughout the whole social structure.” See for details, John Rawls, “Distributive Justice,” in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 133.

⁷⁶ John Rawls, “Distributive Justice: Some Addenda,” in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 163.

more advantaged representative man cannot say, and being reasonable, will not say, that he deserves and therefore has a right to a scheme of cooperation in which he is permitted to acquire benefits in ways that do not contribute to the welfare of others. There is no basis upon which he can make this claim.”⁷⁷ Thus, Rawls rejects the notion of moral desert in his idea of distributive justice. The idea is that Rawls rules out any claim of income and wealth and good fortunes based on a “person’s intrinsic worth.” It is because to make any claim based on a person’s intrinsic worth is problematic. Rawls argues that what individuals are entitled is not dependent upon their intrinsic worth. Rawls says, “But what they are entitled to is not proportional to nor dependent upon their intrinsic worth.”⁷⁸ Rawls also argues that any natural endowments of a person are “arbitrary from a moral point of view.” So, distributive share cannot be related to the notion of moral worth. In Rawls words, “The distributive shares that result do not correlate with moral worth, since the initial endowment of natural assets and the contingencies of their growth and nurture in early life are arbitrary from a moral point of view.”⁷⁹

In addition to the above, Rawls is of the argument that just institutions must be set up for just distributive share. Rawls argues that “the main problem of distributive justice is the choice of a social system.”⁸⁰ The social system is to be designed in such a way that the resulting distribution is just. This means, for Rawls, the outcome of distribution will not be just without the right institutions. Then Rawls gives a brief description of background institutions. First, the basic social structure is regulated by “a just constitution.” The legal and the political process are properly administered. And there is equality of opportunities and “social minimum” is guaranteed.⁸¹ Most importantly, Rawls describes four branches of the government. The first branch is “the allocation branch” and its function is to “keep the economy feasibly competitive.” It is to prevent the “formation of unreasonable market power.” The second branch is “the stabilisation branch.” It strives to “bring about reasonably full employment in the sense that those who want work can find it and the free choice of occupation and the deployment of finance are supported by strong effective demand.” The third branch is “the transfer branch” which is to establish the “social minimum.” The fourth branch is “the distributional branch” which is to “preserve an approximately just distribution of income and wealth overtime by affecting the background conditions of the market from

⁷⁷ Ibid., 170.

⁷⁸ See Rawls, *A Theory Of Justice*, 311.

⁷⁹ Ibid., 311-12.

⁸⁰ Ibid., 274.

⁸¹ Ibid., 275.

time to time.” It is to “preserve an approximate justice in distributive shares by means of taxation and the necessary adjustments in the rights of property.” This branch has two aspects. First, it operates “a system of inheritance and gift taxes.” The aim of these levies is “not to raise revenue, but gradually and continually to correct the distribution of wealth and to prevent the concentration of power to the detriment of political liberty and fair equality of opportunity.” And secondly, it is about “the taxation for raising revenue to cover the costs of public goods, to make transfer payments, and the like.”⁸² Rawls states that “the aim of branches of government is to establish a democratic regime in which land and capital are widely held.”⁸³ Besides, “a just savings principle” is also required which says that each generation must save “a suitable amount of real capital accumulation” for the next generations. According to this principle, only those in the first generation do not benefit as they begin the whole process. Thus, Rawls’s argument is that the idea of distributive justice can work within a framework of just institutions. For Rawls, just institutions are necessary for the idea of distributive justice to work. It is through these just institutions that proper just distribution can be carried out. Rawls argues that “the justice of distributive shares depends on the background institutions and how they allocate total income, wages and other income plus transfers.”⁸⁴

Rawls distinguishes his idea of distributive justice from allocative conception of justice. “Allocative justice” is concerned with divisions of goods among definite individuals with their known desires and needs. The concept of allocative justice is not concerned with whether the goods to be distributed are produced by them, or they have any cooperative relations.⁸⁵ Rawls also argue that his idea of distributive justice is different from “retributive justice.” Retributive justice is concerned with the punishment for wrong doings.⁸⁶

(2) Nozick has not conceptualized any specific notion of distributive justice. Nozick expresses his strong reservations against the notion of distributive justice. This means Nozick does not favour the idea of distributive justice. Nozick is of the argument that the very notion of distributive justice is “not neutral.”⁸⁷ It is because, according to Nozick, the term distribution implies the idea that goods and things that individuals have are to be distributed

⁸² For Rawls’s detail description of four branches of government, see *Ibid.*, 275-279.

⁸³ See Rawls, *A Theory Of Justice*, 280.

⁸⁴ *Ibid.*, 277.

⁸⁵ *Ibid.*, 88.

⁸⁶ *Ibid.*, 315.

⁸⁷ See Nozick, *Anarchy, State, And Utopia*, 149.

among all based on some criterion or principles. It also presupposes the idea that redistribution can be done if the distribution process is not sufficient. This means that distributive justice suggests the idea that goods and things are there awaiting to be distributed among persons through some mechanism. It also presupposes the idea that some central authority has the power to distribute as if goods and things come from the sky.⁸⁸ However, Nozick's argument is that goods and things do not simply come to individuals. Individuals put their effort to possess them. Individuals work hard and create their wealth and incomes. Individuals exercise their skills and generate their resources. Therefore, goods and things in society cannot be simply distributed following some criterion. Any central authority has no power to distribute. Nozick's point is that individuals do not own their wealth through any distribution. They own their goods and wealth through their own effort.⁸⁹ Moreover, Nozick is of the view that there is no justifiable criterion or principle through which the distribution of goods and things can be done.⁹⁰ Therefore, Nozick argues that there is no need for any distribution in society. Individuals are not mere humans that their resources are to be distributed. Individuals exchange goods and services voluntarily based on mutual consent. Individuals possess various resources in a free society, and no central authority has the right to distribute them. Nozick argues, "However, we are not in the position of children who have been given portions of pie by someone who now makes last minute adjustments to rectify careless cutting. There is no central distribution, no person or group entitled to control all the resources, jointly deciding how they are to be doled out. What each person gets, he gets from others who give to him in exchange for something, or as a gift. In a free society, diverse persons control different resources, and new holdings arise out of the voluntary exchanges and actions of persons."⁹¹ As a matter of fact, Nozick is quite against the idea of distributive justice. Nozick's basic argument is that correct theory of justice does not require any distributive activity. This means, for Nozick, proper theory of justice does not incorporate the idea of distributive justice. A correct account of justice does not represent any idea of

⁸⁸ In this context, Nozick's argument is that distributive justice presupposes the idea that resources come to exist like the manna from heaven which is to be justly distributed by some central authority. But in the real world, resources are not the manna from heaven. Individuals produce them.

⁸⁹ In this regard, Ralf Bader clearly points out Nozick's view. According to Ralf Bader, Nozick's argument is that the possessions of individuals are determined by the multitude of actions and interactions among different individuals. People have the possessions, not because they have been distributed to them, but because they have acquired them from other people. See Ralf M. Bader, *Robert Nozick* (New York: The Continuum International Publishing Group inc, 2010), 36.

⁹⁰ According to Eric Mack, Nozick's basic criticism of distributive justice is that there is no independent standard for what the division of the benefits of cooperative interaction ought to be. See, Eric Mack, "Nozickian arguments for the more than Minimal state," in *The Cambridge Companion to Nozick's Anarchy, State, and Utopia*, eds. Ralf M. Bader and John Meadowcroft (Cambridge: Cambridge University Press, 2011), 101.

⁹¹ See Nozick, *Anarchy, State, And Utopia*, 149-50.

distribution of wealth and income in society.⁹² According to Nozick, justice is about respecting the rights of individuals to hold property. It means individuals must be left to themselves to choose what they want to do with what they possess. Each individual is different. Each person is separate and individuals have distinct lives. Individuals cannot be treated as mere means to the ends of others. They have their rights and autonomy. But taking away their income and wealth to distribute based on some principles would mean infringing in the rights and autonomy of individuals. In this sense, Nozick's point is that the idea of distributive justice violates individuals' rights. And this is the reason why Nozick has rejected the account of distributive justice. Besides, Nozick emphasises the point that the holdings of individuals cannot be related to any distribution.⁹³ In other words, what Nozick argues is that individuals' holdings are not the outcome of distribution by any central authority. It is because individuals possess their property as the outcome of their work. Individuals generate their wealth and they own them. And what individuals produce cannot be distributed. For Nozick, the process of production of goods and their distribution cannot be treated as different issues.⁹⁴ This basically means whatever individuals produce are not meant to be distributed for any purpose. Individuals have the full rights over what they have produced. In connection with this, Nozick's argument is that the idea of distributive justice does not recognize the autonomy of individuals. The idea of distributive justice also carries the sense that some individuals have the responsibility to do something good for others. But Nozick seems to argue that individuals are not bound by any responsibility towards others. Individuals have no obligation to do something beneficial to others.⁹⁵ This means that Nozick rules out even the idea of taking some portion of the wealth of the rich to give to the poor in society. Nozick's point is that individuals benefit from each other based on their voluntary transactions in society.

Nozick not only rejects the idea of distributive justice, but he also tries to show that the entitlement theory of justice can be an alternative theory to other theories of distributive

⁹² As Edward points out that Nozick is of the view that justice does not require any particular distribution of wealth and justice forbids the redistribution of wealth. See for details, Edward Feser, *On Nozick* (Australia: Thomson Wadsworth, 2004), 65.

⁹³ As Kenneth J. Arrow points out clearly, Nozick rejects the idea that distribution of goods and income is to be considered as the outcome of a social decision process. For Nozick, individuals are entitled to make their own decisions. Distribution of goods is not bound by any social decision. See Kenneth J. Arrow, "Nozick's Entitlement Theory of Justice," *Philosophia* 7, issue, 2 (June, 1978): 265.

⁹⁴ See Nozick, *Anarchy, State, And Utopia*, 160.

⁹⁵ David Schmidtz also expressed a similar view in this aspect. David Schmidtz points out that Nozick denies the idea that individuals are obliged to benefit each other per se. Any obligation among individuals is only on mutually acceptable terms. See David Schmidtz, "History and Pattern," in *Natural Rights Liberalism from Locke to Nozick*, eds. E. F. Paul, F. D. Miller and J. Paul (Cambridge: Cambridge University Press, 2005), 171.

justice. While propounding the entitlement theory of justice, Nozick strongly defends his view that justice does not require any distribution.⁹⁶ For Nozick, the entitlement theory of justice is the correct theory of “justice in holdings.” The entitlement theory of justice does not require any kind of distribution. According to the entitlement theory, justice in holdings is determined by the three principles of justice in holdings. The entitlement theory of justice is opposed to any compulsory distribution of things. According to entitlement theory of justice, any transfer of goods and things between persons is justified only when they are voluntary.⁹⁷ So, the idea of distributive justice cannot determine justice in holdings. Moreover, Nozick argues that the entitlement theory of justice is historical and it is opposite to “the end-result principles.” According to the entitlement theory of justice, the historical background of how an individual acquires a holding is crucial. The entitlement theory of justice considers seriously the historical facts about how holdings arise. And the entitlement theory of justice does not follow any patterned principles. What is important in the entitlement theory of justice is whether people acquire their holdings in accordance with the three principles of justice in holdings. If the holdings of an individual conform to any of the three principles, then it is considered just. Thus, Nozick’s argument is that justice does not entail the idea of distribution. Justice does not require any central authority to distribute goods and things of individuals. Justice is not about bringing equality in society through compulsory distribution of resources. Justice is about respecting the rights of individuals to own holdings. The holdings of individuals cannot be available for distribution. In a free society, individuals acquire holdings from others based on the voluntary exchanges and actions of persons. For Nozick, things which come to exist on earth are already owned and the owners have the absolute rights over them. Nozick argues that things come into the world having owned by people who are already entitled over their holdings⁹⁸ Hence, they are not to be distributed.

(3) Now we shall compare the fundamental ideas of Rawls’s and Nozick on distributive justice. Rawls’s idea of distributive justice revolves around his argument that once a certain “set of principles of justice” are chosen by individuals in a fair process, the distribution that

⁹⁶ According to Neil Cooper, Nozick considers individual rights so seriously. But Nozick does not consider the reciprocity element in justice. See, Neil Cooper, “Justice and Historical Entitlement,” *Canadian Journal of Philosophy* 7, no. 4 (December, 1977): 801.

⁹⁷ David Schmidtz argues that Nozick’s entitlement theory of justice is grounded in an idea of voluntarism. See, David Schmidtz, “The right to distribute,” in *The Cambridge Companion to Nozick’s Anarchy, State, And Utopia*, eds. Ralf M. Bader and John Meadowcroft (Cambridge: Cambridge University Press, 2011), 207.

⁹⁸ See Nozick, *Anarchy, State, And Utopia*, 160.

result from the application of those principles would be considered just.⁹⁹ For this, the background institutions must be arranged properly. Rawls argues that distributive justice depends on the basic structure of society.¹⁰⁰ According to Rawls, only when there are proper background institutions, the just outcome of the distributive process is ensured. Rawls says, “The basic structure is arranged so that when everyone follows the publicly recognized rules of cooperation, and honours the claim the rules specify, the particular distributions of goods that result are acceptable as just (or at least as not unjust) whatever these distributions turn out to be.”¹⁰¹ So for Rawls, the basic structure of society is the backbone of distributive justice. On the contrary, Nozick does not favour the idea of distributive justice. Nozick is of the argument that justice is not about choosing any set of principles and applies to society. This means that justice is not about distribution. In fact, Nozick is a vehement critic of the idea of distributive justice.¹⁰² Nozick rejects the idea of distributive justice. For Nozick, any process of distribution cannot simply determine what justice is. What is important is whether individuals hold properties following the just process. Nozick argues that justice is not about distributing the income and wealth of individuals in society. And there is no role for any institutions including the state to distribute anything in society. Nozick also rejects any theory of distributive justice because such theories are only concerned about the rights and well being of the recipient by completely undermining the rights of the individuals whose resources are to be distributed.¹⁰³ Moreover, Nozick argues that there are some loopholes in Rawls’s idea of distributive justice. According to Nozick, Rawls is only concerned with how the benefits of cooperation are to be distributed; but Rawls fails to discuss how much each individual may get working separately. Rawls also fails to address as to how the products of joint cooperation are to be equally divided among individuals.¹⁰⁴

⁹⁹ Rawls also argues that distributive justice contains an element of “pure procedural justice.” It is because the principles of distributive justice are mutually chosen by individuals after the fair bargain. And no independent criterion is applied to judge the outcome of the distribution. See Rawls, “Distributive Justice,” 148-49.

¹⁰⁰ *Ibid.*, 133.

¹⁰¹ See John Rawls, *Justice As Fairness: A Restatement*, ed. Erin Kelly (New Delhi: Universal Law Publishing Co. Pvt. Ltd, 2011), 50.

¹⁰² Nozick does not approve of the term distributive justice and he suggests instead using other term which is neutral. For Nozick, a principle of justice in holdings is the appropriate term. See Robert Nozick, “Distributive Justice,” *Philosophy and Public Affairs* 3, no. 1 (Autumn, 1973): 46.

¹⁰³ See Nozick, *Anarchy, State, And Utopia*, 168.

¹⁰⁴ However, Nozick is of the view that in voluntary cooperation, there is no need for any distribution and moreover there is no task of a theory of justice.

Rawls's idea of distributive justice is synonymous with his difference principle.¹⁰⁵ According to the difference principle, individuals are to consider their natural assets as common property and to share the benefits among all in society.¹⁰⁶ Rawls's argument is that natural endowment and assets of individuals are "arbitrary from moral point of view." It is because, for Rawls, individuals are accidentally endowed with their natural assets and endowments. And the natural talents and abilities of individuals are developed by good fortune or favourable social circumstances or advantageous environment.¹⁰⁷ Therefore, naturally gifted or advantaged have no ground to claim more benefits of distribution merely on the ground that they are more gifted or talented. Rawls argues that naturally favoured persons can gain from their good fortune only on the one condition, that is, only if they work to the advantage of the least fortunate. Rawls calls it the "difference principle" because Rawls is of the point that "all differences in income and wealth, all social and economic inequalities, should work for the good of the least favoured."¹⁰⁸ By contrast, Nozick's point is that since individuals have worked hard to develop their talents and skills better, they have every claim to their assets and endowments. According to Nozick, since some individuals choose to put their efforts, they deserve to get better. In this regard, Nozick is quite opposite to Rawls's ideas. Nozick argues that Rawls's difference principle stands against the voluntary social cooperation among individuals. And the difference principle essentially focuses on "the least advantaged."¹⁰⁹ Moreover, Nozick's point is that asserting the view that our natural endowments, assets, contingencies, etc are morally arbitrary may hamper the autonomy of individuals. Such argument carries the idea that everything good about an individual is attributed to some external factors. This also leads to the idea that everyone has equal claim to the natural assets and endowments. Then Nozick argues that some individuals will question whether their assets and talents are used to benefit others. It is in this context that Nozick criticises Rawls for going back against his own stand which is supposed to be against utilitarianism. This

¹⁰⁵ Richard Arneson argues that Rawls's concern of distributive justice 'to compensate individuals for misfortune. Some are blessed with good luck; some are with bad fortune. But we all are responsible to alter the distribution of goods and evils in society. This means the lucky should transfer some or all their gains due to luck to the unlucky.' See Richard Arneson, "Rawls, Responsibility, and Distributive Justice," in *Justice, Political Liberalism, and Utilitarianism*, eds. Marc Fleurbaey, Maurice Salles, John A. Weymark (Cambridge: Cambridge University Press, 2008), 80.

¹⁰⁶ It is also argued by W. J. Stankiewicz that Rawls introduces the concept of distributive justice as a conception of justice that nullifies the accidents of natural endowments. See, W. J. Stankiewicz, *In Search of a Political Philosophy* (London: Routledge, 1993), 161.

¹⁰⁷ In fact, Rawls strongly argues that since a person's assets and superior character depends upon fortune family and social circumstances, he has no extra claim over those assets whatsoever.

¹⁰⁸ See Rawls, "Distributive Justice: Some Addenda," 163.

¹⁰⁹ What Nozick argues is that Rawls's theory of distributive justice requires the state to appropriate the income and wealth of the well off persons in society and distribute them to the less well off persons. In this sense, the difference principle essentially works for the betterment of "the least advantaged in society."

means, according to Nozick, Rawls strongly suggests about the distribution of natural endowments assets instead of recognising them as the natural assets of individuals. And in this way, difference principle undermines the separateness of individuals. The difference principle reflects the idea that those who are blessed by nature are obligated to improve the conditions of the less fortunate and therefore they must work for the benefit of them in society.¹¹⁰ In fact, Nozick is of the argument that persons' talents and abilities are an asset for the whole community and these are beneficial to all in society. In Nozick's words, "People's talents and abilities are an asset to a free community; others in the community benefit from the presence and better off because they are there rather than elsewhere or nowhere. Life, over time, is not a constant-sum game, wherein if greater ability or efforts leads to some getting more, that means that others must lose. In a free society, people's talents do benefit others, and not only themselves."¹¹¹ For Nozick, a person's having entitlement over his holdings does not mean that they are only to benefit him.

Further, Rawls's idea of distributive justice favours taxation. Rawls is in support of the system of taxation if it is for the improvement of the situation of the least advantaged. Rawls argues that taxation can be justified only if it promotes the social conditions and the long term interests of the least advantaged.¹¹² Then, Rawls's idea of distributive justice requires the state to play a major role. Though Rawls has not directly delineated the specific role of the state, when he describes the requirement of background institutions and the functions of the four branches of the government, he broadly refers to the state in the modern sense. In this aspect too, Nozick's arguments stand in sharp contrast to Rawls's. Nozick is strongly against the idea of taxation. For Nozick, taxation is on a par with "forced labour." Taxation is like forcing a person to work for another person's purpose. Thus, taxation involves appropriating the actions of other person. In addition, Nozick only justifies the minimal state that has limited minimum functions. For Nozick, the state has no role in the distributive justice. Moreover, regarding the difference between Rawls and Nozick on the question of distribution, John C. Harsanyi rightly points out that both the thinkers have move away to the radical extreme directions. On the one hand, Nozick moved very much to the right. Nozick opposes all forms of income redistribution and also advocates the abolition of all government

¹¹⁰ According to A. R. Lacey, what Nozick argues is that Rawls's idea of fairness put constraints upon the holdings that arise from voluntary social cooperation, and thus appealing to fairness leads an intuitively unfair result. See A. R. Lacey, *Robert Nozick* (England: Chesham, 2001), 49.

