

Addis Ababa
University
(Since 1950)



ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
COLLEGE OF SOCIAL SCIENCES
DEPARTMENT OF PHILOSOPHY

A JUST SOCIETY: “IDENTITY,” HUMANITY AND JUSTICE

BY: EYASU BERENTO

Phone: +251910491301

E-mail: shambelber@gmail.com

JUNE 2014/2006

ADDIS ABABA

ETHIOPIA

**ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
COLLEGE OF SOCIAL SCIENCES
DEPARTMENT OF PHILOSOPHY**

A JUST SOCIETY: “IDENTITY,” HUMANITY AND JUSTICE

**A THESIS SUBMITTED TO THE DEPARTMENT OF PHILOSOPHY,
SCHOOL OF GRADUATE STUDIES, ADDIS ABABA UNIVERSITY, IN
PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE DEGREE
OF MASTERS OF ARTS IN PHILOSOPHY.**

BY: EYASU BERENTO

ADVISOR: DAGNACHEW ASSEFA (PHD.)

JUNE 2014/2006

ADDIS ABABA

ETHIOPIA

ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
COLLEGE OF SOCIAL SCIENCES
DEPARTMENT OF PHILOSOPHY

A JUST SOCIETY: “IDENTITY,” HUMANITY AND JUSTICE

BY

EYASU BERENTO

APPROVED BY BOARD OF EXAMINERS:

_____	_____	_____
Advisor	Signature	Date
_____	_____	_____
Examiner	Signature	Date
_____	_____	_____
Examiner	Signature	Date
_____	_____	_____
Chairman	Signature	Date

June 2014/2006

Addis Ababa

Acknowledgements

Giving credit to those who take part in our successes is far from paying to their debt. Nonetheless, it is also a moral precept to acknowledge their role.

Therefore, first of all I would like to thank the Almighty God for helping me in my works.

Dr. Dagnachew Assefa, my academic father appears next to my mind. Dr. your insightful comments, your patient considerations of my works made them be successful and appear in this form. Thank you very much, Sir!

Ato Berento Assefa and Woizero Workuha Zinabie my beloved parents, you show me the way of success and hardworking. You are my teachers, my realities and the sources of my happiness. May God give you long live and peace. My younger brother, Nigussie, your role is beyond what I can express. So part of my degree is yours brother.

My girl friend Leiltie, you are the real cooperative of my works and you made my life meaningful. Thank you very much my love.

I would like acknowledge my teachers in the Department of Philosophy of Addis Ababa University. This work is one of the results of your hard works. I thank all of you who educated me philosophy starting from the infancy of my college life.

My friends, colleagues and classmates, especially Dawit M., Andebet H. and Aregawi G., thank you for your contributions.

Finally, I would like to thank Aksum University for giving me this opportunity and its financial support in my study times.

Dedication

This thesis is fully dedicated to my parents Woizero Workiye and Ato Berento.

Table of contents

Acknowledgements -----	i
Dedication-----	ii
Table of contents-----	iii
Abstract -----	v
Introduction-----	1
Chapter One -----	5
1. State of Nature and Life of Men in the Pre-State Formation -----	5
Introduction-----	5
1.1. The State of Nature-----	6
1.2. Natural Laws (<i>Hige Libuna</i>) -----	8
1.3. Social Contract-----	10
1.4. <i>Historical Injustices</i> -----	11
Chapter Two-----	14
2. The Idea of Justice and a Just Society-----	14
Introduction-----	14
2.1. What is Justice? -----	14
2.1.1. Is Justice Natural or Conventional? -----	16
2.1.2. Dimensions of Justice-----	17
2.1.3. Utilitarianism-----	19
2.1.4. Defining Justice-----	20
2.2. Just Society -----	21
2.3. Social Contract Traditions -----	22
2.3.1. Thomas Hobbes: Leviathan-----	22
2.3.2. John Locke: two Treatise of Government-----	24
2.3.3. Jean Jacques Rousseau -----	25

2.3.4. Immanuel Kant:-----	26
2.3.5. John Rawls: Justice as Fairness-----	28
Chapter Three -----	31
3. Contemporary Conceptions of Justice-----	31
Introduction-----	31
3.1. John Rawls: <i>A Theory of Justice</i> -----	31
3.1.1. Rawls' project-----	33
3.1.2. The Original Position and Circumstances of Justice-----	34
3.1.3. The Veil of Ignorance and Social Contract-----	35
3.1.4. The Two Principles of Justice-----	37
3.2. Some Commentaries on Rawls' Theory of Justice -----	41
3.2.1. Important Lessons from Rawls Theory of Justice-----	41
3.2.2. Possible Critics-----	43
3.2.2.1. Amartya Sen's Critics-----	43
3.2.2.2. Robert Nozick's Responses to Rawls' Theory of Justice-----	45
Chapter Four-----	51
4. "Identity," Humanity and Justice-----	51
4.1. Introduction-----	51
4.2. Identity-----	52
4.3. Human Identity -----	54
4.4. Humanity-----	57
4.5. Humanity as the Primary Subject of Justice-----	58
5. Conclusion-----	64
A. References-----	66
B. Bibliography-----	68

Abstract

The question of justice is the fundamental question in human life. It is one of the pioneer issues in the subject of philosophy. The questions for equality, liberty, right and balance in the relationship of men, the interaction between people and the government are manifestations of the quest for justice. Starting from the ancient Greek philosophy (Socrates), the question of justice continues to our times creating new forms and dimensions. The very reason for the formation of state is the need for justice and its role is to maintain justice, its function is devoted the prevalence of justice.

However, the problem of justice remained unsolved and different forms of injustice affect the lives of individuals and groups. Hence, different philosophers and thinkers continue developing new theories of justice. Among others, the most influential political and moral philosopher, John Rawls, argues that the primary subject of justice should be social institutions, guided by certain principles of justice resulted in agreement of rational, mutually disinterested parties in the “original position” behind “the veil of ignorance”. Yet, his theory is criticized by Amartya Sen and Robert Nozick, for it gives extreme emphasis on institutions and to the state than individual freedom and actual behavior of men.

This thesis will argue, in line with Sen and Nozick that the primary subjects of justice should be individual humans. The role of the state must be minimal as Nozick suggests and institutions should be promoters of justice (Sen) than being themselves sources of justice (Rawls). Justice must be giving freedom and allowing opportunities to individuals to attain their goals of life. It must address the question of autonomy, giving recognition to the existence of human beings as complete beings having all the qualities of humanity. Therefore, justice should be conformity with humanity, it can be conceived in the ultimate unity of human beings in the kingdom of humanity and an action is just if it is humane towards humans and non human beings as well.

The thesis is organized into four chapters with introduction and conclusion at the end.

Introduction

Justice is an old concept in the history of political and moral philosophy. In ancient Greek philosophy, it was Socrates who raised the question of justice. The question of justice and just society was central in the moral and political philosophies of Plato and Aristotle. The most parts of Plato's Republic and Aristotle's Politics were mainly devoted to the justification of justice and construction of a just state. Justice relates to practical matters and its applications raise the question of acceptability by those who are "objects" of the action. Most of the time justice deals with the distribution of resources. This is related to fair sharing of benefits and burdens and equal considerations of individuals and groups in the ethical affairs. Hence, justice concerns with the rights of men. It also extends to the retribution and correction of past injustice. It is the question of right and the problem of equity in the history of human kind, which resulted in conflicts and struggles among humans. The quest for justice is the question of existence and the need to recognition and dignity. Just consideration is related with the similar treatment of humans as sharing similar natural essence or identity. Therefore, besides the distribution of benefits and burdens, justice relates to the ethical consideration of humans regarding their identity, to use Immanuel Kant's phrase "consideration of men as ends in themselves." The purpose of political community is to attain a state or society where justice prevails and the resentment among members of the community is minimized.

Justice and a just society are at the centers of moral and political philosophies and different religious teachings. Philosophers tried to hypothesize and theorize the prevalence of justice and the development of just society where the privacy and security of the members is guaranteed by a supreme body. Among others, the social contract* tradition is a prominent trend in the history of political philosophy, in the theoretical construction of the just society. According to this tradition, the question of justice and the need for a just society has lead men to mutual agreement. Based on their agreement they inter into contract by which they form a state or a just society. Many political thinkers have been trying to show the development of modern state and society. Most of them agree in the hypothesis that men in the pre-state periods exist in the state of nature where there are no laws and life is difficult and miserable. The questions of security or

* Social contract refers to the compact or agreement of men to form common institutions that serves all equally. In this context, social contract means the agreement of people to form a state administered by a sovereign or the common power of its members in Hobbes, Locke, Rousseau and Kant's traditions.

self-preservation and property were crucial in the state of nature. Some argue that government is constructed to keep the security of people. Others argue that it is to help people acquire property and protect private property. Still others argue that the need of the sovereign power is to help people share the properties of the country.

This thesis will try to address the issue of justice and the construction of a just society. The general objective of the paper is to deal with questions of social justice and private freedom of individuals. It is intended fill the gap between social justice and individual freedom. The compatibility of individual freedom and social needs is the problem it intends to address. Some of the central questions that this thesis intends to address include; what is justice, and what are the primary focuses or subjects of justice? Can individual rights and freedoms be compatible with social needs? What is a just society? Different theories of social contract and conceptions of justice from ancient to contemporary times are the contents of the thesis. John Rawls' *A Theory of Justice* is the focus in my discussion of the contemporary conceptions of justice and I will incorporate the responses from Amartya Sen (*The Idea of Justice*) and Robert Nozick (*Anarchy, State and Utopia*).

To accomplish this task the paper is organized into four chapters with a concluding at the end. The first chapter deals with the state of nature and the characteristic features of life in it. In this chapter the different accounts of state of nature by different philosophers will be dealt. The second chapter is a focus on the conceptions of justice and a just society. The social contract theories of five philosophers: Thomas Hobbes, John Locke, Jean J. Rousseau, Immanuel Kant and John Rawls are briefly summarized. The third chapter is on the contemporary conceptions of justice with the special treatment of John Rawls' theory of justice and some of its critics. In this chapter his theory of justice and the social contract are dealt in detail with some constructive responses from Amartya Sen, Robert Nozick and others.

My thesis appears on the final chapter that is on "Identity," Humanity and Justice. In this chapter, I will argue that the primarily concern of justice is the consideration of human identity and goal of just society is to protect the dignity and identity of individuals humans as complete human beings who share the natural qualities of humanity. Therefore, the primary subjects of justice cannot be the social institutions (as Rawls argues); instead individual humans as independent and autonomous human beings, having all the essential qualities of humanity should

be the primary subjects of justice. Therefore, the question of justice should go beyond Rawls' institutionalized justice and be guarantee to individual freedom and dignity of human beings. In this sense humanity must be the primary subject of justice and an action is just if it is humane towards, either human beings or non-human beings. A just society is where there is a unity between its members and this unity is based on the mutual acceptance and recognition of one another as having similar shared natures.

In the real life situations, there are different socially constructed identities that put men in different groups. As a result, there are conscious or unconscious assumptions that there exist natural essential differences between the rich and the poor, the high official and the "ordinary," the male and female, the white and black, European or African, and so on. It is an assumption that differences in status (in whatever form) can bring about inherent difference between men identified as "such and such". The concern of justice should not be only sharing what are the common properties or resources of one's country. Rather, it must go beyond the distribution of tangible resources and deal with the ontological recognition of the being in itself as an independent, autonomous and complete being that deserves dignity and respect.

Note that in this thesis, "men" and "humans" are interchangeably used to refer commonly to men and women.

Chapter One

State of Nature and Life of Men in the Pre-State Formation

1.1. Introduction

The theories of social contract, the idea of state and the conception of justice are the core focuses of this chapter. Social contract is predated by the assumption of a State of Nature^{*}. State of nature is assumed by many as human phenomenon where there are no formal social institutions and legal systems that give final decision for any wrong doings of individuals and groups. In the state of nature it is only borderless natural resources given equally to all. The judge is human mentality that can be rational or egoistic. Men move according to the dictates of their natural desires and motives. Differences in capacities and opportunities in their position in specific part of nature brought about differences in the ownership of natural resources. In the state of nature, the lives of humans become harsh and miserable. The lawlessness of state of nature was strengthened by the selfishness of human beings. This in turn led to the contest, competition, mistrust and envy among themselves.

The purpose of life in the state of nature becomes mainly of empowering oneself to protect one from any sudden attack of others and if possible to control others. As some argue, the rational capacities of men and the natural laws in the state of nature help humans to think over. They realized that any sudden attack from others is inevitable. Even the strongest fears the weakest for his hidden attack or in collaboration with others (Hobbes). Hence, power and wealth become meaningless to secure men from any sudden attack and unexpected death. They wish to avoid such insecure/fearful life. By the dictate of reason, they come into mutual agreements, all agree to come into meetings and put their promises not to attack one another. They seek a witness for the guarantee of keeping their promises. Then they give up parts of their power, their rights to everything, and their selfishness for the sake of constructing a common power, a neutral judge and a selfless representative of the members of the community. They do this without any external influence. As a tool, the institutions or the sovereign, now have the power of administering

^{*} State of Nature is a hypothetical assumption of different philosophers about the nature of life of human beings in the pre-state formation or the existence of political community. For example, Hobbes, Locke, Rousseau and Kant use (though with different characterizations) the state of nature as the starting point of their social contract theories.

people, punishing the lawless, distributing the resources of the society, protecting the security of individuals and generally maintaining justice. In the following discussions we are going to elaborate these issues and review some conceptions of the state of nature.

1.2. The State of nature

State of nature is a hypothetical assumption of historical human phenomenon by different social contract theorists. It is Thomas Hobbes who is popularly associated with the phrase “state of nature.” There are different accounts of the state of nature, the nature of human beings in the state of nature and the characteristics of life of men in the state of nature. One thing is common to all, that is, life in the state of nature is not desirable and it cannot live long. Hence, men ultimately seek the way out.

In the *Leviathan*, Thomas Hobbes gives a detailed account of the state of nature and the way out from such a state. For Hobbes, men in the state of nature are psychologically egoists who are lead by the internal motives and desires to empower themselves and to control others. Life in the state of nature is characterized by competition to power and control of others resulted in threatening to one another. He famously stated that, life of men in the state of nature is “solitary, poor, nasty, brutish, and short” (Hobbes, 1651:78)*. Fear of unexpected death and insecurity lead men to give up some of their desires, parts of their natural rights and come into contract. By which they elect their *Leviathan* with an absolute power.

For Locke, on the other hand, men in the state of nature are rational, social and they have the idea of justice. All have equal right and freedom to own as far as they can. There are laws of nature that governs men in the state of nature. Hence, men have obligations in the state of nature like, to respect the right of others. However, with the beginning of private property, some men show extra ordinary powers to control others and to possess more property. Then conflicts among themselves become inevitable and seek the way out. They form a government who is legitimate to make laws and to use coercive force to avoid any injustice (Locke, *Two Treatise of Government*).

* I use as reference hereafter the version of his book *Leviathan printed for Andrew Crooke*, at the Green Dragon in St. Pauls Church-yard in 1651. That is prepared for McMaster University Archive of the History of Economic Thought, by Rod Hay. The pages I put are as appeared in this edition.

Jean-Jacques Rousseau is another prominent figure in political philosophy who theorizes a social contract based on the assumption that men in the pre-state formation exist in the state of nature. For him, men in the state of nature are innocent and wise who live in love with other human beings. Gradually, the advancement, complexity and ownership of private property in human life show differences in the standard of life. Envy, competition and contest become the features of human life. With the difficulties to live in such state humans are forced to form a contract. Finally, they form a state or the common wealth. (Rousseau, *The Social Contract*).

Immanuel Kant's has a different account. For him, the state of nature is not necessarily a state that is unjust. Rather it is a state with no laws. Men have one innate freedom in the state of nature i.e., to be free from any external influence and control of others. However, in the state where there are no laws there are no guarantees that this innate freedom of men is protected. Men threaten one another and some use coercive forces to threaten others. Hence, for Kant the violation of this natural freedom of men is characteristic feature of life of men in the state of nature. The way out to this insecurity is a tacit agreement. They freely come into contract and form a general will or a united will.

All of the theories of state of nature agree that the life of men in the state of nature is miserable and full of problems. They argue that so as to escape the problems of state of nature men come into contract, a social contract. John Rawls' is different. He did not use the theory of state of nature. Instead, he started from the "original position" that we are going to see in detail in the next chapters.

