DIRECTORATE OF DISTANCE EDUCATION

UNIVERSITY OF NORTH BENGAL

MASTER OF ARTS-POLITICAL SCIENCES

SEMESTER -III

ADVANCED POLITICAL THEORY

CORE 301

BLOCK-2

UNIVERSITY OF NORTH BENGAL

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FOREWORD

The Self Learning Material (SLM) is written with the aim of providing simple and organized study content to all the learners. The SLMs are prepared on the framework of being mutually cohesive, internally consistent and structured as per the university's syllabi. It is a humble attempt to give glimpses of the various approaches and dimensions to the topic of study and to kindle the learner's interest to the subject

We have tried to put together information from various sources into this book that has been written in an engaging style with interesting and relevant examples. It introduces you to the insights of subject concepts and theories and presents them in a way that is easy to understand and comprehend.

We always believe in continuous improvement and would periodically update the content in the very interest of the learners. It may be added that despite enormous efforts and coordination, there is every possibility for some omission or inadequacy in few areas or topics, which would definitely be rectified in future.

We hope you enjoy learning from this book and the experience truly enrich your learning and help you to advance in your career and future endeavours.

ADVANCED POLITICAL THEORY

BLOCK – 1

BLOCK - 2

BLOCK 2 : ADVANCED POLITICAL THEORY

Introduction to the Block

Unit 8 deals with the debates of Equality i.e. Value of Equality (Bernard Williams) likewise Common Humanity, Moral Capacities and Equality in Unequal Circumstances

Unit 9 deals with Discussions in moral philosophy have offered us a wide menu in answer to the question: equality of what? In this lecture I shall concentrate on three particular types of equality, viz., (i) utilitarian equality, (ii) total utility equality, and (iii) Rawlsian equality.

Unit 10deals with the discussion on the Consequentialist vs. Deontological as per the understandinf of Utilitarians, Rawls, Nozick.

Unit 11 deals with the debates on Rights. Human rights are based on the idea that every single person on the planet deserves to be treated with dignity and respect.

Unit 12 deals with Civil Disobedience and Satyagraha. The concept of civil disobedience movement has become an important element in the political power structure in contemporary world.

Unit 13 deals with the Debates on Democratic Political Community. In politics, there usually is an intermediary, a third party that mediates in negotiations, in conflicts.

Unit 14 deals with Citizenship, Virtues and Democratic Education. Discuss about the Liberal Democracy, Citizenship and Civic Culture with its democratic education process.

UNIT 8: DEBATES ON EQUALITY I

STRUCTURE

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8.0 OBJECTIVES

After this unit we can able to know:

- Value of Equality (Bernard Williams) likewise Common Humanity, Moral Capacities and Equality in Unequal Circumstances;
- Equality of Opportunity (Rawls) like Fair Equality of Opportunity, The 'Too Weak' Charge and The Meritocracy Charge.

8.1 INTRODUCTION

In political discussion, the idea of equality is asserted in statements of fact — that people are equal — as well as in statements of principles or aims — that people should be treated equally. The problem is that the idea, in both instances, can be interpreted too strongly or too weakly.

The two go significantly together: on the one hand, the point of the supposedly factual assertion is to back up social ideals and programmes of political action; on the other hand, those political proposals have their force because they are regarded ... as affirming an equality which is believed in some sense already to exist, and to be obscured or neglected by actual social arrangements.

Regarding the first, one could claim strongly that all people are equal in all those respects that warrant equal treatment. This would amount to peddling in patent falsehood for people are in fact not equal in all respects. Yet, to say that it is in our common humanity, that is, in the

mere fact that we are all humans, that we are equal would be to say nothing useful.

Regarding the second, the principle cannot possibly demand that everyone should be treated alike in all circumstances (or even as much as possible). But, the principle cannot also be reduced to the mere claim that different people should be treated differently. This amounts to saying that for every difference in the way people are treated, some general reason or principle of differentiation must be given. One could, on this weak interpretation, simply justify discriminatory treatment towards, for instance, women by saying that women are different!

The goal of the essay then is to "advance a number of considerations that can help to save the political notion of equality from these extremes of absurdity and of triviality. … These considerations will … enable us, starting with the weak interpretations, to build up a position that in practice can have something of the solidity aspired to by the strong interpretations".

8.2 VALUE OF EQUALITY (BERNARD WILLIAMS)

8.2.1 Common Humanity

The assertion of our community is certainly insufficient for the idea of equality but it is still substantial. It entails not just the recognition that we belong to the species homo sapiens, speak a language, use tools, live in societies and so on, but also the realisation of other less obvious but important characteristics such as the capacity to feel pain (physical or otherwise), affection, frustration and the like. This second group of characteristics important for the idea of equality for there is and has been political arrangments that neglected these characteristics in the case of certain groups.

[T]hat is to say, they treat certain people as though they did not possess these characteristics, and neglect moral claims that arise from these characteristics and which would be admitted to arise from them.

One could object that the neglect of these characteristics is only on the level of moral claims. In other words, it is not the presence of these characteristics but their moral relevance that is neglected. For instance, a slave owner could claim that the blacks are being discriminated against not because they don't have the capacity to feel pain (he might well concede this fact) but because of some further characteristic, perhaps the fact that they are black.

This objection assumes a sharp distinction between fact and value and effectively asserts that for any fact such as the capacity to feel pain or the colour of the skin to become a matter of moral relevance, one has to engage in moral evaluation and thus commit to a moral principle. The slave owner is, in this view, adopting a particular moral principle. However, to make the capacity to feel pain morally irrelevant but the colour of the skin morally relevant is no moral principle but a purely arbitrary assertion. In any case, this is conceded by even those who practice colour discrimination.

If any reasons are given at all, they will be reasons that seek to correlate the fact of blackness with certain other considerations ... such as insensitivity, brute stupidity, and ineducable irresponsibility. Now these reasons are very often rationalizations, and the correlations claimed are either not really believed or quite irrationally believed by those who claim them. But this is a different point; the argument concerns what counts as a moral reason, and the rationalizer broadly agrees with others about what counts as such.

The point is that "those who neglect the moral claims of certain people that arise from their human capacity to feel pain, and so forth, are overlooking or disregarding those capacities; and are not just operating with a special moral principle." This beings so, the assertion of the platitude that we are equal in that we are all human beings carries great weight. To this capacity for pain could be added even less obvious needs such as the "desire for self-respect" and suchlike characteristics.

8.2.2 Moral Capacities

So far, the respects in which people can be counted alike — the capacity to suffer, the need for self-respect — has been negative i.e., people have been understood as recipients in certain moral relations. However, people are also thought equal in certain positive respects i.e., things that they can achieve — the capacity for virtue or the capacity for achieving the highest moral worth.

This notion is problematic because there are no purely moral capacities. Some capacities are more relevant for the attainment of virtue — the capacity for intelligence as opposed to, say, the capacity to lift heavy objects, for instance — but such capacities can also be exercised in non-moral matters — in an examination, for instance. And in such non-moral matters, such capacities would be understood as differing from one person to the next just like other natural capacities.

There are some who contend that moral worth has nothing to do with natural capacities as these capacities are are unequally and fortuitously distributed. Immanuel Kant [Groundwork of the Metaphysic of Morals 1785, see the Second Essay/Section] epitomises such a view by claiming that the only consideration of relevance for moral worth is that everyone is equally a rational moral agent and that on this basis alone, everyone is owed an equality of respect. All other contingent and empirical capacities of natural excellence or lack thereof are irrelevant. Kant makes this detachment (of moral worth from contingent and unequal natural capacities) workable at a great cost: by making the rational moral agency of the person a transcendental characteristic independent of the unequal natural capacities that people have.

The difficulty here is the fact that the moral agent and ideas of responsibilty — "presumably the central case of treating them as moral agents" — that attaches to him must have an empirical basis to have any relevance.

It seems empty to say that all people are equal as moral agents, when the question, for instance, of people's responsibility for their actions is one to which empirical considerations are clearly relevant, and one which moreover receives answers in terms of different degrees of responsibility and different degrees of rational control over action.

Yet, even if we reject the transcendental basis for the notion of respect, the notion need not be rendered meaningless. For, there is certainly a difference between treating a person from a technical point of view and from his own point of view. To illustrate, one could look at a plumber or a person who has spent his life trying without success to invent a certain machine and pass the technical judgment that both are failures. This judgment might be accepted from the "technological point of view".

But of course, professional "titles" [the fact that one is a "plumber" or a "junior executive"] or the failures or successes of ones activities are not the only relevant considerations. The plumber might be doing his job out of desperation or because he wants to be one. Also, despite failing, the inventor's devotion to his work and his desire to succeed are relevant for him. The point is that human beings are conscious beings with intentions and purposes and that people should be considered from this "human point of view".

