UNIT-14 LIBERAL JUSTICE AND JUSTICE AS DESERT

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15.1 LEARNING OBJECTIVES

After going through this unit you will be able to

- Explain justice and the relevance of justice;
- Learn how justice reflects the moral status of the society, community and state;
- Explain individualistic conception of justice, the liberal concept of justice and Rawls's theory of justice for a liberal society;
- Discuss Justice as fairness, Guiding Ideas of Justice as Fairness; Principles of Justice as Fairness; the Conception of Citizens, Society, Institutions;
- Define the good and give an account of primary goods;
- Discuss the Law of Peoples, International Toleration and Human Rights, Non-Ideal Theory: Outlaw States and Burdened Societies, Reconciliation and Realistic Utopia and many more.

15.2 INTRODUCTION

Nothing other than justice finds its relevance in human life in a greater way. Justice reflects the moral status of the society, community and state. Everybody is pleading for justice. What then is justice? Justice means what is just in the real sense of the term. The term justice may be evaluated from various perspectives. People are talking of social justice, economic justice, political justice, moral justice, liberal justice. The relevance of justice was prevailing from the antiquity. The Greek philosophers were vocal about the concept of justice. According to Plato, justice is the quality of the soul. In the 19th century, John Rawls introduced the mainstream theory of justice. In fact, Rawls' deontological approach of justice appeared as the semblance of justice in the contemporary social and political philosophy. Our point of discussion is liberal justice and justice as Desert or reward.

There is no question of doubt that the concept of justice is a complete one. It is used both for law and also for social morality. Constitutional laws are framed to project political and economic justice. However, the impact of

social and moral justice has far more impact than other forms of justice. Justice is also concerned with the order of the society as a whole. Besides, justice also functions as a conservative and reformative principle. Social justice aims at reconciliation of the interests of individuals with the overall interests of the community. In this sense, social justice maintains a balance between the rights of individuals and the needs of the society. The ideal of social justice per see addresses the welfare of the people, especially the poor, needy, and weaker sections of the society, in short, the downtrodden and marginal class.

15.3 THE LIBERTARIAN CONCEPT OF JUSTICE

Libertarian concept of justice is known as individualistic conception of justice. It states that liberty is to be the ultimate moral ideal. According to this form of justice, individual liberty is more important than anything else. A libertarian considers that a society is just which provides maximum liberty to the individual. The sole function of the government is to protect the moral rights of people, i.e., the right to life, liberty, and property against force and fraud. It states that if A has the right to X, A is entitled to have it and to possess it. It talks in favor of welfare to those who cannot or will not provide for themselves. To make such provisions, the government would have to take from some people against their will in order to give others. Taxing some people to give to others is analogous to robbery. John Hospers, who defends a libertarian position, argues that the laws requiring people to help one another through welfare payments are just like "rob Peter to pay Paul".

15.4 THE LIBERAL CONCEPTION OF JUSTICE

The liberal concept of justice slightly differs from the libertarian concept of justice. It tries to combine both liberty and equality into one ultimate moral ideal. Liberals consider some of the libertarian's negative rights as extremely important. They advocate that social institutions should follow two important functions: (a) to ensure certain basic liberties, and (b) to provide basic needs to the disadvantaged members of society. However, liberals

differ from socialists on the communal ownership of the means of production. John Rawls' argues that only those social goods are justified that will contribute to raising the position of the least-advantaged groups in the society. Here one may justice Rawls' mainstream theory of justice as model of liberal conception of justice.

15.5 JUSTICE AS FAIRNESS: JUSTICE WITHIN A LIBERAL SOCIETY (RAWLS'S THEORY)

Justice as fairness is Rawls's theory of justice for a liberal society. As a member of the family of liberal political conceptions of justice it provides a framework for the legitimate use of political power. Yet legitimacy is only the minimal standard of political acceptability; a political order can be legitimate without being just. Justice is the maximal moral standard: the full description of how a society's main institutions should be ordered.

Rawls constructs justice as fairness around specific interpretations of the defining liberal ideas that citizens are free and equal and that society should be fair. He holds that justice as fairness is the most egalitarian, and also the most plausible, interpretation of liberalism's fundamental concepts. Rawls sees justice as fairness as answering to the demands of freedom and equality, a challenge posed by the socialist critique of liberal democracy and by the conservative critique of the modern welfare state. Justice as fairness sets out a version of social contract theory that Rawls believes provides a superior understanding of justice to that of the dominant tradition in political philosophy.

15.5.1 The Basic Structure of Society

Justice as fairness aims to describe a just arrangement of the major political and social institutions of a liberal society: the political constitution, the legal system, the economy, the family, and so on. The arrangement of these institutions is a society's basic structure. The basic structure is the location of justice because these institutions distribute the main benefits and burdens of social life, for example who will receive social recognition,

who will have which basic rights, who will have opportunities to get what kind of work, what the distribution of income and wealth will be, and so on. The form of a society's basic structure will have profound effects on the lives of citizens, influencing not only their prospects but more deeply their goals, their attitudes, their relationships, and their characters. Institutions that have such pervasive influence on people's lives require justification. Since leaving one's society is not a realistic option for most people, one cannot say that citizens have consented to the arrangement of their institutions by staying in the country. And since the rules of any basic structure will be coercively enforced, often with serious penalties, the demand to justify the imposition of any particular set of rules intensifies further.

In setting out justice as fairness Rawls assumes that the liberal society in question is marked by reasonable pluralism as described above, and also that it is under reasonably favorable conditions: that there are enough resources for it to be possible for everyone's basic needs to be met. Rawls makes the simplifying assumption that the society is self-sufficient and closed, so that citizens enter it only by birth and leave it only at death.