¹¹¹ See Nozick, *Anarchy, State, And Utopia*, 228.

¹¹² See Rawls, *A Theory of Justice*, 332.

programs using tax revenues to relieve poverty. On the other hand, Rawls moved to the left. Rawls advocates radical policies of income redistribution in which Rawls's theory requires large scale redistribution of income and wealth in society.¹¹³ But J. C. Harsanyi is also cautious about the repercussion that Rawls's theory may yield while putting to implement.¹¹⁴

Thus, Rawls conceptualized a unique idea of distributive justice. It goes with the idea that once the principles of distributive justice are chosen in a fair process, then the outcome of following those principles will be fair.¹¹⁵ Rawls believes that inequalities in society are inevitable. Persons are born in different conditions and their life prospects and expectation are also different. Rawls's solution to these inequalities is that the major institutions in society are to be arranged in a way that they work for "the least advantaged." Rawls's fundamental argument is that inequalities of birth and natural endowments are accidental and no one can claim any extra credit based on birth and natural endowments. Therefore, everyone should benefit from those natural endowments. Rawls also strongly advocates the idea that the natural assets and endowments of individuals are "arbitrary from the moral point of view" as they are just accidental. Those who are favoured by the nature do not deserve to gain benefits more than what they deserve without those natural qualities. This means, for Rawls, those who are favoured by nature do not deserve anything more than what they deserve in their "initial starting place in society." The naturally advantaged can gain from those assets and endowments only when they contribute for the improvement of "the least advantaged." Therefore, Rawls rejects the notion of desert in his idea of distributive justice. On the contrary, for Nozick, entitlement theory of justice is not a kind of distributive justice.¹¹⁶ It is about the holdings of individuals. The entitlement theory of justice deals with the just process of acquiring holdings. The entitlement theory of justice does not prescribe any principle for the distribution of the goods and things of individuals. According to Nozick

¹¹³ John C. Harsanyi, "John Rawls's Theory of Justice: Some Critical Comments," in *Justice, Political Liberalism, and Utilitarianism*, eds. Marc Fleurbaey, Maurice Salles and John A. Weymark (Cambridge: Cambridge University Press, 2008), 73.

¹¹⁴ John C. Harsanyi also cautions that Rawls's theory would require very extensive redistribution of income and wealth that would give rise to serious economic and political problems. It would not only cause major economic dislocations, but it would also create heated confrontation between the opponents and the supporters of this policy that might lead to widespread civil war in a country. *Ibid.*, 72.

¹¹⁵ Alexander Kaufman is of the view that the defining characteristic of Rawls's theory is that a unique distribution of goods cannot be specified ex ante. Rawls's theory is not about the resulting distribution, but it is about the fair process of distribution. See Alexander Kaufman, "The Myth of the Patterned Principle: Rawls, Nozick and Entitlements," *Northeastern Political Science Association* 36, no. 4 (July, 2004): 564.

¹¹⁶ Ron Replogle is of the view that Nozick does not present his entitlement theory as a theory of distributive justice. Nozick describes it as the right based theory of justice in holdings. See Ron Replogle, "Natural Rights and Distributive Justice: Nozick and the Classical Contractarians," *Canadian Journal of Political Science* 17, no. 1 (March, 1984): 68.

individuals are entitled to their natural assets, talents, skills and so on.¹¹⁷ Individuals' holdings are related to their natural assets and endowments. And Nozick argues that individuals make free choices in free markets. It is obvious that some benefit more and some benefit less. As the result some will be richer than other. However, there is no question of distributing the outcome of peoples' free choice. So, Nozick is against the idea of sharing income and wealth in order to bring equality in society.¹¹⁸

John Rawls and Robert Nozick on the Role of the State in Promoting Justice

In this section, we shall study the diverse stands of Rawls and Nozick on the role of the state in promoting justice. For this, we shall first study Rawls's account of the state and its relation with the idea of justice. This shall be followed by an examination of Nozick's arguments about the state in relation to justice. Then we shall have a comparative study about the different standpoints of Rawls and Nozick on the role of state in promoting justice.

(1) Rawls has not presented any specific account of the state in his writings.¹¹⁹ Rawls has mentioned intermittently how the background institutions of the state should be which can work in tandem with the two principles of justice. It is a challenging task to describe a clear account of Rawls's notion of the state. By examining some of the features of the state that Rawls argues that the state must have, we can argue that Rawls conceives of a liberal democratic state. Rawls conceives of the "state as the association of equal citizens." According to Rawls, "the state is the association consisting of equal citizens."¹²⁰ Rawls highlights some of the features of the state. The state guarantees some basic freedoms to its individuals. The state guarantees its citizens 'freedom of thought, freedom of belief, freedom of religion, moral liberty,' etc. The state has no right to interfere in the religious matters of citizens. The state respects all religions equally. According to Rawls, the state is not a

¹¹⁷ See Nozick, *Anarchy, State, And Utopia*, 226.

¹¹⁸ According to Jason Brennan, Nozick's idea is that inequality resulting from the free choices that free people make about how to use their own property is justified. See Jason Brennan, *Libertarianism* (Oxford: Oxford University Press, 2012), 131.

¹¹⁹ However, with regard to Rawls's account of the state, Andrew Vincent argues that Rawls's state is a social democratic welfare state. He further argues that liberalism has transformed in character over the years. In the 19th and 20th century, liberalism does not endorse the idea of rigid separation between the state and individual. It endorses the wider functions of the state. The state could act to maximize the conditions of individual liberty. The rights and freedoms of individuals are no more separated from the state. And Andrew Vincent argues that John Rawls belongs to this wave of liberal thinking. See Andrew Vincent, *Theories of the State* (Oxford: Basil Blackwell, 1987), 40, 116.

¹²⁰ See Rawls, *A Theory Of Justice*, 212.

“confessional state” in this sense.¹²¹ Individuals have the freedom to organize their associations as they want. For Rawls, the state upholds moral and religious liberty.¹²² Citizens have the freedom to their beliefs. The state has no right to suppress the belief of citizens when they clash with the interest of the state. The state has no right to intervene in the moral and religious interest of the citizens. “The state can only regulate individuals’ pursuit of their moral and spiritual interests in accordance with the principles of justice.”¹²³ Rawls argues that the state cannot be an “omnicompetent laicist state.”¹²⁴ It is because the state has limited power on the matters of moral and religious liberty of citizens. The state must not be partial to its citizens and the state must equally support its citizens in pursuit of their interests. In this sense, Rawls’s point is that the state is the association of citizens which regulate their pursuit of interests and fulfilment of their obligation which are acceptable to everyone looking from the initial position of equality. Rawls says, “The state is viewed as the association of citizens to regulate their pursuit of their profoundest interests and their fulfilment of their most solemn obligations and to give form to their relations in a manner acceptable to each from an original position of equal liberty.”¹²⁵ Besides, Rawls seems to argue the state is to function in accordance with the principles of justice that individuals have chosen in the “original position.” Rawls argues that a just constitution exist in the state. There is the principle of equal participation in the constitutional process.¹²⁶ This means that every citizen has the equal right to take part in any constitutional and law making process. Rawls also assumes that a constitutional regime can satisfy the principle of equal participation. In a “constitutional democratic regime,” a representative body having limited terms has the “authority to determine the basic social policies.” This representative body has the law making powers and it is accountable to citizens who elect them. Every citizen has the equal right to hold public offices. Every citizen has the equal right to associate in any political affairs. Every citizen has the right to contest elections. And Rawls expressed that elections are to be held regularly in a free and fair manner.¹²⁷ Opposition must be also there because there can be no proper democracy without a fair opposition party. So, there must have fair competition for public and political offices. Rawls suggests that devices such as

¹²¹ Ibid., 211- 212.

¹²² Ibid., 212.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ John Rawls, “Constitutional Liberty and the Concept of Justice,” in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 90.

¹²⁶ See Rawls, *A Theory Of Justice*, 221.

¹²⁷ Ibid., 222.

‘constitutionalism, bicameral legislature, separation of powers, checks and balances, a bill of rights with judicial review’ can be practised if they apply to every citizen.¹²⁸ Most importantly, Rawls is of the view that political parties must be independent. Political parties must not depend upon private economic interest. It is because if the political parties are not independent, the interest of the socially and economically advantaged groups in society will be likely to serve more.¹²⁹ Further, Rawls is of the view that in a democratic state, the government may be divided into four branches.¹³⁰ The first branch is the “allocation branch.” According to Rawls, the task of this branch is “to keep the price system workably competitive and to prevent the formation of unreasonable market power.”¹³¹ The second branch is the “stabilization branch.” It strives “to bring about reasonably full employment in the sense that those who want work can find it and the free choice of occupation and the deployment of finance are supported by strong effective demand.”¹³² The third is the “transfer branch.” According to Rawls, it is the responsibility of this branch to take care of “social responsibility.” The fourth is the “distribution branch.” The task of this branch is “to preserve an approximate justice in distributive shares by means of taxation and the necessary adjustments in the rights of property.”¹³³ Rawls also supposes another branch called the “exchange branch.” This branch consists of “a special representative body” and it takes note of “the various social interests and their preferences for public goods.”¹³⁴

According to one interpretation by Milton Fisk, Rawls’s concept of the state is related to the market. Milton Fisk argues that Rawls’s concept of the state is related to the “market tendencies.”¹³⁵ According to Milton Fisk, Rawls believes in “the efficiency and freedom of the market.” The inequality of income and concentration of large capital pose a threat the efficiency and freedom of the market. As the solution to this, Rawls advocates an “interventionist state.” Equality is required in order to stabilize the efficiency and freedom of

¹²⁸ Ibid., 224.

¹²⁹ Ibid., 225-26.

¹³⁰ Ibid., 275.

¹³¹ Ibid., 276.

¹³² Ibid.

¹³³ Ibid., 277.

¹³⁴ Ibid., 282.

¹³⁵ See Milton Fisk, “The State and the Market in Rawls,” *Studies in Soviet Thought* 30, no. 4 (November, 1985): 347.

the market. Thus, what Rawls tries to argue is that the state can promote justice in society by controlling the monopoly forces.¹³⁶

(2) Nozick has given a specific account of the state. Nozick justifies “the minimal state.” Nozick is against “any more extensive state.” Nozick’s view is that non-minimal state violates individual rights and therefore it is unjust. In Nozick’s view, the any more extensive state is too interfering. Such a powerful state is not compatible with the entitlement theory of justice as such state performs several functions which are quite paternalistic and redistributive in the name of justice. Nozick opposes welfare states. Nozick is of the argument that a robust state is so pervasive and it is bound to violate individual rights. Nozick does not approve of such a pervasiveness of state in public and private life of individuals. Nozick argues that the “state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their own good or protection.”¹³⁷ In fact, Nozick rejects the claim that a more extensive state is justified in order to bring distributive justice among its citizens.¹³⁸ Then Nozick provides the reason why he justifies the minimal state.¹³⁹ Nozick argues that the minimal state is not a paternalistic state. The minimal state has very limited functions. Nozick says, “Our main conclusions about the state are that a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate person’s not to be forced to do certain things, and is unjustified; and that the minimal state is inspiring as well as right.”¹⁴⁰ The minimal state does not clash with the individual rights. Rather the minimal state is there to protect individual rights. Nozick’s fundamental argument is that the minimal does not violate individual rights because it does not give individual rights. Individual rights are already with individuals. And the minimal state has no special rights to interfere in individual rights.¹⁴¹ Nozick argues that the minimal state has no distributive functions. The minimal state does not compel some individuals to aid others. The minimal state cannot distribute any resources in the name of justice. Besides, Nozick argues

¹³⁶ Milton Fisk also argues that Rawls’s notion of the state is not the actual state. It is about an ideal state. Rawls strongly favours an interventionist state. Ibid.

¹³⁷ See Nozick, *Anarchy, State, And Utopia*, ix.

¹³⁸ Ibid., xi.

¹³⁹ In fact, Nozick conceptualises a totally non-distributive state. Geoffery Sampson also stated the same line of argument. According to Geoffery Sampson, what Nozick argues is that the night-watchman state is non-distributive. See Geoffery Sampson, “Liberalism and Nozick’s Minimal Sate,” *Mind* LXXXVII, issue, 1 (Basil Blackwell, 1978): 93.

¹⁴⁰ See Nozick, *Anarhcy, State, And Utopia*, ix.

¹⁴¹ What Nozick seems to argue is that the rights possessed by the state are already possessed by individuals in the anarchic state of nature. Rights possessed by individuals are not given by the state and the state has no special rights to infringe. The state is to protect the individual rights.

that a minimal state would arise by means of an “invisible hand processes” without violating individuals’ rights. Nozick’s point is that a minimal state would arise in a process without violating individuals’ rights even if nobody tries to create it. Nozick says, “A state would arise from anarchy even though no one intended this or tried to bring it about, by a process which need not violate anyone’s rights.”¹⁴² This means, according to Nozick, a state would arise as an unintended outcome of individuals’ actions in the state of nature. A state would not arise out of the contractual agreement or consent from the state of nature. Regarding the genesis of the minimal state, Nozick explains that in the state of nature, individuals possess natural rights. But there are inconveniences. Some groups of individuals may band together to form mutual protection associations and defend their rights. In this way, people will join together to form multi-protection associations. These will then evolve into professionalised protection agencies. After sometime, a single dominant protective agency will emerge. It is because there are advantages of being a client of a powerful agency. But this dominant agency is not yet a state because there are independents who are not members of the dominant agency. Then Nozick argues that the dominant agency would prohibit independents from enforcing their rights which are not approved by the clients. In this process, the dominant agency has a de facto monopoly and becomes an ultra-minimal state. The dominant agency would compensate the independents by offering its own services to independents. Then, the ultra-minimal state becomes a minimal state when it undertakes to provide protective services to those independents.¹⁴³ Nozick’s strong point is that in any of the stages in which the minimal state emerges, there is no stage where it violates individual rights. The minimal state has not obtained any illegitimate authority.¹⁴⁴ So, Nozick argues that the minimal state is morally right. Furthermore, Nozick has not accepted anarchists’ view on the state. Nozick believes that the state is not immoral. There are some merits for the state to exist. The state can be there to protect individual rights. The minimal state has no scope to meddle in individuals’ lives. According to Gerald Gaus, what Nozick tries to demonstrate is that “the political can arise without manifest rights violations, and that the realm of the

¹⁴² See Nozick, *Anarchy, State, and Utopia*, xi.

¹⁴³ It must be mentioned that Nozick’s notion of an ultraminimal state is a halfway house between the dominant protective agency and the minimal state.

¹⁴⁴ Peter Singer also rightly points out that Nozick’s argument is that the minimal state can get from the state of nature without violating individuals’ rights, so nobody can claim that the state has assumed authority illegitimately. See Peter Singer, “The Right to be Rich or Poor,” in *Reading Nozick*, ed. Jeffrey Paul (England: Basil Blackwell, 1981), 39.

political is not essentially unjust.”¹⁴⁵ Nozick argues that in a nonminimal state, economically powerful persons try to capture greater political power in order to get more economic benefits. Those economically powerful persons use state for their own interest because such a state has illegitimate power. However, the minimal state best reduces the chances of misusing the state by some sections of persons for power or economic benefits.¹⁴⁶ Therefore, for Nozick, “minimal state is the most extensive state that can be justified.”¹⁴⁷ Further, Nozick claims that the minimal state is neutral to its citizens. It is because there are independently justifiable reasons for every prohibition it enforces.¹⁴⁸ The minimal state respects individual rights and dignity. The minimal state treats individuals as inviolable persons who cannot be used as means or resources for others. The minimal state does not interfere in the choices of individuals.¹⁴⁹ Thus, Nozick claims that the entitlement theory of justice can be realized by the minimal state. The entitlement theory does not require the state to interfere in the property rights of individuals.¹⁵⁰ Nozick seems to argue that private property rights of individuals are more significant than the state.

(3) Now we shall compare the overall views of Rawls and Nozick on the role of the state in promoting justice.

Rawls conceives of a liberal democratic state having some welfare functions.¹⁵¹ Rawls has not given the account of the origin of the state. Instead of invoking his account of the state, it appears that Rawls attempts to reshape the modern liberal state by infusing the elements of justice which he propounds. In this sense, Rawls conception of state is ideal. The kind of the state Rawls envisaged would have some significant functions. It would possess highly distributive functions. Rawls’s conception of state would engage in the distribution of goods,

¹⁴⁵ Gerald Gaus, “Explanation, Justification, and emergent Properties: an essay on Nozickian metatheory,” in *The Cambridge Companion to Nozick’s Anarchy, State, And Utopia*, eds. Ralf M. Bader and John Meadowcroft (Cambridge: Cambridge University Press, 2011), 129.

¹⁴⁶ See Nozick, *Anarchy, State, And Utopia*, 272.

¹⁴⁷ *Ibid.*, 274.

¹⁴⁸ *Ibid.*, 272-73.

¹⁴⁹ *Ibid.*, 333-34.

¹⁵⁰ In fact, Nozick’s invocation of the minimal state is crucial for the entitlement theory of justice to be attainable. In this sense, Hillel Steiner argues that the central foundation of Nozick’s entitlement theory of justice lies in his justification for the minimal state. See Hillel Steiner, “Nozick on Appropriation,” *Mind* LXXXVII, issue, 1 (Basil Blackwell, 1978): 109.

¹⁵¹ It must be also noted that Rawls does not appear to favour the “perfectionist state” as it may not ensure equal liberties to all. Rawls argues that perfectionism is not a political principle. See Rawls, *A Theory of Justice*, 329. In connection with this, Will Kymlicka also expresses that state perfectionism would result in undesirable consequence in society. He argues that ‘state perfectionism raise the prospect of a dictatorship of the articulate and would unavoidably penalize those individuals who are inarticulate.’ See Will Kymlicka, “Liberal Individualism and Liberal Neutrality,” *Ethics* 99, no. 4 (July, 1989): 900.

income, and so forth towards achieving the greater equality in society. Indeed, Rawls favours a state with positive roles that would facilitate a greater equality of opportunity. According to Rawls, the state that functions in accordance with the two principles of justice will ensure same basic rights to everyone and it will also distribute resources so that a fair amount of equality is brought in society.¹⁵² On the contrary, Nozick justifies the minimal state. Nozick clearly conceptualises the genesis of the minimal state. Nozick explains the stages how the minimal state could arise. Nozick tries to explain the evolution of a state with the help of the invisible hand process.¹⁵³ This means the state would emerge through a series of stages even if individuals in the anarchic state of nature did not intend to create it.¹⁵⁴ Moreover, Nozick states that a minimal state does not possess any distributive functions. The minimal state does not specify any principles of distribution. According to Nozick, the entitlement theory of justice does not require any extensive state as such a state is bound to disrupt the liberties of individuals. Nozick's point is that one of the main reasons for constructing the entitlement theory of justice is to show that justice does not require any extensive state.¹⁵⁵

Rawls is of the view that resources are to be distributed in society. The difference principle requires that all the resources are to benefit everyone in society. Natural assets and endowments are to work for the benefits of everyone since they happen accidentally without anybody's own doing. Rawls argues that any inequality is justified that works for the least advantaged in society. Thus, the state has a significant role to distribute the benefits of resources according to Rawls's theory of justice. The state has to ensure that everyone gets a fair share of distribution of wealth and income. On the contrary, Nozick vehemently opposes the idea of distribution of resources. Nozick argues that the minimal state has very narrow

¹⁵² Rawls appears to suggest that his notion of the state has some roles to bring a kind of egalitarian society by distributing income, wealth and services. According to Peter Berkowitz, what Rawls conceptualises is that the state constructed in accordance with justice redistributes goods to achieve a substantially more egalitarian society. See Peter Berkowitz, "The Ambiguities of Rawls's Influence," *Symposium* 4, no. 1 (March, 2006): 121.