Still, this leaves problematic the issue of cases where people are exploited and degraded to such a degree that they "do not see themselves differently from the way they are seen by the exploiters; either they do not see themselves as anything at all, or they acquiesce passively in the role for which they have been cast."

In any case, "[the fact that human beings are conscious beings with intentions and purposes] enjoins us not to let our fundamental attitudes to people be dictated by the criteria of technical success or social position, and not to take them at the value carried by these titles and by the structures in which these titles place them. This does not mean, of

course, that the more fundamental view that should be taken is in the case of everyone the same: on the contrary. But it does mean that everyone is owed the effort of understanding, and that in achieving it, people should be abstracted from certain conspicuous structures of inequality in which we find them."

In passing this injunction, it is being assumed that people are beings who are necessarily and to some indeterminate extent conscious of themselves and of the world they live in. And the reflective consciousness that people have about their situation or their "titles" may be enhanced or diminished by their social condition. This social element is what makes the considerations relevant for issues of political equality. On its own, the mere injunction that "everyone is owed the effort of understanding" has nothing to do with political equality.

One could, I think, accept this [injunction] as an ideal, and yet favour, for instance, some kind of hierarchical society, so long as the hierarchy maintained itself without compulsion, and there was human understanding between the orders. In such a society, everyone would indeed have a very conspicuous title which related him or her to the social structure; but it might be that most people were aware of the human beings behind the titles and found each other for the most part content, or even proud, to have the titles that they had.

8.2.3 Equality in Unequal Circumstances

So far, the considerations have been about cases where people have been understood to be equal. But the idea of equality is invoked even in cases, especially with respect to distribution of or access to goods, where people are agreed to be unequal. In such cases, a distinction may be drawn between inequality of need and inequality of merit. In the former, it may safely be presumed that that those who need the good actually desire it — for instance, those who are ill actually need/desire medical care.

In the latter, the same presumption cannot be made for all instances — for instance, those without merit may legitimately desire a university education/those with merit might legitimately not want it. There is a competitive element to the case of merit and as such, we have to consider not just the distribution of the good [in this case, a university education] but also the distribution of the opportunity for achieving that good which might conceivably be distributed equally. This is the idea of the equality of opportunity.

In both cases of need and merit, the matter of the relevance of reasons (for needing treatment, or getting admitted to a university) appears. Lets take the case of need to illustrate. Ill health a necessary condition for getting medical treatment. But in many societies, ill health is not a sufficient condition with money serving as a further requirement. The notions of equality and inequality have to be now applied to the rich ill and the poor ill (and not just the the well and the ill as we should). This is an irrational state of affairs.

One might object that ill health is at most a ground of the right to receive medical aid but that it does not warrant its fulfilment. A person might have the right but not the power or resources to actually secure those rights. In other words, the reasons are insufficiently operative.

There is something in the distinction that this objection suggests: there is a distinction between people's rights, the reasons why they should be treated in a certain way, and their power to secure those rights, the reasons why they can in fact get what they deserve.

The combination of the relevance and the operativeness of reasons forms a genuine moral weapon which can be marshaled in cases where people are agreed to be unequal without at the same time being concerned with the equality of people as a whole. This strengthens the weak principle [that for every difference in the way people are treated, some general reason or principle of differentiation must be given] by stipulating that the reasons thus given be relevant and operative.

Similar considerations apply to cases of merit. One difference to keep in mind however is that, while in the case of need, it is clear that certain sorts of need warrant certain corresponding goods [illness warrant medical treatment], in the case of merit the connection is not clear [academic capability warrants a university education?]. If a person objects to the institution of expensive private schools for being unequally accessible to intelligent but poor students, a defender could either claim that the right to access is not a sufficient condition or he could even, radically, dispute that there is any connection between intelligence and the subsequent right to a superior private education. This is not to survey such disputes but to augment the point already established that for differences in the way that people are treated, reasons should be given.

Now, the political sense of the notion of equality of opportunity — understood to mean providing equal opportunity for everyone in society to secure certain goods — will be considered. This notion requires that a good, whatever it is, (a) is desired by large numbers of people, (b) can be achieved earned or achieved, and (c) cannot be secured by all those who might desire it.

The third requirement covers at least three different cases: the good may be necessarily limited — it cannot be both be secured by everyone and continue to be that good e.g., positions of prestige; the good may be contingently limited — not everyone actually manages to fulfil the conditions necessary to secure it even if all conceivably might; and the good may be fortuitously limited — there is simply not enough of it for everybody.

The notion of equality of opportunity may be construed as a notion that stipulates that a limited good shall in fact be distributed on grounds that do not exclude any section a priori. However this formula is problematic. For instance, a senior secondary school might allocate its seats based on the ability of applicants as shown by their Class 10 marks as opposed to, say, their physical height. This appears perfectly reasonable.

But doesn't this already exclude certain people, namely those securing grades below a certain threshold, just as the other condition would, if implemented, exclude people below a certain height? Perhaps the exclusion might be admitted based on some appropriate and rational ground(s). However, there is no easy way out of this puzzle. For it would allow people to claim that it is quite appropriate and rational to filter applicants based on height — which, given that the goal of the school is to educate, is patently absurd.

The notion of equality of opportunity thus is more complex that it initially appeared. Not only should there be no exclusion from access except on appropriate and rational grounds but those grounds should also be such that everyone has an equal chance of satisfying them. Consider a society where prestige is attached to a warrior class whose duties require great physical strength and which has traditionally been constituted by the wealthy families even though recruitment to the class is open everyone. This, we might further suppose, is because the wealthy have a better diet than the malnourished poor who therefore cannot compete effectively.

There appears to be equality of opportunity here — the recruitment process is open to all and the ground for selection/exclusion seems quite appropriate. But of course it would be cynical to claim that this is genuine equality of opportunity. The causal connection between being poor and being undernourished and therefore being physically weak is too obvious to miss. Also, it is apparent that the notion of equality of opportunity can be made more effective by balancing the skewed distribution of wealth and resources.

It appears then that for equality of opportunity to be genuine, no section should be at a disadvantage especially if that disadvantage can be removed by some rearrangement or redistribution of resources when seeking access to the good being allocated. The problem however is those such clear causal connections as present in the imaginary example do not obtain in real world cases.

In any case, equality of opportunity includes not just the theequalisation of grounds that are applied, to reuse the imaginary example, to select the warriors but also the alterable circumstances under which those participants lived, that's to say their wealth and diet, which have a bearing on those very grounds. The participants should be abstracted, in other words, from their unequal circumstances and this abstraction is involved in equality of opportunity.

Where should this [the abstraction of individuals from their circumstances] stop? Should it even stop at the boundaries of heredity? Suppose it were discovered that when all curable environmental disadvantages had been dealt with, there was a residual genetic difference in brain constitution, for instance, which was correlated with differences in desired types of ability; but that the brain constitution could in fact be changed by an operation. Suppose further that the wealthier classes could afford such an operation for their children, so that they always came out at the top of the educational system; would we then think that poorer children did not have equality of opportunity, because they had no opportunity to get rid of their genetic disadvantages?

... Our objections against the system suggested in this fantasy must, I think, be moral rather than metaphysical. They need not concern us here.

Various conflicts beset the idea of equality. It is not inappropriate, for instance, to feel that "a thoroughgoing emphasis on equality of opportunity must destroy a certain sense of common humanity which is itself an ideal of equality". Also, the idea requires that both that certain goods which carry with them some status or prestige be distributed and also that, at the same time, we consider people independently of those very goods and the status that comes associated with them.

"When one is faced with the spectacle of the various elements of the idea of equality pulling in these different directions, there is a strong

temptation, if one does not abandon the idea altogether, to abandon some of its elements. …It is an uncomfortable situation, but the discomfort is just that of genuine political thought. It is no greater with equality than it is with liberty, or any other noble and substantial political ideal."

Check Your Progress 1

Note : a) Use the space provided for your answer.

b) Check your answer with those provided at the end of this unit.

1. Discuss the Value of Equality by Bernard Williams.

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2. Write about Common Humanity.

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3. Write about Moral Capacities.

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4. Discuss the Equality in Unequal Circumstances.

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8.3 EQUALITY OF OPPORTUNITY (RAWLS)

Fair Equality of Opportunity (FEO) requires that social positions, such as jobs, be formally open and meritocratically allocated, but, in addition, each individual is to have a fair chance to attain these positions. John Rawls developed the most well-known conception of FEO. For Rawls, an individual has a fair chance when her prospects for success in the pursuit of social positions are a function of her level of native talent and willingness to use them, and are not a function of her social class or background. To put the principle in terms of Western formula, it holds that all citizens of some society count as the relevant agents, the desired goal is offices and positions, and the obstacles people shouldn't face include social class and family background. The obstacles people may face include having fewer native abilities or less willingness to cultivate them than others. This principle may support educational measures that close the attainment gap between the naturally talented rich and the naturally talented poor.