15.5.2 Two Guiding Ideas of Justice as Fairness

Social cooperation in some form is necessary for citizens to be able to lead a decent life. Yet citizens are not indifferent to how the benefits and burdens of cooperation will be divided amongst them. Rawls's principles of justice as fairness embody the central liberal ideas that cooperation should be fair to all citizens regarded as free and equal. The distinctive interpretation that Rawls gives to these concepts can be seen in broad terms as a combination of a negative and a positive thesis. Rawls's negative thesis is that citizens do not deserve to be born into a rich or a poor family, to be born naturally more or less gifted than others, to be born female or male, to be born a member of a particular racial group, and so on. Since these features of persons are in this sense morally arbitrary, citizens are not at the deepest level entitled to more or less of the benefits of social cooperation because of them. For example the fact that a citizen was born rich, white, and male

provides no reason in itself for this citizen to be either favored or disfavored by social institutions.

This negative thesis does not in itself say how social goods should be distributed; it merely clears the decks. Rawls's positive distributive thesis is equality-based reciprocity. All social goods are to be distributed equally, unless an unequal distribution would be to everyone's advantage. The guiding idea is that since citizens are fundamentally equal, reasoning about justice should begin from a presumption that all cooperatively-produced goods should be equally divided. Justice then requires that any inequalities must benefit all citizens, and particularly must benefit those who will have the least. Equality sets the baseline; from there any inequalities must improve everyone's situation, and especially the situation of the worst-off. These strong requirements of equality and reciprocal advantage are hallmarks of Rawls's theory of justice.

15.5.3 The Two Principles of Justice as Fairness

These guiding ideas of justice as fairness are expressed in its two principles of justice:

First Principle: Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all;

Second Principle: Social and economic inequalities are to satisfy two conditions: (a) They are to be attached to offices and positions open to all under conditions of fair equality of opportunity; (b)They are to be to the greatest benefit of the least-advantaged members of society (the difference principle). (JF, 42-43)

The first principle of equal basic liberties is to be used for designing the political constitution, while the second principle applies primarily to economic institutions. Fulfillment of the first principle takes priority over fulfillment of the second principle, and within the second principle fair equality

of opportunity takes priority over the difference principle.

The first principle affirms for all citizens' familiar basic rights and liberties: liberty of conscience and freedom of association, freedom of speech and liberty of the person, the rights to vote, to hold public office, to be treated in accordance with the rule of law, and so on. The principle ascribes these rights and liberties to all citizens equally. Unequal rights would not benefit those who would get a lesser share of rights. So justice requires equal rights for all in all normal circumstances.

Rawls's first principle accords with widespread convictions about the importance of equal basic rights and liberties. Two further features make this first principle distinctive. First is its priority: the basic rights and liberties must not be traded off against other social goods. The first principle disallows, for instance, a policy that would give draft exemptions to college students on the grounds that educated civilians will increase economic growth. The draft is a drastic infringement on basic liberties, and if a draft is implemented then all who are able to serve must be equally subject to it.

The second distinctive feature of Rawls's first principle is that it requires fair value of the political liberties. The political liberties are a subset of the basic liberties, concerned with the rights to hold public office, the right to affect the outcome of national elections and so on. For these liberties Rawls requires that citizens be not only formally but also substantively equal. That is, citizens similarly endowed and motivated should have the same opportunities to hold office, to influence elections, and so on regardless of their social class. This fair value proviso has major implications for how elections should be funded and run, as described below.

Rawls's second principle of justice has two parts. The first part, **fair equality of opportunity,** requires that citizens with the same talents and willingness to use them have the same educational and economic opportunities regardless of whether they were born rich or poor. "In all parts of society there are to be roughly the same prospects of culture and

achievement for those similarly motivated and endowed" (JF, p. 44). So for example if we assume that natural endowments and willingness are evenly distributed across children born into different social classes, then within any type of occupation (generally specified) we should find that roughly one quarter of people in that occupation were born into the top 25% of the income distribution, one quarter were born into the second-highest 25% of the income distribution, one quarter were born into the second-lowest 25%, and one-quarter were born into the lowest 25%. Since class of origin is a morally arbitrary fact about citizens, justice does not allow class of origin to turn into unequal real opportunities for education or meaningful work.

The second part of the second principle is the difference principle, which regulates the distribution of wealth and income. With these goods inequalities can produce a greater total product: higher wages can cover the costs of training and education, for example, and can provide incentives to fill jobs that are more in demand. The difference principle requires that social institutions be arranged so that any inequalities of wealth and income work to the advantage of those who will be worst off. The difference principle requires, that is, that financial inequalities be to everyone's advantage, and specifically to the greatest advantage of those advantaged least.

Consider four hypothetical economic structures A-D, and the lifetime-average levels of income these would produce for representative members of three different groups:

Economy	Least-Advantaged Group	Middle Group	Most-Advantaged Group
A	10,000	10,000	10,000
B	12,000	30,000	80,000
C	30,000	90,000	150,000
D	20,000	100,000	500,000

Here the difference principle selects Economy C, because it contains the distribution where the least-advantaged group does best. Inequalities in C are to everyone's advantage relative to an equal division (Economy A), and relative to a more equal division (Economy B). But the difference principle does not allow the rich to get richer at the expense of the poor (Economy D). The difference principle embodies equality-based reciprocity: from an egalitarian baseline it requires inequalities that are good for all, and particularly for the worst-off.

The difference principle gives expression to the idea that natural endowments are undeserved. A citizen does not merit more of the social product simply because she was lucky enough to be born with gifts that are in great demand. Yet this does not mean that everyone must get the same shares. The fact that citizens have different talents and abilities can be used to make everyone better off. In a society governed by the difference principle citizens regard the distribution of natural endowments as an asset that can benefit all. Those better endowed are welcome to use their gifts to make themselves better off, so long as their doing so also contributes to the good of those less well endowed. "In justice as fairness," Rawls says, "men agree to share one another's fate." (TJ, 102)



Activity 51.1

1. Do you find any difference between the liberal concept of justice and the libertarian concept of justice?

Ans: .....