Though its characterizations and the nature of its reality may differ, the early years in human history must be different from the modern world. Based on the historical accounts, human development reached its current status through gradual steps. Likewise, the development of the state and society may have its own historical background. We can reasonably argue that at certain point in human history, men were without formal laws, institutions, and with no state. And we can also argue that that time was characterized by lawlessness. That lawlessness result in different problems that lead men to the desire of peace and hence justice. Therefore, the question of justice is so primary in human history, lead to the formation of the state through the social contract. Before dealing with the social contract, it is better to deal with the idea of the natural law in humans.

1.3. Natural Laws (*Hige Libuna*^{*})

It is difficult to say that men are naturally illegal and absolutely egoist. Human beings are different from other creatures to live a meaningful and reasonable life. They remember their past, they sense their present and they predict their future. They try to judge the activities of men as right or wrong. Even in the prior periods, they had standards to evaluate the actions of people. Their rational nature helps them to differentiate well from bad, or good from evil. Their social nature helps them live with others. Their sympathy forced them to feel sadness by problems of others and their affection make them happy by the success and well beings of others. Likewise, their lawfulness resulted in the formation of legal institutions. Prior to the formation of legal institutions we can say that men were led by the natural laws. What are these natural laws? What/where is their origin? What is the justification for the natural lawfulness of human beings? What are the practical implications and historical significances of these laws in the lives of men? These are some of the central questions to be addressed in this part of the paper.

It is hypothetically assumed that human beings lived in the state of nature at certain point in the human history. Then they realize that life in the state of nature could not live long. They have been justifying the activities of men and certain events when they desire to acquire something or to regret from danger. This is one sign of natural laws in the minds of men. They are naturally endowed with these capacities of lawfulness. Keeping this in mind let's see some of the theories about natural laws.

The well-known Christian moral and political philosopher St. Thomas Aquinas is associated with the natural law theory. According to him, there are different categories of laws. The first is

^{*} *Hige Libuna is a Ge'ez concept that is a Christian account of laws, especially in the Ethiopian Orthodox Tewahido Church's teachings that is used to refer to the natural endowment of men with the ability of differentiating right and wrong, good and bad etc. According to this teaching, there are three phases in the laws of Christianity. The first is Hige Libuna; the second is Hige Orith (Old Testament that is the Ten Commandments of God given to Mosses) and the third is Hige Wongel (Laws or Teachings of the Gospel). We have also to note that "natural laws" are different from the "laws of nature" used in philosophy of science in that natural laws are the laws emanated from human natural capacity to differentiate right from wrong, good from bad and just from unjust unlike the laws of nature used to govern the universe.*

Divine Law or Eternal Law (the law that comes from the divine creator, God). This law orders the cosmos. The other law is the law that orders the activities of rational creatures. Human beings are rational creatures. Rational creatures acquire law through their participation in the Divine Creator. This is what Aquinas calls the natural law. It is this natural law, that enables us to differentiate what is good from what is evil. In *Summa Theologica* he states that, "...the light of natural reason, by which we discern what is good and what evil, which is the function of the natural law, is nothing else than the impression of the Divine light in us" (in Dyson, 2004: 86). This natural law directs our acts. "...the first direction of our acts towards their end must be in virtue of the natural law" (ibid. 86). We can argue that human beings are naturally lawful; they have the idea of justice prior to the beginning of civil society. Unless the selfishness or egoistic nature forces them to act unjustly, it is natural to humans that they can differentiate what is just or unjust. It is from this natural law that human laws are derived. When men come together and share their natural laws and the capacity to reason out, they make human laws. "Human reason must necessarily proceed to derive from the precepts of the natural law, as from general and indemonstrable principles, certain arrangements of a more particular kind. And these particular arrangements, devised by human reason, are called human laws" (Ibid. 88).

The nature of life in the state of nature resulted in the agreement of men to maintain peace. According to Hobbes, there is a natural law that makes men seek peace and follow it. This fundamental law of nature to seek peace and follow it is the natural law or "the general rule of reason" (in Gaskin, 1998: 86). This desire to seek peace for oneself and the acceptance of others as natures or creatures who seek similar things is in my opinion the primary quest of justice. Hence, we can argue that men naturally seek justice and the conception of justice is human natural quality resulted from the natural laws of humans. Cicero states the following regarding the origin of justice: "justice had its origin in nature; then certain things became customary by reason of their utility; later still both the principles which proceeded from nature and those which had been approved by custom were sanctioned by fear and reverence for the law" (Quoted in Aquinas, Dyson, 2004: 86). Aristotle also argued that it is peculiar to humans to differentiate between just and unjust, and good and evil. Such creatures that have this capacity can form associations, family and the state. "It is a characteristic of man that he alone has any sense of good and evil, just and unjust, and the like, and the association of living beings who have this sense make a family and a state" (politics, Book I, chap. II). Hence, the lawfulness of human

beings and their natural capacity to conceive justice as desirable and injustice to be avoided lead to the formation of institutions that are meant to maintain justice.

In other words, we can argue that it is human desire to make natural laws social and official that brings about the idea of contract and agreement. We can conclude therefore that men create human laws and come into agreement to form the state. This is partly because human beings are neutrally selfish hence seek self preservation and sustainability of life and partly because it is human nature to have the idea of laws and justice, hence want to avoid the suffering of others in the state of nature where there are not social laws to stand there and to serve as judges.

1.4. Social Contract

Social contract is the theory of different political philosophers as the hypothesis of the mutual agreement of men in the pre-state formation. It is a sort of promise to stop threatening to one another and to establish a judge who has the power to settle disputes and punish those who violate laws or act unjustly. It is the way out from the problems of life in the state of nature and a remedy from fear of death and guaranteeing the right of [private] property in the state of nature.

The natural laws in human beings lead them to the maintenance of justice. The natural laws in the hearts of individuals and the rationality of human beings lead a collection of individuals to mutual agreement. The internal natural laws start their implication when men recognize to one another as autonomous individuals. The sharing of these natural laws resulted in the formation of common power that is greater than the power of individuals. The natural laws now become social and civil laws and stand out there to serve as reference points of human action. At the same time the formation of human laws make human actions to be judged by uniform standards. Through social contract societies make human laws that determine their relationships and interactions. It is after this contract that men are guaranteed to live peacefully and the actions of groups and individuals are legally justified as just or unjust.

Yet, this social contract itself had a shortcoming. It has left us in the condition of “differences.” People come to the field of agreement after owning sorts of properties and empowering themselves. After the contract they back home with their properties having legal ownership and protection. No one has the opportunity to question the legal bases of these properties. Hence, any social contract by itself can result in injustice. It may be asked then that: What is this historical

injustice? What are its implications for the forthcoming just society? Let's deal with these questions in the next section. We have to keep in mind that this discussion is basically hypothetical like the hypothetical assumption of the state of nature. However, as the hypothesis about the state of nature is based on the real natural qualities of human beings, this hypothesis is supported by real historical phenomenon and manifested in different agreements of people up to the contemporary society.

1.5. Historical Injustices

Starting from the theory of natural laws we can argue for the possibility of historical injustices. Now let come back to the state of nature. There were no social rules and systems of laws to rule men in the state of nature. Nature, the earth with its resources was given to all commonly. Everyone had the right to invest his/her natural capacity and exert a certain effort on nature. As a result they start to own private property and accumulate wealth.

The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then here moves out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property (Locke in Macpherson, 1980: 19).

This possession of private property and difference in wealth brought about envy and conflict between them. Gradually, the state of nature changed into the state of war. Then men come into contract, a social contract, to avoid the war of one against the other. At the end of the contract they form common laws and the sovereign. The laws and the sovereign now stand for the protection of individuals and their private property.

It is this social contract that leaves us with the historical injustice. Prior to the contract people had their own private properties, owned in different ways. There is a probability that some own "legally" and wisely, others through theft and robbery even by killing of others. Then they all come to the field of contract with all their properties. After the contract, they return home with their properties having a legal protection and guarantee. Because of this some remain rich while others are left poor. As I have said, the origin of properties can be legal or illegal. The contract lacks the possibility of claiming on the illegal transfer and ownership of property in the pre contract periods. The contract had probably the motto of contemporary legislation of rules that

“this law shall be effective after this specific time.” The absence of possibility to reclaim on properties, the lack of acceptance for the re-sharing of the properties of “nature,” left the rich richer and the poor poorer. After this the rich can use his properties not only for the satisfaction of his desires but also for the expression of his power. As Marx and others argue, through his wealth the rich can buy the skills, the labors and even the humanity of others. This is one of the biggest historical injustices.

Let me clarify the discussion by some examples. In the oral tradition there is a story about people who move from place to place. There are different accounts of the story. The most likely part of the story goes like this:

Long time ago, people were in a journey from place to place. Their journey was through darkness, a dark cave. At the middle of their journey, their leader ordered them to collect stones and something like a stone within their road. Then they start to collect and carry. Some collect a lot as much as they can carry; some do so for the sake of formality, to respect the order of their leader; still others were empty handed since the order was not mandatory. At the end of their journey they elevate from the darkness, and hence from the cave, and their leader asked them to show him their properties. When they see the collection of “stones,” it was really a collection of precious things, a collection of gold. Their leader uttered once again for the last time saying, “these all are your own properties. After now no one can take them from you. Keep them and enjoy with them.” After the realization that the “stones” were really gold and have a legal ownership of individuals, those who collect a lot become happy, those who do little become sad and think that it had better they collect a lot, and those who were empty handed because of laziness or misfortune become remorse, sad and envious.*

Look the consequences of their actions. There is no possibility to go back and collect. The order of their leader applies only for the time in the cave. They will continue after now with new rules. The next journey is forward. The rich remained richer and the poor poorer. Likewise, the social contract leave men in such a state that there is no opportunity to reclaim on the “illegal” collection of properties in the pre-contract periods. After the contract, people left with their properties. It does not mean that some could not take the properties of others “illegally” in the

* This is an oral tradition based on the teachings of Ethiopian Orthodox Tewahido Christian Church. The saying has its own religious interpretations. I use here to explain the nature of property ownership in a society that has not laws and standards of acquisition. Their journey through darkness is analogy to the lives of man in the state of nature where there are no laws. (translation mine)

state of nature. There were not social systems to settle such exploitations. The social contract in fact brought a major change. Still its measures to bring justice leave men in the state of inequality. Such differences in economic power lead human beings to the ideological differences. This historical injustice left us in the state of status differences and the status difference itself led us to the conscious or unconscious assumptions that this difference brought about essential natural differences between the haves and the have not.

Such like phenomenon are the real experiences of human history. Every expansion or invasion, unjust wars*, unfair treaties, colonialism, slave trade, racial and gender discriminations and the like are ended up with little or no compensations to those affected by the actions of others. Therefore, we can argue for the possibilities of historical injustices. The problem is not only with the actions themselves. The remnants of such historical injustices brought about greater differences between the benefited and the disadvantaged. Because of this, there are differences in the economic, political and social statuses. The power expressions of the advantaged are multidimensional. One of these is the assumption that differences in political, economic and social status necessarily can bring about essential natural differences between the different parts of the society. Hence, there is a tendency by part of the society to consider others as “incomplete” and ignoring of their humanity as a whole.

These are some of the historical injustices that need to be addressed in the contemporary practical applications of justice. That is why this paper argues for that humanity and individuals should be the primary subjects of justice unlike Rawls’ emphasis on the social institutions as the primary subjects of justice. It is the matter of fact that we experience, in the name of institutionalized justice, i.e., just social institutions, individuals are ignored, their humanity is denied, their voices are unheard and their needs and desires are suppressed. At the same time the institutions are subject for any bias and are subject to the contexts and cultural restrictions. Hence, justice should focus on the balance in the relationships between private individuals. I argue that there have been historical injustices in different times in human history. Justice should

* Is there a just war? There are different theories of war. Accordingly, many agreed on the possibility of a just war. For example, for Aquinas, a war is just for three reasons. (1) It must be waged or declared by the sovereign body (2) if it has a reasonable cause, i.e., either to the aversion of bad or advancement of good and (3) if those to be attacked deserved to be attacked on account of certain fault. (St. Thomas Aquinas, *Summa Theologica* in Jene M. Porter (edr.) 1997, *Classics in Political Philosophy* 2nd edition Prentice Hall Canada Inc.

address the biased relationships and the isolations of people by different constructed identities. Therefore, justice can be attained in the climax of ultimate human unity in humanity regardless of differences. This will be discussed in detail in chapter four.

Chapter Two

The Idea of Justice and a Just Society

2.1. Introduction

Justice and the just society is the central issue of political philosophy. There are different conceptions of justice and the just society. The main goal of political philosophy is to construct a just state/society and maintain justice. Hence, one of the primary focuses of justice should be the wellbeing of individuals in the society and groups in the state. There are different questions that need to be addressed in the construction of a just society. These include, what is justice? Is justice natural or conventional? What are the primary concerns of justice? What is a just society and how can we construct such a society? What are the characteristic features of life of individuals and groups in a just society? Directly or indirectly many philosophers and political thinkers have been trying to address these questions. In this chapter, we will try to address some of these questions by discussing different conceptions and theories of justice. The ideas and theories of selected philosophers will be briefly summarized starting from classical period to modern periods, including utilitarianism. Mainly, I will focus on the construction of a just society, in view of the social contract traditions.

2.2. What Is Justice?

The question of justice is as old as human society and become explicit with the development of philosophy and the formation of political community. It first arose as the basic philosophical question by a great Greek philosopher, Socrates. It was the quest for justice and the order of justice by itself that make Socrates the victim of death penalty. In the history of philosophy, there have been different conceptions and definitions of justice. Rather than as a single term to be defined in the form of sentence or statement, justice is related to a concept, which is concerned with actions of people. The concept justice is multidimensional in scope and is difficult to give one general and precise definition.

Justice is that which is most *primitive* in the human soul, most *fundamental* in society, most *sacred* among ideas, and what the masses demand today with most ardour. It is the *essence* of religions and at the same time the *form* of reason, the *secret object* of

faith, and the *beginning, middle and end* of knowledge. What can be imagined more *universal*, more *strong*, more *complete* than justice? (Italics mine) (Pierre J. Proudhon, quoted in R. C. Solomon and Higgins, 2010:275)

Justice is often associated with the activities of men and it is judgmental in nature. It is a concept applied not to a thing but to conducts and manners of doing something in the relationships of people. It is also associated with rules, laws or standards to be followed by individuals and groups in their interaction. Hence, it is not a concept, which can be empirically verifiable as the word “tree” connotes a particular concrete phenomenon in the environment. The concept of justice is wider in scope and multidimensional in application. Defining justice often requires understanding of the different applications of the concept.

In the ancient Greek justice was considered as one of the four cardinal virtues of men. As such, it expresses the harmony in the relationships of men in society. For example, Plato, in *The Republic*, discussed the harmony between the three parts of the soul of individuals as virtue. Likewise, a just state is where people live in harmony with one another. [From his theory of specialization], he explains justice as a virtue, which refers to the “condition in which everyone is having and doing what is one’s own, and not interfering in that which is another’s” (quoted in Reese, 1996:369). Aristotle on the other hand defined justice as the mean between two extremes. He categorized two general types of justice. Distributive: one’s just sharing in the resources of the state; and retributive: the address of injury (Ibid. 369). His definition is related to the idea that treating equals equally and the unequal unequally but in proportion to their relevant differences. It is what we call impartiality (Benn, cited in Edwards, 1967: 299).

In the medieval and modern periods, there have been different views about justice. For example, Aquinas associated justice with a natural order that can be discernible through the exercise of human reason (Summa Theologica, part I). Likewise, John Locke argued that rationality and justice are natural human essences. On the contrary, the utilitarians argue that a just action is conditional (not natural) and justice is what maximizes human happiness. Closely related conception of justice is Thomas Hobbes’ idea that justice is the result of convention or agreement people enter to avoid any forceful threat in one another’s relationship. Hence, whether justice is natural or conventional is one issue of debate regarding the nature of justice.