¹⁵³ However, there are some views which are sceptical about Nozick's idea of the evolution of the minimal state. One such view is expressed by David Wood. David Wood argues that Nozick's minimal state can further move to the more- than-minimal state. He questions why the independents would only focus on protection ignoring other important needs. See for details. David Wood, "Nozick's Justification of the Minimal State," *Ethics* 88, no. 3 (April, 1978): 261-62.

¹⁵⁴ In this regard, Nozick argues that no one need have intended to produce a state. According to Nozick, "the notion of invisible hand explanation is descriptive, not normative." See Robert Nozick, "Invisible Hand Explanation," *The American Economic Review* 84, no. 2 (May, 1994): 314.

¹⁵⁵ Regarding Nozick's conception of the state, Murray N. Rothbard argues that Nozick's construction about the evolution of the state has its own defects. One such defect is that there is no historical reality to show that such a state emerges in the way Nozick presents. He further argues that Nozick has an immaculate conception of the state and such state does not exist in the actual sense. See Murray N. Rothbard, "Robert Nozick and the Immaculate Conception of the State," *Journal of Libertarian Studies* 1, no. 1, (Pergamon Press, 1977): 45.

functions. The state has no role of distribution.¹⁵⁶ In a free society, individuals own their property and they make voluntary transactions. They transfer their wealth on voluntary basis. There is no function for the state to meddle in the holdings of individuals. So, in the entitlement theory of justice, the state has no role to play. The minimal state is not concerned with distributive justice.

Rawls's conception of the state appears closer to be a modern welfare state. The difference principle particularly justifies the distribution of goods and resources in society in order to bring some kind of equality in society.¹⁵⁷ And the first principle of justice requires that the state respect basic liberties of individuals. On the contrary, Nozick is opposed to the welfare state.¹⁵⁸ For Nozick, the welfare state is bound to encroach individual rights. Nozick's idea of the state is not meant for any welfare activities. Nozick is not in favour of tax system in order to help others. In Nozick's view, any welfare measures violate individual rights. Garrett Ward Sheldon clearly makes a distinction between Rawls and Nozick on their conceptions of the state. Garrett Ward Sheldon argues that Rawls's state resembles the American welfare state which is based on a constitutional democracy having to guarantee individual liberties. Rawls's state endorses a capitalist market economy along with strong taxation policies.¹⁵⁹ And regarding Nozick, Garrett Ward Sheldon further argues that Nozick advocates a minimalist state. Having opposed to the American welfare state, Nozick never favours any government policy to tax the wealthy to help the poor.¹⁶⁰ However, it must be emphasised that Rawls distinguishes a "property owning democracy" from a capitalist welfare state. According to Rawls, while wealth and capital is concentrated in the hands of a smaller group in the welfare state capitalism; income and wealth are widely distributed in a property owning democracy.¹⁶¹ This means Rawls is not totally in favour of a capitalist welfare state.¹⁶² Rawls

¹⁵⁶ Robert Paul Wolff points out that Nozick is against the state that indulges in income redistribution. Nozick is not opposed to a de facto tyranny. According to him, Nozick's idea is that the just state is possible. See Robert Paul Wolff, "Robert Nozick's Derivation of the Minimal State," in *Reading Nozick*, ed. Jeffrey Paul (Oxford: Basil Blackwell, 1981), 93.

¹⁵⁷ In this context, Peter Berkowitz also argues that Rawls's state is "the modern progressive welfare state which protects individual liberty while distributive wealth in the name of social and economic equality." See Peter Berkowitz, "John Rawls and the Liberal Faith," *The Wilson Quarterly* 26, no. 2 (Spring, 2002): 63.

¹⁵⁸ Michael Davis also expresses the fact that Nozick's idea is quite the opposite to the welfare state. Nozick never defended the welfare state. See Michael Davis, "Nozick's Argument for the Legitimacy of the Welfare State," *Ethics* 97, no. 3 (April, 1987): 576.

¹⁵⁹ See Garrett Ward Sheldon, *The History of Political Theory Ancient Greece to Modern America* (New York: Peter Lang, 1993), 224.

¹⁶⁰ *Ibid.*, 212.

¹⁶¹ See Kelly, *Justice As Fairness*, 139.

¹⁶² As Thomas Pogge rightly explains, Rawls's view is that wider distribution of wealth and income is ensured in a property owning democracy. See Pogge, *John Rawls*, 133.

favours a liberal socialist regime or a property owning democracy. In his “Preface for the French Edition of *A Theory of Justice*,” Rawls makes it clear that under a welfare state, there may be large scale disparities of income and wealth and the result of which is that political powers may be in the hands of few. In such a scenario, Rawls argues, the difference principle may not work. But in the case of a liberal socialist regime, there may be dispersal of income and wealth in society and as a result, economic and political powers are not concentrated in the hands of those few who are affluent. So, the difference principle would work in a liberal socialist regime.¹⁶³

Rawls does not theorise regarding the justification of the state functions.¹⁶⁴ According to Rawls, the principles of justice apply to the main institutions in society, that is, “the basic structure of society.” These principles “regulate the choice of a political constitution and the main elements of the economic and social system.”¹⁶⁵ This means the principles of justice will decide the justification of the functions of the state. In fact, Rawls clearly argues that the principles of justice specify the forms of government that can be established.¹⁶⁶ Whether the role of the state is correct or not is determined by the two principles of justice. On the contrary, Nozick does not justify the state per say. Nozick attempts only to justify the minimal state. Nozick tries to justify the minimal state by theorizing that such a state could arise without violating the rights of individuals and individuals require such a minimal state to protect their rights. Moreover, a minimal state would perform limited roles, and it would not have any redistributive functions. Thus, for Nozick, a minimal state can be legitimate.¹⁶⁷

Rawls assumes that in a democratic state, a just constitution must be there. Citizens can be a part in constitutional process. Elections should be regularly held in a fair way in which all citizens can contest. The role of opposition is to be recognized. The constitution must

¹⁶³ See John Rawls, “Preface for the French Edition of *A Theory of Justice*,” in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 419-20. It must be also noted that both Rawls and Nozick oppose welfare state on different grounds. For Rawls, under welfare state, political liberties of individuals may be compromised and difference principle would not work fully as economic and political powers are in the hands of few. But for Nozick, welfare state indulges in several distributive functions, taxation policies and the result of it is that welfare state tends to infringe individual rights.

¹⁶⁴ According to A John Simmons, Rawls is less concerned about the justification of the state. He argues that Rawls’s is a “justification of coercion offered to those who already accept the necessity of living in some kind of state.” See A. John Simmons, “Justification and Legitimacy,” *Ethics* 109, no. 4 (July, 1999): 758.

¹⁶⁵ See Rawls, *A Theory Of Justice*, 7.

¹⁶⁶ *Ibid.*, 11.

¹⁶⁷ David Miller has a different view on the legitimacy of a minimal state. David Miller argues that Nozick’s minimal state is legitimate because it arose from a prepolitical state of nature in morally permissible ways without anyone intending to create a state. See for details, David Miller, “The Justification of Political Authority,” in *Robert Nozick*, ed. David Schmidtz (Cambridge: Cambridge University Press, 2002), 18.

guarantee certain freedom of citizens. Besides, the constitution provides restrictions on the government through arrangements like constitutionalism, separation of powers, checks and balances, judicial reviews etc. Rawls also argues that the state must not favour any particular religion. On the contrary, Nozick's conception of the state appears to be a private agency which exists to protect its clients.¹⁶⁸ Nozick does not discuss on matters of constitution and its relation to the state. Nozick does not discuss the role of the state in constitutional process like law making and law enactment. Nozick has not discussed the nature of the government. Nozick's main point is that the state should not have any excessive powers. Nozick seems to believe that the minimal state will remain a minimal state. However, there is a flaw in Nozick's stand. In the case of the minimal state transforming itself into a robust state, what the nature of such a state would be. Nozick did not address such a serious problem.

Rawls argues that the coercive powers of the government in "a well ordered society" is necessary. Rawls says, "It is reasonable to assume that even in a well-ordered society the coercive powers of government are to some degree necessary for the stability of social cooperation."¹⁶⁹ Rawls argues that individuals may "lack full confidence in one another" and as a result they may suspect each other. Some may suspect that others are not honouring their duties and obligations. Then the whole scheme may fail. In such circumstance, "the role of an authorised public interpretation of rules supported by collective sanctions is necessary."¹⁷⁰ In relation to this, Rawls also cautions that "the coercive apparatus of the state" cannot be used by persons for their own causes. Rawls says, "They do not use the coercive apparatus of the state to win for themselves a greater liberty or larger distributive shares on the grounds that their activities are of more intrinsic value."¹⁷¹ On the contrast, Nozick is a natural right theorist. According to Nozick, individuals have the inviolable rights. Rights are "side constraints" that cannot be violated by the state. Individual rights are not given by the state and state has no coercive power to take away the rights of individuals. In fact, the state is to protect the individual rights. State has the limited functions of 'protection against force, theft, fraud and enforcement of contracts.' The state has no coercive power.

¹⁶⁸ Similar views can be found in the writings of some scholars. According to Roy A. Childs, Jr, Nozick's state is private property. It is a private firm, an agency. See Roy A. Childs, Jr, "The Invisible Hand Strikes Back," *Journal of Libertarian Studies* 1, no. 1 (1977): 27.

¹⁶⁹ See Rawls, *A Theory Of Justice*, 240.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*, 329.

Moreover, Rawls addresses the “legitimacy principle of the exercise of political power.”¹⁷² Rawls’s idea is that the exercise of political power would be considered legitimate when it is based on constitutional essentials which “free and equal citizens” reasonably endorse. Rawls says, “Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.”¹⁷³ This means that Rawls does not endorse the absolute power of the state.¹⁷⁴ On the contrary, Nozick has devised a different account of the legitimacy of the state. Nozick argues that the state has some special legitimacy.¹⁷⁵ Nozick’s idea is that individuals have their rights which cannot be violated. Individuals choose the state to act as their agent. In other words, individuals authorise the state to act for them. Since the state is authorised to act for individuals, the state is authorised “to punish” those who violate anybody’s rights. The state has not got the authority to act on its own. Nozick argues that the state is entitled to exact punishment since individuals authorise it to act in their place.¹⁷⁶

John Rawls and Robert Nozick on the Notion of Social Cooperation and Justice

In this section, we shall study Rawls’s and Nozick’s notions of social cooperation in relation to the idea of justice. In the first sub-section, we shall study Rawls’s notion of social cooperation and its relation with his theory of justice. In the second sub-section, a study on Nozick’s notion of social cooperation shall be taken up. Then we shall examine the fundamental differences between Rawls and Nozick on the notion of social cooperation.

(A) For Rawls, the idea of social cooperation is an integral part of his theory of justice. Rawls’s account of justice is largely based on his assumption that “society is a fair system of cooperation among individuals.” In fact, Rawls constructs his theory of justice by giving this background assumption that “society is a fair system of social cooperation.” Rawls argues

¹⁷² On the question of Rawls’s idea of legitimacy of the state, David A. Reidy argues that Rawls did not address the legitimacy of the coercive authority of the state in *A Theory of Justice*. Rawls focus was to defend his principles of justice. But in *Political Liberalism*, Rawls addresses the liberal principle of legitimacy. Rawls tries to solve the legitimacy problem existing with the presence of fact of reasonable pluralism. See David A. Reidy, “Reciprocity and Reasonable Disagreement: From Liberal to Democratic Legitimacy,” *Philosophical Studies: An International Journal for Philosophy in the Analytical Tradition* 132, no. 2 (January, 2007): 246-48.

¹⁷³ See Rawls, *Political Liberalism*, 137.

¹⁷⁴ In his later work, Rawls appears to endorse a different kind of state. According to Bernard Williams, Rawls conceptualizes a pluralist state in *Political Liberalism* in which there is no place for any fanaticism. And its space of operation is quite constraint. See Bernard Williams, “A Fair State,” *London Review of Books* 15, no. 9 (May 13, 1993): 7-8.

¹⁷⁵ See Nozick, *Anarchy, State, And Utopia*, 140.

¹⁷⁶ Ibid.

that “the most fundamental idea in justice as fairness is the idea of society as a fair system of social cooperation.”¹⁷⁷ So, Rawls’s idea of justice cannot be detached from his assumption about social cooperation. Rawls considers “society as a cooperative venture” among individuals “for mutual advantages.” According to Rawls, individuals can get better lives through social cooperation. Social cooperation can make the conditions of individuals better than they can get by living separately without any social cooperation. So Rawls argues that “social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts.”¹⁷⁸ One reason why Rawls emphasis on the importance of social cooperation is because he believes that human beings have shared final ends and they value their common institutions. And they partner with others. Rawls argues, “Thus human beings have in fact shared final ends and they value their common institutions and activities as good in themselves. We need one another as partners in ways of life that are engaged in for their own sake, and the success and enjoyments of others are necessary for and complimentary to their own good.”¹⁷⁹ Rawls believes that individuals need one another to cooperate in various activities. Rawls’s idea is that an individual cannot do everything as he wishes. Different individuals have different capacities and potentials. They may cooperate with others to realize their ends in life. So Rawls argues that it is “through social cooperation founded upon the needs and potentialities of its members in a society that individuals can cooperate with others to realize their needs.”¹⁸⁰ And through social cooperation, individuals can benefit from their joint products. Rawls further argues that individuals may not fully realize their full powers and they need to look at others for their support. In a social cooperation, one may fulfil one’s potentials through collective activity. So Rawls says, “We must look to others to attain the excellence that we must leave aside, or lack together. The collective activity of society, the many associations and the public life of the largest community regulates them, sustains our efforts and elicits our contribution.”¹⁸¹ So Rawls’s argument is that an individual cannot be complete by himself; and therefore he needs to participate in social cooperation. Moreover, Rawls argues that individuals have the capacity to cooperate with each other. According to Rawls, equal citizens are those “who are willing to cooperate” and who are “willing to accept the fair terms of social cooperation.” In fact, in developing his idea of justice, Rawls conceives of persons as the cooperating members of

¹⁷⁷ See Rawls, *Justice As Fairness*, 5.

¹⁷⁸ See Rawls, *A Theory Of Justice*, 4.

¹⁷⁹ *Ibid.*, 522-523

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*, 529.

society. So Rawls says, “In justice as fairness the members of society are conceived in the first instance as moral persons who can cooperate together for mutual advantage, not simply as rational individuals who have aims and desires they seek to satisfy.”¹⁸² According to Rawls, the idea of social cooperation has some specific features. First, social cooperation is distinct from “merely socially coordinated activity.” Cooperation is guided by “publicly recognised rules and procedures” that those who are cooperating accept and regard as properly regulating their conduct.¹⁸³ Secondly, social cooperation involves “the idea of fair terms of cooperation.” For Rawls, “these are terms that each participant may reasonably accept, provided that everyone else likewise accepts them. Fair terms cooperation specify an idea of reciprocity, that is, all who are engaged in cooperation and who do their part as the rules and procedure require are to benefit in an appropriate way as assessed by a suitable benchmark of comparison.”¹⁸⁴ And thirdly, the idea of social cooperation requires an “idea of each participant’s rational advantage, or good.” And “this idea of good specifies what those are engaged in cooperation, whether individuals, families, or associations, or associations, or even the governments of peoples, are trying to achieve, when the scheme is viewed from their own standpoint.”¹⁸⁵ In other words, what Rawls argues is that the idea of social cooperation cannot be conceived as that of coordinated social activity. The idea of social cooperation is based on mutual benefits of individuals. The idea of social cooperation is not based on the orders of some authority. In the social cooperation, there are some fair terms that everyone is willing to accept. There is a sense of reciprocity in the idea of social cooperation. And all those who are cooperating are expected to benefit from the cooperation.¹⁸⁶ And regarding the content of fair terms of cooperation, Rawls is of the view that these are the terms that “equal persons are willing to cooperate in good faith.” Rawls says, “The fair terms of social cooperation are terms upon which as equal persons are willing to cooperate in good faith with all members of society over a complete life and to cooperate on a basis of mutual respect.”¹⁸⁷ According to Rawls, the fair terms of social cooperation are to be specified by those who engage in it. Individuals who engage in social cooperation specify the fair terms in the

¹⁸² See John Rawls, “Social Unity and Primary Goods,” in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 385.

¹⁸³ See John Rawls, “Justice as Fairness: Political not Metaphysical,” in *Collected Papers*, ed. Samuel Freeman (Oxford: Oxford University Press, 1999), 396.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*, 396-97.

¹⁸⁶ In *Political Liberalism*, Rawls argues that the notion of social cooperation has two elements. They are: a shared notion of fair terms of cooperation and rational advantages of participants. See, Rawls, *Political Liberalism*, 300.

¹⁸⁷ *Ibid.*, 303.

“original position.” The original position gives the required situation for this. In the original position, individuals choose the two principles of justice and these principles specify the fair terms of social cooperation. Rawls argues that the role of the principles of justice is to specify the fair terms of social cooperation.¹⁸⁸ The main role of these principles is to specify the basic rights and duties of individuals and they are to control the benefits of social cooperation. In Rawls’s words, “These principles specify the basic rights and duties to be assigned by the main political and social institutions, and they regulate the division of benefits arising from social cooperation and allot the burdens necessary to sustain it.”¹⁸⁹

According to Rawls, “the basic structure of society as a whole is a form of cooperation.”¹⁹⁰ It means that the basic structure of society is an essential part of Rawls’s idea of social cooperation. Rawls’s idea is that all the major political and social institutions in society are to function in cooperation. “The basic structure provides the framework for a self sufficient scheme of cooperation for all the essential purposes of human life.”¹⁹¹ Rawls also argues that when the idea of social cooperation is applied to the basic structure, the main political and social institutions of society will be just as they will cooperate in accordance with the two principles of justice.¹⁹² In addition to this, Rawls states that “a well ordered society” that corresponds to the principles of justice is itself a form of “social union.”¹⁹³ According to Rawls, individuals in a well ordered society have the sense of cooperation with one another in order to realize their ends. They have the willingness to cooperate in accordance with the principles of justice. And everyone has the “sense of justice” in “a well ordered society,” they cooperate with one another in good faith and they cooperate based on terms which all accept. According to Rawls, “every citizen wants everyone to act from principles to which they have agreed in the original position, and when they act, they find it satisfactory.”¹⁹⁴ Further, Rawls’s difference principle can be also conceived as a form of social cooperation. Rawls’s “difference principle” represents the idea that any social and economic inequalities are justified only if they work for the benefit of the least advantaged. And the natural assets and endowments are to work for the improvement of the conditions of the naturally disadvantaged in society. This means that the difference principle strictly reflects the idea of social cooperation. The benefits from the natural endowments and assets are to be shared

¹⁸⁸ See Rawls, *Justice As Fairness*, 7.

¹⁸⁹ *Ibid.*, 7.

¹⁹⁰ See Rawls, *Political Liberalism*, 301.

¹⁹¹ *Ibid.*, 301.

¹⁹² See Rawls, *A Theory Of Justice*, 527-28.

¹⁹³ *Ibid.*, 527.