.....

2. What do you know about the two Principles of Justice as Fairness? Discuss

.....

.....



CHECK YOUR PROGRESS

Q1: Justice means what is just. (True/ False)

.....

Q2: According to Plato/ John Rawls justice is the quality of the soul.

.....

Q3: _____ introduced the mainstream theory of justice.

.....

Q4: According to _____ of justice, individual liberty is more important than anything else.

.....

Q5: "Men agree to share one another's fate"- Who said this?

.....

15.6 THE CONCEPTION OF CITIZENS

Having surveyed Rawls's two principles of justice as fairness, we can return to Rawls's interpretations of the liberal ideas that citizens are free and equal and that society should be fair. Rawls uses his conceptions of citizens and society to build his official argument for his two principles: the argument from the original position.

Rawls's interpretation of the idea that citizens are free is as follows. Citizens are free in that each sees himself as being entitled to make claims on social institutions in his own right-citizens are not slaves or serfs, dependent for their social status on others. Citizens are also free in that they see their public identities as uncoupled from any particular comprehensive doctrine: a citizen who converts to Islam, or recants his faith, will expect, for example, to retain his political rights and liberties throughout the transition. Finally citizens are free in being able to take responsibility for planning their own lives, given the opportunities and

resources that they can reasonably expect.

Citizens are equal, Rawls says, in virtue of having the capacities to participate in social cooperation over a complete life. Citizens may have greater or lesser skills, talents, and powers "above the line" required to cooperate, but differences above this line have no bearing on citizens' underlying equal status.

Rawlsian citizens are not only free and equal; they are also reasonable and rational. The idea that citizens are reasonable is familiar from political liberalism. Reasonable citizens have the capacity to abide by fair terms of cooperation, even at the expense of their own interests, provided that others are also willing to do so. In justice as fairness Rawls calls this reasonableness the capacity for a sense of justice. Citizens are also conceived as rational: they have the capacity to pursue and revise their own view of what is valuable in human life. Rawls calls this the capacity for a conception of the good. Together these underlying capacities are the two moral powers.

Like every theory of justice (for example those of Locke, Rousseau and Mill), justice as fairness requires an account of citizens' fundamental interests: what citizens need qua citizens. Rawls derives his account of primary goods from the conception of the citizen as free and equal, reasonable and rational. Primary goods are essential for developing and exercising the two moral powers, and useful for pursuing a wide range of specific conceptions of the good life. Primary goods are: (a) The basic rights and liberties; (b) Freedom of movement, and free choice among a wide range of occupations; (c) The powers of offices and positions of responsibility; (d) Income and wealth; and (e) The social bases of self-respect: the recognition by social institutions that gives citizens a sense of self-worth and the confidence to carry out their plans. (JF, 58-59)

All citizens are assumed to have fundamental interests in getting more of these primary goods, and political institutions are to evaluate how

well citizens are doing according to what primary goods they have. It is equality and inequality of primary goods that, Rawls claims, are of the greatest political importance.

15.7 THE CONCEPTION OF SOCIETY

Rawls's conception of society is defined by fairness: social institutions are to be fair to all cooperating members of society, regardless of their race, gender, religion, class of origin, reasonable conception of the good life, and so on. Rawls also emphasizes publicity as an aspect of fairness. In what he calls a well-ordered society the principles that order the basic structure are publicly known to do so, and the justifications for these principles are knowable by and acceptable to all reasonable citizens. The idea behind publicity is that since the principles for the basic structure will be coercively enforced, they should stand up to public scrutiny. The publicity condition requires that a society's operative principles of justice be neither esoteric nor ideological screens for deeper power relations: that in "public political life, nothing need be hidden." (PL, 68)

15.7.1 The Original Position

Rawls's conceptions of citizens and society are still quite abstract, and some might think innocuous. The original position aims to move from these abstract conceptions to determinate principles of social justice. It does so by translating the question: "What are fair terms of social cooperation for free and equal citizens?" into the question "What terms of cooperation would free and equal citizens agree to under fair conditions?" The move to agreement among citizens is what places Rawls's justice as fairness within the social contract tradition of Locke, Rousseau and Kant.

The strategy of the original position is to construct a method of reasoning that models abstract ideas about justice so as to focus their power together onto the choice of principles. So Rawls's conceptions of citizens and of society are built into the design of the original position itself. Rawls's intent is that readers will see the outcome of the original position as justified

because they will see how it embodies plausible understandings of citizens and society, and also because this outcome confirms many of their considered convictions about justice on specific issues.

The original position is a thought experiment: an imaginary situation in which each real citizen has a representative, and all of these representatives come to an agreement on which principles of justice should order the political institutions of the real citizens. Were actual citizens to get together in real time to try to agree to principles of justice for their society the bargaining among them would be influenced by all sorts of factors irrelevant to justice, such as who could appear most threatening or who could hold out longest. The original position abstracts from all such irrelevant factors. In effect the original position is a situation in which each citizen is represented as only a free and equal citizen, as wanting only what free and equal citizens want, and as trying to agree to principles for the basic structure while situated fairly with respect to other citizens. For example citizens' basic equality is modeled in the original position by imagining that the parties who represent real citizens are symmetrically situated: no citizen's representative is able to threaten any other citizen's representative, or to hold out longer for a better deal.