2.2.1. Is Justice Natural or Conventional?

The first assumption in the debate concerning the nature of justice argues that justice is a natural human quality given from the creator (like God) or from the law of nature. For example, Aquinas associated law with the God's rational will that orders the universe. Hence, justice is the natural human quality that is derived from the natural laws and that is used to administer the relationship of men. In this case, there is a tendency to equate justice with laws. Therefore, justice can be defined as the prescribed laws, rules or standards to be followed. The sociability and the rational nature of humans are used to develop the harmonious relationship between them. According to the classical and modern naturalists of justice, even though there are different social institutions, economic and political systems and conditions ruled by different rules, there are formal criteria of justice. These different rules and laws do not create new justice; rather express the already existing justice in different manners and contexts (Benn, cited in Edwards, 1967: 300). As we will see in the final chapter, Cicero himself argued that justice couldn't be the fabrication of human laws.

The conventionalists on the other hand argue that justice is the compact or agreement of people to avoid mutual harm. For example, Epicurus states, "justice and injustice do not exist in relation to beings, which have not been able to make a compact with the objective of avoiding mutual harm" (Doctrines and Maxims, Ibid. 300). Accordingly, to act justly originates not from the natural human essence, instead from the duty to keep promises in the compact or agreement. This idea gained support from other philosophers like Hume and Hobbes, and partly from Rawls. For them, justice is associated with the agreement of people to maintain their interactions and their social institutions serve the people well. Still this view is attacked by others as implausible. According to Samuel Butler, any convention promoting public utility can be unjust. Rawls himself attacked utilitarianism and conventionalist view of justice, since it intended to justify probably unjust action as just merely because it promotes public interest or happiness. For him, justice understood as fairness should not undergo any calculation of utility (ibid. 300). The debate goes like this. The scope of my paper does not allow us to go further. The intention is towards a general and unified definition of justice. By mentioning another debate it is better to pass to the discussion of the different dimensions of justice. The concept of justice bears the debate about its category (or class). The central questions of this debate include; is justice a

purely ethical concept or can be also a legal concept? Is it purely normative or also descriptive concept? When we see the different dimensions of justice its nature will be probably explicit.

2.2.2. Dimensions of justice

The concept of justice as a normative concept is concerned with the formulation of the standards of conduct and justification of their application. It is also a judgmental in nature. As a judgmental it is concerned with the rules, laws and standards to evaluate and justify the activities of individuals or groups and the workings of the different institutions of the society. According to Thomas Pogge, the predicate justice is associated with evaluation of things. As such it is judgmental. As a “judicanda” the predicate justice has four categories.

Things to which evaluative predicates are applicable can thus be called *judicanda*, from the Latin *judicandum*: that which is to be judged. The *judicanda* of justice may be categorized under four headings:

- (a) individual and collective actors; that is, individuals as well as organized and unorganized groups such as a family, firm, state, or mob;
- (b) the conduct of such actors, their actions and omissions;
- (c) social rules, such as laws, social institutions, and conventions;
- (d) states of affairs and events, such as the fact that some are much worse off than others or that some good persons suffer while some bad ones enjoy good fortune.

The list of categories is at times underinclusive that human emotions and feelings may be included as the fifth category and at times over inclusive that the first category can be included in the second category since evaluation of any action can also entail the actors (Pogge, in D. M. Borchert, 2006:863).

Hence, according to Pogge, the application of justice is related to the evaluation of conducts and actions of individuals and/or groups in relation to the rules and laws regulating their social institutions and conventions, resulting in some states of affairs and events.

So what is the unified definition of justice? It is difficult to have a general and unified single definition of justice. Its definition is not determined by a single justification. Instead it is conditioned to its different dimensions and the different applications related to them. Pogge argues that, to talk of justice or injustice is to talk of someone has done justice or injustice to some other else, just like to talk of a “mother” is to talk of that she is a mother of someone.

Hence, the *judicandum* of justice entails the recipient though at times it might be implicit. He discussed about three dimensions of justice having their respective branches. Just to sketch the map of his discussion:

Dimension One:

1. *First-Order* Justice - deals with the assessment of particular allocation of benefits and burdens.

2. Higher order or *procedural justice*, sometimes also called fairness – concerned with the assessments of the way in which such an allocation comes about.

Dimension Two:

I. Formal Justice – relevantly similar cases be treated similarly. This type of justice needed for the justification of similar treatment of things.

II. Material justice – sometimes the demand of formal justice may not be needed. Though justice is often comparative, there are cases that bag a material justification in the treatment of individuals. Yet, this type of justice is often implicit.

Dimension Three: there are different dimensions of material justice. These include:

I. Distributive – deals with access to scarce resources.

II. Commutative – deals with the exchange of items, including information and bargaining.

III. Corrective or restitutive justice - is concerned with how to make up for violations of social and moral rules and how to deal with the costs such violations cause.

IV. Retributive justice - finally, deals with the ascertainment and punishment of such violations (ibid. 864-5).

Note that the different dimensions of justice are not totally separated. There can be overlap between them. Pogge further discusses the conception of justice so as to have a unified conception. Accordingly, there are about four hypotheses that are used to answer the question “what is specific about the *judicandum* of justice, in the larger realm of moral judgments? i.e., what is the difference between ‘this action is just/unjust and moral/immoral than another’?”

First, justice is thought to occupy within morality, and injustice is the violation of morality itself. Injustice, according to this hypothesis, necessarily involves a false moral claim and “justice is part of morality that defends the authority and dignity of morality itself” (ibid). Second, justice may, in principle be enforced. Here, injustice is the violation of a moral right that needs to be averted through the use of coercive force. There are two applications of coercion to avert

injustice. (1) In “well-ordered society” only the police or courts have legitimacy to use coercion. (2) If it further triggers injustice, using coercion is impermissible. Third, the *judicanda* of justice involves negative duties, i.e., “a claim of justice always involves a claim of undue harm” (ibid.). However, it is controversial that whether we are forced to help others. In other words, failures to help others are in the domain of injustice is questionable. The fourth hypothesis is that justice is not purely recipient-oriented. It is an approach intended to criticize utilitarianism. Any recipient oriented conception of justice is untenable. Sometimes they are exposed to the failures that focusing on the happiness of the recipients, the responsibility of the actors of actions may be ignored. “Purely recipient oriented conceptions of justice are bound to fail because they systematically ignore the active perspective of those who bear responsibility for a particular *judicandum*” (ibid. 866-869).

The other general distinction of the different types of justice is by Robert Audi as follows.

Justice: each getting what he or she is due. *Formal* justice is the impartial and consistent application of principles, whether or not the principles themselves are just. *Substantive* justice is closely associated with rights, i.e., with what individuals can legitimately demand of one another or what they can legitimately demand of their government (e.g., with respect to the protection of liberty or the promotion of equality). *Retributive* justice concerns when and why punishment is justified (Audi, 1999: 456-457).

Generally justice contains different categories and has multidimensional applications to evaluate the activities of individuals, to administer and maintain the relationships between people and to manage the social institutions serve the people well.

2.3. Utilitarianism

Another perspective regarding the conception of justice and the evaluation of human activity as just/unjust is utilitarianism, social hedonism. At the center of utilitarianism is “maximizing the greatest happiness of the greatest number of people.” The activity is right if its consequence resulted in some valuable outcome. According to E.D.L Miller, there are three doctrines of utilitarianism.

- a. The doctrine that we ought to act so as to promote the greatest balance of good over evil.

- b. The doctrine that we ought to act so as to promote the greatest balance of pleasure over pain.

Whose pleasure is to be maximized? The pleasure of the people, the greatest number of people. Hence, utilitarianism is:

- c. The doctrine that we ought to act so as to promote the greatest happiness of the greatest number (Miller, 1984: 393-4).

There are different views about maximization of happiness. Two important views are that of Jeremy Bentham's (founder of modern utilitarianism) who stressed the quantity of happiness over the quality of happiness, related to material satisfaction, i.e., the "greatest" means the "most" and that of John Stuart Mill's, who stressed quality over quantity of happiness, related to the mental satisfaction, i.e., the "greatest" means the "best". In his famous statement "wouldn't you rather be a dissatisfied human than a satisfied pig or a dissatisfied Socrates than a satisfied fool?" (quoted in Miller, 1984: 401). But they agree in the socialist nature of happiness, Miller summarizes the common point of the two as "actions are right [just] actions, if and only if, they produce pleasure or happiness or satisfaction of needs, and this pleasure or happiness or satisfaction is to be distributed among as many people as possible" (ibid.: 398).

According to utilitarianism there are two justifications of a moral action. Hence, utilitarianism is divided into two, *act-utilitarianism* and *rule-utilitarianism*. Act utilitarianism is the view that what action should be done in a particular situation in order to maximize the happiness to the greatest number of people. On the contrary, rule-utilitarianism is the view that what rule should be followed [always and everyone should follow] in a particular situation so as to maximize the happiness of the greatest number (ibid. 408).

In general, utilitarian conception of is the view that the justness or injustice of the actions of men is determined by the "calculating" the amount of happiness it attained to the greatest number of people. If the action resulted in the greatest balance of pleasure over pain, then it is just, the opposite is unjust. The utilitarian theory of justice has practical implications in the ethical, social and political aspects of human life.

There is also a theory of justice proposed by Immanuel Kant called Deontological theory of justice. According to Kant, the action is just by itself independent of its end. Human action should be based on the rationality of his/her will to act and free from any conditionality. His theory is popularly known as the "categorical imperative," which is contrary to the hypothetical

imperative that is end oriented. So, according to this theory an action is to be justified independent of its results or utilities.

2.4. Defining Justice

So, what is the exact meaning of justice? What is central and common to the different conceptions of justice? Etymologically, the word justice comes from the Latin word “justum,” from “jussum” meaning which has been ordered. It is a prescribed manner of doing things that should be enforced by authority or set by the rules and laws. “As a principle of social order, giving individuals their due, justice demands that the **rights** of individuals are not violated by other members of society or by the **state**” (Bunnin and Yu, 2004, p. 367).

The “Random House Webster’s *Unabridged Dictionary*” of English defines justice in different ways. Among others justice refers to (1) the quality of being just, righteousness, equitableness or moral rightness. (2) rightfulness or lawfulness, as of a claim or title... (3) the moral principle determining just conduct. (4) conformity to this principle as manifested in conduct; just conduct dealing or treatment. (5) the administering of deserved punishment or reward. (6) the maintenance or administration of what is just by law as by judicial or other proceedings: a court of justice. (7) judgement of persons or causes by judicial process: to administer justice in the community... (11) Do justice, **a.** to act or treat justly or fairly. **b.** to appreciate properly. **c.** to acquit in accordance to one’s abilities and potentialities. (Random House, 2001, p. 1040).

From what has been discussed earlier, we can conclude that justice has the following central meanings. Justice is righteousness and lawfulness in the activities and conducts of individuals. It is fairness and equity in the relationships of people, in the distribution of benefits and burdens, in settling disputes and legal cases in the decision making processes of the courts by the judges. It is having harmony and being well ordered in the social institutions to attain the wellbeings of the society as a whole or particular members of the society. More importantly, it refers to giving to men what is due theirs (or what they are deserved to own); i.e. guaranteeing their rights as legal members of the society, starting from the equal considerations and recognitions (or acceptances) of individuals as complete human beings sharing similar natural essential qualities with others regardless of their economic, political or social statuses in the society. How does the prevalence of justice serve every one equally? What are the means to the maintenance and the workings of justice? How can we settle injustice? Are still questions that lead us to the construction of a just society.

2.5. A Just Society

What is just society?

Society is defined differently. *The Dictionary of Politics and Government* defines society as (1) a group of people who live together and have the same laws and customs (2) an organisation of people with the same interests or jobs (Collin, 2004, p. 241). A “society” in this paper is used to refer to the human phenomenon where there are people with different backgrounds but with a common experience of the prevailing circumstances, either natural or man made. A just society is the collection of people either in the form of government or as non governmental, where the equality and rights of individual members is guaranteed.

The purpose of political philosophy is to attain a state or society where justice prevails and there is no resentment among citizens. Philosophers tried to hypothesize and theorize about the development of just society where the privacy and security of the members is guaranteed by the supreme body. Among others, the social contract tradition is a prominent trend in the history of political philosophy, in the theoretical construction of the just society. According to this tradition, the question of justice and the need for a just society lead men to the mutual agreement. Based on their agreements they enter into contract by which they form a state. Many political thinkers have been trying to show the development of modern state and society. They trace the formation of government to the relationships of men in the ancient periods. Some argue that government is constructed to keep the security of people. Others argue that it is to help people acquire private property and secure their properties. Still others argue that the need of the sovereign power is to help people share the properties of the country.

2.5.1. Social Contract Traditions and a Just Society

In the history of political philosophy, there are different assumptions regarding the developments of state and civil society. Without the state and one supreme power that protect the liberty and security of members of the community, it is difficult to live peaceful life. Among others for Hobbes, Locke and Rousseau, people originally live in the “State of Nature.” The state of nature gradually changed into the state of war and contest. To avoid this contest over autonomy and property, the formation of sovereign power is necessary. Hence, ultimately people necessarily come into a contract, the social contract, by which the rule of law is asserted and self-preservation is guaranteed.

2.5.1.1. Thomas Hobbes: *The Leviathan*

Hobbes begins his theory by assuming that men originally live in the *State of Nature*. State of Nature is a phenomenon of human life where there are no laws to govern the activities of men. Human beings in the *State of Nature* are in conflict and they threaten one another. The main reason for their conflict is the egoist nature of humans. The desire to empower oneself from others and the need to control others is the characteristic feature of human beings in the *State of Nature*. Men by nature are endowed with desires of possession of the good and aversion of the evil. "...man's appetite or desire, that is it which he for his part calleth good; and the object of his hate and aversion, evil" (Hobbes, 1651: 33). All men for Hobbes are equal both in mental and bodily capacities. As they have similar nature, men may have similar desires for the possession of something. The equality in capacity and similarity in desire lead them to conflict. This ultimately results in the need for mutual distraction of one another.

From this equality of ability ariseth equality of hope in the attaining of our ends. And therefore if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies; and in the way to their end (which is principally their own conservation, and sometimes their delectation only) endeavour to destroy or subdue one another. (Hobbes, 1651: 76)

According to Hobbes, there are three causes of conflict, "first, competition; secondly, diffidence; thirdly, glory" (Ibid. 77). Competition for gain, diffidence for safety and glory for reputation are the reasons why men conflict one another. The State of Nature is hence a fearful world where men are not sure about the continuity of their life. In the State of Nature, there is no stability and any form of invention and development is impossible; no communication of any sort; "and the life of man [is], solitary, poor, nasty, brutish, and short" (ibid. 78). To avoid this, people come into agreement or contract. After men realize the fearful and skeptical life in the state of nature, they come into the way-out. "Consequently it is a precept, or general rule of reason: that every man ought to endeavor peace." Men "seek peace and follow it" (ibid. 80). This is for Hobbes the first law of nature. The derivative of this law is the second law of nature that men lay down, as far as others do, their natural right for everything and come into contract.

From this fundamental law of nature, by which men are commanded to endeavour peace, is derived this second law: that a man be willing, when others are so too, as far forth as for peace and defense of himself he shall think it necessary, to lay down this right to all things; and be

contented with so much liberty against other men as he would allow other men against himself (ibid. 80).

According to Hobbes, in the state of nature, the actions of men cannot be justified as just or unjust. Because to act as they will is the natural condition of man, which we cannot deny as unjust. Acting “justly” in the state of nature, where everyone acts according to his/her egoistic desire, is impossible. The notion of justice for Hobbes comes after the construction of society or state by the mutual agreement of men in the state of nature. This means that there is no justice naturally independent of social structure and the purpose of society is to distinguish what is just and unjust and to avoid injustice, which are actions contrary to the aims of the state.

After this they come into agreement and elect a sovereign who can protect them from any danger. They fear the punishment of this sovereign and refrain from doing any crime. The problem of Hobbes’ political philosophy is the sovereign is an absolute monarchy, where any opposition is impossible. Rawls’ critique of Hobbes is that if there is the possibility that individuals can escape arrest and punishment, they cannot avoid doing injustice and crime.