Debates about FEO have focused on the relative importance of the goods it regulates (opportunities for offices and positions) and its failure to treat all luck equally. On the first debate, some have argued that the opportunities that FEO regulates are not more important than other goods, such as income or welfare, and that we should prefer a principle (known in Rawls' work as the difference principle) that ensures that the least advantaged are as well-off as possible in terms of income and wealth rather than a principle that ensures fair competition for positions. On the second debate, some argue that inequalities in social luck, being born into a poor family, which FEO does attempt to correct for, and inequalities in natural luck, being born with fewer natural talents, which FEO does not attempt to correct for, should be treated the same. It is easy to think that both types of luck are equally arbitrary from the moral point of view and that this arbitrariness is a source of injustice. Why would be born poor not require the same response as being born disabled? As we shall see Equality of Opportunity for Welfare treats both types of luck as equally suspect sources of injustice.

8.3.1 Fair Equality of Opportunity

The core normative content of John Rawls's theory of justice—justice as fairness—is presented in the form of two lexicographically ordered principles. The first principle, in its final formulation, demands a fully adequate and equal scheme of rights and liberties, and says that when it comes to the political rights and liberties the fair equal value of these should be guaranteed, whereas the other rights are underwritten by the second principle. This principle says that:

Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society. (Rawls 2001: 42–43)

The first part, FEO, is lexically prior to the second part, the difference principle, but other than that Rawls is rather cryptic when it comes to the meaning of this principle. A reader might be excused for thinking that the only help he or she gets is the following:

[T]hose with the same level of talent and ability and the same willingness to use those gifts should have the same prospects of success regardless of their social class of origin, the class into which they were born and develop until the age of reason. (Rawls 2001: 44. Cf. Rawls 1999: 63; 1996: 5–7)

The obvious interpretation of this quotation seems to be that education (and all other institutions of the basic structure in different ways and to varying degree) should ensure that citizens at the same level of talent and willingness should have equal opportunities, but that citizens at different levels could have unequal sets of opportunities. This would make talent, ability and willingness the only aspects that justice allows to affect individuals' chances of attaining their goals. In consequence, sexual orientation, ethnic background, gender and class should not affect

individuals' prospects of success in realizing their opportunities. While this interpretation is clearly salient, it is not quite right; it does not make full sense of Rawls's vision of democratic equality.

Samuel Freeman captures the egalitarian idea behind FEO in the following manner: 'Being in a position to develop one's capacities and talents, whatever they may be, is needed to maintain one's status and self-respect as a free and equal citizen capable of social cooperation over a complete life.' (Freeman 2007: 95) Freeman identifies the three major arguments for FEO in Rawls's works as

(1) The Aristotelian Principle,

(2) the fact that it is needed to make sense of the difference principle, and

(3) the ideal of free and equal citizens.

That efficiency is not found among these reasons may be surprising. Obviously, there is a close connection between that value and equality of opportunity—if each person has equal opportunity, then the most suitable candidate will be hired for each position, which in turn will improve efficiency—but this is just a lucky contingency.1 I shall not discuss the Aristotelian Principle (which says roughly that people prefer to exercise their developed faculties, and enjoy more complex tasks to less intricate undertakings) (Rawls 1999: 374–375. Cf. Taylor 2004). Using this principle in the argument for FEO might amount to a violation of the strictures of the political liberalism of the later Rawls, and, moreover, the arguments I will make stand on their own without the support of the Aristotelian Principle.

Let us, then, focus on the connection between FEO and the ideal of free and equal citizens. Rawls says the following:

> The differences in citizens' moral powers do not, as such, lead to corresponding differences in the allocation of primary goods, including the basic rights and liberties. Rather, the basic structure is arranged to include the requisite institutions of background justice so that citizens have available to them the general all-purpose means to train and educate their basic capabilities, and a fair opportunity to make good use of them. (Rawls 2001: 171)

For the purposes of justice as fairness, Rawls conceives of citizens as having two moral powers. They can act from fair principles of cooperation and they can act rationally; they have the capacity 'to have, to revise, and to rationally pursue a conception of the good' (Rawls 2001: 19). They are equal because they all have 'to the essential minimum degree the moral powers necessary to engage in social cooperation over a complete life and to take part in society as equal citizens' (Rawls 2001: 20). Citizens, moreover, are free in two respects. They view themselves and others as being able to revise their conception of the good, their goals and values, and 'they regard themselves as being entitled to make claims on their institutions so as to advance their conceptions of the good (provided these conceptions fall within the range permitted by the public conception of justice)' (Rawls 2001: 23). This moral conception of persons is the background against which Rawls claims, in the quote above, that differences in moral powers do not lead to a justification of different levels of primary goods, such as spending more resources on the education of the talented. Instead, and this is the meaning of the second sentence of the quote, opportunities, for these free and equal citizens, are to be afforded on an equal basis on the assumption of equality between citizens.

The opportunities needed to achieve equal standing as a citizen are to be distributed equally, which in turn probably means that more resources will be spent on the less talented than on the very talented. This also explains Rawls's (2001: 174) insistence on general healthcare as a requirement of FEO. The ideal of equal citizenship explains why it is important that people have the opportunity to develop their talents, but it

also puts limits on the requirement of equality in opportunities. Differences that do not have to do with equal standing fall outside the scope of FEO. David Edmonds (2006) asks how we can make a distinction between skin color and toe size, when it may well be the case that the group consisting of people with small toes is worse off than other people. What is the difference between this situation and one in which the group of people with dark skin color is worse off? The Rawlsian answer is that toe size does not affect anyone's social standing, whereas skin color has done this all too often. The core aim of FEO is to secure the equal standing of citizens, and its measure of unjust discrimination is this ideal?

A further, and even more fundamental reason to interpret FEO along these lines, can be found in Rawls's account of how justice as fairness is an egalitarian theory. There are many ways in which equality can be seen as valuable, but Rawls opts for what he sees as Rousseau's approach: 'the fundamental status in political society is to be as equal citizenship, a status all have as free and equal persons' (Rawls 2001: 132). He continues by spelling out the way in which equality is integral to justice as fairness and what this means for the interpretation of the theory:

Equality is present at the highest level in that citizens recognize and view one another as equals. Their being what they are—citizens—includes their being related as equals; and their being related as equals is part both of what they are and of what they are recognized as being by others. Their social bond is their public political commitment to preserve the conditions their equal relation requires. (Rawls 2001: 132)

What are these conditions? They are the social conditions of a society well-ordered by the two principles. This means that the principles must be read as a way of spelling out principles of justice from an ideal of relational equality. The core of justice as fairness is the ideal of relational equality, which is given by the account of free and equal citizenship. FEO must be interpreted as having the aim of giving expression to this ideal of relational equality. An illustrative way of explaining this abstract

ideal is to look into how Rawls uses the idea of slavery to explain the ideal of the citizen. Rawls says '[s]laves are, so to speak, socially dead: they are not recognized as persons at all' (Rawls 2001: 24). This is not to say that we cannot care about the welfare of slaves, but they are not counted as sources of valid claims. Their moral powers do not count socially as a reason for equal standing and their conception of the good is not taken into account (expect perhaps indirectly by their holders). The citizen is the opposite of the slave. The ideal of the citizen is the ideal of independent persons.

Let us now turn to the relationship between FEO and the difference principle. Rawls aims to develop a theory of pure procedural justice and says of FEO that '[u]nless it is satisfied, distributive justice could not be left to take care of itself' (Rawls 1999: 76). The goal is a situation where the distributive result of social cooperation is a function of individuals' choices against a fair background. Without fair opportunity, citizens would have valid complaints of unfairness because they (as individuals) would not have equal prospects in deciding how to conduct their lives. If the difference principle were only constrained by a principle that says that positions should be open to all—if instead of democratic justice we opt for what Rawls dubs natural aristocracy—the charge from Rawls would be that this would carry with it the inegalitarian idea of noblesse oblige (Rawls 1999: 64). This is a serious issue for Rawls; his theory is devised to be suitable for a democratic society, and if the charge of bringing in aristocratic relationships and values, which conflicts with the ideal of free and equal citizens, into the core of justice as fairness succeeds, it would amount to a knock-down argument. This again illustrates the absolute centrality to Rawls's project of the free and equal citizen: he is searching for the proper theory for citizens so conceived.

The relationship between the difference principle and FEO is, in short, that they are parts of a single principle based on the ideal of free and equal citizens. FEO is the part of this principle that regulates how the basic structure affects talents and ambitions, whereas the difference principle regulates the inequality that could result from differences in

(natural) talents even after the opportunity principle has done its work (Rawls 1999: 87). Even if the more talented would have a better chance of attaining some coveted position, the gains that they would have from this would be constrained by the difference principle. If there are people who have better prospects of becoming, say, judges, due to their innate talent, then FEO says that they should have better chances to occupy such a position than those who have less native talent for it. The difference principle then regulates the structure of salaries and wages in society (as well as the tax system). It is also important to see that it is not only the difference principle that has egalitarian distributive implications. The first principle demands the fair equal value of the political principles, whereas FEO says that to the extent that inequality in terms of income and wealth threatens equality in terms of opportunity, there ought to be redistribution. In this sense, FEO constrains the kind of inequalities that the difference principle would allow.