The most striking feature of the original position is the veil of ignorance, which prevents other arbitrary facts about citizens from influencing the agreement among their representatives. As we have seen, Rawls holds that the fact that a citizen is for example of a certain race, class, and gender is no reason for social institutions to favor or disfavor him. Each party in the original position is therefore deprived of knowledge of the race, class, and gender of the real citizen they represent. In fact the veil of ignorance deprives the parties of all facts about citizens that are irrelevant to the choice of principles of justice: not only their race, class, and gender but also their age, natural endowments, and more. Moreover the veil of ignorance also screens out specific information about the citizens' society so as to get a clearer view of the permanent features of a just social system.

Behind the veil of ignorance, the informational situation of the parties that represent real citizens is as follows:

Parties do not know:

a. The race, ethnicity, gender, age, income, wealth, natural endowments, comprehensive doctrine, etc. of any of the citizens in society, or to which generation in the history of the society these citizens belong.

b. The political system of the society, its class structure, economic system, or level of economic development.

Parties do know:

a. That citizens in the society have different comprehensive doctrines and plans of life; that all citizens have interests in more primary goods.

b. That the society is under conditions of moderate scarcity: there is enough to go around, but not enough for everyone to get what they want;

c. General facts about human social life; facts of common sense; general conclusions of science (including economics and psychology) that are uncontroversial.

The veil of ignorance is intended to situate the representatives of free and equal citizens fairly with respect to one another. No party can press for agreement on principles that will arbitrarily favor the particular citizen they represent, because no party knows the specific attributes of the citizen they represent. The situation of the parties thus embodies reasonable conditions, within which the parties can make a rational agreement. Each party tries to agree to principles that will be best for the citizen they represent (i.e., that will maximize that citizen's share of primary goods). Since the parties are fairly situated, the agreement they reach will be fair to all actual citizens.

The set-up of the original position also models other aspects of Rawls's conceptions of citizens and society. For example the publicity of a

well-ordered society is modeled by the fact that the parties must choose among principles that can be publicly endorsed by all citizens. There are also some assumptions that make the hypothetical agreement determinate and decisive: the parties are not motivated by envy (i.e., by how much citizens besides their own end up with); the parties are not assumed to be either risk-seeking or risk-averse; and the parties must make a final agreement on principles for the basic structure: there are no "do-overs" after the veil of ignorance is lifted and the parties learn which real citizen they represent.

15.7.2 The Argument from the Original Position: The Selection of Principles

The argument from the original position has two parts. In the first part the parties agree to principles of justice. In the second part the parties check that a society ordered by these principles could be stable over time. Rawls only attempts to show that his two principles of justice would be favored over utilitarian principles, since he sees utilitarianism as the main competing tradition of reasoning about justice. The parties are thus presented with a choice between Rawls's two principles and utilitarian principles, and asked which principles they would prefer to agree to.

The first part of the original position contains two fundamental comparisons between Rawls's two principles and utilitarian principles. In the first comparison the parties compare the two principles to the principle of average utility: the principle that the basic structure should be arranged so as to produce the highest level of utility averaged among all citizens.

In this first comparison Rawls argues that the parties would prefer his two principles to average utility because it is rational for the parties here to use maximin reasoning: to maximize the minimum level of primary goods that the citizens they represent might find themselves with. Under average utilitarianism the basic liberties of some citizens might be restricted for the sake of greater benefits to other citizens. For example, restrictions on the political and religious liberties of a weak minority might benefit the majority

and so lead to a higher average overall. A party in the original position would find the possibility that their citizen might be a member of such a weak minority intolerable, given that the party could secure equal liberties for their citizen by choosing the two principles instead. A party would not be taking seriously the political standing and deepest commitments of the citizen they represent, Rawls argues, were they to gamble with their citizen's basic liberties by favoring average utility.

Moreover, Rawls says, a society governed by his two principles has other advantages over a utilitarian society. Securing equal basic liberties for all encourages a spirit of cooperation among citizens on the basis of mutual respect, taking divisive conflicts about whether to deny liberties to certain groups off of the political agenda. By contrast a utilitarian society would be riven by mutual suspicions, as different groups put forward highly speculative arguments that average utility could be increased by implementing various partisan policies. The two principles, by requiring permanent equal liberties for all, increase social harmony by making it much easier for justice to be seen to be done. The balance of considerations in favor of the two principles over average utility is, Rawls claims, decisive.

The second fundamental comparison in the first part of the original position is between the two principles and the principle of restricted utility, which is identical to Rawls's two principles except that the difference principle is replaced with a principle of average utility to regulate the distribution of wealth and income, constrained by a social minimum. While the first comparison turned on the importance of the basic liberties, the second scrutinizes the reasons for the difference principle.

Maximin reasoning plays no role in the argument for the difference principle. Nor does aversion to uncertainty (JF, xvii, 43, 95, 96). Rather, the parties will favor Rawls's two principles because these provide a better basis for enduring cooperation among all citizens. The two principles ask less of the better-off than restricted utility asks of the worst-off. Under the two principles those who are better endowed are permitted to gain more

wealth and income, on the condition that their doing so also benefits their fellow citizens. Under restricted utility, in contrast, those living at the minimum will suspect that their interests have been sacrificed to make the better-off better off still. These citizens at the minimum may become cynical about their society, and withdraw from active participation in public life. Moreover, it is again difficult to maintain a public agreement as to which policies actually will maximize average utility, and debates over for example where to set the social minimum may lead to mistrust among social classes. The difference principle encourages mutual trust and the cooperative virtues by instantiating an ideal of economic reciprocity. Each party will see the advantages of securing such a social world for the citizen they represent.