2.5.1.2. John Locke: *The Second Treatise of Government*

The social contract theory of John Locke is almost similar with the theory of Hobbes. Their basic difference is the nature of men in the state of nature. For Hobbes men in the state of nature are naturally egoist and are obsessed with the desire to power. Unlike for Locke, human beings are rational and have the idea of law and obligations to respect the rights of others. The state of nature for Locke is characterized by the place where absolutely free men who have rights and obligations live. In the state of Nature there are laws of nature. These laws of nature are accessible to human reason. Based on these laws we can evaluate the activities of men as right or wrong. Therefore, unlike Hobbes’s, the state of nature of Locke is moral. Men in the state of nature are equal both mentally and physically. No man has the right to harm or destroy others and even himself, his own body. Even though men have perfect liberty, they have also obligation to respect the liberties of others. In *The Second Treatise of Government*, he states “the state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions” (Chap. 2 §6). This assumption comes from his theological influence. He asserted that men are the properties of one supreme body [God]. The respective right in the state of nature has its own obligation. Unlike Hobbes for

Locke, the State of Nature is not identical with the state of war. For Locke, men in the state of nature live in a “give and take” manner. For example, one’s right to life and property is respected as far as one respects similar rights of others. Everyone in the state of nature has the right to punish the transgressor of laws (§7). It is this right that leads State of Nature to the State of War. To avoid this violation of the laws of nature and seek the sovereign body who gives the ultimate punishment, men come into agreement. Because they think that the state can serve as the ultimate punisher for those who violate the laws.

To avoid this state of war (wherein there is no appeal but to Heaven, and wherein every the least difference is apt to end, where there is no authority to decide between the contenders) is one great reason of men’s putting themselves into society, and quitting the state of nature : for where there is an authority, a power on earth, from which relief can be had by appeal, there the continuance of the state of war is excluded, and the controversy is decided by that power (Chap. 3 § 22).

In the transition from State of Nature to civil society, individuals surrender their natural right to punish. The right to preserve oneself is the natural right that cannot be turn over from individuals. Men are free and independent. No one can force them to form a community. They surrender their right to the community based on their voluntary consent. They give the right to punish to a single authority (§ 95-96). The main purpose of the authority of the community is to preserve the property of individuals. “The great and chief end, therefore, of men’s uniting into commonwealths, and putting themselves under government, is the preservation of their property” (§ 124). He continues, explaining the main reasons why men surrender parts of their natural right, and come into social contract to form a common authority, in section 127. “The inconveniencies that they are therein exposed to, by the irregular and uncertain exercise of the power every man has of punishing the transgressions of others, make them take sanctuary under the established laws of government, and therein seek the preservation of their property.” Property for Locke refers to the possessions of individuals, like life, health, liberty or wealth. After this men live in peace and the sovereign must serve the society based on some social laws or the constitution. If the sovereign fails to do so and life is not better than the life in the state of nature, people have the right to rebel against the authority.

2.5.1.3. Jean Jacques Rousseau: *The Social Contract*

MAN was born free, and everywhere he is in chains.

Rousseau's social contract is different from Locke's and Hobbes. For him human beings in the state of nature are not egoist rather they are innocent. Life in the state of nature is happy. They live in peace and harmony. They have not personal motives to attack others, even lack the access to communicate with others. (Rousseau, 1754) But, gradually as the life of men improved and new inventions are started, the competition and envy between men began. The first development of man is expressed by his mastery over other animals. With possession of property and the change in the life of men is therefore the reason that men become greedy and vice. Though man is born free, he is enclosed by many chains as the life of man become more complex. The first person who is the founder of a civil society is the one who "having enclosed a piece of ground, bethought himself of saying, 'This is mine, and found people simple enough to believe him' " (1754:38). This is an interesting hypothesis about the origins of human conflict and the envy on one another. The strength to self-preservation becomes weaker and they realize that they cannot defend themselves. Hence the way out is to come together and form a unity. In *The Social Contract* Book I Chapter VI, Rousseau states the following:

Now as men cannot generate new strength, but only unify and control the forces already existing, the sole means that they still have of preserving themselves is to create, by combination, a totality of forces sufficient to overcome the obstacles resisting them, to direct their operation by a single impulse, and make them act in unison (in Betts, 1994:54).

This union results in the *General Will*. The general will is the union of people, which refers to their desires and wants with the submission of their individual interest and personal motives. The competition of people is ended with the formation of the general will. "*Each of us puts his person and all his power in common under the supreme direction of the general will; and we as a body receive each member as an indivisible part of the whole*" (*Social Contract* Book I Chap. vi). Then they form a state and they are now citizens of the state, they are subjects to the laws of the general will. After, this no one is any one's enemy. This is Rousseau's social contract in a nutshell.

2.5.1.4. Immanuel Kant: *State as the United Will of the People*

Kant's social contract is not compiled in a single book or article. His political philosophy is extracted from his different works. Especially his theory of ethics is the base for his political theory. Human beings have only one innate right -freedom. "Freedom (independence from the constraint of another's will), insofar as it is compatible with the freedom of everyone else in accordance with a universal law, is the one sole and original right that belongs to every human being by virtue of his humanity" (quoted in Robert C. Solomon and K. M. Higgins, 1993: 87). In a state where there are no laws, the rights of men are violated by others. Such a state is characterized by coercion and threat of individuals to one another. This is the state of nature. For Kant, state of nature is not necessarily unjust or a state where there is injustice. Instead, it is a state where there are no laws and a judge to settle the problems men face.

The state of nature need not necessarily be a *state of injustice (iniustus)* merely because those who live in it treat one another solely in terms of the amount of power they possess. But it is a state devoid of justice, for if a dispute over rights occurs in it, there is no competent judge to pronounce legally valid decisions (Kant, 1785 cited in Lessnoff, 1990:125).

Therefore, in such a state, there is a possibility that individuals threaten to one another, or pose coercion on one another's freedom. To avoid this men come into a contract. "The act by which the people constitute a state for itself or more precisely, the mere idea of such an act (which alone enables us to consider it valid in terms of right) is the original contract. By this contract, all members of the people, give up their external freedom in order to receive it back as members of the commonwealth, i.e. the state" (ibid. 126). It is after the universal law of freedom, where all the wills of people are conjoined, that the state can be created. This is the united will of the people. The purpose of this original contract is to construct a civil society or a state. Before the contract men give up their natural freedoms, and rights in the condition that other men do so. "In particular, he [Kant] argues that there must be a single institution among a people, which he calls the state, that has the authority to use coercion to force people to leave others free to formulate and pursue the ends of their choice, provided that they are not violating the similar freedom of another." (Becker, in R.C. Solomon and Higgins, 1993: 83).

Men in this civil society are now free from any external coercion. The only thing that uses coercive force is the state. The state contains three bodies, the legislative, the executive and the judiciary. The state is a law making body and judge, which gives ultimate decisions on disputes.

The legal members of the state are called citizens. There are two types of citizens, active and passive. For Kant it is only the active citizens who have the right to vote and the capacity to make decisions on matters of the state. However, it does not mean that all are not equal. Everyone is equal as human being. This is the contradiction in Kant's political philosophy. On the one hand he argues that all human beings are equal. On the other hand he gives political right to vote to those who are independent, masters and wealthy citizens or active citizens (in Lessnoff, 1990: 130-131).

2.5.1.5 John Rawls: *Justice as Fairness*

In his most influential book *A Theory of Justice*, John Rawls considered justice as the first virtue of institutions as truth is the first virtue of thought. Unlike others, Rawls' did not start his social contract theory from a state of nature. Rather he started from the "original position" or the "initial situation". According to him, the origin of just society or a social institution is the contract of free, rational, and non-egoist individuals who have no prior knowledge about their "fate" or place in the forthcoming society. In his terms, the contractors in the "original position" are in the "veil of ignorance." The veil of ignorance refers to the lack of knowledge of the contractors about their wealth, status, talents and any identity as well as their future place in the society. They are rational, mutually disinterested and ignorant of their status in the society to be attained. Therefore, for Rawls the principles of justice to be chosen by such contractors are necessarily just. There are two principles of justice that parties should agree about in their contract. These are the principles that guide their institutions.

The guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement. They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. These principles are to regulate all further agreements; they specify the kinds of social cooperation that can be entered into and the forms of government that can be established. This way of regarding the principles of justice I shall call justice as fairness (Rawls, 1999: 10).

Rawls sets forth two such basic principles of justice. The first principle gives a guarantee to equality for the basic liberties of parties. The second is giving equal opportunities to offices and income and wealth for all with the difference principles that allows inequality in the distributions of income and wealth. This inequality is assumed to be for the advantages of the list-advantaged

group and based on the agreement of all the parties. (1999: 53). The working of the difference principle is to rule out past injustices. That is why the second principle is also called the difference principle. There are the primary social goods that any rational person wants to attain. It is these primary social goods that are the concerns of social institutions. After the original agreement men chose these two principles of justice. Then the next role of the principles of justice is to establish social institutions and basic structure of the society. For Rawls therefore the primary subjects of justice are social institutions that distribute primary social goods and keep the basic liberties and rights of men protected. (ibid. p.82)

Now primary goods ... are things which it is supposed a rational man wants whatever else he wants. ... The primary social goods, to give them in broad categories, are rights, liberties, and opportunities, and income and wealth. ... They are social goods in view of their connection with the basic structure; liberties and opportunities are defined by the rules of major institutions and the distribution of income and wealth is regulated by them (Ibid. 79).

The role of the state or government is to keep the basic liberties and rights of citizens and the fair distribution of income and wealth among the parties. In the next chapter we will see in detail Rawls' social contract and theory of justice.

In summary, in this chapter we have seen the different conception of justice. There are different dimensions and definitions of justice. Justice is judgmental in nature, which evaluates the practical implications in the activities of men. It has different meanings. Central to them is that justice is fairness in the distributions of resources, righteousness and lawfulness in the actions of men, giving people what is due to them, and equal consideration of particular members of a given community.

We tried to answer the question "What is the guarantee to the prevalence of justice?" as the existence of one supreme power, i.e., the state. The nature of the state is different in the different theories of political philosophy. However, in all the state has similar purpose. The state is the tool for the maintenance of justice. Regarding its construction, we have seen the social contract tradition in the political philosophy. Five of them are the social contract theories of Hobbes, Locke, Rousseau, Kant and Rawls. They have their own differences in their theories. What is common to all, with different approaches is that the life of men in the state where there are no laws (the state of nature) are characterized by greedy, jealousy, competition, egoistic and selfishness resulted in the coercion and threat to one another. What follows is that men become

skeptic and fear of unexpected death. Hence, they desire peace, stability and security. They realize that all need such stability and security. In a condition that everyone seeks peace and desires others seek similar, it is easy to make an agreement or compact. This is what we called the social contract. It is through this contract that the state or the supreme authority is constructed. Exceptional account of the social contract is that of Rawls' in that the original agreement is not to form a state instead to choose principles of justice. The supreme authority is termed as the *Leviathan* (Hobbes), the state (Locke), the "general will" (Rousseau) or the "unified will" (Kant) of the people. Finally, based on the consent of the people, it is only the state that has legitimacy to use coercion, to settle disputes and distribute resources among the members.

This is what I have to say regarding the literature on justice and the construction of the just society. John Rawls' 19th C hypothesis of social contract is special. In the next chapter I will deal with his theory of justice and social contract with some possible criticisms and constructive insights by including the thoughts of different philosophers and thinkers.

Chapter Three

Contemporary Conceptions of Justice

3.1. Introduction

We have seen some conceptions of justice and social contract traditions in the previous chapters. In this chapter we will discuss the contemporary conceptions of justice. The first part of this chapter deals with John Rawls' theory of justice and his theory of social contract. The second part of the chapter will be on some possible responses to Rawls' theory of justice. I make the Harvard Professor, John Rawls' *A Theory of Justice* the opening discussion of my account on the contemporary conceptions of justice. There are many reasons for doing so. One is to see some possible gaps in his theory and try to fill the gaps. The other is that it is a matter of fact that he is Rawls who sets fire in the contemporary discussions of justice in political philosophy and no one can deny his extra ordinary influence in the contemporary theory of justice. It is after the publication of his most famous and influential book *A Theory of Justice* that the idea of justice revived into the arena of academic discussions. According to some commentators, the contemporary debates in the conception and theorization of justice revolves around his theory of justice. Hence, it could be profitable to open the contemporary discussion of justice with John Rawls' theory of justice.

3.2. John Rawls: *A Theory of Justice*

Born on February 21, 1921 in Baltimore, Maryland USA, John (Jack) Bordley Rawls was a prominent figure in American political philosophy of 20th C. The detailed account of his biography is written by Thomas Pogge in a book Translated by Michelle Kosch as *John Rawls: His Life and Theory of Justice*, published in 2007 by Oxford University Press. According to Pogge, John Rawls was closer his mother than his father in his childhood. He was influenced by her in her attitudes towards justice and gender equality. Gradually, he developed the habit of reflecting on different injustices in his town.

During his childhood, Jack's sense of justice was engaged through his mother's work for the rights of women. He also began his own reflections on matters of race and class. Even then, Baltimore had a large black population (approximately 40 percent), and Jack noticed early on

that blacks were living in very different circumstances and that black children were attending separate schools (Pogge, 2007: 6).

After different ups and downs he started teaching at Princeton University in 1950. In 1953 he received assistance professorship in Cornell University. Gradually he joined Harvard University in 1962 and taught there till his retirement in 1991. In 1970 he became the chairman of philosophy department of Harvard University. This position makes his task multifaceted and busier ever-using evenings and weekends to accomplish his tasks. The years between 1962 and 1971 are the time when he was so busy doing teaching and other duties. It is in this period that he wrote his most extensive and detailed work *A Theory of Justice*. “The long and widely anticipated book appeared in the United States in late 1971.” (Pogge, 2007: 22). His book was so influential which,

brought political philosophy back to life inspiring a flood of many thousands of articles in the journals of philosophy, political science, economics, and law. It is also well known that this work has been translated into twenty-eight languages, has sold some four hundred thousand copies in English alone (it holds the record at Harvard University Press), and has also found many supporters in the developing world (Ibid. 178)

In the year 1979 he promoted to the highest academic rank of Harvard University, a University Professor who receive high salary and freedom of teaching even in other departments. He continued teaching as nominal pay up to the time he stopped teaching in 1995 because of his strokes. According to Pogge, he was an exceptional teacher who revises and updates his lecture notes continuously and even a student who follows his lessons can follow the similar topic with a new spirit.

Even when it had been given many times before, he would prepare each class lecture afresh, looking once more through the primary texts and familiarizing himself with any new and important secondary sources. It is not surprising, then, that many graduate students attended the same lecture course year after year to deepen their understanding of the field and to partake in the development of Rawls’ thinking. (Ibid. 24)

Therefore Rawls is a serious and hard worker who can be pedagogically an example of a good teacher especially for young professors of Universities.

After 1995 he was suffered from series of strokes that resulted in his mental and physical decline. Aged about 81 years, professor John Rawls died on November 24/2002 in Lexington city. Yet, his influential book *A Theory of Justice* and his different works in theory of justice, moral and political philosophy made him alive forever and remains in the memory of intellectuals in any account of contemporary discussions of justice. This paper is part of his influence and a witness for his existence.

3.3. Rawls' project

Rawls come up with a new project making the social institutions or basic structures of well-ordered society primary subjects of justice. He started from a social contract, a peculiar hypothesis of social contract. Unlike the traditional social contract theorists, he proposed the agreement of rational, free, equal and mutually disinterested parties not to form a specific form of government or social system, but to choose principles of justice that order the basic structures of the society. Accordingly, parties in the original position are in a “veil of ignorance” about particular information on their private matters while they have enough knowledge about general facts and theories. The agreement of such individuals resulted in the choice of two principles of justice (we will discuss them latter) among many possible alternatives presented to them. Then these principles of justice are the tools that maintain and arrange the social institutions of the society, which in turn define the basic liberties and opportunities of the society and distribute the income and wealth of the society. Then the ultimate goal of his project is to attain a just system of institutions through a purely procedural justice. This is what Rawls called “justice as fairness” since the agreements reached at the initial contract are fair given the circumstances of justice, and human conditions in the original position satisfied. Ultimately, Rawls intended to attain a society - well ordered society, where the social institutions are lead by the principles of justice. Then human life both collectively and individually is worthwhile in such a state. Such a just social order is reasonable to sustain for long since its origin is the choice of free, equal, rational and non-egoist contractors to further the wellbeing of the collective life.