¹⁹⁴ *Ibid.*

among everyone in society. Rawls argues that “the arrangements required by the difference principle are part of the conception of fair social cooperation in justice as fairness.”¹⁹⁵

(B) Nozick does not propound his idea of justice in relation to social cooperation. In a strict sense, Nozick describes his idea of justice independent of any framework based on social cooperation. Nozick does not invoke the requirement of the social cooperation in defining justice concerning holdings of individuals. In fact, Nozick is not approving of the idea of social cooperation. Nozick is of the argument that in a non voluntary social cooperative situation, the chances are high that a person may end up in getting a lesser share. It is because in a non voluntary cooperative situation, it is likely that all the benefits are to be strictly shared irrespective of each participant’s distinct contribution. So, Nozick argues that in a non cooperative situation, each individual gets what he deserves. And since everyone is clear about their entitlements, nobody can claim his share against the holdings of others in non cooperative situations. Nozick argues, “In the social noncooperative situation, it might be said, each individual deserves what he gets unaided by his own efforts; or rather, no one else can make a claim of justice against this holding. It is pellucidly clear in this situation who is entitled to what, so no theory of justice is needed.”¹⁹⁶ In fact, one of the basic arguments of Nozick against the idea of social cooperation is that social cooperation creates a situation in which nobody can know about their entitlements clearly. In the social cooperative situation, it is vague as to who deserves what. So, Nozick argues that “social cooperation introduces a muddying of waters that makes it unclear or indeterminate who is entitled to what.”¹⁹⁷

Nozick rejects Rawls’s idea of social cooperation. According to Nozick, Rawls fails to address the problem of how the benefits of cooperation are to be distributed. Nozick’s point is that Rawls only concentrates on how benefits obtained from social cooperation are to be distributed. Rawls obviously ignores to explain how much benefits an individual may get when he acts separately. Nozick’s belief is that a person may get lesser benefit in a social cooperative situation. But the same person may gain larger benefits acting separately in a noncooperative situation. Thus, Nozick argues that in a noncooperative distribution, Rawls’s idea of social cooperation may not result in a fair looking distribution.¹⁹⁸ However, it must be noted that Nozick is not against the idea of voluntary social cooperation. Nozick favours the idea of voluntary cooperation. Nozick’s idea is that individuals make their own choices in a

¹⁹⁵ See Rawls, *Justice As Fairness*, 52.

¹⁹⁶ See Nozick, *Anarchy, State, And Utopia*, 185.

¹⁹⁷ *Ibid.*, 185-86.

¹⁹⁸ *Ibid.*, 184.

free society. They make exchanges with others voluntarily. Individuals transfer their goods and things based on mutual consent. So, Nozick argues that in a voluntary, persons cooperate with others to make a product. But still individuals work separately.¹⁹⁹ Nozick's argument is that in a situation of voluntary cooperation where the product of each individual is distinct, there is no need for any idea of social cooperation based on any theory of justice.

With regard Rawls's idea that "the better endowed" gain by cooperating with "the worse endowed," and "the worse endowed" gain by cooperating with "the better endowed," Nozick is of the argument that Rawls's idea is not neutral between the better endowed and the worse endowed in a social cooperation.²⁰⁰ Nozick's argument is that "the less endowed gain more than the better endowed do from the scheme of general cooperation."²⁰¹ In fact, Nozick is doubtful whether the better endowed persons and the worse endowed persons would ever come to agree on any terms of social cooperation. It is because both sides would prefer to make the terms of cooperation that will result in increasing benefits to their respective sides. And they may not come up with any acceptable terms of cooperation to both the sides. Moreover, Nozick believes that the more favoured persons would complain in a situation of cooperation in which they are to get the less than what they deserve.²⁰² Overall, Nozick seems to believe that resources in society are the products of separate individuals. Nozick does not seem to accept the view that resources are the creation of social cooperation. Even if there is a voluntary cooperation, Nozick argues that individuals produce separately. So, for Nozick, the idea of social cooperation has no role to play in the entitlement theory of justice.

(C) We shall examine the basic differences between Rawls and Nozick on the idea of social cooperation.

For Rawls, the idea of social cooperation is an integral part of his idea of justice as fairness. Rawls conceives "society as a cooperative venture" among individuals for their "mutual advantages" and individuals have the willingness to cooperate with each other. Rawls argues that it is voluntary on the parts of citizens who are taking part in cooperation. Rawls's idea is that individuals get better lives through social cooperation. So, the broader framework of Rawls's idea of justice lies in his notion of social cooperation. On the contrast, Nozick does not bring the necessity of the idea of social cooperation in the entitlement theory of justice.

¹⁹⁹ Ibid., 186.

²⁰⁰ Ibid., 192.

²⁰¹ Ibid., 194.

²⁰² Ibid., 197.

For Nozick, the entitlement theory is not about social cooperation. Nozick does not conceptualize the need of social cooperation to bring justice in society. For Nozick, justice is not interdependent with the idea of social cooperation. Justice in holdings is to do with individuals' right to hold property conforming to three principles.

Rawls's idea of social cooperation is based on the assumption that benefits from the cooperation are to be shared in society.²⁰³ For Rawls, the main idea is that all the resources in society are to be shared among individuals in society in one way or the other. Rawls's theory of justice espouses the need of sharing the benefits of all the natural endowments and assets of individuals. Rawls's difference principle is a form of social cooperation because this principle requires the economic and social inequality to work for the advantage of the most unfortunate in society. Rawls's argument is that nobody deserves to gain more from their natural endowments and thus they must be shared. On the contrary, Nozick is not approving the idea of sharing the benefits from individuals' natural assets and talents. Nozick does not approve of the idea that the benefits or rewards one gets from his efforts should be shared in the name of promoting justice in society. He strongly advocates the idea that everyone is solely entitled to the reward of his legitimate deeds. To illustrate his point, Nozick gives the provocative example of "Wilt Chamberlain" in which he argues that Wilt Chamberlain is rightfully entitled to earn as much he can. Therefore, Nozick stands against the framing of any pattern or principle in a social cooperation to share the products of individuals in society. According to Nozick, there is no need for social cooperation in a situation where people voluntarily interact with one another, exchange their goods and services mutually.

Rawls invokes the idea of "a well ordered society" in which individuals will have the sense of social cooperation. Rawls argues that a well ordered society satisfies the two principles of justice which are chosen to determine the fair terms of social cooperation. In a well ordered society, individuals accept the two principles of justice and they are willing cooperate with one another. On the contrary, Nozick believes in the idea of "a free society" where individuals carry their lives based on their free choices. For Nozick, the question of social cooperation hardly figures in a free society because in a free society individuals voluntarily make exchanges with others. In a free society, "individuals control different resources" and everyone gets benefit from them. Finally, while Rawls strongly believes in the idea of social

²⁰³ T. M. Scanlon is of the argument that Rawls's idea of social cooperation is only for those who are related to one another under common institutions. They cooperate for an equitable share of the benefits of their cooperation. See for details, T. M. Scanlon, "Rawls' Theory of Justice," in *Reading Rawls*, ed. Norman Daniels (Oxford: Basil Blackwell, 1975), 202.

cooperation as it makes the lives of individuals better, Nozick is of the view that when each individual gets his share by his own efforts, there is no question of social cooperation. While Rawls argues that social cooperation brings mutual benefits for everyone, Nozick believes that social cooperation carries the idea of distributing all the resources in society irrespective of the entitlements that individuals have over their holdings.²⁰⁴

John Rawls and Robert Nozick on Individual Rights and Liberty

In this section, we shall discuss the ideas of Rawls and Nozick on individual rights and liberty. First, we shall analyse Rawls's idea on individual rights and liberty. Then we shall examine Nozick's stand on individual rights and liberty. Finally we shall explore the primary differences between Rawls and Nozick on individual rights and liberty.

(i) Rawls's theory of justice is based on the primacy of individual rights. The fundamental idea of Rawls's theory of justice is that individual rights cannot be compromised. In other words, Rawls's theory of justice underlies the idea that individual rights must be respected. It is in this context that Rawls rejects utilitarianism because utilitarian thinking does not regard the rights of individuals seriously. Rawls argues that utilitarianism does not recognize the "separateness of individuals."²⁰⁵ According to Rawls, justice as fairness respects individual rights seriously and it does not consider individuals as means. However, it must be also mentioned that Rawls has not theorised specifically about the individual rights. Even though Rawls's theory of justice is about defending individual rights, Rawls has not delineated about the nature of individual rights.²⁰⁶ Rawls seems to suggest that rights will originate from the social contract that "parties in the original position" enter to make. This further means, the principles of justice chosen in the original position will specify the rights of individuals. In fact, Rawls idea seems to suggest that rights of individuals and the nature of rights will be

²⁰⁴ Rawls and Nozick had different notions of society. David Schmidtz rightly elaborates the distinction. Rawls envisages 'a free society which is a mutually advantageous cooperative venture. A free society is not a zero sum game.' But Nozick envisages 'a free market society governed by a minimal state in which individuals interact by their consent and on mutually agreeable terms.' See for details, David Schmidtz, *Elements of Justice* (New York: Cambridge University Press, 2006), 196-203.

²⁰⁵ Rawls is of the argument that utilitarianism regards individual both as means and as ends: as ends by assigning the same weight to the welfare of everyone; as means by allowing the benefits to work for the unfortunate ones. See Rawls, "Distributive Justice: Some addenda," 169.

²⁰⁶ With regard to Rawls's idea on rights, Alan Ryan has given a different explanation. Alan Ryan argues that 'Rawls's theory of justice sets out to find some rights such as the rights against government (the right to a fair trial, the right not to participate in unjust war), civil and political rights (the right to vote, the right to choose one's occupation), economic rights (the right to protection against poverty and exploitation), etc. Rawls's stand is that any government that does not recognize such rights is not legitimate.' See Alan Ryan, "John Rawls," in *The Return of Grand Theory in the Human Sciences*, ed. Quentin Skinner (London: Cambridge University Press, 1985), 104-5.

derived from the two principles of justice that individuals have chosen in the original position. Rawls expressed that these principles will apply to the basic structure of society and they are to regulate the assignment of rights and duties. Rawls says, “These principles primarily apply to the basic structure of society. They are to govern the assignment of rights and duties and to regulate the distribution of social and economic advantage.”²⁰⁷ Rawls also argues that individuals in the original position are to choose the principles of justice in order to establish a complete conception of right. Rawls argues, “Therefore, to establish a complete conception of right, the parties in the original position are to choose in a definite order not only a conception of justice but also principles to go with each major concept falling under the concept of right.”²⁰⁸ Rawls’s idea seems to suggest that individual rights can be specified in the original position by the free individuals.²⁰⁹ Further, one can argue that Rawls has not advocated the idea of the absolute natural rights of individuals. This point can be examined from Rawls’s own assertion that natural endowment and assets are simply natural facts. Rawls claims that our natural talents and assets are “arbitrary from the moral point of view” as they just happen to us by circumstances like good fortune or accident. And nobody has any absolute claim over them. From this point, it can be argued that Rawls recognises the notion of individuals’ natural rights under one condition. Thus, Rawls argues that individual rights must be respected, and simultaneously Rawls does not recognize the absolute rights of individuals over the natural endowments and assets.²¹⁰

And with regard to liberty, Rawls has given much importance to the idea of liberty in his theory of justice.²¹¹ For Rawls, the idea of liberty is an integral part of his theory of justice. The first principle of justice is about having “equal basic liberties” by individuals. The first principle requires that basic liberty be equal for all. Rawls gives a list of basic liberties of citizens which are “political liberty (right to vote and to be eligible for public offices) together with freedom of speech and assembly; liberty of conscience and freedom of thought;

²⁰⁷ See Rawls, *A Theory Of Justice*, 61.

²⁰⁸ *Ibid.*, 110.

²⁰⁹ According to Samuel freeman, Rawls’s idea is that principles of right are independently specifiable in contractarian terms of agreement among reasonable and rational persons who are fairly situated. See Freeman, *Rawls*, 482.

²¹⁰ Regarding Rawls’s idea of rights, Thomas Nagel is of the view that Rawls’s account of the individual rights is “not instrumental.” This means Rawls does not see individual rights in terms of instrumental conception. Individual rights are good not because of the result they bring. For Rawls, rights are good in themselves. See Thomas Nagel, “Rawls and Liberalism,” in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), 65.

²¹¹ However, it must be noted that Rawls has not conceptualized his idea of liberty on the lines of positive and negative liberty. Rawls has not distinguished the kinds of liberty. Rawls only explained about some basic liberties in his theory of justice.

freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizures as defined by the concept of the rule of law.”²¹² And citizens are to have equal basic liberties. Moreover, Rawls gives some characters of the basic liberties. Rawls argues that a “basic liberty can be restricted only for the sake of liberty itself”. None of the basic liberty is absolute since “the basic liberties may be limited when they clash with one another.”²¹³ This also means that all basic liberties are equally important when they conflict with one another. None of the basic liberties is more important than other basic liberties. The basic liberties are inalienable. This means any agreement by citizens cannot violate the basic liberties even if those agreements are rational.²¹⁴ However, it is unclear how Rawls specifies the list of the basic liberties. Rawls seems to argue that these basic liberties are identified by the “parties in the original position.”²¹⁵ Further, Rawls argues that liberty can always be explained by a reference to three items. They are: ‘the agents who are free, the restriction or limitations which they are free from, and what it is that they are free to do or not to do.’²¹⁶ In Rawls’s words, “persons are at liberty to do something when they are free from certain constraints either to do it or not to do it and when their doing it or not doing it is protected from interference by other person.”²¹⁷ For Rawls, individuals must have equal liberty. All citizens must have same liberty. When an individual has greater liberty than other, then it can be said that liberty is not equal. Moreover, according to Rawls, the “equal basic liberties” are the same for every citizen in “justice as fairness.” But “the worth of liberty” is not the same for everyone.²¹⁸ According to Rawls, the worth of liberty to persons is their “capacity to advance their ends within the framework the system defines.”²¹⁹ The worth of liberty is not same for all because some are able to achieve their ends in life because they have better advantages and wealth. But some individuals are not in the position to utilize their opportunities due to the lack of proper means. But Rawls argues that the lesser worth of liberty are to be compensated.²²⁰

²¹² See Rawls, *A Theory Of Justice*, 61.

²¹³ See Rawls, *Political Liberalism*, 295.

²¹⁴ *Ibid.*, 365.

²¹⁵ H. L. A. Hart also points out that the basic liberties that Rawls describes are identified by the parties in the original position from behind the veil of ignorance. They are identified by the parties as they are essential for the pursuit of their ends in life. See H. L. A. Hart, “Rawls on Liberty and its Priority,” in *Reading Rawls*, ed. Norman Daniels (New York: Basic Books, 1975), 235.

²¹⁶ See Rawls, *A Theory of Justice*, 202.

²¹⁷ *Ibid.*

²¹⁸ See Rawls, *Political Liberalism*, 326.

²¹⁹ See Rawls, *A Theory Of Justice*, 204.

²²⁰ *Ibid.*, 202.

(ii) Nozick has different viewpoints about individual rights and liberty. Nozick argues that individual rights are natural and inviolable.²²¹ The first introductory line of his *Anarchy, State, and Utopia* says that “Individuals have rights, and there are things no person or groups may do to them, so strong and far reaching are these rights that they raise the question of what, if anything, the state and its officials may do.”²²² Nozick holds that each person is a separate individual with inviolable rights. Each individual has absolute right to live as he chooses. Nozick’s point is that rights of individuals cannot be used for the purposes of others. Individual rights are absolute as long as individuals respect the rights of others.²²³ For Nozick, rights are “side constraints.” This means rights impose limits on certain actions that can clash with the rights of individuals. There are different individuals with separate lives and so no rights of anyone may be sacrificed for others. Therefore, individual rights cannot be overridden.²²⁴ Nozick also argues that any compulsory distribution of income and wealth is not justifiable. It is because any nonvoluntary distribution of income and wealth violates the rights of individuals. For Nozick, individuals have the absolute right over their properties and they cannot be distributed.²²⁵ So, Nozick’s view is that individual rights define a moral boundary around the person which cannot be violated. Rights of individuals are not to be violated for any cause.²²⁶ The entitlement theory of justice is about respecting individual rights.

And with regard to liberty, it can be put argued that Nozick uses rights and liberty interchangeably. Nozick identifies liberty with the sphere of individuals where interference of any kind is not allowed. Nozick argues that since individual rights are inviolable, individuals have absolute liberty. Individuals should not be coerced to do things that have not chosen.

²²¹ Natural rights are those rights which are natural, inalienable and which are not given by human laws, customs, beliefs, government, etc. According to Tom Campbell, natural rights are rights that exist in nature independently of any human laws or customs. See Tom Campbell, “Human Rights,” in *Issues in Political Theory*, ed. Catriona Mckinnon (Oxford: Oxford University Press, 2012), 169.

²²² See Nozick, *Anarchy, State, And Utopia*, ix.

²²³ A. R. Lacey is of the view that what Nozick argues about the nature of rights is that rights are absolute. Once a person has a right, he has it fully only subject to the restriction that he does not violate the rights of others. See Lacey, *Robert Nozick*, 34.

²²⁴ Jonathan Wolff argues that Nozick’s libertarian rights are inviolable, they are natural and these rights are not dependent upon law or convention. See for details, Wolff, *Robert Nozick*, 35.

²²⁵ As Samuel Scheffler also points out that Nozick’s argument is that non-voluntary redistribution of income is impermissible because it violates the rights of those individuals whose income is redistributed. See Samuel Scheffler, “Natural Rights, Equality, and the Minimal State,” in *Reading Nozick*, ed. Jeffrey Paul (Oxford: Basil Blackwell, 1981), 149.

²²⁶ In fact, Nozick appears not to be approving of any violation of individuals’ rights for any purpose. Similarly, Leslie Pickering Francis and John Gregory Francis rightly point out that Nozick holds the view that it is never right to violate a right. See Leslie Pickering Francis and John Gregory Francis, “Nozick’s Theory of Rights: A Critical Assessment,” *The Western Political Quarterly* 29, no. 4 (December, 1976): 637.

Individuals themselves determine their lives and no one can force them to do something which is against their will. For Nozick, individuals must make voluntary exchanges with others and they must not be forced to make any agreement with others. As Thomas Scanlon rightly points out that Nozick considers any imposition of obligation to individuals which they have not given their consent as the primary threat to liberty.²²⁷ Therefore, Nozick is against any kind of paternalistic interventions in individuals' personal affairs. Nozick strongly justifies only a minimal state. It is because a minimal state never violates the rights of individuals. The functions of a minimal state are limited and they are confined to protection against force, theft, fraud, enforcement of contracts. Moreover, Nozick argues that personal liberty will be at odds with patterned principle. Nozick argues that liberty of individual will tend to upset any given patterned and the patterned will try to restrict individual liberty in trying to maintain it. In fact, the main dispute that Nozick has with the utilitarianism is the latter's ignorance of the separateness of person. Nozick argues that utilitarianism justifies the use of one person as a resource for others. Utilitarianism supposes society as an entity whose well-being can be maximised at the cost of some members in society. However, Nozick argues that there are certain rights that individuals have absolute control. Individual liberty cannot be compromised for the welfare of society. Thus, Nozick's main point is that the entitlement theory of justice is compatible with the individual's liberty. The entitlement theory of justice does not provide any scope in which individual liberty can be infringed.

(iii) There are some basic differences between Rawls and Nozick with regard to Individual rights and liberty.

First, Rawls argues about rights in terms of contractual rights. Rawls seems to argue that rights are themselves subject to discussion in the initial contract situation. Rawls does not underscore the idea of natural rights. Rawls does not express about the notion of absolute rights. In fact, Rawls does not begin with any set of rights in his theory. Rawls does not describe clearly about the nature of rights that individuals must have. Moreover, what Rawls propounds is that individuals will have equal rights after the principles of justice are fairly chosen. Rawls seems to depend much upon the two principles of justice to determine the

²²⁷ See Thomas Scanlon, "Rights, Liberty, and Property," in *Reading Nozick*, ed. Jeffrey Paul (Oxford: Basil Blackwell, 1981), 118.

nature of individual rights. On the contrary, Nozick believes in natural rights.²²⁸ Nozick begins with the assertion that there are individual rights which cannot be overridden. Nozick first argues that individual rights are inviolable and then he describes how political institutions can come to exist without violating those rights. Nozick's point is that individual rights are so absolute that anybody even the state cannot violate them without their consent.²²⁹ Thus, Rawls's idea of individual rights looks flexible as rights can be evaluated based on the principles of justice chosen by the individuals. Rawls does not describe individual rights in terms of natural rights. However, for Nozick, individual rights are already with individuals. According to Nozick, individual rights are natural and they cannot be overruled.

Second, Rawls does not discuss the concept of liberty in general. Rawls in his theory of justice specifies some basic liberties as we have discussed above. Rawls argues that very citizens should have equal rights to these basic liberties. These basic liberties cannot be restricted and they are not alienable. For Rawls, these basic liberties are so important that his theory of justice would not be possible without individuals having them equally. On the contrary, Nozick has not specified any specific kinds of liberties. Nozick seems to argue that individuals have natural liberties. Nozick discuss the idea of liberty in absolute terms. For Nozick, individuals have the absolute liberty to choose freely in a free society. Individual liberties tend to clash with end-state principles. Individuals cannot be coerced to give up their liberties. Thus while Rawls argues that liberties are allowed to be restricted only for the liberties, Nozick argues that individuals can only give up their liberties voluntarily.