15.7.3 The Argument from the Original Position: The Check for Stability

Having selected the two principles of justice as fairness, the parties next check that these principles can order a society stably over time. They check, that is, whether those who grow up under institutions arranged by these principles will develop sufficient willingness to abide by them that the principles can serve as the focus of an enduring overlapping consensus.
Rawls argues that his two principles are congruent with each citizen's good. Under the two principles the society's basic institutions affirm the freedom and equality of each citizen, giving a public basis to each citizen's self-respect. Citizens will see that the basic liberties allow sufficient social space to pursue their reasonable conceptions of the good. Citizens will tend to be neither envious nor imperious due to their economic situation, as they will see how the economy works toward the reciprocal advantage of all. And they can reflect on the collective good that they all can achieve together by working to maintain just institutions over time.

Given that the two principles are congruent with citizens' good, Rawls argues that it is reasonable to suppose that citizens will develop a desire to act in accordance with them. It is a deep thesis in Rawls's understanding of moral psychology that people will become attached to people and institutions

that they see benefitting them and those close to them. The two principles create a social world in which each can pursue his own ends on a basis of mutual respect with others. Since this is experienced as a good, the principles will gain citizens' willing and stable allegiance. "The most stable conception of justice," Rawls says, "is one that is perspicuous to our reason, congruent with our good, and rooted not in abnegation but in affirmation of the self" (TJ, 261).

15.8 INSTITUTIONS: THE FOUR-STAGE SEQUENCE

The two parts of the argument for the two principles of justice just surveyed occur at the first stage of the original position. At this stage the parties also agree to a principle of just savings to regulate how much one generation must save for future generations. Since the parties do not know which era the citizens they represent live in, it is rational for them to choose a savings principle that is fair to all generations. Rawls says that the parties need not choose a savings principle that requires endless economic growth. Rather, the parties may prefer a Millian "steady state" of zero real growth once a generation has been reached in which the two principles are satisfied. After agreeing on the two principles and a principle of just savings, the parties then proceed further through the four-stage sequence, tailoring these general principles to the particular conditions of the society of the citizens they represent. The veil of ignorance that screens out information about society's general features is gradually thinned, and the parties use the new information to decide on progressively more determinate applications of the two principles.

At the second stage the parties are given more information about the society's political culture and economic development, and take on the task of crafting a constitution that realizes the two principles. At the third stage the parties learn still more about the details of the society, and agree to specific laws and policies that realize the two principles within the constitutional framework decided at the second stage. At the final stage the parties have full information about the society, and reason as judges and

administrators to apply the previously-agreed laws and policies to particular cases. When the four stages are complete the principles of justice as fairness are fully articulated for the society's political life.

To illustrate: at the constitutional and legislative stages the parties specify abstract basic liberties such as "freedom of thought" into more particular rights like the right to free political speech, which is then further specified as the right to criticize the government, the special rights of the press, and so on. The parties also adjust the basic liberties to fit with one another and with other values, always aiming for an overall scheme of liberties that will best enable citizens to develop and exercise their two moral powers and pursue their determinate conceptions of the good. (PL, 289-371) At these stages the parties also work out the institutions necessary to realize the fair value of the equal political liberties. On this topic Rawls is adamant: unless there is public funding of elections, restrictions on campaign contributions, and substantially equal access to the media, politics will be captured by concentrations of private economic power, making it impossible for equally-able citizens to have equal opportunities to influence politics regardless of their class.

The parties attempt to realize the second principle of justice at the legislative stage by shaping the laws that regulate property, contract, inheritance, taxation, hiring and minimum wages, and so on. Their task is not to allocate some fixed set of goods that appear from nowhere, but rather to devise a set of institutions for training, production, and distribution whose operation will realize fair equality of opportunity and the difference principle over time.

For fair equality of opportunity Rawls emphasizes that laws and policies must go beyond merely preventing discrimination in education and hiring. To ensure fair opportunity regardless of social class of origin, the state must also fund high-quality education for the less well off. Moreover the state must also guarantee both a basic minimum income and health care for all.

For the difference principle Rawls says that the goal is an economic order that maximizes the position of the worst off group (e.g., unskilled laborers, or those with less than half the median wealth and income over their lifetimes). Given that institutions realizing the prior principles are already in place, this should be approximately achievable by, for example, varying marginal rates of tax and exemptions.

Rawls explicitly rejects the welfare state (JF, 137-40). Welfare state capitalism leaves control of the economy in the hands of a group of rich private actors. It therefore fails to ensure for all citizens enough resources to have even roughly equal chances of influencing politics, or to have sufficiently equal opportunity in education and employment. The welfare state tends therefore to generate a demoralized under-class. Laissez-faire capitalism is even worse for equality than the welfare state along these dimensions. And a socialist command economy puts too much power in the hands of the state, again endangering political equality and also threatening basic liberties such as free choice of employment.

Justice as fairness, Rawls says, favors either a property owning democracy or democratic socialism. The government of a property owning democracy takes steps to encourage widespread ownership of productive assets and broad access to education and training; democratic socialism is similar but features worker-managed firms. The aim of both systems of political economy is to enable all citizens, even the least advantaged, to manage their own affairs within a context of significant social and economic equality. "The least advantaged are not, if all goes well, the unfortunate and unlucky-objects of our charity and compassion, much less our pity-but those to whom reciprocity is owed as a matter of basic justice" (JF, 139).

15.9 THE ORIGINAL POSITION AND POLITICAL CONSTRUCTIVISM

Rawls puts forward the original position as a useful device for reaching greater reflective equilibrium. He holds that the value of the original

position as a method of reasoning is affirmed when it selects the first principle of justice, since the first principle accords with many people's deep convictions about the importance of assuring the basic rights and liberties for all. Having gained credibility by confirming these settled moral judgments, the original position then goes on to select principles for issues on which people's judgments may be less certain, such as how society should structure employment opportunities and what a just distribution of wealth and income might be.