The question is then whether we can envision a realistic utopia, an ideal social world that is reachable from the present on a plausible path of transition and, once reached, could sustain itself in its real context. By constructing such a realistic utopia, Rawls has sought to show that the world is good at least in this respect of making a worthwhile collective life of human beings possible (Pogge, 2007: 27)

Therefore, we can understand that the role of political philosophy is to construct such a real social order in the contemporary world where problems and dangers of human life are abolished. “By modeling a realistic utopia as a final moral goal for our collective life, political philosophy can provide an inspiration that can banish the dangers of resignation and cynicism and can enhance the value of our lives even today”(Ibid. 27).

This is Rawls project in *A Theory of Justice*. How can such principles of justice be chosen and how can they be applicable to the social institutions of the well-ordered society? In the forthcoming discussions we will see the basic assumptions of his theory. I deal his theory of justice based on the 1999-revised edition of *A Theory of Justice*.

3.3.1. The Original Position and Circumstances of Justice

According to Rawls human beings in the pre contract period are in the original position. The original position is similar to the state of nature in that it is a hypothetical condition of human life where there are reasons for human agreements are mandatory. It is not a historical human phenomenon for Rawls. Rather it is a hypothetical assumption that is not equivalent with real life human situations. In the original position men are free, rational and equal. “In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract. This original position is not, of course, thought of as an actual historical state of affairs...” (Rawls, 1999: 11).

There are different characteristics of the original position that make human agreement both possible and necessary. Among others there are circumstances of justice. These are the conditions of life in the original position. In the traditional social contract theories there are different problems of life in the state of nature that compel human beings to mutual agreement. For example for Hobbes it is the excessive desire for power and self-preservation that brought about conflict among men. For Locke and Rousseau, it is ownership of property and advancement in human life that leads to competition and envy resulted in conflict and wars in the state of nature. Likewise for Rawls there are circumstances of justice that are possible to be experienced in the original position. One thing is needed the circumstances of justice to be described. That is under the normal condition human cooperation is both “possible and necessary” thing (1999, 109). One of the characteristics of human cooperation is the experience of conflict and identity of interests and the possibility of scarcity in resources. These are what Rawls called the circumstances of justice. These circumstances of justice can be explained as

the condition of moderate scarcity (among the objective circumstances), and that of conflict of interests (among the subjective circumstances). Thus, one can say, in brief, that the circumstances of justice obtain whenever persons put forward conflicting claims to the division of social advantages under conditions of moderate scarcity (1999, 110).

This conflict of interests and moderate scarcity brought about the problem in the distributions of resources among members of the community. It is at this point that some principles of justice needed to determine the distribution of resources. The social institutions are the basic tools to distribute resources. Yet there are different arrangements that can be chosen. As said above, the original agreement of parties is not to establish a particular form of social institution rather principles of justice that determine the arrangements of social institutions. “Thus principles are needed for choosing among the various social arrangements which determine this division of advantages and for underwriting an agreement on the proper distributive shares” (Ibid. 109).

There are also other characteristics of the original position. There are differences in knowledge, thought, and judgments. Hence, men’s knowledge can be limited; their judgments can be biased because of moral faults, selfishness, negligence and their natural situations. As a result, men may have different plans of life and diversity in philosophical and religious beliefs, political and social doctrines. More importantly, men in the original position are aware of these circumstances of justice, they are free from any selfish, egoistic interests, sentiments and affections to others, they are not bound by prior moral ties, and mutually disinterested, meaning “they are not willing to have their interests sacrificed to others,” hence no benevolence ethics. These are the circumstances of justice, the situation of human life in the original position “which sets the stage for the questions of justice.” Therefore, it is rational to argue for the quest of justice given the circumstances of justice and the situations of human life in the original situation. Because according to Rawls, justice is “the virtue of practices where there are competing interests and where persons feel entitled to press their rights on each other” (Ibid. Pp. 109-112). These desires for justice lead men to a tacit agreement about the choice of principles of justice. After these preliminary remarks and discussions of the circumstances of justice in the original position, we can directly go to the social contract theory of Rawls.

3.3.2. The Veil of Ignorance and Social Contract

One of the important things in Rawls’ theory of justice is “the veil of ignorance.” In addition to the circumstances of justice in the original position, the parties must be in “the veil of

ignorance.” Without the veil of ignorance his theory is nothing since the choice of the principles of justice is based on the presupposition of the veil of ignorance. According to Rawls, the veil of ignorance in the original position is fundamental importance without which any theory of justice cannot work at all (p. 121). In this section we will see his conception of the veil of ignorance, and its application in the choice of the principles of justice.

According to Rawls, the veil of ignorance is a state where the parties are behind the veil regarding the knowledge of particularities about themselves. It is lack of a sort of information about their private matters. In a purely procedural justice, in the original position, where all the conditions are satisfied, the parties are in a veil of ignorance, in state of lack of knowledge particular facts about their private affairs. These particular information and knowledge that the parties are assumed to be ignorant are subjective matters that can negatively affect the choice of the principles of justice and “specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage. Now in order to do this I assume that the parties are situated behind a veil of ignorance” (1999, 118). In general, the parties in the original position are in the veil of ignorance about particularities. So, what are specific information that the parties are ignorant of?

They do not know their place in the society, their class and social status, their fortune in the distribution of the natural assets and abilities, their intelligence and strength. No one knows his conceptions 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 culture it has been able to achieve. The persons in the original position have no information as to which generation they belong (Ibid. 118).

The parties do not know the specific contingencies that set them in opposition. In general, the veil of ignorance is the condition of parties in the original position where they lack any knowledge and information about particularities and about their personal private matters. The only particular fact that the parties are aware of is that “their society is subject to the circumstances of justice and whatever this implies” (Ibid. 119).

Despite their being in the veil of ignorant the parties have knowledge of general facts. They are not totally ignorant. They know the general facts and theories. They know the general facts that can affect their choice of the principles of justice.

It is taken for granted, however, that they know the general facts about human society. They understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology...know whatever general facts affect the choice of the principles of justice. There are no limitations on general information, that is, on general laws and theories.... (Ibid. 119).

They also know that in the distribution of benefits and burdens they need more primary social goods than less. In addition to this, they are mutually disinterested; “they are not moved by affection or rancor. Nor do they try to gain relative to each other; they are not envious or vain” (p. 125). They are rational that they choose principles that can be kept for long and be respected (be practical) without great difficulty. The advantage of the veil of ignorance in the original position is that the parties must be impartial and can reach in “unanimous agreements” about the principles of justice. “... since the differences among the parties are unknown to them, and everyone is equally rational and similarly situated, each is convinced by the same arguments” (p. 120). The impartiality of the original position is what we call fairness. Therefore, according to Rawls, this purely procedural justice is what Rawls calls “justice as fairness.” On page 11, he states the following: “The original position is, one might say, the appropriate initial status quo, and thus the fundamental agreements reached in it are fair. This explains the propriety of the name “justice as fairness: ...”” In this initial status quo there are many alternatives presented to the parties. But because of the veil of ignorance the parties choose only two of them. These are the two principles of justice. Therefore, ultimately the parties must choose only two principles of justice among different possible alternatives presented to them in the original position. Such principles are the principles on which everyone in the original position should agree about and that can maintain, “equal basic liberties for all, as well as fair equality of opportunity and equal division of income and wealth” (p. 130).

The original agreement of parties is therefore not to establish a system of social institution or form of government. Rather the principles of justice that can order further social institutions and basic structures of the society.

3.3.3. The Two Principles of Justice

According to Rawls the parties are rational to choose the two principles of justice. These principles are not principles that are intended to be applicable to particular cases. Their purpose

is to help social institutions serve the society and maintain justice. In this section we will see the two principles of justice in detail.

As we have tried to explain above, "... the content of the relevant agreement is not to enter a given society or to adopt a given form of government, but to accept certain moral principles." (1999,14). Thus, the two principles of justice are the subjects of the original agreement. According to Rawls, the veil of ignorance makes parties not to choose utilitarianism and other theories of justice. They cannot choose especially utilitarianism because they do not know their place in the forthcoming society hence they fear being victims of "the greatest happiness for the most part of the society" principle of utilitarianism unfortunately placed in the minority group, specific of religion, or racial discrimination. After all, the choice among equals cannot be affected by the maximizing utility principle. What are then the two principles of justice that the parties agree about in the original position?

...it hardly seems likely that persons who view themselves as equals, entitled to press their claims upon one another, would agree to a principle which may require lesser life prospects for some simply for the sake of a greater sum of advantages enjoyed by others... Thus it seems that the principle of utility is incompatible with the conception of social cooperation among equals for mutual advantage...

I shall maintain instead that the persons in the initial situation would choose two rather different principles: the first requires equality in the assignment of basic rights and duties, while the second holds that social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society. (1999, 13).

The two principles of justice are, the equal liberty principle and the difference principle that read as follows:

First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all (1999, 53, with emphasis added).

Then Rawls gives a detailed discussion of the two principles of justice. The primary concerns or subjects of these principles of justice are the social institutions or the basic structure of the society, since its effects are "so profound and pervasive."(p. 82). The role of social institutions is

to assign the basic rights and opportunities and the distribution of social and economic advantages. Based on this the principles of justice have their distinctive roles in social institutions. “Thus we distinguish between the aspects of the social system that define and secure the equal basic liberties and the aspects that specify and establish social and economic inequalities.”(Ibid. 53). At the center of the two principles of justice there is the priority of equality of liberty. There are primary social goods that are the things the social institutions distribute. These goods are the goods that “a rational man wants whatever else he wants.” Regarding this, the man’s happiness is in securing his/her plan to attain these primary social goods and “the good is the satisfaction of rational desire.”

But the problem of these principles of justice is settling and maintaining such primary social goods. To solve this, the two principles of justice must be in serial order. That is liberties and opportunities are guaranteed to all equally by the first principle and the distribution of income and wealth should be attained by the difference principle. The motto is that everything in the society is to be equally distributed unless an unequal distribution is for the benefit of all. Injustice then is any inequality that will not result in the equality of all (p. 54).

The difference principle works like the principle of efficiency in economics. “It is impossible to raise or lower the expectation of any representative man without raising or lowering the expectation of every other representative man, especially that of the least advantaged” (p. 70). One basic question need to be addressed here. Who are the beneficiaries of justice or for whom should the primary social goods be equally distributed? Rawls sets out the criterion for the application of principles of justice. The structure favors some starting points over others in the distribution of benefits and burdens. In other words, there are “relevant social positions” that are the focus of social institutions while maintaining justice. One of such positions is equal citizenship. According to Rawls, thus the social institutions distribute primary social goods to all based on citizenship.

Now as far as possible the basic structure should be appraised from the position of equal citizenship. This position is defined by the rights and liberties required by the principle of equal liberty and the principle of fair equality of opportunity. When the two principles are satisfied, all are equal citizens, and so everyone holds this position. In this sense, equal citizenship defines a general point of view. The problems of adjudicating among the basic liberties are settled by reference to it. (Ibid. 82)

While the first principle of justice must to be respected without any conditionality, the second principle allows for the possibility of inequality. According to Rawls, inequality is inevitable in the distribution of income and wealth. Then this inequality should be viewed and dealt as a means to redress (or compensate) for past injustice and at the same time it is for the advantage of all. At this point, Rawls' theory of justice appeals to *reciprocity* meaning, "the difference principle appears acceptable to both the more advantaged and the less advantaged individual" (p. 89). This in turn entails *fraternity* that is to the absence of envy and contention rather, which refers "to the idea of not wanting to have greater advantages unless this is to the benefit of others who are less well off." It is natural that members of the family do not want to sacrifice the advantage of part of the family for the sake of maximize the greatest happiness of most of the members. "The family, in its ideal conception and often in practice, is one place where the principle of maximizing the sum of advantages is rejected." (p. 90). Yet one difficulty of this is that we cannot easily apply to the members of wider society, who have different historical, social and cultural backgrounds.

His egalitarianism extends to the sharing of even the natural talents and fortunes of part of the society to those who lack such talents and fortunes. The gifted can contribute to the wellbeing of the disadvantaged either in the form of tax or other means. (Pp. 244-247)

The difference principle represents, in effect, an agreement to regard the distribution of natural talents as in some respects a common asset and to share in the greater social and economic benefits made possible by the complementarities of this distribution. Those who have been favored by nature, whoever they are, 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 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 favorable starting place in society (p. 87).

After a detailed discussions and explanations the final statement of the two principles of justice appeared on page 266 as follows:

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.

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.
(Emphasis added).

Though the two principles of justice primarily apply to the social institutions, there may be possibilities that they can be tailored to particular cases if necessary, with possible establishments of particular laws. After Rawls constructed the two principles of justice and the social institutions are set up based on these two principles, the basic structure of the society or the state has a dominant power in determining, defining basic liberties and distributing income and wealth. Therefore, the role of the state is prominent in his theory of justice. These are as far as possible the central points of John Rawls' theory of justice.

3.4. Some Commentaries on Rawls' Theory of Justice

Rawls' theory of justice is one of the fundamental changes in the theoretical developments of contemporary political and moral philosophy. The book influenced many thinkers. Philosophers debate on the issue for and against the strength of the book. One of the strong critics of Rawls' theory of justice, Robert Nozick, states that, those who work in the contemporary moral and political philosophy either necessarily deal with Rawls' theory of justice or they are expected to explain why not.

“*A Theory of Justice* is a powerful, deep, subtle, wide-ranging, systematic work in political and moral philosophy which has not seen its like since the writings of John Stuart Mill, if then. It is a fountain of illuminating ideas, integrated together into a lovely whole. Political philosophers now must either work within Rawls' theory or explain why not.” 1974, 183) The book as a wide explanation and structured formulation can be a good reference on the theory of justice. Thus we can get many useful lessons from the book and some critics are inevitable since it could not be the final court of appeal in addressing all political and moral problems of our contemporary world.

3.4.1. Important Lessons from Rawls Theory of Justice

With all possible critics, Rawls' theory of justice is a foundation in the contemporary political and moral philosophy. We cannot easily deny his extraordinary influence as valueless because of even strong critics that can be posed to his theory. Hence, we can draw many important lessons from Rawls' theory of justice. His social contract can pass the test of the capacity of any promise or contract as the basis for moral claims. If people are unanimously agree being free from any

personal and subjective vested interests, i.e., behind “the veil of ignorance,” then they can choose such neutral principles of justice. The application of these principles to moral judgments and evaluations can be a court of appeal. Since the social contract in the original position is to be made between equals without any influence on one another’s choice, no one can oppose their implication in the practical life situations. Therefore, his contract theory is better than other contracts and it is “morally powerful” (Sandel, 2010: 80).

Another important thing is that the priority of liberties over other rights. The first principle emphasizes liberty over economic equality. Human beings are endowed with natural liberties that are inalienable and inviolable. These liberties cannot be violated for the sake of high accumulation of income and wealth and they cannot be exchanged for the sake of “maximum happiness for the greatest number” principle. His priority of liberty can be criticized as extremist. Still his attempt to emphasis on the basic liberties to be given priority is one of the contributions of Rawls’ theory of justice. “Rawls’ prioritization of liberty, admittedly in the rather extreme form of its total priority, does draw attention to the strong case for seeing liberty as a separate and, in many ways, overriding concern in the assessment of the justice of social arrangements.” (Sen, 2009, 63)

In his purely procedural justice his focus on fairness in the original position is the third fundamental ideal that we can learn from Rawls’ theory. People in the original position are absolutely impartial, that is the conception of justice as fairness. Hence, his priority of fairness, or impartiality of parties in the original position in the choice of principles of justice is valuable thing in his project (Ibid. 64).

The difference principle can also be one of the basic tools in the procedures of distributive justice. It allows the worse-off in the society to be benefited. Inequality and differences are inevitable in any distribution of benefits and burdens. The difference principle is meant to rule out any resentment among the members since it is intended to the benefit of all. Therefore, his attempt to employ the second part of the second principle of justice in his theory made it convincing and at times worthwhile to apply in contemporary distributive justice if it can satisfy any competing claims or conflict of interests of parties.

These and others with possible modifications are the important lessons that we can draw from Rawls’ *A Theory of Justice*. Yet, as I have said above, the book or his theory in general cannot be the complete material in the political and moral philosophies that fully answers the questions of

justice in the current world. His contemporaries and followers reflected on some of the defects of his work. That means possible critics are at hand.