Third, Rawls's theory of justice requires more affluent or fortunate in society not to take their rights and liberties in the absolute sense and they are required to work for the betterment of the less well off in society. Rawls's theory also would require a state having welfare functions to oversee that the least advantaged are properly taken care of. In this sense, for Rawls, better endowed individuals have some responsibilities towards the weaker or poor sections in society whether they deem it correct or not. On the contrary, Nozick is of the view

²²⁸ According to Theo Papaioannou, Nozick's idea of "absolute individual rights" is founded upon his ideas of "full self ownership and the moral inviolability of persons." But he argues that both premises are problematical as the relation between the absolute private property rights and equal liberty is not compatible with each other. See for details, Theo Papaioannou, "Nozick Revisited: The Formation of the Right-Based Dimension of His Political Theory," *International Political Science Review* 29, no. 3 (June, 2008): 262, 270.

²²⁹ Thomas Nagel is of the view that what Nozick believes is that individual rights and duties are the basis of what a government may do and should do. See Thomas Nagel, "Libertarianism without Foundation," in *Reading Nozick*, ed. Jeffrey Paul (Oxford: Basil Blackwell, 1981), 194.

that individuals have no compulsory obligation towards other fellow beings. Individuals own their income and wealth with full rights and liberties. No institution can force individuals to share some of their wealth with others. Therefore, Nozick does not justify any robust state because such a powerful state will violate individual rights and liberty.²³⁰

To sum up, from this comparative study, we have come across divergent ideas of Rawls and Nozick on each of the specific dimensions: (1) Rawls conceptualizes his idea of justice in terms of fairness, whereas Nozick defines his concept of justice in terms of entitlement. Rawls argues that the correct process to arrive at the fair principles of justice is to imagine a hypothetical situation in which free and equal individuals having no particular knowledge about themselves are to choose the principles of justice. The reason why Rawls invokes a hypothetical contract for choosing the principles of justice instead of actual contract is because Rawls believes that actual contract would not guarantee fairness. In an actual contract, conflicting interests and preferences of individuals would not guarantee the fairness of the principles of justice. But Nozick's argument is that the idea of justice has to be conceived in terms of the entitlement that individuals have over their holdings.²³¹ For Nozick, the entitlement of individuals over their holdings would be determined either by following the correct process of acquiring unheld things or by following the just process of transferring holdings from one person to another. An individual is entitled to a holding if he acquires that holding either in accordance with the principle of justice in acquisition or according to the principle of justice in transfer. So, Nozick's idea of justice is about non infringement in individuals' entitlement to their holdings. (2) Rawls's idea of justice as fairness is a kind of distributive justice. In Rawls's theory of justice, the primary requisite to select the two principles of justice is to determine the fair terms of distribution. Rawls argues that principles of justice would distribute all the benefits among individuals in a fair manner. For instance, all the benefits of natural assets and endowments are to benefit the less well off in society. But Nozick has objected the idea of distributive justice. Nozick argues that the term

²³⁰ Regarding Nozick's view on distribution and individuals rights, Judith Jarvis Thomson has a different interpretation. He argues that when Nozick argues that redistribution violates the rights of individuals, Nozick actually means the property rights. Therefore, Nozick is for an ideal state that does not do the distribution of property. See Judith Jarvis Thoson, "Some Ruminations on Rights," in *Reading Nozick*, ed. Jeffrey Paul (Oxford: Basil Blackwell, 1981), 141-42.

²³¹ It must be noted that Rawls has a different concept of entitlement. Individuals have their entitlements according to the rules of cooperation. They are not entitled to benefits on the basis of their natural talents and endowments. Individuals have the legitimate expectations to get whatever benefits in accordance with the fair agreements they all have accepted to follow. For instance, supposing there is a public rule which specifies a fixed salary for employees; then employees are entitled to their salaries provided they fulfilled the rules or conditions of the jobs.

distributive justice is not neutral because it suggests the idea that social resources are to be distributed among individuals. For Nozick, individuals have control over different resources in a free society and they are not available for any distribution. (3) Rawls has not presented any specific account of the state. Rawls advocates “a liberal socialist regime” or “a property owning democracy.” But Rawls does not prefer a welfare state. In fact, Rawls’s theory of justice necessitates a kind of state that would require having some welfare functions. Especially the difference principle would require a state with distributive roles. But Nozick justifies on the minimal state because any powerful state would violate individual rights. Nozick argues that the minimal state does not clash with individual rights and liberties as it has very limited functions. (4) Rawls conceptualizes his theory of justice on the premise that society is a cooperative venture and social cooperation makes the lives of individuals better. The whole exercise of choosing the principles of justice can be seen as a way to determine the “fair terms of social cooperation” so that everyone gets a fair distributive share. But Nozick does not emphasis on the need for social cooperation. Nozick’s argument is that free individuals in a free society choose according to their wishes. Individuals exchange their goods and service based on their mutual consent. Individuals cooperate with others on voluntary basis. (5) With regard to individual rights and liberties, Rawls is of the argument that every individual should have equal rights and same basic liberties. Rawls has not presented the concept of rights on the lines of natural rights. Rawls seems to argue that individuals would have same rights and liberties which they all have accepted in the initial choice situation. But Nozick uses rights and liberties interchangeably. According to Nozick, individual rights are natural and they are inviolable. Nozick argues that individual rights are so strong that no one including the state can override them. Individuals have the liberty to choose and individual liberties tend to obliterate any patterned principle. Most importantly, a mention must be made that while Rawls has reformulated some of his standpoints on justice in his later works; Nozick has not reframed his ideas of justice in any of his subsequent works. Nozick, in fact, has not engaged anymore with Rawls later when Rawls had expanded his ideas on justice. This comparative study is not extended to other specific areas later developed in Rawls’s works. However, having studied their differences on various counts, it must be also emphasised that both Rawls and Nozick still share a noticeable similarity. Both Rawls and Nozick stand in stark contrasts to the utilitarianism. Their theories of justice are opposed to utilitarianism. Both the thinkers had envisaged their versions of a just society

though in contrasting ways.²³² In Rawls's case, it is the concept of "a well ordered society" in which everyone accepts and fulfils the two principles of justice; in Nozick's case, it is a vision of a utopian world in which individuals can pursue their best ways of life without being imposed.

²³² In this regard, David Lewis Schaefer has pointed out that Rawls and Nozick try to present an ideally just society through their respective theories of justice. Both the thinkers construct a just utopian society, though in different frameworks, in which the government has no coercive authority to set any moral restrictions on individuals. See for details, David Lewis Schaefer, "Procedural Versus Substantive Justice: Rawls and Nozick," *Social Philosophy and Policy* 24, issue 1 (January, 2007): 172.

Chapter 5

Amartya Sen and the Idea of Justice

Amartya Sen has recently published a book called *The Idea of Justice*. This book takes cognizance of Rawls and Nozick in passing. While dealing with the idea of justice, Sen adds a few more dimensions by insisting on real life conditions that should determine the articulation on the idea of justice. The most distinctive feature is Sen's reference to actual lives and freedoms of people. In fact, one of the basic arguments of Sen is that the idea of justice has to be understood in connection with the actual lives and freedoms of people. Sen suggests that the idea of justice lies in the identification of the causes of injustice and try to find remedies. According to Sen, the aim of a theory of justice is not about formulating principles for a just society. A theory of justice must be concerned with the real lives of people. This means the focus of the idea of justice should be with the real lives of people and it must try to eliminate injustice around us. Sen is sceptical of the view that just rules and institutions would bring justice in society. He is of the view that the institutions alone would not advance the pursuit of justice. Sen says, "Justice is ultimately connected with the way people's lives go, and not merely with the nature of the institutions surrounding them."¹ Sen is critical about the practice of theorising justice in an idealistic way. Sen is of the view that most of the contemporary theories of justice focus on identifying perfectly just society. They are not directly concerned with the actual lives of people. Sen therefore favours the comparative approach to justice that relies on comparing feasible alternatives to come up with a more just alternative that can be actualized in society. Sen also expressed the significance of public reason in advancing the idea of justice. For Sen, public reason on the matters of justice is crucial as it can enhance the idea of justice. It is through public reason that biased and impartial ideas of justice can be critically scrutinised. Sen argues that justice by nature has a global reach, and justice should not be confined to a particular region. Sen's views have some global dimensions in the sense that the idea of justice, to be credible, has to have a global reach. Sen believes that global justice can be conceived through global public reason. Sen claims that "the idea of justice" has a strong connection with the practice of democracy. Thus, Sen weaves his idea of justice around the questions of famine, poverty, slavery, untouchability, illiteracy, exploitations, subjugation of women and democracy, etc.

¹ See Amartya Sen, *The Idea of Justice* (London: Penguin Books, 2010), x.

Amartya Sen has not provided a specific framework for a theory of justice like other mainstream political philosophers who take up the idea of justice rather seriously. Sen's concern is to remove injustices from society. Sen highlights some features that any the theory of justice must entail. First, a theory of justice must take the practical reasoning as its basis. It must be concerned with the questions of how injustice can be reduced and how justice can be advanced. It must not simply concentrate on constructing the features of perfectly just societies. A theory of justice must focus on how a particular social change would enhance justice.² Secondly, in the cases where conflicting considerations on the questions of justice are not resolved, a reasoned discussion is necessary. Sen argues that reasoning and impartial scrutiny are so essential in dealing with conflicting claims.³ Conflicting ideas exists because there are divergent reasons about the ideas of justice. Third, a theory of justice must be concerned with the actual lives of people. It is not simply about determining just institutions in society. Sen does not believe that remedy of injustice may be merely connected with establishing just institutions. So, to focus on actual lives of people is central in the pursuit of justice.⁴ According to Amartya Sen, a theory of justice must focus on actual lives, not simply on the institutions.⁵ Sen's idea is that a theory of justice is concerned with lives and freedoms of the people and it is not just about determining the principles of justice. Sen does not believe that institutions can only bring justice in society though institutions have important role in the pursuit of justice. Sen's argument is that there are remediable injustices across the world that we can possibly remove.⁶ He suggests that instead of framing the ways to establish a perfect justice in a society, a theory of justice must concentrate on identifying causes of injustices and work for their remedies.⁷ So, Sen's idea is not about finding a perfect justice. In this sense, Sen appears more pragmatic based on the real life conditions.

² Ibid., ix.

³ Ibid., x.

⁴ Ibid., x-xi.

⁵ Ibid., p. xi.

⁶ However, it must be clearly argued that Amartya Sen has not defined what he means by "manifest injustice." Sen has not offered the determinants of specifying his idea of injustice. Instead Sen suggests that issues such as: famine, genocide, slavery, untouchability, illiteracy, epidemics, poverty, exploitation, subjugation of women, etc. are the manifestations of injustice.

⁷ In this sense, what Sen argues is that we do not need a perfect theory of justice to know injustice. However F. M. Kamm rightly rejects Sen's view. According to F. M. Kamm, we still need a theory of justice. A theory of justice is necessary to guide us in identifying remedies for injustices around us. See F. M. Kamm, "Sen on Justice and Rights: A Review Essay," *Philosophy and Public Affairs* 39, no. 1 (2011): 84.

Transcendental Institutionalism and Comparative Approach

Amartya Sen broadly classifies two divergent lines of reasoning about justice. The first line of reasoning is called “transcendental institutionalism.” It concentrates on identifying just institutions in society.⁸ This approach focuses on the idea of perfect justice. This approach is about identifying the right institutions. This approach does not focus on the actual societies. Its primary aim is to develop ideal institutions. According to Sen, thinkers like Thomas Hobbes, John Locke, Jean-Jacques Rousseau, Immanuel Kant, John Rawls, and Robert Nozick pursued this approach.⁹ The second line of reasoning refers to “comparative approaches.” This approach is concerned with social realizations.¹⁰ According to Sen, Adam Smith, Jeremy Bentham, Karl Marx, and John Stuart Mill follow this approach. This approach concentrates on comparing societies that already existed or could emerge.¹¹ The comparative approach concentrates on the actual behaviour of people. This does not focus on determining the ideal institutions. The main purpose of this approach is to compare feasible actions, institutions, etc and find out a just alternative in real society.¹²

Sen argues that today’s mainstream political philosophers largely follow the transcendental institutionalism approach in propounding their theories of justice. He argues that the works of John Rawls is the finest example of it. It is because Rawls’s two principles of justice are chosen to apply to just institutions.¹³ But Sen is critical of transcendental institutionalism.¹⁴ It is because, Sen points out, any theory of justice formulated on the line of transcendental institutionalism has no much scope for public reasoning. Sen argues that there are problems

⁸ See Sen, *The Idea of Justice*, 5-6.

⁹ *Ibid.*, 6-7.

¹⁰ *Ibid.*, 7.

¹¹ *Ibid.*

¹² Sen stresses a point that there is a basic difference between “transcendental institutionalism” and “comparative approach.” Transcendental institutionalism concentrates on identifying perfect justice. It aims at identifying the nature of the just. It focuses on getting right institutions and it is not concerned about the real or actual societies that may emerge eventually. Comparative approach is concerned with social realizations. It involves the comparisons of societies that exist or could emerge. It does not confine its focus on determining a perfectly just society. See Amartya Sen, “Adam Smith and the Contemporary World,” *Erasmus Journal for Philosophy and Economics* 3, Issue 1 (Spring, 2010): 57-8. It may be also mentioned that the philosophy of “transcendentalism” believes that individuals are good in themselves or individuals are inherently good. It is the institutions in society that adulterate the goodness in humans. Therefore, Sen’s point is that transcendentalists aim to find an ideal of a perfectly just society through just or right institutions.

¹³ See Sen, *The Idea of Justice*, 8.

¹⁴ Nathan Rehn rightly sums up Sen’s stand against “transcendental institutionalism.” Nathan Rehn argues that what Sen argues is that transcendental institutionalism is not sufficient to promote justice in the real world. Instead Sen suggests a comparative approach. In comparative approach, the most just ways to promote justice in the real world among the feasible alternatives through public reason can be applied. Sen’s argument is that there are more reasonable viewpoints in any issue. See Nathan Rehn, “Sen v. Rawls.” *Jindal Global Law Review* 2, issue 1(September, 2010): 255.

with transcendentalism. The transcendental approach may not provide any reasoned agreement on justice because there are many conflicting principles of justice. The transcendental approach may not find the perfect situation as it does not focus on comparing feasible alternatives.¹⁵ Another drawback of formulating the idea of justice within the framework of transcendental institutionalism is that it does not enhance any discussion of justice in global level.¹⁶ According to Sen, transcendentalists believe that discussion of global justice is not possible as there is no viability of a sovereign global state which can enhance global justice. However, Sen is seriously wrong to claim that thinkers whom he labels as transcendentalists avoid the question of global justice. As a matter of fact, transcendental thinkers do not confine their discussions on justice to any specific region or society. For instance, thinkers like Immanuel Kant and John Rawls extended their ideas of justice to global level.¹⁷

Niti and Nyaya

In relation to the idea of justice, Sen invokes an old distinction between “niti” and “nyaya.” For Sen, the term niti relates to “organizational propriety and behavioural correctness.”¹⁸ And “nyaya stands for a comprehensive concept of realized justice.”¹⁹ Sen argues that the concept of niti is roughly equivalent to the transcendental institutionalism. And niti based justice may not do much to reduce actual problems of people. But the idea of justice conceived in terms of nyaya is concerned with the social condition in which people actually live. Moreover, Sen argues that the concepts of niti and nyaya can be understood from the point of deontological and consequential approaches to justice.²⁰ Drawing from the Indian epic Mahabharata, Sen argues that the debate between Arjuna and Krishna on the eve of the battle is from the standpoint of niti and nyaya or about deontology versus consequentialism. In that debate Arjuna puts his arguments from the grounds of consequentialism, whereas, Krishna talks from the point of deontology. For Sen, Arjuna’s arguments are from the side of nyaya, whereas, Krishna’s reasoning speaks about niti. Sen emphasises that there can be good reasons to assess justice in the sense of nyaya. One of the reasons why Sen prefers a nyaya

¹⁵ See Sen, *The Idea of Justice*, 9.

¹⁶ *Ibid.*, 25.

¹⁷ For instance, Rawls’s basic framework in his *The Law Of Peoples* is about the ways to extend the liberal conception of justice in the international arena. This means Rawls’s theory of justice is not meant only for some specific society or country.

¹⁸ See Sen, *The Idea of Justice*, 20.

¹⁹ *Ibid.*

²⁰ *Ibid.*, 22.

approach to niti approach to justice is because in the latter's case, the consequences of actions can be discussed.

Plural Dimensions of Justice

Sen argues that there is no singular dimension of justice. The idea of justice has plural dimensions. To illustrate this claim, Sen gives the example of three children and flute.²¹ Three children namely, Tom, Bob and Hary are quarrelling over the question as to who should get a flute. Tom claims the flute because he only knows the ways to play the flute. Bob claims the flute by saying that he is the poorest of all and he has no other toys. Hary demands the flute because he produces it by working hard. In such a scenario, Sen argues that the utilitarian would certainly favour the Tom's claim because he knows how to play and it will increase Tom's pleasure. The egalitarians would favour Bob's claim as he is the poorest and it will help in reducing economic disparity. The libertarians would favour Hary because he has produced it and he has the right to own it. In a situation like this, Sen argues that it is not possible to arrive at a unanimous agreement. Different claims with various reasons would emerge. And a perfect social arrangement may not exist. Thus Sen believes that plurality to be a part of understanding justice. Sen argues that for a theory of justice, it is not necessary to identify only the just social arrangements.²² There are other basic aspects that a theory of justice must concentrate. For Sen, issues such as hunger, illiteracy, torture or medical exclusion, etc. are source of injustice. Whether a society is just or not can be assessed in relation to these issues. In short, Sen argues that the idea of justice cannot be detached from the actual problems of people. But Sen has not worked out any framework by which the conflicting claims can be sorted out.

Reason, Institution and Justice

Sen believes that "reasoning is central to the understanding of justice."²³ Sen argues that "by and large, all of us are capable of being reasonable through being open minded about welcoming information and through reflecting on arguments coming from different quarters, along with undertaking interactive deliberations and debates on how the underlying issues should be seen."²⁴ Reasoning is essential for the idea of justice because it helps us in scrutinising our thoughts and ideas. Sen argues that reasoning "helps us to scrutinize

²¹ Amartya Sen has given this example in his book *The Idea of Justice*, 12-14.

²² See Sen, *The Idea of Justice*, 12-14.

²³ *Ibid.*, xx.

²⁴ *Ibid.*, 43.

ideology, blind belief” and biased outlook, etc.²⁵ Reasoning would help in enhancing the idea of justice.²⁶

Apart from reason, Sen believes that roles of institutions and behavioural patterns are interdependent in achieving justice. In this aspect, Sen is sceptical about the way Ashoka, the emperor of India in the third century B C and Kautilya, the author of Arthashastra, thought about achieving social justice. According to Ashoka, “social enrichment could be achieved through the voluntary good behaviour of the citizens themselves, without being compelled through force.”²⁷ However, Kautilya emphasised on institutional features as major contributors to good conduct.²⁸ In this context, Sen is of the argument that both Ashoka and Kautilya are incomplete.²⁹ For Sen, justice requires the combination of institutional choice, behavioural adjustment based on public discussion. But Sen claims that institutions themselves would not deliver justice. Institutions are not the direct manifestations of justice themselves.³⁰

Justice and Social Choice Theory

Sen believes that justice demands a more inclusive exercise. This means justice is not to be conceived as an exclusive exercise. We must listen to other’s views in assessing a society that we aspire for. It is because it may enhance our perspectives in many ways. At the same time, we can also let others take note of our suggestions and views. Sen’s idea is that dialogue and communication must be the part of the theory of justice. It is in this context that Sen discusses the importance of “social choice theory” in the pursuit of justice. According to Sen, social choice theory “focuses on the development of a framework for rational and democratic decisions for a group, paying attention to the preferences and interest of all its members.”³¹ Sen believes that social choice theory can contribute significantly in enhancing the idea of justice. Generally social choice theory refers to the analysis of individual interest, preferences and choices, etc. to form the collective decision for all in the society.