8.3.2 The 'Too Weak' Charge

Arneson's first charge is that FEO cannot deal with the problem of stunted ambition brought about by unfair traditions and cultural forces.

Any two persons of equal talent and ambition will have the same prospects of success in competition for positions of advantage. However, this characterization of the society is compatible with a further, disturbing description: all individuals are socialized to accept an ideology which teaches that it is inappropriate, unladylike, for women to aspire to many types of positions of advantage, which are de facto reserved for men, since only men come to aspire to them. Any man and woman with the same native talent and ambition will have the same prospects for success in the society we are imagining, but the rub is that individuals' ambitions are influenced unfairly by socialization. (Arneson 1999:78)

The first thing that strikes one when reading this is the question of how it is possible to both have equal opportunities and not have equal

opportunities. The answer must be that FEO is too weak, because it only deals with the design of institutions, and hence is silent on the issue of socialization. According to this interpretation it would deal with influences on opportunity other than those from social contingencies. Therefore, the argument would go, you could have equal opportunities in the domain of this narrow version of FEO, and yet have unequal prospects, all things considered. The charge of stunted ambition can only be an argument against FEO if justice as fairness does not deal with socialization.

If the narrow interpretation needed to make the argument of stunted ambition argument were correct, then it would make the fact that Rawls says the following in the course of arguing for the second principle appear rather strange: 'There is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune' (Rawls 1999: 64). The outcome of the natural lottery is just as arbitrary from a moral perspective as are the results of the social lottery. A basic criterion of adequacy on a theory of justice is that it does not give natural or social contingencies free reign. The idea behind Rawls's second principle is to have FEO deal with the social lottery and the difference principle with its natural counterpart. We should prefer an interpretation of FEO that makes sense of this fundamental point for Rawls.

So cultural forces are within the domain of FEO, but one might ask whether perhaps their effects on ambitions are not. Rawls takes the basic structure as his subject

because the effects of the basic structure on citizens' aims, aspirations, and character, as well as on their opportunities and their abilities to take advantage of them, are pervasive and present from the beginning of life. (Rawls 2001: 10; cf. 56–57)

This seems to imply that stunted ambition should be high on the list of priorities for justice as fairness, since FEO deals with the cultural

development of aims and aspirations. It also suggests the usefulness of a term Arneson coins in a later paper on discrimination. There, he says that what Rawls is really concerned with is 'prototalent' (Arneson 2006: 795), which seems to me to much better capture the core idea than plain 'talent'. FEO deals with how potential talent is turned into actualized talent. Again, we should prefer an interpretation of FEO that makes sense of the claims that Rawls makes.

We have seen that Rawls is concerned with class—'same prospects of success regardless of […] social class of origin' (Rawls 2001: 44)—but does this mean that he would be concerned with gender as well? There are textual indications that Rawls at least believes that he can address those issues. First, in his writings after Theory he has included sex explicitly as something that the veil of ignorance covers for the parties of the original positions (Rawls 2001: 15). Second, he has discussed the issue of justice between the sexes:

Moreover, to establish equality between men and women in sharing the work of society, in preserving its culture and in reproducing itself over time, special provisions are needed in family law (and no doubt elsewhere) so that the burden of bearing, raising, and educating children does not fall more heavily on women, thereby undermining fair equality of opportunity. (Rawls 2001: 11)

At this point, we have seen that there are three aspects of Rawls's work that point in the direction of taking seriously socialization as it affects the formation of ambition with regards to gender:

(1) the argument to the effect that the outcomes of the two lotteries cannot be consider morally justified,
(2) a focus on the development of aims, and
(3) direct textual evidence concerning gender equality.

It seems very difficult to interpret Rawls as failing to see the kind of problem that Arneson claims that he misses, especially so when the theory takes as its starting point an ideal of relational equality. Moreover,

the two first points in themselves seem to indicate that stunted ambition is not consistent with justice as fairness. FEO should be interpreted in such a way that it includes the development of this kind of development of ambition under its domain.

In fact, it seems that Arneson does not find this a very telling argument either, because he ends the section devoted to this issue by saying that he has not done much more than put a label on this problem, after which he proceeds to suggest an amendment to FEO:

(a) that any two persons with the same talent and the same ambition should have the same prospects of competitive success and in addition (b) that the education and socialization processes that influence the formation of individual ambitions are unmarred by bigotry and unfairness. (Arneson 1999: 79)

If my arguments in this section are correct, this is not an amendment. FEO already contains the important aspects that Arneson claims it lacks in the original formulation. The Too Weak charge does not succeed.

8.3.3 The Meritocracy Charge

The Meritocracy charge is in a way the most troublesome for Rawls. If it is correct, then he has incorporated, in the heart of his theory of justice, a principle that violates some of the core commitments of justice as fairness. A meritocratic FEO would disregard the argument from the two lotteries, undermine the emphasis on equal status and undercut the difference principle.

Check Your Progress 2

Note: a) Use the space provided for your answer.

b) Check your answer with those provided at the end of this unit.

2. What is Fair Equality of Opportunity?

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3. Discuss the Equality of Opportunity (Rawls).

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4. What is The ‘Too Weak’ Charge?

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5. Discuss about The Meritocracy Charge.

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8.4 LET US SUM UP

At first glance, the value of equality can seem to demand uniformity that seems dystopian. For instance, if everyone were forced to wear the same clothes, pursue the same hobbies and have the same number of children, we would think this was intolerable. However, we should be careful not to reject equality entirely on this basis. Equality is still attractive if we limit its scope to some areas. For instance, equality before the law and

equal rights to vote seem to be at the heart of our convictions about how we should live together. Inequality in these areas seems as intolerable as sameness in dress, family size or in our choice of recreational activities.

Freedom or opportunity may explain where and when equality seems most important. Our equal rights to a fair trial, to vote in elections, to association, speech and religion are each an equal right to a sphere of freedom. Part of what we value in this mixture is the protection from interference and having others dictate our lives to us and the other part of what we value is that we enjoy this protection on equal terms. In the sphere of religious worship, for example, individuals decide what religion they will worship. Unequal freedom, where some have freedom of religion and others do not, strikes us as wrong because it is unequal. Whereas Equal Unfreedom, where we are all slaves or lack basic rights, strikes us as wrong because it is unfree. A combination of freedom and equality, then, promises to describe a fitting social ideal for people who disagree about important, religious, moral and political questions, and yet want to live together in mutual respect.

Equality of Opportunity is one such combination and it has been a rich source of academic and political debate, a political slogan, and a widely held conviction about how human beings should live together. At its most basic, Equality of Opportunity requires that all human beings are equal in the sphere of opportunity. Equality of opportunity is usually opposed to slavery, hierarchy and caste society, where social positions, life prospects and individual freedoms are determined by membership of some group that you are born into, such as the aristocracy. Our acknowledgement of the importance of freedom and equality motivate the theory and practice of Equality of Opportunity.

8.5 KEY WORDS

Equality:the state of being equal, especially in status, rights, or opportunities.

Opportunity:a time or set of circumstances that makes it possible to do something.

Oparations:the action of functioning or the fact of being active or in effect.

Values:In ethics, value denotes the degree of importance of some thing or action, with the aim of determining what actions are best to do or what way is best to live, or to describe the significance of different actions.

8.6 QUESTIONS FOR REVIEW

1. Discuss the Value of Equality by Bernard Williams.
2. Write about Common Humanity.
3. Write about Moral Capacities.
6. Discuss the Equality in Unequal Circumstances.
7. Discuss the Equality of Opportunity (Rawls).
8. What is Fair Equality of Opportunity?
9. What is The 'Too Weak' Charge?
10. Discuss about The Meritocracy Charge.