3.4.2. Possible Critics

Rawls' theory of justice is logically consistent. If it can be applicable in any form of society, the theory by itself is constructed to be good tool in maintaining justice. Nevertheless, there are different responses to his theory of justice. By mentioning my own general comments in my reading of his theory I move on to the discussion of some critics from different philosophers and thinkers. One of the possible critiques to his theory is that it is so ideal and cannot be practical. Especially we can easily deny the possibility of parties in the original position can be behind "the veil of ignorance." It is against human nature that men can totally be ignorant of their own private interests and free from guessing their future destiny. In addition to this, people who did not know to one another, come from different backgrounds, and may have different plans of life (since they have their own plans of life, though ignorant about the particular ends of their plan) may not reach in unanimous agreement in the choice of the two principles of justice. There must be some sort of selfishness to deal with others and to plan about the future. How can men totally deny their identities and avoid bothering about their personal futures? And for what ends are they coming into contract?

The role of the basic structure of the society in maintaining justice is so strong. As far as the basic structures of the society are in conformity with the two guiding principles of justice their actions are justified. The effects of social institutions in the basic structure of the society are so "profound." Hence, his primacy of social institutions as the subjects of justice gave the state unlimited power. This can make individuals powerless and intend to shape individual behavior by the principles of justice. This according to Sen, in turn leads to an attempt of making all members of the society to behave uniformly, in conformity to these fixed principles of justice "These principles apply in the first instance to decide the justice of the institutions that constitute the basic structure of society. Individuals and their actions are just insofar as they conform to the demands of just institutions." (Freeman, 2003: 3). Hence, this made Rawls' theory of justice rigid for the sake of denying the utilitarian or any conditionality approach to justice.

3.4.2.1. Amartya Sen's Critics

In his book *The Idea of Justice*, Amartya Sen posed the following critiques. According to Sen, Rawls' theory did not give priority to human freedom focusing on the institutions and the

principles of justice. The theory fails to consider the actual behaviors of men by giving the principles the determinant role as the standards of action. This institutional foundationalism focuses on institutions than individual human capability. As such it has a gap to deal on the behaviors and realities. In his important theory, the “capability approach”*, Sen argues for the individual freedom to develop one’s capacities and to pursue the value to be chosen and the mood of life to be lived. Among many critics he imposes to Rawls theory of justice include: (1) Rawls’ focus on just institutions than just society. But as Sen opposed and I agree, the role of institutions should be to promote justice rather than being themselves the subjects and manifestations of justice. “There is still a large question about how the chosen institutions would work in a world in which everyone’s actual behaviour may or may not come fully into line with the identified reasonable behaviour”(Sen, 2009:68) and p.82. Therefore, the concern of justice should focus on the actual behavior of individuals, contrary to Rawls’ proposal of trying to confirm individual’s behaviors with institutions and principles of justice as freeman put it. I will come back to this issue in the next chapter. (2) His priority of liberty over others is so extreme. As Hebert Hart (1973) in his essay “Rawls on Liberty and its Priority” argues, and Sen agreed, at times the neglect of hunger, starvation and medical treatment cannot be less dangerous than the denial liberty. In addition to this, there is a tendency to move from primary goods to freedoms and capabilities in Rawls theory of justice that (Sen, 2009: 65-66). Sen argues that primary goods are central in the distributive justice of Rawls that are assumed to be central issues “while they are best means to the valued ends of human life ... [thus, it] is a mistake, for primary goods are merely means to other things, in particular freedom.” (p. 234). Unlike Rawls’, the capability

* The “Capability/ or Capabilities approach” is an approach to human development theory, that states that human beings are born with the capabilities or in Aristotelian language with “the potentials” to be actualized. Amartya Sen and Martha Nussbaum are prominent figures associated with this approach. Accordingly, we have to give freedom and liberty of individuals to choose the value they are reasonable to value without any external influence, or we can say, without being bind to the guidance and impositions of principles from a state or other conditionality. The capability approach gives individuals both the freedom and opportunity to pursue their goals and values. “... individual advantage is judged in the capability approach by a person’s capability to do things he or she has reason to value... The focus here is on the freedom that a person actually has to do this or be that – things that he or she may value doing or being” (Sen, 2009: 231-232).

approach proposed by Sen focuses on human life itself, not on “some detached objects of convenience, such as incomes or commodities that a person may possess...” (pp. 233-234). (3) The third important insight that we can borrow from Amartya Sen is that the restriction that Rawls gives to the paradigm of justice. For Rawls there is a “relevant social position,” that is membership to a state, that serves the assessment of distribution and the institutions focus of maintaining justice. Sen argues that there should not be any border in the application of justice. Citizens of a country may share other identities with people who are outside of their country. For Sen giving priority to a particular identity denies the rights and more importantly the freedoms of individual’s choice of the life prospects to other identities they want and are really members to.

The increasing tendency towards seeing people in terms of one dominant ‘identity’ (‘this is your duty as an American’, ‘you must commit these acts as a Muslim’, or ‘as a Chinese you should give priority to this national engagement’) is not only an imposition of an external and arbitrary priority, but also the denial of an important liberty of a person who can decide on their respective loyalties to different groups (to all of which he or she belongs). (p. 247)

Furthermore, the actions of one country can affect the lives of people elsewhere since “we do not live in secluded cocoons of our own” (p. 130). Hence, giving a border to justice in the name of relevant social position or other else necessarily result in inevitable parochialism. (pp. 128-130). Besides the three reasons Sen pointed out to the denial of citizenship or other restrictive criteria for justice, we can argue that justice by itself is borderless and its applications cannot be limited by any identity. Justice cannot be subject to territorial, temporal or identity constraints. The primary subjects of justice cannot be institutions or such and such parts of the society as defined by race, class, nationality, religious, color or other identities. This it is this argument that I am going to defend in the next chapter of the paper.

There are different critics Sen raises to Rawls project in general. While Sen agreed that Rawls theory is consistent theoretically, it is difficult to apply in the real life and to the possible natural behavior, freedoms and capabilities of human beings. Especially his comments on the defects of the principles of justice are convincing.*

3.4.2.2. Robert Nozick’s Responses to Rawls’ Theory of Justice

Another important figure in political philosophy is Robert Nozick. His book *Anarchy, State and Utopia*, appeared in 1974 about three years after the first publication of *A Theory of Justice*. It is

* His comments on the limitations of the principles of justice and other aspects of Rawls’ theory of justice appeared in his book *The Idea of Justice* on page 90.

worthwhile to incorporate some of his critics of the Rawlsian theory of justice in the discussion of contemporary theory of justice. Nozick did not deny the extra ordinary importance and the influence of Rawls' work and his theory of justice. But as a matter of fact, he by no means allow himself to totally agree with Rawls. He has some critiques and at times constructive reflections on Rawls' theory of justice. Among his critics I will discuss three of them: on the distribution of things that man produced (entitlement theory), on the role and power of the state in the distributive justice (the idea of the minimal state) and on the application of principles of justice to particular cases (macro-micro assessment).

The *first* critique of Nozick is on Rawls' denial (or exclusion) of natural assets as a moral bases for distributive justice. For Rawls natural assts and talents have no moral significant for they "permit distributive shares to be improperly influenced by factors that are arbitrary from the moral point of view" (Nozick, 1974: 213-214). According to Rawls, these factors are natural assets which are not the workings of individuals. The differences in these natural assets should not be the starting points for the differences in the distribution of social goods. Further, Rawls argues that these natural assets and talents should be the common properties of the society that are subjects of the difference principle (Rawls, 1999: 87). Hence, differences in holdings based on these arbitrary factors should be eliminated.

It is this position that Nozick try to criticize in his *entitlement theory** of distributive justice. Nozick has at least two reasons in denying this position of Rawls. (1) If we eliminate the moral bases of natural assets as arbitrary and hence have nothing of moral significance, it seems to eliminate human beings themselves as moral significance. Because we are the results of the process of fertilization that which sperm among millions succeeds to fertilize the egg is "arbitrary from the moral point of view." Hence, the difference principle proposed by Rawls put in question the moral "legitimacy of our very existing." (Nozick, 1974: 226, footnote). (2) If we take this position relevant for Rawls' theory of justice, it contradicts with his position of denying

* Entitlement theory is a theory of distributive justice supported by Nozick that states that human beings are entitled to hold or own property through different ways. There are three ways of ownership of property. These are acquisition, transfer and rectification. Acquisition is holding the originally unhold things, transfer is the case where holding is changed into the second or third party. Rectification works in redistribution of things that has historical injustice in holdings, in other words the violation of the two (Nozick, 1974: 150-153). Here Nozick argues that denying natural assets as the bases of holdings is unacceptable since men have legitimate entitlement on their natural talents, assets, and products that follow from them.

utilitarianism and taking Kant's position of considering human beings "as ends in themselves." On the one hand, the difference principle tends to improve those who are worst off by allowing differences, at times by lowering the shares of those better off. On the other hand by making the natural assets of individuals as common properties and by denying the rights of some on what they produce, in the name of difference principle, it is inevitable that the properties of some and their natural assets serve in improving the lives of others. Hence human beings are being the means for others (Nozick, 1974: 228-231).

Just to elaborate this point, Nozick argues that we cannot allow the difference principle in the distribution of things that men produce. This argument is clearly put in his Manna argument that goes like this:

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 couldn't 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? (p. 198)

As for Nozick, the difference principle rules out the natural rights of people on the properties they have legitimate entitlement and historical ownership. Therefore we can conclude that, "Rawls' construction is incapable of yielding an entitlement or historical conception of distributive justice." (p. 202)

Before proceeding to the next critique of Nozick, We have to note that there are some responses to these critiques. The scope of the paper does not allow dealing with the details of the debate. But it is worthwhile to mention one strong response from Samuel Freeman in his book *Justice and the Social Contract: Essays on Rawlsian Political Philosophy* (Freeman, 2007, pp. 114-118). The *second* critique of Nozick, though it is not the critique peculiar to Rawls' theory, is on the power and role of the state in distributive justice. Nozick argues that the role of state should be limited, that allows the rights of individuals. He denies extensive state that uses its power as an apparatus to coerce the distribution of incomes and wealth. According to Nozick, thus the role of the state should be limited so as to allow individuals freely enjoy their rights and have full rights in holding properties they are historically entitled to own. He argued that extensive state by no

means could be justified since it tends to use its coercive apparatus to force some help others (the worst of). The institutions that are so powerful fail to give individuals certain rights, as they wanted them. The Rawlsian state or basic institutions, that groups members as worst off and better off and tends to apply the principles of justice for rising the lives of the worst off, on behalf of the better off in the name of redistributing resources to compensate past injustice even by considering the natural assets as common properties. On the contrary, Nozick's minimal state treat all of us "as inviolate individuals, who may not be used in certain ways by others as means or tools or instruments or resources; it treats us as persons having individual rights with the dignity this constitutes." (1974: 334) The role of the minimal state according to Nozick is limited to the functions of protecting against theft, frauds, external force, enforcements of contracts, and so on. The implication of this conception of the state is 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" (p. ix). The *final* critique of Nozick I deal with is on the application of principles of justice to the particular cases. According to Rawls, the principles of justice are used to arrange the basic structures and social institutions of the society. The primary subjects of justice are the social institutions. The principles that apply to particulars are to be established gradually with the formations of social institutions. As such the two principles of justice do not apply to particulars (micro cases). If they do not apply to the micro cases, then they cannot be universal in application and coverage. Then there could be the possibilities of injustices of particular actions though the basic institutions may be just. This leads us to the conclusion that these principles are not correct.

Rawls does not claim the difference principle is to apply to every situation; only to the basic structure of the society. ... If, in our considered judgment, they don't apply there then they are not universally applicable. And we may think that since correct principles of justice are universally applicable, principles that fail for micro situations cannot be correct. (Pp. 204-5).

There are different arguments for and against Rawls theory of justice, its parts and the particular implications it draws. For example, Douglas B. Rasmussen argues that the difference principle in the distributive justice of Rawls denies the rights of individuals on what they produce. Rawls argued that any inequality is for the advantage of all parties who take part in the distribution. The problem is that whose property is to be distributed? Like Nozick, Rasmussen pointed out that the

properties to be distributed are the products of men. In the name of mutual advantage and improving the lives of those worst off, Rawls' distribution denies the rights of individuals on what they produce. In his article, "A Critique of Rawls' Theory of Justice," appeared in *The Personalist*, a philosophy journal, he states the following:

Admittedly, Rawls is not a completely "wild-eyed" egalitarian, for he does allow for inequalities in economic and social values if the least advantaged are aided by it. But the important point to realize is that his conception of justice does not recognize the right of a person to what he creates. Rawls makes the concept of "rights" conditional upon it aiding the rest of society, and if such a right is maintained only through the sanction of the rest of society, so to speak, then it is not something that a person possesses because he is a person but only a privilege given him. Thus, in this sense, we can say that Rawls' conception of justice does not recognize the right of a person to what he creates, and this right is a considered moral judgment of some force—at least, we shall contend this. (Rasmussen, 1974, 304)

These and others are the possible critiques for Rawls' theory of justice. In the following chapter some additional critiques and alternative approaches will be provided.

In Summary, as we have seen the contemporary conception of justice begun by John Rawls. His book *A Theory of Justice*, is so profound in political and moral philosophy. According to Rawls, people in the original position are subject to the circumstances of justice. Among others, conflict of interest and scarcity of resources lead to the competing claims of people in the distribution of resources. Therefore, the quest for the principles of justice that can use in the distribution process resulted in a social contract. Unlike, the traditional social contract theories, Rawls' social contract is to choose the principles of justice. The original contract is not to establish a form of government or a system of social institutions rather to choose principles of justice. To do so, the parties must be in the veil of ignorance on the particularities about their private matters. They are rational that they know the principles should be practical and respected without difficulty. They are also mutually disinterested that they did not move by affection or envy to one another. In this situation all parties unanimously agree on the two principles of justice, the equal liberty principle and the difference principle. These two principles of justice determine the social institutions and the basic structures of the society. Hence, the basic structure as the primary subject of justice defines and assigns the liberties and rights of citizens and equally distribute income and wealth with inevitable inequality based on the agreements of all for the advantages of the least advantaged .

Although his theory is well constructed and his book is so influential, there are some critiques of his theory. Among others we Amartya Sen argued that justice should be universal that is it cannot be subject to any restriction as Rawls argued that citizenship is one relevant position in the practical applications of justice. Further, Sen argued that justice should be guaranteeing humans the freedom to actualize their capability to choose the life and value things they are reasonable to value. Hence, to put principles and standards to confine human behavior is against human freedom. The institutional fundamentalism in justice failed to allow opportunities to individuals to choose what they have reason for choice. Moreover, his theory of justice misses the real nature and behavior of individuals in the name of conformity to principles of justice.

The other critique is from Nozick that Rawls' theory of justice failed to incorporate the historical entitlement and ownership rights of people on what they produce. In addition to this extensive state that uses its power as an apparatus to coerce others in the distribution of benefits and burdens in the name of benefiting the worst off is against individual rights. Therefore, he suggested a minimalist state. In the name of distributive equality and the difference principle, human beings lose their rights on what they produce or naturally endowed.

Hence, we can argue that the primary subjects of justice should be individual humans. Humanity must be the relevant position for justice. Justice cannot be subject to institutions or human laws. The application of justice should transcend any artificial borders and address the problem of all human society everywhere without being subject to citizenship or other identity.

Chapter Four

“Identity,” Humanity and Justice

4.1. Introduction

In the previous chapters we have seen different theories about the origin and development of the state. The social contract tradition is the most prominent about the state development in political philosophy. It starts from the assumption that the human experience, in history is characterized by the absence of the state or a supreme power to govern and to make laws. Because of the absence of such a power, human beings are left to employ their powers to acquire individual needs, to satisfy desires, to protect themselves and to dominate others. Different injustices become inevitable due to the absence of an impartial judge or power to redress the wrong actions of individuals or groups. Thus the possibility of injustice leads men to the formation of the state whose powers include, protecting members from external attack, maintaining internal peace and security, enforcing laws and implementing them, punishing the transgressors of these laws, assuring justice and so on. At the center of each role of the state there is the question of justice and the problem of injustice to be solved. Therefore, the state as the all encompassing, strong power and the biggest human association should devote its full functions to the maintenance and sustainability of justice. We have also seen that justice has different conceptions, which can at times be judgmental that implies the evaluation of actions. Justice is the guarantee of people to own what is due to theirs extending to the recognition of their existence as complete human beings.