²⁵ Ibid., 35.

²⁶ Sen is of the view that thinkers like Habermas, Rawls and Smith strongly underpin the use of public reasoning even though they adopt different framework in their theories, 45.

²⁷ Ibid., 76.

²⁸ Ibid., 76.

²⁹ Ibid., 77.

³⁰ Ibid., 82.

³¹ Ibid., 92.

Sen discusses seven points of significant contributions of social theory to the theory of justice. First, the social theory focuses on the comparative assessments. This means social choice theory “concentrates on the practical reason behind what is to be chosen and which decisions should be taken.” Social choice theory is not concerned about developing a perfectly just society.³² Second, the social choice theory recognizes the plurality of competing reasons. This means the social choice theory pay attention to plurality of reasons though they are conflicting. They are inescapable plurality of reasons.³³ Third, the social choice theory has scope for assessment and critical scrutiny further and further. This means, the social choice theory allows the re-examination of general principles. It facilities the scope for reassessing the principles we have once formulated.³⁴ Fourth, the social choice theory permits partial resolution.³⁵ This means the social choice theory also allows the incomplete theory of justice. Fifth, the social choice theory allows alterative interpretations. This means the social choice theory is not opposed to other diverse interpretations. The social choice theory aims judgements based on diversity of ideas and views.³⁶ Sixth, the social choice theory emphasises on precise articulation and reasoning. This means the social choice theory emphasises on having clearer articulation and defence.³⁷ Seventh, the social choice theory has a close association with the public reason. This means the social choice theory recognizes the role of public reason.³⁸ It recognizes the role of public reason in how social problems can be addressed.

Moreover, Sen argues that there are differences between social choice theory and the “mainstream theories of justice.” The mainstream theories of justice regard any incompleteness to be a failure. In social choice theory, evaluative incompleteness is accepted.³⁹ So, Sen points out that the mainstream theories of justice are not more practical than social choice theory.⁴⁰

³² Ibid., 106.

³³ Ibid.

³⁴ Ibid., 107.

³⁵ Ibid., 107.

³⁶ Ibid., 108-9.

³⁷ Ibid., 109.

³⁸ Ibid., 110.

³⁹ Ibid., 103-5.

⁴⁰ Ibid., 95.

Impartiality and Global Justice

Sen puts forward his view that the idea that justice has to have a universal reach. This means justice should not be concerned about some specific society or regions. A theory of justice must have universal inclusion. For this, the idea of impartiality is required in a theory of justice. Sen argues that impartial evaluation is necessary to understand justice. Sen believes that one of the ways to make the subject of justice universal is to “formulate and discuss ideas that are significantly new but which would nevertheless be readily understood in terms of old rules of expression.”⁴¹ Furthermore, Sen distinguishes two kinds of impartiality: “closed impartiality” and “open impartiality.”⁴² In closed impartiality, “the procedure of making impartial judgements invokes only the members of a given society or nation for whom the judgements are being made.”⁴³ John Rawls’s theory of justice belongs to this category. However, in case of open impartiality, Sen argues, the process of making impartial assessment can invoke judgements from outside the focal group.⁴⁴ Adam Smith’s use of “impartial spectator” invokes this procedure. Sen is definitely in favour of the second category.

Sen’s view is that the idea of justice should go beyond the concerns of the members of a state or country. The idea of justice should not confine to the requirements of the specific state. It should not be confined within the boundaries of specific region or people. The argument of Sen is that the idea of justice should cover broader concerns for the whole humanity.⁴⁵ Sen goes on to provide some reasons for this. For Sen, justice has some elements of obligation towards fellow human beings. Sen argues that having the notion that “we do not really owe anything to others who are not in our neighbourhood would make the limits of our obligations very narrow indeed.”⁴⁶ Sen believes that if we owe some concerns to others. A theory of justice has to be inclusive. The reason why Sen argues that the idea of justice must include the concerns of whole humanity is because the lives of people are interrelated today. According to Sen, “the actions of one country can seriously influence lives elsewhere” as we are not living in isolation.⁴⁷ Since the institutions and policies of one country can have impacts in the lives elsewhere, the voice of affected people elsewhere cannot be ignored. The

⁴¹ Ibid., 122.

⁴² Ibid., 123.

⁴³ Ibid., 123.

⁴⁴ Ibid.

⁴⁵ Ibid., 128-29.

⁴⁶ Ibid., 129.

⁴⁷ Ibid.

voices of people affected should be considered in deciding what is just or unjust. The serious problem of ignoring the voices of people elsewhere is that the pursuit of justice would lead towards parochialism. Sen argues that the voice and views of people elsewhere have to be taken into account. It is because objectivity has a definite role in the deliberation of justice. And objectivity demands serious scrutiny and considering different viewpoints of different people living elsewhere.⁴⁸ Therefore, Sen strongly argues that the assessment of justice demands engagement with concerns of the entire humanity.⁴⁹

Sen also argues that today cross border discussion may provide various insights. The ties and bonds of human beings are not determined by just sovereign nation states. Today, many issues around the world are global in nature. To illustrate the point, Sen gives the idea of feminist movement which has a global phenomenon and which does not confine to the boundaries of one particular country or nation. Other global aspects like culture, commerce, politics, philanthropy, even protests indicate direct relations between human beings across the borders. Apart from these, various global phenomena like famines, slavery, untouchability, genocide, illiteracy, epidemics, economic crisis, etc., do not call for any similar agreement to solve. Therefore, any theory of justice today cannot ignore the concerns of the whole world. sAnd no theory of justice can simply ignore the concerns of other countries. Sen argues that “we are increasingly linked not only by our mutual economic, social and political relations, but also by vaguely shared but far-reaching concerns about injustice and inhumanity that challenge our world.”⁵⁰ Today, human beings around the world are connected to various global issues like mass scale violence and terrorism. Therefore, Sen strongly suggests that in today’s world, “global dialogue” is very important for “global justice.” Public discussion in global level is essential for bringing global justice. Sen argues that enhancement of global justice can be achieved through public discussion. For this, there is a need for the open impartiality. And in this aspect, Sen sees a profound necessity to use the idea of “impartial spectator” of Adam Smith. The basic idea of “impartial spectator” of Adam Smith is to “examine our own conduct as we imagine any other fair and impartial spectator would

⁴⁸ Ibid., 130.

⁴⁹ Ibid.

⁵⁰ Ibid., 173.

examine it.”⁵¹ The device of impartial spectator suggests the idea to judge or examine one’s own thinking and conduct as an impartial spectator would judge it.

And, in relation to the global justice and impartiality, Sen discusses the sharp dichotomy between the approaches applied by Adam Smith and John Rawls with regard to the question of impartiality. Adam Smith’s approach is of the ‘impartial spectator, while that of Rawls’s is contractarian approach.⁵² While Adam Smith’s approach aims at broadening our understanding and widening the reach of our ethical inquiry, Rawls’s approach is quite restrictive about the perspectives of outsiders.⁵³ Sen says, “Smith invoked the reflective device of the impartial spectator to go beyond reasoning that may be constrained by local conventions of thought, and to examine deliberately what the acceptable conventions would look like from the perspective of a spectator at a distance.”⁵⁴ In this sense, Smith’s reasoning allows wide ranging views and ideas to be considered. Smith’s approach is not parochial and it is to broaden the discussion. On the contrary, Rawls’s approach is restrictive. Rawls’s approach doesn’t consider the diverse viewpoints of other persons. Sen argues that Rawls’s approach is not concerned with the scrutiny of other persons who are not the part of his project. Sen argues that Smith’s “impartial spectator” does not seek for total agreement. But Rawls’s theory of justice seeks for agreement.⁵⁵ Moreover, Smith’s approach does not call for any contracting group. But Rawls’s theory of justice is concerned with the deliberations of those persons who are in the original position. Sen argues that even Rawls’s idea of “reflective equilibrium” also confine to those specific people. In this context, Sen exhorts that assessment of justice requires widest engagements with people cutting across the borders. It is required because the choice we make may affect others. The actions of ours may have serious consequences with others around the world. Sen argues that other’s perspectives may help us to overcome our parochial outlook and broaden our outlook.⁵⁶

⁵¹ Adam Smith invokes the device of “impartial spectator” in his book *The Theory of Moral Sentiments*. See Adam Smith, *The Theory of Moral Sentiments*, eds., D. D. Raphael and A. L. Macfie (Indianapolis, Indiana: Liberty Fund, 1984).

⁵² See Sen, *The Idea of Justice*, 124.

⁵³ As discussed in the above pages, Sen makes a distinction between “closed impartiality” and “open impartiality.” In closed impartiality, the procedure of making impartial judgment is confined to the members of the focal group. But in open impartiality, judgments from outside the focal group can be invoked in making impartial judgment. Rawls’s device of original position is an example of closed impartiality while Adam Smith’s the impartial spectator is the example of open impartiality. See Amartya Sen, “Open and Closed Impartiality.” *The Journal of Philosophy* XCIX, no. 9 (September, 2002): 445-46.

⁵⁴ See Sen, *The Idea of Justice*, 125.

⁵⁵ *Ibid.*, 135.

⁵⁶ *Ibid.*, 130.

Justice and Position

Sen argues that understanding of the “positionality” is an important aspect of a theory of justice. It is because people see the world from different position. Sen’s argument is that there are limitations in positional observation. There are positional illusions that can cause serious drawbacks in the pursuit of justice.⁵⁷ According to Sen, one way of overcoming this problem is to widen the information for evaluations and to invoke various perspectives from different persons.

Moreover, Sen argues that consequence reasoning is an essential aspect of justice. This means in assessing justice, the consequence reasoning cannot be ignored. To illustrate this point, Sen draws the conversation between Arjuna and Krishna on the eve of the battle of Kurukshetra in the epic *Mahabharata*.⁵⁸ Arjuna’s worry is that he had to kill several people who are his relatives. Many of them on the opposite side have not done anything wrong to him. So, Arjuna is doubtful whether fighting and killing is the right thing. On the contrary, Krishna’s stand is that one must concentrate on doing one’s duty. One must not worry about the consequence of one’s own actions. So, Krishna emphasises that doing one’s duty without considering the result is the right thing to do. In that conversation, Arjuna’s reasoning is based on the consequences. Arjuna’s reasoning is that one cannot simply undermine the result that may emerge after the actions. One must also consider about the consequences of our actions. In this context, Sen favours Arjuna’s reasoning about the consequence of actions. Sen argues that Arjuna’s argument goes on the line of Nyaya.⁵⁹ Thus, Sen argues that consequence reasoning entails the sense of obligations and responsibility.

Justice and Capability Approach

Sen argues that there is a relation between justice and capability approach. Sen is of the view that “capability approach” can be useful in advancing the idea of justice.⁶⁰ In fact, Sen

⁵⁷ Ibid., 169.

⁵⁸ Amartya Sen gives the detail illustration in *The Idea of Justice*, 208-214.

⁵⁹ Ibid., 213.

⁶⁰ According to Amartya Sen, ‘functioning represents parts of the state of a person—in particular the various things that he or she manages to do or be in leading a life.’ “The capability of a person, on the other hand, reflects the alternative combinations of functionings the person can achieve, and from which he or she can choose one collection.” This approach is based on a view as a combination of various ‘doings and beings’, with quality to life to be assessed in terms of the capability to achieve valuable functionings. See Amartya Sen, “Capability and Well-Being,” in *The Quality of Life*, eds. Martha Nussbaum and Amartya Sen (Oxford: Oxford University Press, 1993), 31.

underscores the point that the “capability approach” has a vital role in the pursuit of justice.⁶¹ Sen argues that “the capability approach is a general approach, focussing on information on individual advantages, judged in terms of opportunity rather than a specific design for how a society should be organised.”⁶² The capability perspective points out the relation between the inequality of capability and the social disparities. The “capability approach” focuses the issues of opportunity and freedom. And the “capability approach” is also concerned with the plurality of human lives. Sen’s argument is that these important aspects in which the capability approach concentrates are central to understand justice. This means that assessing the reasons for the deprivation of capability is essential to remove injustice around us.

In connection with the idea of justice, Sen also focuses the issue of disability. Physical and mental disability cannot be overlooked to understand the idea of justice. The problem of disability is global today. Those who are disabled are the most deprived. Their disabilities hamper them from earning their income. But Sen points out that society can help to reduce the problems of disability. Sen argues that the idea of justice has to take note of the problems of disability in society. According to him, prevention and alleviation of disability are crucial to advance justice. In addition to this, Sen argues that the capability approach is also concerned about equality in society. The capability approach is concerned with “equality of what?”⁶³ Sen’s idea is that the capability approach does not try to address the question of equality in general.⁶⁴ Martha C. Nussbaum argues that Sen’s idea of equality is not concerned with the “equality of welfare or equality of resources” in society. Nussbaum argues that Sen’s idea of equality is about equality of capability. But how Sen’s argument of equality can be connected with a theory of justice is not clear.⁶⁵

⁶¹ According to Wiebke Kuklys, the capability approach of Sen is “an evaluative framework for individual welfare.” It consists of the concepts of functionings and capability. The evaluation of an individual’s welfare involves the analysis of his or her capability. See for details, Wiebke Kuklys, *Amartya Sen’s Capability Approach* (Berlin: Springer, 2005), 10-11.

⁶² See Sen, *The Idea of Justice*, 232.

⁶³ *Ibid.*, 293.

⁶⁴ In this regard, Sen claims that all theories of social justice have the concern for equality of something in society. Sen argues that even Nozick strongly demands the equality for libertarian rights though he is not in favour of equality of income and wealth.

⁶⁵ See Martha C. Nussbaum, “Capabilities as Fundamental Entitlements: Sen and Social Justice,” *Feminist Economics* 9, issue 2-3 (2003): 36.

Justice and Democracy

Sen propounds the idea that there is a connection between the idea of justice and democracy. Sen argues that the practice of democracy is not all about “public balloting” and rather democracy is to be seen in terms of people exercising their reason.⁶⁶ Sen’s point is that the exercise of public reason is the point which connects justice and democracy. Sen says, “If the demands of justice can be assessed only with the help of public reasoning, and if public reasoning is constitutively related to the idea of democracy, then there is an intimate connection between justice and democracy, with shared discursive features.”⁶⁷ Ensuring democratic values are required to enhance the idea of justice. In this regard, Sen emphasises the critical role of media in enhancing the practice of democracy and justice. Free and independent media can help in developing public reasoning in an effective way. The media can spread various knowledge and information to public and as the result people will be equipped to scrutinize various aspects in a critical way. For the assessment of justice, the exercise of public reason needs to be inclusive. Thus, media has a significant both for democracy and justice. Sen’s idea is that the idea of justice must be inclusive in nature and it must be discussed. Sen argues that “discussionless justice can be an incarcerating idea.”⁶⁸ This means the idea of justice must be critically examined and extensive discussions must be there to advance justice. The idea of open engagement in public discussion is crucial for promoting justice. Different conflicting viewpoints may arise in the public reason. But Sen argues that the aim of public reason is not to arrive at conclusion. The idea is to take diverse viewpoints in assessing the idea of justice and try to accommodate them.⁶⁹ So, Sen argues that plurality of reasons does not hamper the progress of public reasoning. The idea of justice requires the recognition of different considerations. Sen believes that congruence can be arrived among plural viewpoints. Sen argues, “There can be a congruence of different reasons in many particular cases. The idea of justice does include cases of different types, with easy resolution in some instances and very hard decisional problem in others.”⁷⁰ Therefore, for Sen, a theory of justice is not just about identifying just institutions. Enhancement of justice requires comparative assessments. A theory of justice should not be concerned only with some specific persons. It must go beyond the boundaries of a state. The public reasoning about justice must be expanded across the borders. It is because such exercise may curb the

⁶⁶ See Sen *The Idea of Justice*, 324.

⁶⁷ *Ibid.*, 326.

⁶⁸ *Ibid.*, 337.

⁶⁹ *Ibid.*, 395.

⁷⁰ *Ibid.*, 397.

chances of a biased or parochial judgement about the idea of justice. Sen favours the comparative approach for the advancement of justice.

To sum up, Sen made an attempt to advance the idea of justice. Sen strongly advocates the idea that any theory of justice must not simply aim at establishing the just social arrangement in society. Sen does not support the idea that having just institutions would result in bringing justice in society. Sen emphasises on the importance of relating the idea of justice to actual lives of people. This means a theory of justice must focus on the real issues around people rather than theorising some frameworks about the idea of justice. A theory of justice must focus on the causes of injustice and see how they can be remedied. Sen argues that the idea of justice has to be universal in nature. Many of the problems today are global. A problem in a country can give multiple impacts in other countries. Therefore, a theory of justice seriously needs to be inclusive. And there is need to have the idea of global justice. Sen suggests that the idea of having wider engagement in open discussions is necessary to resolve global issues. Public reasoning is an essential part of justice. Sen argues that we can critically evaluate our ideas and views through public discussion. The idea of justice is also related to the functioning of democracy. Sen is of the view that justice cannot be advanced without fulfilling certain democratic characters. Overall, what Sen tries to argue is that the exercise of finding an ideal just society should not be the focus of a theory of justice. Instead, a theory of justice must focus on the ways to redress the causes of injustice around the world. For this, Sen proposes the need to adopt the comparative theory of justice. Sen believes that a comparative theory of justice would help us in advancing the idea of justice. A comparative approach allows us to compare feasible options and evaluate them. Sen also argues that the capability approach and social choice theory can be immensely useful in the pursuit of justice.

Amartya Sen on John Rawls and Robert Nozick

Amartya Sen has made an attempt to re-examine the ideas of John Rawls and Robert Nozick on justice. In the process, Sen identifies some loopholes in their theories of justice.

(a) Sen has expressed some of his disagreements with Rawls's theory of justice. Sen claims that there are some defects in Rawls's theory. First of all, Sen is critical about Rawls's claim that a just society requires a set of principles of justice. According to Sen, there are other

conflicting yet genuine aspects which are important for our understanding of justice.⁷¹ Sen's view is that it is doubtful to agree with Rawls's idea that the two principles of justice will be considered fair. Sen questions the reason why other principles would not be considered to ensure fairness. Sen argues that other principles of justice can also generate impartiality. Sen gives the example of different claims of three children over a flute. In that case, all the three arguments can be defended from different perspectives even though there can be no commonly agreeable solution to that. The idea of Sen is that there can be plurality of principles which are not biased. Therefore, Sen argues that if a set of principles of justice does not emerge, then Rawls's theory of justice would be difficult to adopt.⁷² In fact, Sen expresses his doubt over the possibility of arriving at a "single set of principles of justice" given the fact that there is plurality of reasons in the original position.

Sen argues that it is difficult to accept Rawls's argument that parties or individuals in the hypothetical "original position" would unanimously choose the two principles of justice. According to Sen, Rawls is under the assumption that only one kind of argument that satisfies the requirement of fairness would be chosen.⁷³ But Sen argues that there are other ways of arguments that satisfy the demands of justice. Sen argues that Rawls fails to show the convincing reasons for undermining other alternative principles of justice in the original position. Sen expresses the view that the process of choosing Rawls's two principles of justice are exclusive in nature.⁷⁴ The process concentrates on identifying the just society and it may exclude the scope of evaluating various views about justice. The process may exclude the possibility of accommodating the views of different people who may be affected by the decision made in a specific country. The process also may exclude the chance of different persons choosing other principles of justice in the original position. However, there are arguments that do not support Sen's argument against Rawls's two principles of justice.⁷⁵

Sen argues that Rawls's original position has some inherent limitations. In the original position, the views of other people who are not the apart of the parties may not be taken into

⁷¹ Ibid., 57-58.

⁷² Ibid., 57.

⁷³ Ibid., 10-11.

⁷⁴ Ibid., 90.