8.7 SUGGESTED READINGS AND REFERENCES

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- Notes: This paper argues that there are serious problems with the role of the conception of Fair Equality of Opportunity in Rawls as he sees that conception as guaranteeing that the least advantaged are as well off as possible but if that is so it should not have priority over the difference principle. The paper also raises concerns with the quality and quantity of opportunities that fair equality of opportunity distributes.
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8.8 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. See Section 8.2

2. See Sub Section 8.2.1
3. See Sub Section 8.2.2
4. See Sub Section 8.2.3

Check Your Progress 2

1. See Section 8.3
2. See Sub Section 8.3.1
3. See Sub Section 8.3.2
4. See Sub Section 8.3.3

UNIT 9: DEBATES ON EQUALITY II

STRUCTURE

9.0 OBJECTIVES

After this unit, we can able to know:

- Equality of What? (Welfare, Resources, Capability)
- Luck egalitarianism and its critique (Elizabeth Anderson)
- Equality, Priority or Sufficiency (Scheffler, Parfit, Franfurt)

9.1 INTRODUCTION

Discussions in moral philosophy have offered us a wide menu in answer to the question: equality of what? In this lecture I shall concentrate on three particular types of equality, viz., (i) utilitarian equality, (ii) total utility equality, and (iii) Rawlsian equality. I shall argue that all three have serious limitations, and that while they fail in rather different and contrasting ways, an adequate theory cannot be constructed even on the combined grounds of the three. Towards the end I shall try to present an alternative formulation of equality which seems to me to deserve a good deal more attention than it has received, and I shall not desist from doing some propaganda on its behalf. First a methodological question. When it

is claimed that a certain moral principle has shortcomings, what can be the basis of such an allegation? There seem to be at least two different ways of grounding such a criticism, aside from just checking its direct appeal to moral intuition. One is to check the implications of the principle by taking up particular cases in which the results of employing that principle can be seen in a rather stark way, and then to examine these implications against our intuition. I shall call such a critique a case-implication critique. The other is to move not from the general to the particular, but from the general to the more general. One can examine the consistency of the principle with another principle that is acknowledged to be more fundamental. Such prior principles are usually formulated at a rather abstract level, and frequently take the form of congruence with some very general procedures. For example, what could be reasonably assumed to have been chosen under the as if ignorance of the Rawlsian "original position," a hypothetical primordial state in which people decide on what rules to adopt without knowing who they are going to be - as if they could end up being any one of the persons in the community.1 Or what rules would satisfy Richard Hare's requirement of "universalizability" and be consistent with "giving equal weights to the equal interests of the occupants of all the roles." I shall call a critique based on such an approach a prior-principle critique. Both approaches can be used in assessing the moral claims of each type of equality, and will indeed be used here.

9.2 EQUALITY OF WHAT? (WELFARE, RESOURCES, CAPABILITY)

UTILITARIAN EQUALITY

Utilitarian equality is the equality that can be derived from the utilitarian concept of goodness applied to problems of distribution. Perhaps the simplest case is the "pure distribution problem": the problem of dividing a given homogeneous cake among a group of persons. Each person gets more utility the larger his share of the cake, and gets utility only from his share of the cake; his utility increases at a diminishing rate as the amount of his share goes up. The utilitarian objective is to maximize the

sumtotalof utility irrespective of distribution, but that requires the equality of the marginal utility of everyone — marginal utility being the incremental utility each person would get from an additional unit of cake. According to one interpretation, this equality of marginal utility embodies equal treatment of everyone's interests.

The position is a bit more complicated when the total size of the cake is not independent of its distribution. But even then maximization of the total utility sum requires that transfers be carried to the point at which the marginal utility gain of the gainers equals the marginal utility loss of the losers, after taking into account the effect of the transfer on the size and distribution of the cake. It is in this wider context that the special type of equality insisted upon by utilitarianism becomes assertively distinguished. Richard Hare has claimed that "giving equal weight to the equal interests of all the parties" would "lead to utilitarianism" - thus satisfying the prior-principle requirement of universalizability. Similarly, John Harsanyi shoots down the non- a utilitarians (including this lecturer, I hasten to add), by claiming for utilitarianism an exclusive ability to avoid "unfair discrimination" between "one person's and another person's equally urgent human needs." The moral importance of needs, on this interpretation, is based exclusively on the notion of utility. This is disputable, and having had several occasions to dispute it in the past, I shall not shy away from disputing it in this particular context. But while I will get on to this issue later, I want first to examine the nature of utilitarian equality without — for the time being — questioning the grounding of moral importance entirely on utility. Even when utility is the sole basis of importance there is still the question as to whether the size of marginal utility, irrespective of total utility enjoyed by the person, is an adequate index of moral importance. It is, of course, possible to define a metric on utility characteristics such that each person's utility scale is coordinated with everyone else's in a way that equal social importance is simply "scaled" as equal marginal utility. If interpersonal comparisons of utility are taken to have no descriptive content, then this can indeed be thought to be a natural approach. No matter how the relative social importances are arrived at, the marginal utilities attributed

to each person would then simply reflect these values. This can be done explicitly by appropriate interpersonal scaling, or implicitiy through making the utility numbering reflect choices in situations of as if uncertainty associated with the "original position" under the additional assumption that ignorance be interpreted as equal probability of being anyone. This is not the occasion to go into the technical details of this type of exercise, but the essence of it consists in using a scaling procedure such that marginal utility measures are automatically identified as indicators of social importance. This route to utilitarianism may meet with little resistance, but it is non-controversial mainly because it says so little. A problem arises the moment utilities and interpersonal comparisons thereof are taken to have some independent descriptive content, as utilitarians have traditionally insisted that they do. There could then be conflicts between these descriptive utilities and the appropriately scaled, essentially normative, utilities in terms of which one is "forced" to be a utilitarian.

In what follows I shall have nothing more to say on utilitarianism through appropriate interpersonal scaling, and return to examining the traditional utilitarian position, which takes utilities to have interpersonally comparable descriptive content. How moral importance should relate to these descriptive features must, then, be explicitly faced. The position can be examined from the prior-principle perspective as well as from the case-implication angle. John Rawls's criticism as a preliminary to presenting his own alternative conception of justice took mostly the prior-principle form. This was chiefly in terms of acceptability in the "original position," arguing that in the postulated situation of as if ignorance people would not choose to maximize the utility sum. But Rawls also discussed the violence that utilitarianism does to our notions of liberty and equality. Some replies to Rawls's arguments have reasserted the necessity to be a utilitarian by taking the "scaling" route, which was discussed earlier, and which - I think - is inappropriate in meeting Rawls's critique. But I must confess that I find the lure of the "original position" distinctly resistible since it seems very unclear what precisely would be chosen in such a situation. It is also far

from obvious that prudential choice under as if uncertainty provides an adequate basis for moral judgment in unoriginal, i.e., real-life, positions. But I believe Rawls's more direct critiques in terms of liberty and equality do remain powerful. Insofar as one is concerned with the distribution of utilities, it follows immediately that utilitarianism would in general give one little comfort. Even the minutest gain in total utility sum would be taken to outweigh distributional inequalities of the most blatant kind. This problem would be avoidable under certain assumptions, notably the case in which everyone has the same utility function. In the pure distribution problem, with this assumption the utilitarian best would require absolute equality of everyone's total uti1ities.

This is because when the marginal utilities are equated, so would be the total utilities if everyone has the same utility function. This is, however, egalitarianism by serendipity: just the accidental result of the marginal tail wagging the total dog. More importantly, the assumption would be very frequently violated, since there are obvious and well-discussed variations between human beings. John may be easy to please, but Jeremy not. If it is taken to be an acceptable prior-principle that the equality of the distribution of total utilities has some value, then the utilitarian conception of equality - marginal as it is - must stand condemned. The recognition of the fundamental diversity of human beings does, in fact, have very deep consequences, affecting not merely the utilitarian conception of social good, but others as well, including (as I shall argue presently) even the Rawlsian conception of equality. If human beings are identical, then the application of the prior-principle of universalizability in the form of "giving equal weight to the equal interest of all parties" simplifies enormously. Equal marginal utilities of all - reflecting one interpretation of the equal treatment of needs - coincides with equal total utilities - reflecting one interpretation of serving their overall interests equally well. With diversity, the two can pull in opposite directions, and it is far from clear that "giving equal

weight to the equal interest of all parties" would require us to concentrate only on one of the two parameters - taking no note of the other.

The case-implication perspective can also be used to develop a related critique, and I have tried to present such a critique elsewhere. For example, if person A as a cripple gets half the utility that the pleasure-wizard person B does from any given level of income, then in the pure distribution problem between A and B the utilitarian would end up giving the pleasure-wizard B more income than the cripple A. The cripple would then be doubly worse off: both since he gets less utility from the same level of income, and since he will also get less income. Utilitarianism must lead to this thanks to its single-minded concern with maximizing the utility sum. The pleasure-wizard's superior efficiency in producing utility would pull income away from the less efficient cripple. Since this example has been discussed a certain amount, I should perhaps explain what is being asserted and what is not.