We can also add that to be just is to be acceptable by all. An action is genuine and just as far as it is reached a consensus (though may be disagreements between different parts of the society) on its acceptability between the doer and the receiver of the action and its possible consequences. It is a multidimensional concept that has different meanings and can be subject to cultural, political, economic, social, ethical, religious and other context.

In the third chapter we dealt with contemporary conceptions of justice by selecting Rawls' theory of justice as a showcase. Debates remain unsettled on the important questions of justice. How can the power of the state and the rights of individuals be negotiated? What are the primary

objects of justice? To what extent should the social institutions use their power in maintaining justice? Are the roles of justice restricted to the distributions of benefits and burdens and the correction of wrong actions? What are the boundaries of justice? What are the possible obstacles to maintain justice? In this chapter I will try to address some of these questions.

4.2. Identity

The concept identity has different meanings and implications. In this thesis it connotes the “differentia” of things. What qualities make a thing to be different from others? What makes a thing to be called such and such rather than being that? Answers to these questions refer to the identity of a thing. “‘Identity’ denotes the ways in which individuals and collectivities are distinguished in their relations with other individuals and collectivities.” (Jenkins, 2008: 18) Hence, identity in this context refers to similar traits of groups shared in common. The very use of the concept is intended to address questions like; what impacts can identity has in the maintenance of justice between groups that have different identities? What is the possible impact of identity difference in the just communications and considerations of different identified groups?

There are different theories of identity and identity construction. The scope of this paper does not allow dealing with these theories. The existence of different identities and the reality of identified groups is a matter of fact. What are the causes of these identity differences?

Identity differences can be due to natural phenomenon, human activity and the combination of both. The natural identity is identity that is given to things naturally. Natural differences are primary identities of things most of the time that cannot be averted, replaced or transgressed by human rational intervention. The natural identity of things is fundamental and durable. No one can reasonably deny its reality and easily avoid its practical implications. Moreover, the natural identity cannot be subject to contextual varieties. That means there are points of agreements on the reality of natural identity as such. The probable difference can be in naming and expressing it. This difference cannot make the thing different than it really is. X is an X for all, everywhere and for all time. Despite the difference in language, naming, culture or passage of time, the natural identity of a thing remains the same. For example, a Tiger cannot be a cat due to human meaning and identity or differences in naming or whatever else. It can lose its being a Tiger by

no means. Being a Tiger is not the product of intentional construction and mere contingencies that are under human control.

Natural identities are foundational that cannot be subject to any borderline cases. There is no gap between the different members who share this identity. Either it can be strong or weak, satisfied or starved, “beautiful” or “ugly,” thin or fat, big or small, it does not lose its being, for example, a Tiger. No hierarchy, no boundary or no limitation exists on its being a Tiger. That is to say that neither a strong Tiger will claim into the rank of being a Lion nor the weakest be reduced into the status of being a cat. All are Tigers irrespective of the prefixes of “strong,” “weak,” “starved,” or “satisfied” and so on. All are members of the given identity, “Tigerness”. This identification tells us that they are not Cats, Dogs, or Lions, which may in turn be identified as members of broader group-carnivores.

Identity can also be nurtured, or constructed. This is the constructed and secondary identity that can be influenced by natural phenomenon or by human activities. The difference in natural capacity can bring about the difference in social identities. These secondary identities have their own borders and serve as the means for the creation of ranks due to human conceptions. At times when there are borders, the identities may lead to contest, controversies and conflicts or contentions. For example, the strongest Tiger can take the prey of the weaker one because of the workings or differences of secondary identity. In this case, the strongest Tiger assumes himself as superior than the weakest and fails to acknowledge the right to eat by the weaker. But can one argue that it is its right to use its strength to deny the similar rights of the other, for example the right to eat? This is the impact of the secondary identities in the relationships of human society that should be addressed in political and moral philosophy. The primary concern of justice must be to address and rectify the possibility of unbalanced relation due to identity differences. At least, the conception of justice requires minimizing such hierarchical inequalities between naturally equal beings.

In short, identities are the differentia between things that can be because of natural phenomena or human activities. Any form of identity can be the source of differences. The remaining parts of this paper focus on human identities, identities that exist between different parts of society. I argue that identities serve as the major obstacles of justice by allowing for unnecessary inequalities. By creating unnecessary gaps between the different members that have similar

natural identities, secondary identities make the communication and the mutual consideration of these members unbalanced. The question “What are the impacts of secondary identities on the maintenance of justice?” will be addressed by focusing on human identities.

4.3. Human Identity

As I have said above, partly identity can be the result of natural phenomena that cannot be altered by human activity. If such identities create gaps, we can reduce the impacts of the gaps by developing rational interpretations and by accepting its irreversibility. We have to develop the culture of recognition and acceptance. For example, there are different natural identities that make humans different. These include, color, sex, race and the like that are beyond human control. They are natural and no one can deny their reality. They necessarily create differences that are not substantial to human nature. What can we do about these differences is simply accepting their realities and minimizing the gap they can create between us. To do so, we need to accept the rights and completeness of beings on their own as naturally independent beings.

There are also secondary identities between different parts of human society. These identities are socially, culturally, religiously and politically constructed identities. For example, social status, political power, economic capacity, ideological differences (religious, political, cultural, social ideologies), education, and so on are secondary identities that create gaps in the communications and mutual recognitions of human society. Their origin and their development can be beyond human control. In fact, the identity developed through different means can help us to live meaningful life. Our current reality is the result of our gradually constructed social identity. Sometimes we intentionally construct them. There are also possibilities where we find ourselves as members of a given identified community. It is through our identities that we make a story to be narrated and that can bring about a collective explanation of social affairs and mutual experiences.

One thing that matters to people across many societies is a certain narrative unity, the ability to tell a story of one’s life that hangs together.... For modern people, the narrative form entails seeing one’s life as having a certain arc, as making sense through a life story that expresses who one is through one’s own project of self-making. That narrative arc is yet another way in which an individual’s life depends deeply on something socially created and transmitted. (Appiah, 2005:23)

Even though we cannot argue for their total avoidance, the different identities result in social problems. The problem with them is that their mere existence necessarily results in the division of human society into different opposite groups. For example, the poor and the rich, political leader and the ordinary citizens, the followers of different religions, the speakers of different languages, supporters of different political parties, citizens of the developed and the developing countries and the like are the results of secondary identities. They make the communication of men only horizontal. That means the interaction between people is shaped by the nature of perspective subjects. For example, the rich only communicates and gives recognition to their kind, since shared of identities can create solidarity as Appiah argues (p. 24), without ignoring the possible competition that may exist between them. The gap creates the presumption by some parts of the society as superior than others. The problem is deep rooted. There is little or no communication and interaction between the members of different identified groups. The vertical communication between the rich and the poor may not be peaceful or the relationship may not be balanced and amicable. “The joy of living frequently fades, lack of respect for others and violence are on the rise, and inequality is increasingly evident.” (Pope Francis, Exhortation Paragraph 52).

This in turn initiates attempts for mutual destruction, contention and resentment. The stronger uses his power, not only as a means to satisfy his/her desires, but also as a tool to destroy others, to deny the rights of the weak, to suppress their will, to obstruct their opportunities, to darken their hope and to disturb their goal of life. Furthermore, the “fortunate” or “the winner of life” intends to deny the loser, reduce them to the status of animal and regard them as tools for the satisfaction of his/her desires. He/she does not recognize their identity, denies their humanity, and concludes that they are not like him; they are not human beings having similar desires and rational goals of life to be attained and other things they value. This is, in my opinion, the one of the manifestations of injustice that our current generation is facing. It is this worldwide problem that any genuine political or moral theory or policy of action should address. Pope Francis of the Roman Catholic Church, in his Apostolic Exhortations, argues that in our current world some parts of society are completely excluded and marginalized as complete members of a given society. Their humanity is forgotten and their membership is denied. This is for him an “economy of exclusion.”

Human beings are themselves considered consumer goods to be used and then discarded. We have created a “throw away” culture which is now spreading. It is no longer simply about exploitation and oppression, but something new. Exclusion ultimately has to do with what it means to be a part of the society in which we live; those excluded are no longer society’s underside or its fringeas or its disenfranchised – they are no longer even a part of it. The excluded are not the “exploited” but the outcast, the “leftovers”. (Ibid. Paragraph, 53)

There are different forms of exclusions or isolations. As I have tried to explain in chapter one, there are different historical injustices. The rich become richer through different means (at times that can be unjust acts). Their entitlement rights are undeniable; their current status is also a reality that no one can argue against reasonably. Through conscious or unconscious means they have achieved their current status. Unfortunately, their power continues creating new injustices. The tendency to empower themselves, at times, manifests the possibility of killing others and denying the rights of others, denying their voices and distorting their claims. Let see a simple example to illustrate this issue. For elaboration let assume that in a court of justice, appeared the case of the rich and the poor man arguing towards the ownership right of certain property. In the absence of justice, it is a matter of fact that the rich man uses his previous economic power to influence the decisions of the judge and own the property. In this case, both the rich man and the judge employ their position to further their personal benefits at expense of the poor that leaving the poor in a situation of extreme poverty. Their greediness blinded them to consider his humanity and all his rights following his nature.

Our day-to-day experiences of the different institutions, the relationships of individuals, the activities of different hidden motives of men to make their neighbors, friends and colleagues lower than them or unsuccessful are features of lack of recognition to their humanity and hatred because of differences due to secondary identities. Some use drugs to kill their friends, some use superstitions to make others crazy, others attack officially those who are followers of “opposite” religions or those who have different ideologies from them. All this are manifestations of injustice because of the failure of considering “others” as having similar natural identities of humanity besides their differences in secondary identities. It is these sorts of conscious or unconscious injustices done by individuals and groups that should be addressed.

There are gaps between the different identity owners. These gaps continue creating new gaps. Finally they result in the “ideologies of isolation,” or exclusions. This ideology may be conscious or unconscious assumption that the differences between the different people of the stated identifications necessarily entail the differences in natural identities. It is the assumption that the differences in status could bring about the essential natural differences. In other words, that is the assumption of the rich about the poor as if he/she is not a human being like him/her having all the natural qualities of humanity with similar desires and aversions. “Identificatory stereotypes are, therefore, consequential, affecting people’s life-chances across a range of situations.” (Jenkins, 2008: 192) This is one of the fundamental problems, which any contemporary conception of justice should redress or solve.

4.4. Humanity

We have been discussing different types of identity. Humanity is one of the natural identities of human beings. The concept humanity can have at least two meanings. First, it refers to human identity, a human race. Being a human being naturally is identified as “humanity”. Second, it can denote the moral justification of an action as acceptable to and compatible with human nature. That is kindness, sympathy and compassion towards others. In other words, humanity refers to the action that is humane. The two meanings of the term can be employed interchangeably with the slight differences depending on contexts. As a subject, humanity connotes the specific identity of humans; the natural essence of human beings. And as an ethical perception, it refers to the judgment of an action that is compatible with human identity, which is justifiable by all reasonable men of human race, compassionate towards the receivers of our action regardless of their nature, and identity.

Now I set forth my argument that any action that is justifiable as just should pass the minimum criterion of humanity. That is, it should directly address the human problem and must be compatible with human rational goals. Lest this idea seem strongly anthropocentric, we have to add an illustration. Any action that is just should pass the criterion of humanity in the second sense of the term. That is our activities towards human beings, towards nature, towards other animals and the environment in general, is justifiable as far as it is humane. Therefore, the center of justice is humanity and the justifiability of any action depends on its conformity with humanity, in either sense of the term.

Despite the above socially constructed identities of different social groups, all human beings share the identity of humanity in its strict sense. All human beings belong to the single kingdom of humanity. They are the universal citizens of humanity. Each and every human creation is the legal member of this natural identity. There is no boundary between the different parts of human society in taking part in humanity. There is no hierarchy in sharing this natural identity. Therefore, the primary subject of justice must be humanity.

There are different dimensions of justice as we have seen in chapter two. They can be distributive, procedural, retributive or corrective. Justice can also be towards non-human beings. In our action of maintaining justice, we have to give priority to recognition. Recognition is accepting the existence of something with all qualities of its being. Before we recognize human beings, their humanity, we cannot deal with the other dimensions of justice. At core of every human action, declaration and decision, there must be the consideration of humanity. The question “whether it is humane or not,” must be primarily addressed.

4.5. Humanity as the Primary Subject of Justice

Rawls argued that the primary subjects of justice should be social institutions or the basic structure of the society since their effects are so profound (Rawls, 1999: 82). Because, it is the social institutions or the basic structure that maintain justice by defining the liberties and the rights of citizens and by distributing income and wealth among members. “...liberties and opportunities are defined by the rules of major institutions and the distribution of income and wealth is regulated by them.” (p. 79). As guiding principles of the institutions, he forwards the two principles of justice, one guaranteeing the undeniable liberties of the parties and the other works in the appropriation of right to different opportunities and equal access for public offices. There is a version of the second principle, the difference principle that allows inequalities in the distributions of benefits and burdens based on the “universal” consensus of the parties as the mutual advantages with the primary intention of improving the status of the disadvantaged. Therefore, for Rawls, the fundamental role of social institutions that are the primary subjects of justice is to distribute primary social goods to all “citizens” with the inevitable inequalities in income and wealth without affecting the advantages of all.

Justice for Rawls is defined by the “role of its principles in assigning rights and duties and in defining the appropriate division of social advantages.” (p. 9). His focus is on social justice that provides a standard by which the “distributive aspects of the basic structure of the society are to be addressed.” (p. 8). Who are the individual subjects of such social institutions serve in maintaining justice? In other words, who have the rights to access for the primary goods that “every rational person wants to acquire”? Rawls’ response is that there is a “relevant social position” which is the focus of the social institutions in their maintaining justice. Citizenship is such a relevant social position. Accordingly, it is citizens who have the rights to primary social goods. He ruled out the rights of human beings who are not the members of the political community. In *Justice as Fairness: A Restatement*, Rawls states the following:

Primary goods are things needed and required by persons seen in the light of political conception of persons, as citizens who are fully cooperating members of and not merely human beings apart from any normative conception. These goods are things citizens needed as free and equal persons living a complete life; they are not things simply rational to want or desire, or to prefer or even to crave. (Rawls, 2001: 58)

I agree with most of the critics that Sen, Nozick and Rasmussen pointed out as we have seen in the previous chapter. One important thing that Rawls’ theory failed to address is that it misses the universal nature of justice and gives extreme emphasis on the distributive aspect of justice that is subject to specific situations. For example, his distributive institutions as guided by the two principles of justice may not serve those who have not relevant social positions. Hence, a theory that is so constructed and foundational gives little or no room for those who are non citizens or legal members of the country the right to access for primary social goods that “every rational man want to acquire.” His theory gives priority to social institutions and in the context of his theory these institutions are restricted to the status of being servants to citizens alone, even there may be a possibility where they serve the advantaged. The social institutions by themselves cannot be the sources of justice. As Sen argued and I agree that their role should be promoting justice rather than generating it. The primary focus of justice must be the shaping of behaviours of the individual humans rather than tending to make human behaviour compatible and confirmable with the prescribed principles of justice. There may be a possibility where the rights of individuals, the humanity of some denied in the name of institutionalized justice.

Rawls' social institutions work for the well-being of citizens. They assure justice if and only if they are serving those who have relevant positions. If someone is not a citizen, it is not their business to treat him/her justly. This is a tendency to make justice subjective dependent to conditionalities. But justice, the most universal human question, must not be subjective to such criteria. Therefore, the primary subjects of justice must be individual human beings and the relevant social position, rather better to say natural position must be humanity. Justice should be not the matter of sharing this or that amount of property instead the matter of assuring one's dignity and respect in a society. Rather than "what is my share in the society?", justice should address the question, "where is my place in the society?" The quest for this and that good, say food or cloth, is not naturally human question.

Without one's autonomy and dignity, material needs are not the primary human desires. Even the animal can bark for food. For the rational creature who has complete moral worth, bodily pleasures are superficial to the desire of his soul. Simone Weil, French writer and philosopher, argues that the first question is the question of right which can be addressed by the laws of human society. The second question on the contrary is the basic question of justice related to human dignity and reaction against any bodily harm or psychological denial. The question of sharing of resources is so superficial to the human soul. On the contrary, the cry to avert harm from others is the basic question that entails his/her humanity. (in Miles, 2005:73-74). In the collective, and in the institutions the voices of these cries cannot be heard. "The person, being subordinate to the collective both in fact and by the nature of things, enjoys no natural rights which can be appealed to on its behalf." (Weil, 1942/3 in Miles, 2005:77).