In this way the original position first confirms and then extends judgments about justice. For Rawls it is important that the same method of reasoning that explains equal basic rights also justifies more political and economic equality than many people might have initially expected. The momentum of the argument for the first principle carries through to the argument for the second principle. Those who believe in equal basic rights, but who reject the other egalitarian features of justice as fairness, must try to find some other route to justifying those basic rights.

The original position is also the crux of Rawls's meta-ethical theory, political constructivism. Political constructivism is Rawls's account of the objectivity and validity of political judgments. The original position embodies, Rawls says, all of the relevant conceptions of person and society and principles of practical reasoning for making judgments about justice. When there is an overlapping consensus focused on justice as fairness, the original position specifies a shared public perspective from which all citizens can reason about the principles of justice and their application to the society's institutions. Judgments made from this perspective are then objectively correct, in the sense of giving reasons to citizens to act regardless of their actual motivations or the reasons they think they have within their particular points of view. Political constructivism does not maintain that the principles of justice are true: questions of truth are ones about which reasonable citizens may disagree, and are to be addressed by each citizen from within their own comprehensive doctrine. Judgments made from the original position

are, however, valid, or as Rawls says, reasonable.

15.10 THE LAW OF PEOPLES: LIBERAL FOREIGN POLICY

With the theories of legitimacy and justice for a self-contained liberal society completed, Rawls then extends his approach to international relations with the next in his sequence of theories: the law of peoples.

Rawls takes it as a constraint of realism that no tolerable world state could be stable. He cites Kant in asserting that a world government would either be a global despotism or beleaguered by groups fighting to gain their political independence. Rawls's law of peoples will be international, not cosmopolitan: it will guide a liberal society in its interactions with other societies, both liberal and non-liberal.

Rawls describes the main ideas motivating his law of peoples as follows:

Two main ideas motivate the Law of Peoples. One is that the great evils of human history-unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, not to mention genocide and mass murder-follow from political injustice, with its own cruelties and callousness… The other main idea, obviously connected with the first, is that, once the gravest forms of political injustice are eliminated by following just (or at least decent) social policies and establishing just (or at least decent) basic institutions, these great evils will eventually disappear. (LP, 6-7)

The most important feature of the "realistic utopia" that Rawls envisages is that the great evils of human history is no longer occur. The most important condition for this realistic utopia to obtain is that all societies are internally well-ordered: that all have just, or at least decent, domestic political institutions.

15.11 THE INTERNATIONAL BASIC STRUCTURE AND THE PRINCIPLES OF THE LAW OF PEOPLES

Much of Rawls's presentation of the law of peoples parallels that of justice as fairness and political liberalism. As a liberal society has a basic structure of institutions so, Rawls says, there is an international basic structure (LP, 33, 62, 114, 115, 122, 123). While Rawls does not say that the international basic structure has a pervasive impact on the life chances of individuals, the rules of this basic structure are coercively enforced (for example, Iraq's invasion of Kuwait in 1990 was coercively reversed by a coalition of other countries). The principles that should regulate this international basic structure thus require justification. The justification of these principles must accommodate the fact that there is even more pluralism in worldviews among contemporary societies than there is within a single liberal society.

Rawls puts forward eight principles for ordering the international basic structure:

(i) Peoples are free and independent, and their freedom and independence are to be respected by other peoples.

(2) Peoples are to observe treaties and undertakings.

(3) Peoples are equal and are parties to the agreements that bind them.

(4) Peoples are to observe the duty of nonintervention (except to address grave violations of human rights).

(5) Peoples have a right of self-defense, but no right to instigate war for reasons other than self-defense.

(6) Peoples are to honor human rights.

(7) Peoples are to observe certain specified restrictions in the conduct of war.

(8) Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime. (LP, 37)

All of these principles, with the exception of the last one, are familiar from contemporary international law (though Rawls's list of human rights for principles 4 and 6 is shorter than the list in international law). Rawls also leaves room for his law of peoples to accommodate various organizations that may help societies to increase their political and economic coordination, such as idealized versions of a United Nations, a World Trade Organization, and a World Bank.

15.12 PEOPLES: LIBERAL AND DECENT

The actors in Rawls's international theory are not individuals (citizens) but societies (peoples). A people is a group of individuals ruled by a common government, bound together by common sympathies, and firmly attached to a common conception of right and justice. "People" is a moralized concept, and not all states currently on the world map qualify as such.

Rawls's conception of peoples within the law of peoples parallels his conception of citizens within justice as fairness. Peoples see themselves as free in the sense of being rightfully politically independent; and as equal in regarding themselves as equally deserving of recognition and respect. Peoples are reasonable in that they will honor fair terms of cooperation with other peoples, even at cost to their own interests, given that other peoples will also honor those terms. Reasonable peoples are thus unwilling to try to impose their political or social ideals on other reasonable peoples. They satisfy the criterion of reciprocity with respect to one another.

Rawls describes the fundamental interests of a people as follows:

- Protecting its political independence, its territory, and the security of its citizens;

- Maintaining its political and social institutions and its civic culture;
- Securing its proper self-respect as a people, which rests on its citizens' awareness of its history and cultural accomplishments.

Rawls contrasts peoples with states. A state, Rawls says, is moved by the desires to enlarge its territory, or to convert other societies to its religion, or to enjoy the power of ruling over others, or to increase its relative economic strength. Peoples are not states, and as we will see peoples may treat societies that act on such desires as outlaws.

Peoples are of two types, depending on the nature of their domestic political institutions. Liberal peoples satisfy the requirements of political liberalism: they have legitimate liberal constitutions, with governments that are under popular control and not driven by large concentration of private economic power.

Decent peoples are not internally just from a liberal perspective, since their basic institutions do not recognize reasonable pluralism or realize the liberal ideas of free and equal citizens cooperating fairly. The institutions of a decent society may be organized around a single comprehensive doctrine, such as a dominant religion. The political system may not be democratic, and women or members of minority religions may be excluded from public office. Nevertheless decent peoples are well-ordered enough, Rawls says, to merit equal membership in international society.