⁷⁵ One such argument against Sen is pursued by Laura Valentini. Laura Valentini points out that Sen criticizes Rawls's theory of justice for the lack of flexibility. Sen also criticizes Rawls's two principles of justice for being unrevisable. But Laura Valentini is of the argument that Sen's both criticisms are not correct. It is because Rawls admits the fact that there is plurality of reasonable liberal conceptions of justice. And Rawls's two principles of justice are open to revision. No principle is taken for granted in the original position. See for details, Laura Valentini, "A Paradigm Shift in Theorizing about Justice? A Critique of Sen," *Economic and Philosophy* 27, issue 3 (November, 2011): 312-13.

account. But the principles chosen in the original position by the parties may affect the lives of other peoples whose views are not considered in the original position. Sen's idea is that decision taken for a specific society may have impacts on the lives of other people who are not accommodated or who are not part of the original position. Also, the original position may not always have consistencies. Sen argues that when decision of the parties in the original position can influence the nature or numbers of the groups itself, then the composition of parties in the original position will be different with different decisions.⁷⁶

Sen is of the view that Rawls is not steadfast in his arguments about the emergence of the two principles of justice in the original position in his later works.⁷⁷ Rawls has expressed the possibilities of other alternative conceptions of justice appealing in the original position. According to Sen, Rawls also admitted that his theory of justice is not totally attainable.⁷⁸ In addition to this, Sen argues that there is notable tension within Rawls's own reasoning about his theory of justice. The tension is that Rawls always justifies his theory of justice, but Rawls also admits the fact that agreeing on "one set of the principles of justice" unanimously in the original position is a difficult task. Further, Sen argues that Rawls focuses too much on the priority of liberty. For Sen, vital issues like hunger, starvation and medical neglect, illiteracy, etc. are not less important than liberty.⁷⁹ Sen argues that Rawls had ignored the importance of such issues while emphasising on the priority of liberty.

Sen is of the argument that Rawls's different principle is problematic. Sen's view is that even if the opportunities are given equally to everyone, individuals will end up in getting different outcomes in society due to several factors. A physically disabled person cannot work on par with a strong and able person with the similar level of income, wealth and "primary goods." Obviously a physically disabled person can work lesser than a strong and able person. The same primary goods which are distributed to all equally will not result in getting same outcome. In other words, the outcome of same primary goods will vary enormously because of various factors like inborn qualities, environment and diseases, etc.⁸⁰ Sen argues that physical and social factors may affect the outcome of the same primary goods distributed

⁷⁶ See Sen, *The Idea of Justice*, 139.

⁷⁷ *Ibid.*, 58.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, 65.

⁸⁰ Rainer Forst clearly explains Sen's argument in this regard. What Sen argues is that even if equal distribution of resources according to primary goods is there among people, persons will utilize these primary goods in different ways. It is because persons have different capabilities. A less able person will get less benefit from the primary goods. So, Sen's argument is that only equal distribution of resources will not bring justice in society. See Rainer Forst, *Context of Justice* (Los Angel: University of California Press, 1994), 142.

among individuals. Moreover, persons with same capabilities may end up with different outcomes because of the means they adopt.⁸¹ Besides, Sen is of the view that Rawls's idea of justice as fairness primarily focuses on just institutions.⁸² Rawls argues about just institutions without considering the actual behaviour of persons. Sen argues that it is not possible to identify the just institutions without considering the actual behaviour of persons. Sen is doubtful about how the just institutions would work in the actual world. According to Sen, institutions should not be chosen in isolation from the actual behaviour of people. Institutions must be chosen in contact with actual behavioural pattern of persons. But Sen argues that Rawls oversimplifies the connection between the choice of institution and actual behaviour of people.⁸³

Sen argues that Rawls's idea of just institutions has a problem. According to Sen, Rawls's idea of just institutions is chosen keeping the result in focus. But the problem with the institutions is that once these institutions are chosen, there is no mechanism to check whether the institutions are able to generate the desired results or not.⁸⁴ Rawls has not provided any procedure to evaluate the proper functioning of the institutions after they are chosen. Sen further argues that in Rawls's formulation of social contract, the participation in pursuit of justice is limited to the members of specific country.⁸⁵ Rawls's formulation of social contract has less possibility of transforming itself into a global social contract. Rawls's social contract is specially meant for the members of a given society. In this sense, Sen argues that Rawls formulation of his idea of justice is parochial. Sen also argues that Rawls's idea of veil of ignorance does not provide the scope for the critical scrutiny of any local and biased ideas.⁸⁶ Rawls's idea of veil of ignorance is not open for scrutiny of diverse viewpoints. Moreover, Sen has some objections to "Rawls's idea of primary goods." According to Sen, Rawls's primary goods are concerned with good things. It is not "concerned with what these good

⁸¹ In connection with this aspect, Sen argues that the "conversion rates of primary goods into capability" between men and women will not be equal. Women may be in disadvantaged position even if they have same primary goods. It is because of the biological and social factors. See Amartya Sen, "Justice: Means versus Freedoms," *Philosophy and Public Affairs* 19, no. 2, (Spring, 1990): 116. In reply to Sen, Rawls argues that citizens have the minimum capacity to be the cooperating members of society even though they do not have equal capacities. Rawls argues that there are four major variations: variations in moral, intellectual capacities and skills; variations in physical capacities and skills; variations in citizens' conceptions of the good; and variations in tastes and preferences. For Rawls, once the principles of justice are fulfilled, any of these variations will not generate injustice in society. See for details, John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 183-84.

⁸² See Sen, *The Idea of Justice*, 67.

⁸³ *Ibid.*, 69.

⁸⁴ *Ibid.*, 85.

⁸⁵ *Ibid.*, 71.

⁸⁶ *Ibid.*, 128.

things to do to human beings.”⁸⁷ Rawls’s idea of primary goods rules out the role of any distributive claims based on entitlements, merits, deserts, right to ownership of property, etc. Moreover, Sen argues that Rawls has not worked out any specific scheme regarding the needs of the deprived sections like the handicaps in society.

Apart from the criticisms, Sen has expressed his immense appreciation for Rawls. Sen acknowledges Rawls for propounding an influential theory of justice. Sen expresses that Rawls’s theory of “justice as fairness” helps us to further our understanding of justice beyond the previously existing ideas on the subject of justice. Sen admits that his own understanding of justice has been hugely influenced by Rawls. Some of the ideas that Rawls invokes are very novel. Rawls’s idea of the moral powers, the idea of being rational and being reasonable certainly enrich the understanding of the idea of justice.⁸⁸ Rawls theory also makes significant contribution on the aspects of inequality. It also explores the new ways of assessing the idea of equality through the difference principle. Overall, Sen is of the view that Rawls has made a major contribution on the subject of justice.

(b) Sen is critical of some of the ideas expressed by Robert Nozick in his theory of justice. Sen argues that Nozick’s theory of justice falls under the transcendental institutionalism. This means that Nozick’s theory of justice emphasises on having dependent upon institutions. According to Sen, Nozick’s theory of justice endorses the importance of the chosen institutions. When Nozick argues for the importance of individual rights and liberties, Nozick emphasises on the requirement of the institutions. Nozick makes institutions necessary for a just society.⁸⁹ Sen argues that Nozick considers institutions essential in his idea of justice, guaranteeing individual rights to property, free exchange, free transfer, etc. Nozick entrusted these matters in the hands of institutions. But Nozick is not bothered about the evaluation of the outcomes of institutions.⁹⁰ Hence, Sen argues that Nozick’s theory of justice gives central importance to the institutions. Sen criticizes Nozick’s theory of justice of being “institutional fundamentalism.”⁹¹ This means Nozick theory of justice is dependent on having institutions. However, Sen’s argument is that even if just institutions are established in a society, it may

⁸⁷ See Amartya Sen, “Equality of What?” in *Liberty, Equality, and Law*, ed. Sterling C McMurrin (Cambridge: Cambridge University Press, 1983), 160.

⁸⁸ See Sen, *The Idea of Justice*, 63.

⁸⁹ *Ibid.*, 84.

⁹⁰ *Ibid.*

⁹¹ *Ibid.* “Institutional fundamentalism” basically means the view that the establishment of just or adequate institutions themselves are all sufficient to satisfy the requirements of justice. It also means the way of treating institutions to be central for meeting the demands of justice.

result in producing unexpected result without violating the libertarian rights of individuals. Without actually violating the rights of individuals, institutions established for generating expected results may turn out to produce the undesirable result.⁹² Sen's argument is that factors like political and economic failure may generate great tragedies like famines and starvation without actually violating individuals' libertarian rights. Nozick's theory of justice has not addressed such aspects.

It must be mentioned that Nozick had made some exception in his theory of justice. Nozick has noted that giving absolute or complete priority of "libertarian rights" may lead to some undesirable outcomes like a "catastrophic moral horror" in some cases.⁹³ It means that Nozick admits the fact that in extreme cases the institutions requirements might be abandoned. But Sen's point is that Nozick has not answered two questions: one is of whether individual rights are absolute and another is whether individual rights may be violated to avoid catastrophic moral horror.⁹⁴ Sen's argument in this case is that once such an exception happens, there would be nothing substantial left in Nozick's theory of justice. In Sen's words, "But once such an exception is made, it is not clear what remains of the basic priorities in his theory of justice, and the fundamental place that is given to the necessary institutions and rules within that theory."⁹⁵ Sen also points out that there may be other grounds such as bad social consequences in which Nozick's theory of justice may have to abandon a complete reliance on just institutions. Moreover, Sen is critical about Nozick's idea of right to liberty. Sen argues that Nozick characterises the right to liberty in terms of individuals having absolute right to choose.⁹⁶ However, Sen's argument in this regard is that a person's right to choose something may be dependent upon other conditional factors.

An Assessment of Amartya Sen's Idea of Justice

The idea of justice that Amartya Sen expounds in his book *The Idea of Justice* is not free from shortcomings. First of all, Sen argues that the way to enhance justice is not to theorise about a perfect just society. Sen argues that justice can be enhanced by removing injustices. Justice cannot be achieved by simply identifying just institutions. However, Sen's idea of justice has not sufficiently specified the process of how injustices might be remedied. Sen's

⁹² Ibid., 85.

⁹³ Robert Nozick discusses the problem of "catastrophic moral horror" in *Anarchy, State, And Utopia*. See Robert Nozick, *Anarchy, State, And Utopia* (New York: Basic Books, 1974), 30.

⁹⁴ See Sen *The Idea of Justice*, 85.

⁹⁵ Ibid.

⁹⁶ Ibid., 315.

idea of justice fails to provide the pragmatic ways in which the problems of real injustices can be addressed. In other words, Sen has not provided any plausible theory through which justice can be achieved. Sen suggests a comparative approach to remove injustice without a guiding theory of justice.⁹⁷

Sen is very much critical of the “transcendental institutionalism” right from the beginning. Sen is of the argument that transcendental institutionalism only aims to identify an ideally perfect society through just institutions. Sen argues that a theory of justice must be concerned about finding remedies to injustice in the world. However, Sen has the lack of clarity to show how his approach of addressing the problems of injustice can be distinguished from the approach of transcendental institutionalism. In fact, a comparative approach which Sen prefers aims at transforming an unjust society into a just society. Similarly, the objective of transcendental institutionalism is also to identify a perfectly just society. The objectives of both the approaches are not different. In this sense, Sen need not simply discard the importance of the transcendental institutionalism.⁹⁸

Sen attaches a good deal of importance to the “idea of public reason” in the attainment of justice. In other words, Sen emphasises much importance on the idea of public reason in the pursuit of justice. But his idea of public reason has its own defects. Sen seems to believe that the idea of justice can be generated by exercising public reason. But the problem is that Sen fails to provide any feasible arrangement as to who would decide the rules and regulations public reasoning. Sen has not specified any process in which the final outcome of public reasoning can be achieved. And how far the final outcome of public reasoning will be advancing the idea of justice is not discussed by Sen. In fact, it is not even clear whether there can be an ideal situation under which the public reason can be ascertained. Moreover, Sen also emphasises on having global public reasoning on the matters of justice. But Sen’s idea of invoking public reason in the global level is fancifully ambitious.

⁹⁷ Amartya Sen in his earlier essay, “Rawls versus Bentham: An Axiomatic examination of the Pure Distribution Problem” argues that Rawls theory of justice is not complete. Sen is of the strong view that a complete theory of justice is yet to be developed. See Amartya Sen, “Rawls versus Bentham: An Axiomatic examination of the Pure Distribution Problem,” in *Reading Rawls*, ed. Norman Daniels (Oxford: Basil Blackwell, 1975), 292. However, we shall argue that Sen has failed to provide an alternative theory of justice which is more complete than Rawls’s theory of justice.

⁹⁸ For instance, Debra Satz rebuts Sen’s stand of downplaying the importance of transcendental theories of justice. Debra Satz argues that transcendental theories are required if we are to achieve our goal even if the process is slow. Comparative approach has its own defects. Simply comparing alternatives may lead us to miss our goal because comparative approach is not properly guided. See Debra Satz, “A Review of *The Idea of Justice* by Amartya Sen,” *Political Theory* 39, no. 4 (July, 2011): 562.

It can be noted that Sen indulges in explaining other topics at length without actually addressing the core question as to how these are relevant to the idea of justice. For instance, Sen talks at length about rational choice theory. However, Sen does not show how rational choice theory can be directly connected with the theory of justice in a way that it can enhance justice. Moreover, Sen has written with verbosity about various issues like capability, sustainable development and the environment etc without demonstrating any methodology to showcase their relevance with the idea of justice. At times, it pretty looks like Sen intends to subsume every possible concepts within the ambit of the idea of justice and merely claims, or rather suggests that the idea of justice can relate to them in one way or the other.

Sen rightly argues that there is plurality of reasons for justice. Sen has illustrated this by giving the analogy of three children and a flute in which all of them are claiming their rights over the flute on legitimate grounds. Sen admits that it is difficult to arrive at a completely reasonable final solution in such a complex situation. But Sen also argues the comparative approach in order to arrive at the best possible options from a number of feasible alternatives. There is a tension in Sen's argument in this sense. On the one hand, Sen claims that it is not possible to arrive at a completely agreeable solution to some complex situation due to the presence of reasonable claims. On the other hand, Sen argues for the comparative approach to arrive at some best feasible alternative. In addition to this, any comparison of reasons can be feasible with rankings of competing reasons. But Sen has not emphasised on the need of ranking for the comparative approach. Thus, Sen's idea of comparative approach appears hollow.

Sen argues that political philosophy must aim at diagnosing the manifest injustices. Sen advocates the idea of removing injustice without an ideal theory of justice. Sen emphasises on eliminating visible injustice instead of pursuing perfect justice. But there are still some inherent problems in Sen's ideas. Sen has not discussed how he distinguishes his idea of justice from other significant aspects which are moral. Although Sen focuses on the need to remove injustice, he has not discussed as to what constitutes his idea of injustice. Sen has not made any distinction between his idea of injustice and other wrongdoings. Besides, it is problematic to claim that just removing injustice will promote justice in society. Sen has not shown how eliminating manifest injustice will generate justice in society. Also, the nature of injustice may be varied substantially; but Sen has not illustrated any procedures of how different kinds of injustice can be successfully remedied.

Sen is critical of most of the contemporary theories of justice. According to Sen, many of the contemporary theories of justice are not practical. As a result they are not related to the actual problems of human beings. While they are obsessed with theorising about the just perfect society, they are not concerned with actual issues which people are facing around the world. However, the question is how successfully Sen has managed to distinguish his idea of justice from the mainstream theories of justice. It is not yet clear as how far Sen has advanced his idea of justice to be considered practical. In what ways, Sen's idea of justice would succeed to provide solution to injustices that people are facing is a matter of serious inquiry. As a matter of the fact, Sen has presented his idea of justice in a very utopian way even though he tries not to be seen in that fashion. Often, it appears that Sen oversimplifies the idea of justice by directly linking it to the exercise of public reasoning. Sen presents it without adequately examining the arduous complications involved in the process of public reason. For instance, Sen discusses at length the significance of global justice. Sen believes that global public reasoning is one of the most practical ways to eliminate the injustices across the world and bring about justice. As many of problems faced by human beings are global in character today, justice can be advanced globally through global public reasoning. Nevertheless Sen has not been successful in conceptualising the practical procedure through which reasonable public discussion can be held amidst the irresolvable conflicting reasons among the people globally. Sen's projection of arriving at global public reason to resolve multiple global issues looks utopian. Overall, Amartya Sen's attempt does appear to be more of a suggestion to take note of various significant issues around us in the deliberation of justice than presenting his own idea of justice. However, Prof. Amartya Sen might have exhibited some inadequacies on clarifying his approach but the impression one gets is Sen's abiding concern for justice and how to achieve it. It may be readily recognized that the question of justice may still be excitingly complex and insolvable in a perfect way. But the idea of justice is too important to be left unarticulated. Amartya Sen's book may be seen in that light.

Chapter 6

Conclusion

This thesis is divided into six chapters. Chapter 1 of this thesis deals with the meaning of the term justice; the difficulties involved in defining the concept of justice accurately. It attempts to explore various dimensions of justice besides examining the aspects that are broadly considered to be the origin of the idea of justice. This chapter tries to study some of the notable historical trends about the changing evolution of the idea of justice. Following this, it also examines the different interpretations of justice by some of the prominent schools. The prominent schools which are under this study are: the Greek idea of justice; Libertarian idea of justice; Communitarianism and justice; Utilitarian conception of justice; Anarchist view on justice; Marx's idea of justice; and the idea of justice as understood in the East. While doing this, the main focus is to examine how differently these schools of thought interpret the idea of justice. This chapter brings out the idea that describing the concept of justice in the most accurate or precise term is still an elusive exercise. The idea of justice has different dimensions and origins. The idea of justice is constantly evolving owing to numerous factors. Various schools of thought have developed the idea of justice in variety of ways.

In the chapter 2 of this thesis, we have examined John Rawls's theory of justice. Rawls had worked extensively on the theory of justice. In the process, Rawls has made some modification in his later works. Hence it is not prudent to study Rawls's theory of justice in a single section. Three sections are classified based on the original texts of Rawls. The first section deals with Rawls's idea of justice based on his first book *A Theory of Justice*. In this, we have examined how Rawls conceptualizes the idea of justice in terms of fairness. The next section discusses how Rawls has reformulated his theory of justice in *Political Liberalism*. It delineates why Rawls has reformulated "justice as fairness" as "the political conception of justice." The final section is concentrated on Rawls's attempt to extend his idea of justice in the international arena. It is confined to Rawls's last work *The Law of Peoples*. This chapter shows that Rawls has conceptualized his theory of justice in terms of fairness. Never did Rawls claim that justice is similar with the term fairness. Hence, Rawls writes "justice as fairness." Rawls has also made some modifications in his theory of justice without disrupting the basic framework. One significant modification is Rawls's point that "justice as fairness" is to be understood as "a political conception of justice" but not as a metaphysical or philosophical conception. Rawls also formulated the ways in which his liberal conception of

justice could be extended in the international arena. In this way, this chapter tries to give an overall picture of Rawls's theory of justice.

Chapter 3 of this thesis highlights Robert Nozick's theory of justice. This chapter tries to examine how Nozick defines his idea of justice which he calls as the "entitlement theory of justice." It examines the three principles of the entitlement theory of justice that Nozick has invoked. This chapter also discusses how Nozick has justified the minimal state in relation to individual rights and liberties. Further, it attempts to analyse some of the primary factors that captivated Nozick's interest on the idea of justice. A section that deals with Nozick's reactions to Rawls's theory of justice concludes this chapter. This chapter brings out the idea that Nozick's theory of justice is concerned with the "holdings" of individuals. Nozick's theory of justice does not go along the line of other distributive theories of justice. Nozick's entitlement theory of justice tries to show that any distribution of income and wealth in society following some principles could not determine the idea of justice. Justice is to be defined in relation to how individuals have come to possess their things. Nozick believed that his theory of justice is compatible with a minimal state. The minimal state has no rights to interfere in the holdings of individuals. While expounding his theory, Nozick also argues that Rawls's theory of justice is not workable universally.