First, it is not being claimed that anyone who has lower total necessity have lower marginal utility also. This must be true for some levels of income, but need not be true everywhere. Indeed, the opposite could be the case when incomes are equally distributed. If that were so, then of course even utilitarianism would give the cripple more income than the non-cripple, since at that point the cripple would be the more efficient producer of utility. My point is that there is no guarantee that this will be the case, and more particularly, if it were the case that the cripple were not only worse off in terms of total utility but could convert income into utility less efficiently everywhere (or even just at the point of utility (e.g., the cripple) at any given level of income must of equal income division), then utilitarianism would compound his disadvantage by settling him with less income on top of lower efficiency in making utility out of income. The point, of course, is not about cripples in general, nor about all people with total utility disadvantage, but concerns people - including cripples - with disadvantage in terms of both total and marginal utility at the relevant points. Second, the descriptive content of utility is rather important in this context. Obviously, if utilities were scaled to reflect

moral importance, then wishing to give priority to income for the cripple would simply amount to attributing a higher "marginal utility" to the cripple's income; but this - as we have already discussed - is a very special sense of utility - quite devoid of descriptive content. In terms of descriptive features, what is being assumed in our example is that the cripple can be helped by giving him income, but the increase in his utility as a consequence of a marginal increase in income is less-in terms of the accepted descriptive criteria - than giving that unit of income to the pleasure-wizard, when both have initially the same income. Finally, the problem for utilitarianism in this case-implication argument is not dependent on an implicit assumption that the claim to more income arising from disadvantage must dominate over the claim arising from high marginal utility.16 A system that gives some weight to both claims would still fail to meet the utilitarian formula of social good, which demands an exclusive concern with the latter claim. It is this narrowness that makes the utilitarian conception of equality such a limited one. Even when utility is accepted as the only basis of moral importance, utilitarianism fails to capture the relevance of overall advantage for the requirements of equality. The prior-principle critiques can be supplemented by case-implication critiques using this utilitarian lack of concern with distributional questions except at the entirely marginal level.

TOTAL UTILITY EQUALITY

Welfares is the view that the goodness of a state of affairs can be judged entirely by the goodness of the utilities in that state.17 This is a less demanding view than utilitarianism in that it does not demand - in addition - that the goodness of the utilities must be judged by their sum-total. Utilitarianism is, in this sense, a special case of welfarism, and provides one illustration of it. Another distinguished case is the criterion of judging the goodness of a state by the utility level of the worst-off person in that state - a criterion often attributed to John Rawls. (Except by John Rawls! He uses social primary goods rather than utility as the index of advantage, as we shall presently discuss.) One can also take

some other function of the utilities - other than the sum-total or the minimal element. Utilitarian equality is one type of welfarist equality. There are others, notably the equality of total utility. It is tempting to think of this as some kind of an analogue of utilitarianism shifting the focus from marginal utility to total utility. This correspondence is, however, rather less close than it might first appear. First of all, while we economists often tend to treat the marginal and the total as belonging to the same plane of discourse, there is an important difference between them. Marginal is an essentially counter-factual notion: marginal utility is the additional utility that would be generated if the person had one more unit of income. It contrasts what is observed with what allegedly would be observed if something else were different: in this case if the income had been one unit greater. Total is not, however, an inherently counter-factual concept; whether it is or is not would depend on the variable that is being totalled. In case of utilities, if they are taken to be observed facts, total utility will not be counter-factual. Thus total utility equality is a matter for direct observation, whereas utilitarian equality is not so, since the latter requires hypotheses as to what things would have been under different postulated circumstances. The contrast can be easily traced to the fact that utilitarian equality is essentially a consequence of sum maximization, which is itself a counter-factual notion, whereas total utility equality is an equality of some directly observed magnitudes. Second, utilitarianism provides a complete ordering of all utility distributions - the ranking reflecting the order of the sums of individual utilities- but as specified so far, total utility equality does not do more than just point to the case of absolute equality. In dealing with two cases of non-equal distributions, something more has to be said so that they could be ranked. The ranking can be completed in many different ways. One way to such a complete ranking is provided by the lexicographic version of the maximin rule, which is associated with the Rawlsian Difference Principle, but interpreted in terms of utilities as opposed to primary goods. Here the goodness of the state of affairs is judged by the level of utility of the worst-off person in that state; but if the worst-off persons in two states respectively have the same level of utility, then the states are ranked according to the utility levels of the second worst-off. If

they too tie, then by the utility levels of the third worst-off, and so on. And if two utility distributions are matched at each rank all the way from the worst off to the best off, then the two distributions are equally good. Following a convention established in social choice theory, I shall call this leximin. In what way does total utility equality lead to the leximin? It does this when combined with some other axioms, and in fact the analysis closely parallels the recent axiomatic derivations of the Difference Principle by several authors.18 Consider four utility levels a, b, c, d, in decreasing order of magnitude. One can argue that in an obvious sense the pair of extreme points (a, d) displays greater inequality than the pair of intermediate points (b, c) . Note that this is a purely ordinal comparison based on ranking only, and the exact magnitudes of a, b, c, and d make no difference to the comparison in question. If one were solely concerned with equality, then it could be argued that (b, c) is superior - or at least non-inferior - to (a, d) . This requirement may be seen as a strong version of preferring equality of utility distributions, and may be called "utility equality preference." It is possible to combine this with an axiom due to Patrick Suppes which captures the notion of dominance of one utility distribution over another, in the sense of each element of one distribution being at least as large as the corresponding element in the other distribution.

In the two-person case this requires that state x must be regarded as at least as good as y, either if each person in state x has at least as much utility as himself in state y, or if each person in state x has at least as much utility as the other person in state y. If, in addition, at least one of them has strictly more, then of course x could be declared to be strictly better (and not merely at least as good). If this Suppers principle and the "utility equality preference" are combined, then we are pushed in the direction of leximin. Indeed, leximin can be fully derived from these two principles by requiring that the approach must provide a com plete ordering of all possible states no matter what the interpersonally comparable individual utilities happen to be (called "unrestricted domain"), and that the ranking of any two states must depend on utility information concerning those states only (called "independence") .

Insofar as the requirements other than utility equality preference (i.e., the Suppes principle, unrestricted domain, and independence) are regarded as acceptable - and they have indeed been widely used in the social choice literature-leximin can be seen as the natural concomitant of giving priority to the conception of equality focussing on total utility. It should be obvious, however, that leximin can be fairly easily criticised from the prior-principle perspective as well as the caseimplication perspective. Just as utilitarianism pays no attention to the force of one's claim arising from one's disadvantage, leximin ignores claims arising from the intensity of one's needs. The ordinal characteristic that was pointed out while presenting the axiom of utility equality preference makes the approach insensitive to the magnitudes of potential utility gains and losses. While in the critique of utilitarianism that was presented earlier I argued against treating these potential gains and losses as the only basis of moral judgment, it was not of course alleged that these have no moral relevance at all. Take the comparison of (a, d) vis-à-vis (b, c), discussed earlier, and let (b, c) stand for (3, 2). Utility equality preference would assert the superiority of (3, 2) over (10, 1) as well as (4, 1). Indeed, it would not distinguish between the two cases at all. It is this lack of concern with "how much" questions that makes leximin rather easy to criticise either by showing its failure to comply with such priorprinciples as "giving equal weight to the equal interest of all parties," or by spelling out its rather austere implications in specific cases.

Aside from its indifference to "how much" questions, leximin also has little interest in "how many" questions-paying no attention at all to the number of people whose interests are overridden in the pursuit of the interests of the worst off. The worstoff position rules the roost, and it does not matter whether this goes against the interests of one other person, or against those of a million or a billion other persons. It is sometimes claimed that leximin would not be such an extreme criterion if it could be modified so that this innumeracy were avoided, and if the interests of one worse-off position were given priority over the interests of exactly one better-off position, but not necessarily against the interests of more than one better-off position. In fact, one can define a less

demanding version of leximin, which can be called leximin-2, which takes the form of applying the leximin principle if all persons other than two are indifferent between the alternatives, but not necessarily otherwise. Leximin-2, as a compromise, will be still unconcerned with "how much" questions on the magnitudes of utilities of the two non-indifferent persons, but need not be blinkered about "how many" questions dealing with numbers of people: the priority applies to one person over exactly one other. Interestingly enough, a consistency problem intervenes here. It can be proved that given the regularity conditions, viz., unrestricted domain and independence, leximin-2 logically entails leximin in general. That is, given these regularity conditions, there is no way of retaining moral sensitivity to the number of people on each side by choosing the limited requirement of leximin-2 without going all the way to leximin itself. It appears that indifference to how much questions concerning utilities implies indifference to how many questions concerning the number of people on different sides. One innumeracy begets another. Given the nature of these critiques of utilitarian equality and total utility equality respectively, it is natural to ask whether some combination of the two should not meet both sets of objections. If utilitarianism is attacked for its unconcern with inequalities of the utility distribution, and leximin is criticised for its lack of interest in the magnitudes of utility gains and losses, and even in the numbers involved, then isn't the right solution to choose some mixture of the two? It is at this point that the long-postponed question of the relation between utility and moral worth becomes crucial. While utilitarianism and leximin differ sharply from each other in the use that they respectively make of the utility information, both share an exclusive concern with utility data. If nonutility considerations have any role in either approach, this arises from the part they play in the determination of utilities, or possibly as surrogates for utility information in the absence of adequate utility data. A combination of utilitarianism and leximin would still be confined to the box of welfarism, and it remains to be examined whether welfarism as a general approach is itself adequate. One aspect of the obtuseness of welfarism was discussed clearly by John Rawls. In calculating the greatest balance of satisfaction it does not matter, except

indirectly, what the desires are for. We are to arrange institutions so as to obtain the greatest sum of satisfactions; we ask no questions about their source or quality but only how their satisfaction would affect the total of well-being. . . . Thus if men take a certain pleasure in discriminating against one another, in subjecting others to a lesser liberty as a means of enhancing their self-respect, then the satisfaction of these desires must be weighed in our deliberations according to their intensity, or whatever, along with other desires. . . . In justice as fairness, on the other hand, persons accept in advance a principle of equal liberty and they do this without knowledge of their more particular ends. . . . An individual who finds that he enjoys seeing others in positions of lesser liberty understands that he has no claim whatever to this enjoyment. The pleasure he takes in other's deprivation is wrong in itself: it is a satisfaction which requires the violation of a principle to which he would agree in the original position.