Michael Sandel agrees with Weil, that if we did not respect man's natural right it is an attempt to use him/her as an instrument for other ends, for utility. "If you believe in universal human rights, you are probably not a utilitarian. If all human beings are worthy of respect, regardless of who they are or where they live, then it is wrong to treat them as mere instruments of the collective happiness." (Sandel, 2010: 58) Therefore, the question of justice is the respect of humans natural rights, his/her humanity regardless of one's identity. Immanuel Kant's account of natural rights is so fundamental here. He argues that human beings are an end in themselves. They cannot, and should not be the means for other ends. This is because that they are rational beings who deserve dignity and respect. "Now, morality is the condition under which alone a rational being can be

an end in itself, since only through this is it possible to be a law giving member in the kingdom of ends. Hence morality, and humanity insofar as it is capable of morality, is that which alone has dignity.” (Kant, 1785:42?).

The standard of justice should not be such and such principles, rather its confirmity with humanity and being humane in its nature. Humaity must be the relevant natural position for justice and humane its character.

Institutions can be adressed indirectly by the undeserved activities and devotedness of individuals to promote and maintain justice. The different identities specified to be the relevant positions of justice, like nationality and other status differences that serve as a means to bias justice, create unnecessary gaps and borders between human race which in turn limit the application of justice that is borderless and universal by its very nature. We can create borders to secific political or economic rights. For example, the right to vote can be restricted to the criteria of relevant postions like citizenship. But how can we limit the implication of justice in the name of such and such positions.

The strength of institutions, the perfectness of systems and the collective agreement cannot guarantee the assurance of justice. In a society where the relationship between members is characteristically violent and there is inequality, the institutions are subject to the influence of the “fortunate” and the “powerful,” and at times they can work for the wellbeing of the “successful”. In such cases, “justice” can be disguised by the favourable condition of systemic exploitations. Once the gap is created between different identified groups and this gap served as the means to exploitation and exclusion, it is difficult to redress its negative effects. “When a society – whether local, national or global – is willing to leave a part of itself on the fringes, no political programmes or resources spent on law enforcement or surveillance systems can indefinitely guarantee tranquility.” (Pope Francis, Para. 59). That is why I argue for the humanity as the primary subject of justice. It is when humanity transcends in the “identity calculations” or setting of standards for the intercommunications of society that acceptance and equal consideration of different parts of the society as complete human beings can be a realized. Then human unity follows, sympathy and compassion become the guiding principles of human-to-human and human-nature interaction, which is, in my opinion the real meaning of justice

Justice cannot be subject to human laws. If we make laws for the application of justice subject to principles, we make it the means to attain some end, namely respecting the prescribed laws. Justice must be an end in itself. Rather than considering the action as just in its conformity with laws, we should justify laws in their conformity with justice. The ancient Roman lawyer and philosopher, Cicero, argued that justice should not be subject to human laws. In his book *On the Laws, Book I* he states the following:

The most stupid thing of all, moreover, is to consider all things just which have been ratified by a people's institutions or laws. ...And if justice is obedience to the written laws and institutions of a people, and if (as these same people say) everything is to be measured by utility, then whoever thinks that it will be advantageous to him will neglect the laws and will break them if he can. The result is that there is no justice at all if it is not by nature, and the justice set up on the basis of utility is uprooted by that same utility: if nature will not confirm justice, all the virtues will be eliminated. Where will there be a place for liberality, for love of country, for piety, for the desire to do well by others or return kindness? These all arise because we are inclined by nature to love other humans, and that is the foundation of justice. (Cicero in Zetzel, 1999: 120-121)

Justice should be human unity. It is reciprocity, that is considering the wellbeing of others as the well being of oneself. In this regard Rawls' reciprocity and fraternity principles help us to attain the just society. The natural fraternity and reciprocity devoid of envy and exploitation between different identified groups is an expression of their unity in humanity. This unity is hardly to come because of artificial principles of justice, rather this emanates from the natural love and respect of humans to one another. Unless we built this sense of natural unity it is difficult to maintain justice in social institutions. M. B. Ramose in his book *African Philosophy through Ubuntu*, explains Rawls' principle of fraternity and reciprocity in different account.

Most African languages have in their vernacular the saying which is synonymous with the following found in the *Sotho* language. The saying is that *motho ke motho ka batho*. This means that to be human is to affirm one's humanness by recognising the same in others and, on that basis establish humane relations with them. Here it is *botho* understood as being human and having a humane (respectful and polite) attitude towards other human beings which constitutes the central meaning of the aphorism: *motho ke motho ka batho*. (Ramosé, 2002: 111).

He further argues that this aphorism has two principles. One is all human beings have intrinsic value. They are ends in themselves, that is to denigrate or disrespect others is to denigrate or disrespect oneself "if it is accepted that oneself is object worthy of dignity and respect." The other is that human being is truly human insofar as there is relation with other human beings. This does not entail, according to Ramose, that relation with other non-human beings is not important. (Ibid. 111).

We can thus conclude that the source of justice should be love for humanity. Justice should be borderless; its primary subject must be humanity; and its source love and solidarity for humanity. Its reality must be absence of any artificial gap between human beings due to secondary identities or theoretical fabrications of restriction such as "relevant social positions". To be just is to be acceptable by all; to act in accordance with the principle of humanity, being humane; and justice can be attained in the primal or ultimate unity and solidarity of human beings in the kingdom of humanity. A just society is a human association in whatever form where its members respect to one another and at the same time this mutual respect is extended to the respect of other associations and their members regardless of their differences in secondary identities. A society in which the communication gaps due to status differences are nullified because of the primal unity of its members in the kingdom of humanity is a just society. The members of such society do justice to others not because of their fear of punishment or for the purposive confirmity of their actions and behaviors to certain prescribed principles of justice; instead, they do so for the sake of justice itself and their conviction of humanity as the common identity of all.

Conclusion

The existence of human beings in the pre-state formation is the starting point in any theory of society and state. Started from the traditional social contract theories to the contemporary theories of the state formation and maintenance of justice reviewed in the previous chapters. The main reason of social contract for all theorists is the quest for justice and the guarantee of its long-term existence. All political philosophers, though in different expressions, argue that one common power, strong human association, termed as the state desired for the maintenance of justice. So far we have dealt with the different conceptions of justice. Justice is the deep and wider concept that has ethical, political, religious and social implications. The quest for justice extends from the need to fairness in the distribution of this and that tangible goods, avoidance of any bodily harm and the quest for autonomy, dignity, freedom, and recognition. The quest for justice is the expression the desire for recognition, an assertion of one's humanness.

We have seen the contemporary conceptions of justice. John Rawls' is the starting point in our account of contemporary theory of justice. His theory of justice is practical importance and has strong influence in the political and moral philosophies of our century. According to Rawls social institutions are the primary subjects of justice since they are so profound in their role of assigning primary social goods. The legal members of the country have the right to enjoy in the distributive shares of the institutions. The two principles of justice, which are the subjects of the original agreement, are the guiding principles in the distribution of social goods. Fraternity and reciprocity are the characteristic features of parties in accepting the difference principle. That means for Rawls inequality is for the advantages of the list advantaged and it is based on the assumption that it is for the advantages of all.

His theory was criticized by many philosophers. Amartya Sen's critics focus on the universality of his principles of justice and on the failure of his theory to address individuals' behaviors and reality of human nature. Sen points out that for the sake of conformity with the principles of justice or the workings of social institutions, individual behavior is given little attention. For Sen we have to give human beings the freedom to pursue their own rational ends and at the same time we have to give them an opportunity to use their capability.

The other critique as we have seen above is Robert Nozick. In his entitlement theory of holdings, Nozick argued that the principles of justice like Rawls' couldn't be applicable for the distribution of things that men produce. Even Rawls' denial of natural assets and talents as morally

significant due to their arbitrariness and being beyond the control of human beings is not convincing since it entails that the very existence of human beings is the result of arbitrary natural process. Moreover, the state that uses its coercive apparatus to determine the distribution of resources based of inequality principle that benefits the least advantaged cannot be justified. Such state violates the rights of individuals on what they produce and have legal entitlement rights. Hence, Nozick argues for the minimal state whose power is limited to the protection of fraud, theft, external attack, and processing contracts.

I argue along with Sen and Nozick that justice must be guaranteeing the rights of citizens. The rights and freedoms of individuals must be protected. In the contemporary world there are different socially constructed identities that make people different. These differences in turn result in the reality statues differences. Those who are fortunate treat those who “lose” as lower than they do. The assumption that difference in statuses necessarily could bring about essential natural difference is the characteristic feature of the current generation. That is why some are lowered to the status of animals, being the means for the desires of the higher class, considered as “non-humans” that have similar natural identities, desires and aversions like those of the fortunate. This is the greatest injustices that we are experiencing in our day-to-day lives. Therefore, the primary subjects of justice must be human individuals; humanity must be the central focus of actions.

Absence of any gap in the communications of the different identified groups of the members of the society must be ruled out. Justice is the ultimate unity of human beings in the kingdom of humanity. The different status that individuals possess should not have a moral worth in treating individual members of the community. Fraternity, reciprocity and love for humanity and solidarity must be the guiding principles in the relationships of individuals and groups of the different identified members of a given society. It is argued that the minimum criterion of actions must be its conformity to humanity, its being humane.

So, what action can be justified than which is confirmable with humanity? What thing can be pursued by itself that can put us in unity than justice? What could be the primary subject of justice than humanity? What could be just than the reality of human unity?

A. References

- Appiah, K. A., 2005. *The Ethics of Identity*. Princeton:New Jersey: Princeton University Press.
- Aristotle,. *Politics*. Benjamin Jewett(trans.), 1999:Batoche Books, Kitchener.
- Audi, R., 1999. *The Cambridge Dictionary of Philosophy*. 2nd ed.:Cambridge University Press.
- Benn, S. I. "Justice" in: P. Edwards, ed. 1967 *The Encyclopedia of Philosophy*.Crowell Collier and Macmillan, Inc. London:, pp. 298-302.
- Betts, C., 1994. (trans.) Rousseau, J. J. *Discourse on Political Economy and The Social Contract*: Oxford. Oxford University Press.
- Borchert, D. M. (edr.), 2006, *Encyclopedia of Philosophy*. 2nd ed. New York: Thomson Gale, a Part of the Thomson Corporation.
- Bunnin, N. And Yu., 2004, *The Blackwell Dictionary of Western Philosophy*.:Blackwell Publishing.
- Collin, P., 2004. *The Dictionary of Politics and Government*. 3rd ed.:Bloomsbury Publishing Plc.
- Don Becker, "Kant's Moral and Political Philosophy" in Solomon, R. C.. Higgins, K. M.(eds.), 1993, *Routledge History of Philosophy: The Age of German Idealism Vol.VI*: London and New York, Routledge: Pp. 68-102.
- Dyson, R.W., (edr. and trans.) 2002. *St. Thomas Aquinas: Political Writings*. Cambridge University Press.
- Francis (Pope), 2013. "Evangelii Gaudium (the Joy of the Gospel)," Apostolic Exhortations: Libreria Editrice Vaticana.
- Freeman, S., ed., 2003. *The Cambridge Companion to Rawls* :Cambridge University Press.
- 2007. *Justice and the Social Contract: Essays on Rawlsian Political Philosophy*. Oxford New York: Oxford University Press, Inc.
- Jenkins, R., 2008. *Social Identity*. 3rd ed. London and New York: Routledge, Taylor & Francis Group.
- Hart, H. L. A., 1983. *Essays in Jurisprudence and Philosophy*. Oxford: Oxford University Press.
- Hobbes, T., 1651. *Leviathan*.London: St. Pauls Church Yard.
- Kant, I., 1785. *Groundwork of the Metaphysics of Morals*:Cambridge University Press.
- Lessnoff, M., 1990. *Social Contract Theory*. New York: New York University Press.
- Macpherson, C.B., (edr.) 1980. *John Locke: Second Treatise of Government*, Indianapolis. Cambridge. Hackett Publishing Company, Inc.
- Miller, E.D.L., (edr.) 1984. *Questions that Matter: an Invitation to Philosophy*, New York, McGraw-Hill Publishers INC.

- Pogge, T., 2005. "Justice." In: D. M. Borchert, ed. *Encyclopedia of philosophy* 2nd ed.:Thomson Gale, a Part of Thomson Corporation, pp. 862-870.
- Pogge, T., 2007. *John Rawls: His Life and Theory of Justice*. Oxford: Oxford University Press, Inc.
- Porter, J. M., (ed.), 1997. *Classics in Political Philosophy* 2nd edn. Prentice Hall Canada Inc.
- Random House Webster's Unabridged Dictionary*. 2001. 2nd ed. New York: Random House, Inc.
- Ramose, M. B., 2002. *African Philosophy through Ubuntu*. Revised ed. Harare: Mond Books Publishers.
- Rasmussen, D. B., 1974. A Critique of Rawls' Theory of Justice. *The Personalist*, 55 (3), pp. 303-318.
- Rawls, J., 1999. *A Theory of Justice*. Revised Edition ed. Cambridge, Massachusetts: The Belknap Press of Harvard University Press.
- Rawls, J., 2001. *Justice as Fairness: A Restatement*. Cambridge, Massachusetts: The Blaknap Press of Harvard University Press, Inc.
- Reese, W. L., 1996. *Dectionary of Philosophy and Religion*. New and Enlarged Edition ed. New Jersey: Humanities Press .
- Rousseau, J. J., 1756. *Discourse on Inequality*. Cole, G. D. H.(trans.) *Digireads*.
- Sandel, M., 2010. *Justice: What Is the Right Thing to Do?* Farrar, Straus and Giroux, New York:
- Sen, A., 2009. *The Idea of Justice*. Cambridge, Massachusetts: The Belknap Press of Hrvard University Press.
- Shapiro Ian, 2003. (Edr.) John Locke, *Two Treatises of Government and A Letter Concerning Toleration*, Yale University Press, New Haven and London.
- Solomon, R. C.. Higgins, K. M.(eds.), 1993. *Routledge History of Philosophy: The Age of German Idealism Vol.VI*: London and New York, Routledge.
- (eds.), 2010. *The Big Questions: A Short Introduction to Philosohy*. Eighth Edition.:Wadsworth, Cengage Learning.
- Weil, S.,1943. "Human Personality" In: S. Miles, 2005 ed. *Simone Weil: An Anthology*. s.l.:Penguin Classics.
- Zetzel, J. E. G. ed., 1999. *Cicero: On the Commonwelth and On the Laws*. New York: Cambridge University Press.

B. Bibliography

- Audard C., 2007. *John Rawls*, Acumen Publishing.
- Barry, B., 1973. *The Liberal Theory of Justice: A Critical Examination of the Principal Doctrines in A Theory of Justice by John Rawls*, Oxford: Oxford University Press.
- Bird C., 2006, *An Introduction to Political Philosophy*, Cambridge: Cambridge University Press.
- Blocker, H.G. and Smith, E. H., (eds.) 1980. *John Rawls' Theory of Social Justice: An Introduction*, Athens: Ohio University Press.
- Brooks, T. and Freyenhagen, F. *The Legacy of John Rawls*, New York Continuum Publishing.
- Cahn S.M. (edr.) 2003. *Philosophy for 21st Century: A Comprehensive Reader*, New York and Oxford: Oxford University Press, Inc.
- Ferrari, G. R. F. (edr) and Griffith, T. (trans.) 2000. *Plato: The Republic*, New York: Cambridge University Press.
- Goodin R.G. et al (eds.) *A Companion to Political Philosophy*, vol. 2, Second Edition, Blackwell Publishing Ltd.
- Michael M. 1996. *Constructing Identities: The Social, the Nonhuman and Change*, London, New Delhi: SAGE Publications, Ltd.
- Miles, R., (edr.) 1999. *Constructing Identities in Late Antiquities*, London New York: Routledge University Press.
- Rawls, J. 1996. *Political Liberalism*, New York Columbia University Press.
- Velasquez M. 2009. *Philosophy: A Text with Readings*, 11th edition: Wadsworth, Cengage Learning
- Vincent, C. (edr.), 2003. *Social Justice, Education and Identity*, London and New York: Routledge Taylor & Francis Group.