Like all peoples, decent peoples do not have aggressive foreign policies. Beyond this Rawls describes one type of decent society-a decent hierarchical society-to illustrate what decency requires. A decent hierarchical society's basic structure specifies a decent system of social cooperation. First, it secures a core list of human rights. Second, its political system takes the fundamental interests of all persons into account through a decent consultation hierarchy. This means that the government genuinely consults with the representatives of all groups, which together represent all persons in the society, and that the government justifies its laws and policies to

these groups. The government does not close down protests, and responds to any protests with conscientious replies. The government also supports the right of citizens to emigrate.

Rawls imagines a decent hierarchical society he calls "Kazanistan." Here Islam is the favored religion, and only Muslims can hold the high office. However non-Muslim religions may be practiced without fear and believers in them are encouraged to take part in civic culture of the wider society. Minorities are not subject to arbitrary discrimination by law, or treated as inferior by Muslims. Kazanistan would qualify, Rawls says, as a decent, well-ordered member of the society of peoples.

15.13 INTERNATIONAL TOLERATION AND HUMAN RIGHTS

Liberal peoples tolerate decent peoples, and indeed treat them as equals. Not to do so, Rawls says, would be to fail to express sufficient respect for acceptable ways of ordering a society. Liberal peoples should recognize the good of national self-determination, and let decent societies decide their futures for themselves. The government of a liberal people should not criticize decent peoples for failing to be liberal, or set up incentives for them to become more so. Criticism and inducements may cause bitterness and resentment within the decent people, and so be counter-productive.

Indeed public reason imposes duties of civility upon the members of international society, just as it does upon members of a liberal society. Government officials and candidates for high office should explain their foreign policy positions to other peoples in terms of the principles and values of the law of peoples, and should avoid reliance on contentious parochial reasons that all peoples cannot reasonably share.

One major reason that liberal peoples tolerate decent peoples, Rawls says, is that decent peoples secure for all persons within their territory a core list of human rights. These core human rights include rights to

subsistence, security, personal property, and formal equality before the law, as well as freedoms from slavery, protections of ethnic groups against genocide, and some measure of liberty of conscience (but not, as we have seen, a right to democratic participation). These core human rights are the minimal conditions required for persons to be able to engage in social cooperation in any real sense, so any well-ordered society must protect them.

The role of human rights in the law of peoples is thus to set limits on international toleration. Any society that guarantees Rawls's list of human rights is to be immune from coercive intervention from other peoples. Societies that violate human rights overstep the limits of toleration, and may rightly be subject to economic sanctions or even military attack.

15.13.1 The International Original Position

The international original position parallels the domestic original position of justice as fairness. This original position answers the question: "What terms of cooperation would free and equal peoples (liberal and decent) agree to under fair conditions?" The strategy is to build the conception of peoples into the set-up of this original position, along with restrictions on reasons for favoring basic principles of international law: to describe reasonable conditions under which a rational agreement on principles can be made.

In the international original position representatives of each people agree on principles for the international basic structure. Each party is behind a veil of ignorance, deprived of information about the people it represents such as the size of its territory and population, and its relative political and economic strength. Each party tries to do the best it can for the people it represents, in terms of the fundamental interests that all peoples have.

Rawls claims that the parties in the international original position would favor the eight principles listed above. Starting from a baseline of equality and independence, the parties would see no reason to introduce

inequalities into the relationships among peoples (beyond certain functional inequalities in the design of cooperative organizations, such as richer countries contributing more to an idealized United Nations). The parties would reject international utilitarian principles, as no people is prepared to accept that it should sacrifice its fundamental interests for the sake of greater total global utility.

After selecting the eight principles of the law of peoples, the parties next check that these principles can stably order international relations over time. Analogously to the domestic case, the parties will see that the principles of the law of peoples affirm the good of peoples, and that peoples will develop trust and confidence in one another as all willingly abide by these principles over time. The stability of the international political order will thus be stability for the right reasons (and not a mere modus vivendi), since each people will affirm the principles as its first-best option whatever the international balance of power might become.

Rawls also attempts to draw empirical support for his stability argument from the literature on the democratic peace. Social scientists have found that historically democracies have tended not to go to war with one another. Rawls explains this by saying that liberal societies are, because of their internal political structures, satisfied. Liberal peoples have no desires for imperial glory, territorial expansion, or to convert others to their religion, and whatever they need from other countries they can gain through trade. Liberal peoples, Rawls says, have no reasons to fight aggressive wars, so a genuine peace can endure among them. And since decent peoples are defined as non-aggressive, any decent people can join this liberal peace as well.

Once the parties have agreed to the eight principles of the law of peoples, they then continue to specify these principles more precisely in a process analogous to the domestic four-stage sequence.

15.14 NON-IDEAL THEORY: OUTLAW STATES AND BURDENED SOCIETIES

The principles selected in the international original position contain provisions for non-ideal situations: situations in which nations are unwilling to comply with the ideal principles, or are unable to cooperate on their terms. These provisions are embedded in principles 4 through 8 of the law of peoples.

Outlaw states are non-compliant: they threaten the peace by attempting to expand their power and influence, or by violating the human rights of those within their territory. The principles of the law of peoples allow peoples to fight these outlaw states in self-defense, and to take coercive actions against them to stop the violation of human rights. In any military confrontations with outlaws, peoples must obey the principles of the just prosecution of war such as avoiding direct attacks on enemy civilians in all but the most desperate circumstances. The aim of war, Rawls says, is to bring all societies to honor the law of peoples, and eventually to become fully participating members of international society.