It is easily seen that this is an argument not merely against utilitarianism, but against the adequacy of utility information for moral judgments of states of affairs, and is, thus, an attack on welfarism in general. Second, it is clear that as a criticism of welfarism - and a fortiori as a critique of utilitarianism - the argument uses a principle that is unnecessarily strong. If it were the case that pleasures taken "in other's deprivation" were not taken to be wrong in itself, but simply disregarded, even then the rejection of welfarism would stand. Furthermore, even if such pleasures were regarded as valuable, but less valuable than pleasures arising from other sources (e.g., enjoying food, work, or leisure), welfarism would still stand rejected. The issue— as John Stuart Mill had noted-is the lack of "parity" between one source of utility and another. Welfarism requires the endorsement not merely of the widely shared intuition that any pleasure has some value - and one would have to be a bit of a kill-joy to dissent from this- but also the much more dubious proposition that pleasures must be relatively weighed only according to their respective intensities, irrespective of the source of the pleasure and the nature of the activity that goes with it. Finally, Rawls's argument takes the form of an

appeal to the priorprinciple of equating moral rightness with prudential acceptability in the original position. Even those who do not accept that prior principle could reject the welfarist no-nonsense counting of utility irrespective of all other information by reference to other prior principles, e.g., the irreducible value of liberty.

The relevance of non-utility information to moral judgments is the central issue involved in disputing welfarism. Libertarian considerations point towards a particular class of non-utility information, and I have argued elsewhere that this may require even the rejection of the so-called Pareto principle based on utility dominance.24 But there are also other types of non-utility information which have been thought to be intrinsically important. Tim Scanlon has recently discussed the contrast between "urgency" and utility (or intensity of preference), He has also argued that "the criteria of well-being that we actually employ in making moral judgments are objective," and a person's level of well-being is taken to be "independent of that person's tastes and interests." 25 These moral judgments could thus conflict with utilitarian - and more generally (Scanlon could have argued) with welfarist - moralities, no matter whether utility is interpreted as pleasure, or - as is increasingly common recently - as desire-fulfilment. However, acknowledging the relevance of objective factors does not require that well-being be taken to be independent of tastes, and Scanlon's categories are too pure. For example, a lack of "parity" between utility from self-regarding actions and that from other-regarding actions will go beyond utility as an index of well-being and will be fatal to welfarism, but the contrast is not, of course, independent of tastes and subjective features. "Objective" considerations can count along with a person's tastes. What is required is the denial that a person's well-being be judged exclusively in terms of his or her utilities. If such judgments take into account a person's pleasures and desire-fulfilments, but also certain objective factors, e.g., whether he or she is hungry, cold, or oppressed, the resulting calculus would still be non-welfarist. Welfarism is an extremist position, and its denial can take many different forms - pure and mixed - so long as totally ignoring non-utility information is avoided.

Second, it is also clear that the notion of urgency need not work only through the determinants of personal well-being - however broadly conceived. For example, the claim that one should not be exploited at work is not based on making exploitation an additional parameter in the specification of well-being on top of such factors as income and effort, but on the moral view that a person deserves to get what he - according to one way of characterizing production - has produced. Similarly, the urgency deriving from principles such as "equal pay for equal work" hits directly at discrimination without having to redefine the notion of personal well-being to take note of such discriminations. One could, for example, say: "She must be paid just as much as the men working in that job, not primarily because she would otherwise have a lower level of well-being than the others, but simply because she is doing the same work as the men there and why should she be paid less?" These moral claims, based on non-welfarist conceptions of equality, have played important parts in social movements, and it seems difficult to sustain the hypothesis that they are purely "instrumental" claims - ultimately justified by their indirect impact on the fulfilment of welfarist, or other well-being-based, objectives. Thus the dissociation of urgency from utility can arise from two different sources. One disentangles the notion of personal well-being from utility, and the other makes urgency not a function only of well-being. But, at the same time, the former does not require that well-being be independent of utility, and the latter does not necessitate a notion of urgency that is independent of personal well-being. Welfarism is a purist position and must avoid any contamination from either of these sources.

RAWLSIAN EQUALITY

Rawls's "two principles of justice" characterize the need for equality in terms of - what he has called - "primary social goods." These are "things that every rational man is presumed to want," including "rights, liberties and opportunities, income and wealth, and the social bases of self-respect." Basic liberties are separated out as having priority over other primary goods, and thus priority is given to the principle of liberty which

demands that "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others." The second principle supplements this, demanding efficiency and equality, judging advantage in terms of an index of primary goods. Inequalities are condemned unless they work out to everyone's advantage. This incorporates the "Di fference Principle" in which priority is given to furthering the interests of the worst-off. And that leads to maximin, or to leximin, defined not on individual utilities but on the index of primary goods. But given the priority of the liberty principle, no trade-offs are permitted between basic liberties and economic and social gain. Herbert Hart has persuasively disputed Rawls's arguments for the priority of liberty, but with that question I shall not be concerned in this lecture. What is crucial for the problem under discussion is the concentration on bundles of primary social goods. Some of the difficulties with welfarism that I tried to discuss will not apply to the pursuit of Rawlsian equality. Objective criteria of well-being can be directly accommodated within the index of primary goods. So can be Mill's denial of the parity between pleasures from different sources, since the sources can be discriminated on the basis of the nature of the goods. Furthermore, while the Difference Principle is egalitarian in a way similar to leximin, it avoids the much-criticised feature of leximin of giving more income to people who are hard to please and who have to be deluged in champagne and buried in caviar to bring them to a normal level of utility, which you and I get from a sandwich and beer. Since advantage is judged not in terms of utilities at all, but through the index of primary goods, expensive tastes cease to provide a ground for getting more income. Rawls justifies this in terms of a person's responsibility for his own ends. But what about the cripple with utility disadvantage, whom we discussed earlier? Leximin will give him more income in a pure distribution problem. Utilitarianism, I had complained, will give him less.

The Difference Principle will give him neither more nor less on grounds of his being a cripple. His utility disadvantage will be irrelevant to the Difference Principle. This may seem hard, and I think it is. Rawls justifies this by pointing out that "hard cases" can "distract our moral

perception by leading us to think of people distant from us whose fate arouses pity and anxiety." This can be so, but hard cases do exist, and to take disabilities, or special health needs, or physical or mental defects, as morally irrelevant, or to leave them out for fear of making a mistake, may guarantee that the opposite mistake will be made. And the problem does not end with hard cases. The primary goods approach seems to take little note of the diversity of human beings. In the context of assessing utilitarian equality, it was argued that if people were fundamentally similar in terms of utility functions, then the utilitarian concern with maximizing the sum-total of utilities would push us simultaneously also in the direction of equality of utility levels. Thus utilitarianism could be rendered vastly more attractive if people really were similar.

A corresponding remark can be made about the Rawlsian Difference Principle. If people were basically very similar, then an index of primary goods might be quite a good way of judging advantage. But, in fact, people seem to have very different needs varying with health, longevity, climatic conditions, location, work conditions, temperament, and even body size (affecting food and clothing requirements). So what is involved is not merely ignoring a few hard cases, but overlooking very widespread and real differences. Judging advantage purely in terms of primary goods leads to a partially blind morality. Indeed, it can be argued that there is, in fact, an element of "fetishism" in the Rawlsian framework. Rawls takes primary goods as the embodiment of advantage, rather than taking advantage to be a relationship between persons and goods. Utilitarianism, or leximin, or - more generally - welfarism does not have this fetishism, since utilities are reflections of one type of relation between persons and goods. For example, income and wealth are not valued under utilitarianism as physical units, but in terms of their capacity to create human happiness or to satisfy human desires. Even if utility is not thought to be the right focus for the person-good relationship, to have an entirely goodoriented framework provides a peculiar way of judging advantage. It can also be argued that while utility in the form of happiness or desire-fulfilment may be an inadequate guide to urgency, the Rawlsian framework asserts it to be irrelevant to urgency,

which is, of course, a much stronger claim. The distinction was discussed earlier in the context of assessing welfarism, and it was pointed out that a rejection of welfarism need not take us to the point in which utility is given no role whatsoever. That a person's interest should have nothing directly to do with his happiness or desire-fulfilment seems difficult to justify. Even in terms of the prior-principle of prudential acceptability in the "original position," it is not at all clear why people in that primordial state should be taken to be so indifferent to the joys and sufferings in occupying particular positions, or if they are not, why their concern about these joys and sufferings should be taken to be morally irrelevant.