In the Chapter 4 of the thesis, we have focused on the comparative study of Rawls and Nozick on the idea of justice. This chapter attempts to explain the differences between both the thinkers on the ideas of justice. For specific objective, some key dimensions are specified. The first dimension is about the basic differences between Rawls's idea of "justice as fairness" and Nozick's the "entitlement theory of justice." In this, we have discussed how Rawls has conceptualized his idea of justice in terms of fairness. We have also discussed how Nozick defines his idea of justice in terms of entitlements that individuals have over their holdings. The second dimension is on the question of distributive justice. In this, we have elaborated the different stands taken by Rawls and Nozick on the idea of distributive justice. The third dimension is about the views of Rawls and Nozick on the role of the state in promoting justice. In this, we have explained that while Rawls has not presented a clear account of the state in relation to his theory of justice, Nozick justifies the existence of the minimal state. The fifth dimension focuses on the notion of social cooperation. With regard to social cooperation, we have examined why Rawls is in favour of it; whereas Nozick stands opposed to the notion of social cooperation. The final dimension is about the different views of Rawls and Nozick with regard to individual rights and liberties.

Chapter 5 of this thesis delineates Amartya Sen's ideas on the question of justice. In this chapter, we have examined how Sen has looked at the idea of justice from a different format. Further, we have discussed about Sen's basic objections to Rawls and Nozick. This chapter concludes with a critical assessment of Amartya Sen's idea of justice. From this chapter, we can note that Sen's attempt is to articulate the idea of justice from a different angle. Sen argues that the idea of justice is to concern with the real life problems that people face. The purpose of a theory of justice is not to identify the right rules and institutions for the purpose of establishing justice in society. Sen's main argument is that institutions alone cannot bring justice. It is in this context, Sen tried to differentiate himself from those theories of Rawls and Nozick. Sen argues that a theory of justice must focus on the "actual lives" of individuals and try to find solutions. For this purpose, Sen favours a comparative approach to justice. Moreover, Sen emphasises on the need to bring other aspects like public reason, capability approach and social choice theory etc into the deliberation of justice. Sen also believes that the idea of global justice can be achieved as the problems that people encounter today is no more confined to any specific region.

The present study brings out the fact that the idea of justice, while controversial, continues to occupy the minds of many political theorists. The multiple dimension of the idea of justice is a subject of inquiry by many theorists. In this study, we have concentrated on the works on justice by John Rawls and Robert Nozick. We have also taken into account the work of Amartya Sen on justice. We have studied the ideas of justice propounded by Rawls and Nozick and then have sought to compare them comprehensively. Sen's ideas on justice are then analyzed.

From the comparison of John Rawls and Robert Nozick, we have found that there are major differences between the ideas of Rawls and Nozick on justice. (i) There is a difference between Rawls and Nozick in the way they present their respective ideas of justice. Rawls conceptualizes his idea of justice in terms of fairness, whereas Nozick defines his concept of justice in terms of entitlement. For Rawls, justice is to be understood in terms of fairness. Rawls puts forward the argument that the correct process of arriving at the fair principles of justice is through a hypothetical social contract among free and equal individuals. Rawls's idea is that in a hypothetical choice situation in which everyone is equal and free, the principles of justice chosen by individuals after deliberating various options available would be considered fair. Rawls calls such an initial situation the "original position." The unique argument that Rawls devises is that while deliberating for the principles of justice, individuals

are under the “veil of ignorance” and they are deprived of fundamental knowledge about themselves. In such a situation, everyone has the equal rights to choose the principles of justice which would serve the interest of all once they enter the real world. And the principles chosen in such a circumstance would be considered fair. However, the problem in Rawls’s theory is that Rawls has not defined what exactly constitutes the term fairness. Rawls seems to be concerned primarily about the process of choosing the two principles of justice which will be considered fair. But Rawls has not outlined any mechanism to assess whether the outcomes of applying the two principles in society are fair or not. Rawls also supposes the idea that individuals are put in what he calls as original position to choose the principles of justice first and then in the next stage, individuals are to apply those principles in the main institutions when the real life begins. But Rawls’s such supposition is problematic because the hypothetical thought experiment that Rawls envisages is too abstract and it seems impracticable in the real world. On the contrary, Nozick presents his theory of justice as the entitlement theory of justice which is basically concerned about the holdings of individuals. For Nozick, individuals are entitled to their holdings if they are acquired in accordance with the just process of acquisition or in accordance with the just process of voluntary transfer. The entitlement theory of justice is concerned with the non infringement of the rights of individuals to their holdings. And Nozick’s “entitlement theory of justice” is about respecting the rights of individuals to their holdings. However the problem that is inherent in Nozick’s theory is that Nozick seems to concern only about the property rights of individuals. In this sense, Nozick took a hardcore libertarian stand which usually underpins the importance of individuals’ property rights in society. Nozick seems to be under the belief that the idea of justice is to be defined only in relation to property. Nozick does not seem to argue that the idea of justice entails larger aspects of society than just concerning about the property itself. Moreover, Nozick has not explained clearly what he meant by the just process of acquiring things or the just process of transfer things. Without bothering much about explaining the principles of the entitlement theory of justice, Nozick appeared to argue that just holdings of individuals can be assessed according to these principles. (ii) Rawls and Nozick have taken two different stands with regard to the idea of distributive justice. Rawls is all for the distributive justice. Rawls’s theory of justice can be seen as a form of distributive justice. In fact, the very basic purpose of choosing the “two principles of justice” is to determine the fair terms of sharing all the benefits of income and wealth in society. For Rawls, all the benefits of natural assets and endowments are to benefit everyone in society. Rawls’s idea of distribution is based on his assumption that differences among individuals are accidental and

no one can claim for any extra advantages. However, Rawls's such assumption is problematic because Rawls appears to urge others to accept the idea that individual talents, skills and any natural endowments are not the result of their effort. This means that Rawls's theory discredits individual effort, endeavours because Rawls argues that individuals happen to have their natural assets by good fortune. Rawls's idea of distributive justice negates the effort or endeavours that individuals put in order to develop their talents and skills. Moreover, Rawls holds such a stand with a view to ensuring larger benefits to those whose income and wealth are the lowest in society. On the contrary, Nozick's "entitlement theory of justice" is not a kind of distributive justice. Nozick's views are not in favour of any distribution in society. The reason why Nozick rejects the idea of distributive justice is because Nozick believes in the self ownership of oneself. For Nozick, individuals are the sole owners of the outcomes of their labour and they have control over different resources in a free society. Nevertheless, while discarding the idea of distribution, Nozick's defence of individual self possession reflects a kind of individuals who are atomistic and self centred. In fact, Nozick eulogizes human efforts and endeavours on whose outputs others cannot lay any claim. Nozick propounds the view that individual alone is entitled to any product and society has no right to share it. But Nozick appears to undermine the societal factors that go into in nurturing those individual qualities. (iii) Regarding the role of state in promoting justice, Rawls has not theorised clearly the specific functions of the state. However going by his theory of justice, particularly the difference principle, it looks clear that Rawls's theory of justice requires a kind of state having distributive roles. Rawls's difference principle underlines the idea of distributing the benefits of income, wealth, privileges and opportunities in society. Rawls appears to have a kind of state in mind that would involve in the distributions of income, wealth, assets, privileges and opportunities of various kinds without compromising the fundamental liberties of individuals. Moreover, when Rawls suggests that the two principles of justice apply to the major institutions in society, Rawls would mean that the state machinery is to adopt the two principles of justice while exercising its functions. Thus, Rawls visualizes a kind of state that has larger role while enforcing its duties in accordance with the principles of justice. As a matter of fact, Rawls propounds "a liberal socialist regime" or "a property owning democracy." Rawls does not advocate a welfare state. By contrast, Nozick theorised at length about the account of the state. Nozick justifies a minimal state as it does not mess with individual rights. Nozick argues that a minimal state is not at odd with the entitlement theory of state. One of the reasons why Nozick favours a minimal state is because, according to Nozick, a correct theory of justice does not require a robust state.

However, Nozick's idea of a minimal state sounds problematic. The scope of functions that a minimal state should enjoy is too limited. Nozick sounds a bit authoritative when he argues that the functions of a state should confine to the protection against force, fraud, theft and the enforcement of contracts. It is because there is no guarantee that a minimal state would only remain within such jurisdictions. It is also contestable to conclude whether such a state with the most minimal functions would ever exist. (iv) On the question of social cooperation, Rawls is an advocate of social cooperation whereas Nozick is not in favour of the idea of social cooperation. For Rawls, society is a cooperative venture and social cooperation is essential for the better lives of individuals. The main reason behind choosing the principles of justice is to determine the fair terms of social cooperation so that everyone gets fair share in the distribution of resources. But Rawls's idea of social cooperation seems to focus much on the least advantaged in society. Because Rawls argues that any social arrangement cannot be considered just unless it ensures that those poor and unfortunate in society get the maximum benefits. Rawls strongly suggests that those at the bottom of the society must get the higher share. However, it must be also noted that while emphasising on the need for equal distribution of the benefits, Rawls is not proposing a levelling equality in society. What Rawls conveys is that income, wealth and opportunities in society must also benefit those who are least well off. In this sense, Rawls's idea of social cooperation works in a rather complex process. On the contrary, Nozick does not advocate the idea of social cooperation. It is because Nozick does not see the need of compulsory social cooperation in society. Nozick's point is that individuals have absolute control over their resources and wealth and they have the right to do with what they have. So Nozick does not go with the idea that social cooperation would result in having better lives. In fact, Nozick's aversion towards the compulsory social cooperation is based on the fact that such an idea compels individuals to share all their benefits equally irrespective of the differences in their contributions. Nozick's point is that those who contribute more are entitled to get more than those who do not. However, it must be also taken into account that Nozick is not against the idea of social cooperation per say. Nozick is only averse to the idea of compulsory social cooperation that demands equal sharing of benefits. Hence, Nozick instead favours voluntary cooperation among individuals according to their choices. (v) With regard to individual rights and liberties, Rawls's theory of justice reflects the point that individual are to have equal rights and same basic liberties. However it is noticed that Rawls has not conceptualized individual rights in terms of absolute rights. This means that Rawls has not advocated individual rights being natural in the sense that they are absolute. Rawls's idea seems to suggest that individual

right and liberties are bound by the terms and agreements in the initial choice situation. On the contrary, Nozick expresses the view that individual rights are natural and they are not violable. Nozick argues that individual rights are absolute that they cannot be overridden. Nozick also puts forward the point that individuals have the liberty that can upset any patterned principle. Individual liberty cannot be simply seized even by the state. It is also clear that the kind of individual rights and liberties that Nozick advocate are absolute in nature. Also, both Rawls and Nozick use the concepts of rights and liberties interchangeably. However, while Nozick regards individual rights in terms of self ownership whereas Rawls does not consider rights on the line of absolute self possession.

Apart from what has been said above, it can be also seen that Rawls and Nozick represent two different stands of liberalism. While Rawls's ideas are inclined towards modern liberalism which promotes positive welfare functions of the modern state; Nozick's views epitomize classical liberalism in the form of libertarianism which champions individuals' right to liberty. Further, while Rawls has expanded his idea of justice in his later work; Nozick has not made any significant revision of his theory of justice in his later works. One major modification that Rawls had made in his later work is to present the idea of "justice as fairness" as "a political conception of justice" (see chapter 2, 76-80). In addition to these differences, Rawls and Nozick envisaged two different visions of a just society. Rawls terms his version of just society "a well ordered society." For Rawls, "a well ordered society" is one in which everyone accepts the same conception of justice. "A well ordered society" is regulated by the same conception of justice which is endorsed by individuals publicly and the main institutions of society, laws; policy; institutions and constitutional arrangements etc are to be formulated in accordance with the same conception of justice. Contrary to Rawls, Nozick has devised "a framework of utopia." Nozick's idea of utopia is about the best of all possible worlds which allow individuals to choose multiple ways of life that suit their interests. Unlike the traditional notion of utopia which seeks to promote a single conception of good life for everyone; Nozick's idea of utopia allows varieties of good lives. However, both the versions of a just society are not short of shortcomings. While conceptualizing the idea of "a well ordered society," Rawls sounds too optimistic. There is no society that endorses a same conception of justice as Rawls supposes. As there are difficulties in arriving at a single universalised conception of justice, Rawls's proposition of "a well ordered society" being more stable looks hollow. In the case of Nozick, the framework of utopia that Nozick imagines is far from the reality. Nozick sounds vociferous when he stresses the point

that individual can leave a community and join other communities voluntarily in such a utopia. The problem is that human beings are yet to be well equipped to lead such a fanciful life as Nozick supposes.

Despite the differences, both Rawls and Nozick also share certain commonalities. Both Rawls and Nozick reject utilitarianism. Rawls rejects utilitarianism on the ground that utilitarianism does not take the distinctions between individuals seriously. As far as Nozick is concerned, he finds faults with utilitarianism for not recognizing the separateness of individuals. As a result, utilitarianism justifies the sacrifice of the rights of few individuals in order to bring the well being of larger individuals in society. Both Rawls and Nozick are highly influenced by Immanuel Kant. Both thinkers subscribe to Kant's idea that the right is prior to the good which generally means rights of few cannot be sacrificed for the greater good of others. They advocate Kant's idea that individuals are ends; individuals are not to be considered as means. Rawls and Nozick follow the "categorical moral reasoning" which is concerned with actions. Their ideas of individual rights and freedom are on the line of Kant's idea of autonomy and freedom of individuals. Further, apart from rooting their theories of justice around the core elements of liberalism like individualism, freedom, consent, rights, reason and equality etc, Rawls and Nozick are considered to have revitalized the discourse on liberal idea of justice in the contemporary times. It must be mentioned that the dominant trend in political theory in the early 20th century was logical positivism which mainly concentrated on scientific aspects of knowledge and analytical tradition. Rawls is credited to have revived the substantial political theory which focuses on fundamental questions related to individual rights, liberties, justice and institutions in society. Similarly, Nozick is also widely accounted for bringing libertarianism into the mainstream discussion in a vigorous way. Moreover, after the Second World War, liberalism was under the tremendous criticism, overwhelmingly from the left. In the 1960s and 1970s, events like the anti Vietnam War protest, widespread civil rights movements, black liberation slogans, hippie culture etc seriously questioned the legitimacy of liberal values and institutions in the United States. It is largely seen that the main attempt of Rawls and Nozick was to defend the legitimacy of liberalism. In doing so, both Rawls and Nozick counteract against the criticism from the left which argues that liberalism does not address the real issues of capitalism. Rawls has not directly tackled Marx's criticism of liberal capitalism. What Rawls argues is that the main institutions of a liberal society are arranged based on the principles or agreements which free and rational citizens have chosen with their consents. Liberal institutions are legitimate as they function in accordance with the

terms and conditions which everyone has accepted. In liberal society, rights and liberties of individuals are equally respected. All opportunities are open for fair competition and there is no ground of discrimination. In fact, Rawls suggests that the less well off in society are looked after. All the benefits of income and wealth are to benefit everyone in society. The question of exploitation is ruled out in liberal society since distribution of all benefits is performed according to the terms of agreements accepted by all. In fact, Rawls's defence of liberalism is based on the premise that there is no exploitation of individual rights and liberties since liberal society runs in tandem with the agreements which everyone has consented without force.¹ But for Nozick, Marx's theory of exploitation is unacceptable. Nozick argues that there is no exploitation of workers by capitalists because workers are never forced to work for the capitalists. Workers work for the capitalists based on the terms of contract which they all agree voluntarily. As workers are not forced to work under the unfair terms and conditions, there is no exploitation of workers in a capitalist society. Countering the criticism from Marx, Nozick questions that if Marx is right and that exploitation takes place in capitalist society, then why have not the workers or groups of workers started their own enterprises or business ventures?² In fact, Nozick outrightly remarks that "Marxian exploitation is the exploitation of people's lack of understanding of economics."³ In one of his interviews, Nozick expresses the view that many of Marx's ideas are sloppy and they are sorts of politically aggressive language when they lack effective arguments.

As contrary to both Rawls and Nozick, Amartya Sen has tried to articulate the idea of justice from a different perspective. For Sen, justice is connected with the actual life conditions of people, not merely with the institutions in society. One of the basic arguments that Sen emphasises is that just rules and institutions alone cannot generate justice in society. For this, Sen suggests that any theory of justice must focus on addressing the causes of injustice in society and find the remedies for them. Unlike Rawls and Nozick, Amartya Sen's approach appears to focus more closely with the conditions of the poor and developing countries. As a matter of fact, Prof. Sen's ideas reflect the concern for vast majority of the poor and the underprivileged. For Sen, poverty, famine, malnutrition, lack of education and health care are

¹ But it must be noted that while defending liberalism, Rawls has not claimed that liberalism as practiced in the American society is absolutely justifiable. Rawls only shows, through his theory of justice, how possibly the legitimacy of liberal values and institutions can be reinforced. In fact, Rawls did not reject all the ideas from the left outrightly as Nozick did. For Rawls, a kind of egalitarian society can be established without having to compromise the fundamental rights and liberties of individuals.

² See Robert Nozick, *Anarchy, State, And Utopia* (New York: Basic Books, 1974), 253-55.

³ *Ibid.*, 262.

some of the problems that plague our society. Sen, therefore, advocates the view that education and universal health care should be provided to all. Sen strongly favours state subsidies to meet the basic needs of people. Nevertheless, it is noticed that Sen has not accurately outlined any specific framework through which justice can be ensured in society. Unlike Rawls and Nozick, Sen does not endorse any principles of justice. In this sense, Sen seems to believe that justice will exist in society once the problems that cripple our society are addressed. For Sen, manifested problems such as poverty, famine, exploitation, untouchability, famine, slavery, genocide, gender inequality, malnutrition, lack of education and health care etc. are the causes of injustice in society.

While working on this thesis, this scholar is aware of some limitations albeit a serious attempt is being made to fulfil the objectives of this research at every possible level. First of all, carrying out a research on the idea of justice is not an easy task given the wide range of dimensions that the ideas of justice touch upon. The ideas of justice propounded by Rawls and Nozick are abstract in nature. As a result, some of their standpoints are complex and not straightforward. There are difficulties in grasping their ideas and interpret them in a simpler forms. Second, theories of justice as propounded by Rawls and Nozick are enormous in size. There are many dimensions in which both Rawls and Nozick can be compared. However, it is not practical on our part to take up all the aspects of Rawls and Nozick for the comparison within the ambit of this thesis. Third, the ideas of Rawls and Nozick on justice generate diverse views and discussions. There is no uniform interpretation on Rawls and Nozick. Besides, the volume of literature on justice is too vast. In fact, the literature on Rawls and Nozick itself is very large. Hence, there is a tendency to get distracted while trying to explain the ideas of Rawls and Nozick on justice. Fourth, we also find that many prominent thinkers have influenced Rawls and Nozick. This means that both Rawls and Nozick had borrowed some of the basic ideas from other thinkers in developing their theories of justice. Some of the influential thinkers who appeared to have largely influenced Rawls are Aristotle, Thomas Hobbes, John Locke, David Hume, Rousseau, Immanuel Kant, Marx etc. And thinkers such as Locke, Kant, Ludwig Von Mises, Friedrich Hayek etc. have influenced Nozick. Therefore, it becomes essential on our part to go back to the basic writings of these thinkers in order to grasp the clear ideas. However, it is not always feasible to do so given the time and scope of the present research. Further, in the case of Amartya Sen, we find that Sen has intertwined his idea of justice with several aspects derived from other areas of disciplines. Sen's idea of justice appears to be quite eclectic and hence difficult to pin down.

Finally, it can be concluded that John Rawls, Robert Nozick and Amartya Sen have propounded different theories of justice. While advocating the idea that justice can be perceived in terms of fairness, Rawls's theory suggests the view that social arrangement can be formulated based on a conception of justice which individuals can accept. Rawls's theory of justice underpins the distribution of income and wealth in accordance with the principles which everyone has agreed to follow. By contrast, Nozick's theory of justice is concerned with the holdings of individuals. Nozick's entitlement theory advocates the non infringement in the property rights of individuals and hence nobody including the state has any authority to claim over them. Unlike Rawls and Nozick, Sen's idea of justice stresses on the connection between justice and the real life conditions of people, not merely with principles and institutions. Sen seems to believe that justice would exist in society only when the manifest injustices around us are remedied. However, despite having differences, John Rawls, Robert Nozick and Amartya Sen have made significant contribution in advancing the discourse on the idea of justice.

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