Burdened societies struggle with social and economic conditions that make it difficult to maintain either liberal or decent institutions. They may lack sufficient material or social resources to support a scheme of social cooperation, perhaps having allowed population growth beyond their territory's current means. Rawls holds that it is the basic structure of a society and its political culture that are most essential for its self-sufficiency; yet there are situations in which the international community must help a burdened society to rise above that threshold. The law of peoples (eighth principle) requires that burdened peoples be assisted until they can handle their own affairs (i.e., become well-ordered). This duty of assistance is Rawls's greatest divergence from the rules of current international law. Accepting this duty would require significant changes in how nations now respond to global poverty and failed states.



Activity 15.2

1. Discuss elaborately about the Law of Peoples.

Ans: .....

.....

.....

2. Write a note on International Toleration and Human Rights.

Ans: .....

.....

.....



CHECK YOUR PROGRESS

Q6: The actors in Rawls's international theory are not individuals (citizens) but societies (peoples). (True/False)

Q7: "Citizens are equal"- Who said this?

Q8: Societies that violate human rights overstep the limits of toleration - Is it true?

.....

Q9: What is the goal of Rawls's law of peoples?

.....

Q10: What is the aim of war according to Rawls?

.....



15.15 LET US SUM UP

- Reconciliation and Realistic Utopia: Rawls's vision is of a perpetually peaceful and cooperative international order, where liberal and decent peoples stand ready to pacify aggressive states, to secure core human

rights, and to help struggling countries so long as they need assistance.

- To some degree this is a vision of limited ambition. Officials of democratic societies can do little more than hope that merely decent societies will become internally more tolerant and democratic.
- Once the duty to assist burdened peoples is satisfied there are no further requirements on economic distribution within Rawls's law of peoples: inequalities across national borders are of no political concern as such.
- Individuals around the world may suffer greatly from bad luck, and may be haunted by spiritual emptiness.
- The practical goal of Rawls's law of peoples is the elimination of the great evils of human history: unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, genocide and mass murder.
- The limits of this ambition mean that there will be much in the world to which Rawls's political philosophy offers no reconciliation.
- Nevertheless, while Rawls's vision is realistic it is also utopian. To believe that Rawls's vision is possible is to believe that individuals are not merely selfish or amoral, and that international relations can be more than a contest for power, wealth, and glory.
- Affirming the possibility of a just and peaceful future can inoculate against a resignation or cynicism that might otherwise seem inevitable.
- "By showing how the social world may realize the features of a realistic utopia, political philosophy provides a long-term goal of political endeavor, and in working toward it gives meaning to what we can do today" (LP, 128).



15.16 FURTHER READING

1) Andersson, Emil. 2011. Political Liberalism and the Interests of Children:

A Reply to Timothy Michael Fowler,' Res Publica, 17: 291-96.

2) Beitz, Charles. 1997. Political Theory and International Relations, Princeton: Princeton University Press.
3) Benn, Stanley I. 1988. A Theory of Freedom, Cambridge: Cambridge University Press.
4) Bentham, Jeremy. 1952. Manual of Political Economy in Jeremy Bentham's Economic Writings W. Stark (ed.), London: Allen and Unwin.
5) Bentham, Jeremy. 1823. Introduction to the Principles of Morals and Legislation, J. H. Burns and H. L. A. Hart (eds.), London: Athlone Press.

15. 17. ANSWERS TO CHECK YOUR PROGRESS

Ans to Q1: True

Ans to Q2: Plato

Ans to Q3: John Rawls

Ans to Q4: Libertarian concept

Ans to Q5: John Rawls

Ans to Q6: True

Ans to Q7: John Rawls

Ans to Q8: True

Ans to Q9: The practical goal of Rawls's law of peoples is the elimination of the great evils of human history: unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, genocide and mass murder.

Ans to Q10: The aim of war, Rawls says, is to bring all societies to honour the law of peoples, and eventually to become fully participating members of international society.

15.18. MODEL QUESTIONS

A. Very short Questions

Q1: Define Justice.

Q2: What do you mean by Libertarian concept of justice?

Q3: What is liberal concept of justice?

Q4: What is society?

Q5: Write the name of two guiding ideas of justice.

Q6: Define institution.

Q7: What is meant by Justice as Fairness?

Q8: State an important feature of the realistic utopia.

Q9: What do you mean by Burdened societies?

Q10: Who introduced the concept of Justice as fairness is a theory of justice for a liberal society?

B. Short Questions (Write in about 100-150 words)

Q1: Is there any difference between the liberal concept of justice and the libertarian concept of justice? Discuss.

Q2: Write briefly about the conception of the Goods.

Q3: Name five Primary goods.

Q4: What are the eight principles for ordering the international basic structure?

Q5: Write a short note on international toleration and Human Rights.

Q6: Explain two main ideas motivate the Law of Peoples.

Q7: Discuss briefly the law of peoples.

Q8: Name three fundamental interests of a people.

Q9: Define Outlaw states.

Q10: Explain, after Rawls, the concept of citizens.

C. Long Questions (Write in about 300-500 words)

Q1: Explain and discuss Justice.

Q2: How many ways justice reflects the moral status of the society? Discuss.

Q3: Discuss Rawls's theory of justice for a liberal society.

Q4: What is meant by Justice? Discuss the relevance of justice in the 20th century.

Q5: Write an essay on the International Basic Structure and the Principles of the Law of Peoples.

Q6: Explain and examine Rawls's two principle of justice.

Q7: What does Rawls mean by citizen? Explain Rawls's conceptions of citizens and societies are quite abstract.

Q8: Explain the relation between international toleration and human rights according to Rawls.

Q9: State and comment on Rawls theory of justice and the Law of Peoples.

Q10: "The actors in Rawls's international theory are not individuals (citizens) but societies (peoples)"- Explain.

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