BASIC CAPABILITY EQUALITY

This leads to the further question: Can we not construct an adequate theory of equality on the combined grounds of Rawlsian equality and equality under the two welfarist conceptions, with some trade-offs among them. I would now like to argue briefly why I believe this too may prove to be informationally short. This can, of course, easily be asserted if claims arising from considerations other than well-being were acknowledged to be legitimate. Non-exploitation, or non-discrimination, requires the use of information not fully captured either by utility or by primary goods. Other conceptions of entitlements can also be brought in going beyond concern with personal well-being only. But in what follows I shall not introduce these concepts. My contention is that even the concept of needs does not get adequate coverage through the information on primary goods and utility. I shall use a case-implication argument. Take the cripple again with marginal utility disadvantage. We saw that utilitarianism would do nothing for him; in fact it will give him less income than to the physically fit. Nor would the Difference Principle help him; it will leave his physical disadvantage severely alone.

He did, however, get preferential treatment under leximin, and more generally, under criteria fostering total equality. His low level of total utility was the basis of his claim. But now suppose that he is no worse off than others in utility terms despite his physical handicap because of

certain other utility features. This could be because he has a jolly disposition. Or because he has a low aspiration level and his heart leaps up whenever he sees a rainbow in the sky. Or because he is religious and feels that he will be rewarded in after-life, or cheerfully accepts what he takes to be just penalty for misdeeds in a past incarnation. The important point is that despite his marginal utility disadvantage, he has no longer a total utility deprivation. Now not even leximin— or any other notion of equality focussing on total utility – will do much for him. If we still think that he has needs as a cripple that should be catered to, then the basis of that claim clearly rests neither in high marginal utility, nor in low total utility, norof course - in deprivation in terms of primary goods. It is arguable that what is missing in all this framework is some notion of "basic capabilities": a person being able to do certain basic things. The ability to move about is the relevant one here, but one can consider others, e.g., the ability to meet one's nutritional requirements, the wherewithal to be clothed and sheltered, and the power to participate in the social life of the community. The notion of urgency related to this is not fully captured by either utility or primary goods, or any combination of the two.

Primary goods suffers from fetishist handicap in being concerned with goods, and even though the list of goods is specified in a broad and inclusive way, encompassing rights, liberties, opportunities, income, wealth, and the social basis of self-respect, it still is concerned with good things rather than with what these good things do to human beings. Utility, on the other hand, is concerned with what these things do to human beings, but uses a metric that focusses not on the person's capabilities but on his mental reaction. There is something still missing in the combined list of primary goods and utilities. If it is argued that resources should be devoted to remove or substantially reduce the handicap of the cripple despite there being no marginal utility argument (because it is expensive), despite there being no total utility argument (because he is so contented), and despite there being no primary goods deprivation (because he has the goods that others have), the case must rest on something else. I believe what is at issue is the interpretation of

needs in the form of basic capabilities. This interpretation of needs and interests is often implicit in the demand for equality. This type of equality I shall call "basic capability equality."

The focus on basic capabilities can be seen as a natural extension of Rawls's concern with primary goods, shifting attention from goods to what goods do to human beings. Rawls himself motivates judging advantage in terms of primary goods by referring to capabilities, even though his criteria end up focussing on goods as such: on income rather than on what income does, on the "social bases of self-respect" rather than on self-respect itself, and so on. If human beings were very like each other, this would not have mattered a great deal, but there is evidence that the conversion of goods to capabilities varies from person to person substantially, and the equality of the former may still be far from the equality of the latter. There are, of course, many difficulties with the notion of "basic capability equality." In particular, the problem of indexing the basic capability bundles is a serious one.

It is, in many ways, a problem comparable with the indexing of primary good bundles in the context of Rawlsian equality. This is not the occasion to go into the technical issues involved in such an indexing, but it is clear that whatever partial ordering can be done on the basis of broad uniformity of personal preferences must be supplemented by certain established conventions of relative importance. The ideas of relative importance are, of course, conditional on the nature of the society. The notion of the equality of basic capabilities is a very general one, but any application of it must be rather culture-dependent, especially in the weighting of different capabilities. While Rawlsian equality has the characteristic of being culture-dependent and fetishist, basic capability equality avoids fetishism, but remains culture-dependent. Indeed, basic capability equality can be seen as essentially an extension of the Rawlsian approach in a non-fetishist direction.

Check Your Progress 1

Note : a) Use the space provided for your answer.

b) Check your answer with those provided at the end of this unit.

1. Equality of What? (Welfare, Resources, Capability).

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9.3 LUCK EGALITARIANISM AND ITS CRITIQUE (ELIZABETH ANDERSON)

If much recent academic work defending equality had been secretly penned by conservatives, could the results be any more embarrassing for egalitarians? Consider how much of this work leaves itself open to classic and devastating conservative criticisms. Ronald Dworkin defines equality as an "envy-free" distribution of resources.' This feeds the suspicion that the motive behind egalitarian policies is mere envy. Philippe Van Parijs argues that equality in conjunction with liberal neutrality among conceptions of the good requires the state to support lazy, able-bodied surfers who are unwilling to work. This invites the charge that egalitarians support irresponsibility and encourage the slothful to be parasitic on the productive. Richard Arneson claims that equality requires that, under certain conditions, the state subsidize extremely costly religious ceremonies that its citizens feel bound to perform. G. A. Cohen tells us that equality requires that we compensate people for being temperamentally gloomy, or for being so incurably bored by inexpensive hobbies that they can only get fulfilling recreation from expensive diversions. These proposals bolster the objection that egalitarians are oblivious to the proper limits of state power and permit coercion of others for merely private ends. Van Parijs suggests that to fairly implement the equal right to get married, when male partners are

scarce, every woman should be given an equal tradable share in the pool of eligible bachelors and have to bid for whole partnership rights, thus implementing a transfer of wealth from successful brides to compensate the losers in love. This supports the objection that egalitarianism, in its determination to correct perceived unfairness everywhere, invades our privacy and burdens the personal ties of love and affection that lie at the core of family life. Those on the left have no less reason than conservatives and libertarians to be disturbed by recent trends in academic egalitarian thought. First, consider those whom recent academic egalitarians have singled out for special attention: beach bums, the lazy and irresponsible, people who can't manage to entertain themselves with simple pleasures, religious fanatics. Thomas Nagel6 and Gerald Cohen give us somewhat more sympathetic but also pitiable characters in taking stupid, talentless, and bitter people to be exemplary beneficiaries of egalitarian concern. What has happened to the concerns of the politically oppressed? What about inequalities of race, gender, class, and caste? Where are the victims of nationalist genocide, slavery, and ethnic subordination? Second, the agendas defined by much recent egalitarian theorizing are too narrowly focused on the distribution of divisible, privately appropriated goods, such as income and resources, or privately enjoyed goods, such as welfare.

This neglects the much broader agendas of actual egalitarian political movements. For example, gay and lesbian people seek the freedom to appear in public as who they are, without shame or fear of violence, the right to get married and enjoy benefits of marriage, to adopt and retain custody of children. The disabled have drawn attention to the ways the configuration of public spaces has excluded and marginalized them, and campaigned against demeaning stereotypes that cast them as stupid, incompetent, and pathetic. Thus, with respect to both the targets of egalitarian concern and their agendas, recent egalitarian writing seems strangely detached from existing egalitarian political movements. What has gone wrong here? I shall argue that these problems stem from a flawed understanding of the point of equality. Recent egalitarian writing has come to be dominated by the view that the fundamental aim of

equality is to compensate people for undeserved bad luck-being born with poor native endowments, bad parents, and disagreeable personalities, suffering from accidents and illness, and so forth. I shall argue that in focusing on correcting a supposed cosmic injustice, recent egalitarian writing has lost sight of the distinctively political aims of egalitarianism. The proper negative aim of egalitarian justice is not to eliminate the impact of brute luck from human affairs, but to end oppression, which by definition is socially imposed. Its proper positive aim is not to ensure that everyone gets what they morally deserve, but to create a community in which people stand in relations of equality to others.

The theory I shall defend can be called "democratic equality." In seeking the construction of a community of equals, democratic equality integrates principles of distribution with the expressive demands of equal respect. Democratic equality guarantees all law-abiding citizens effective access to the social conditions of their freedom at all times. It justifies the distributions required to secure this guarantee by appealing to the obligations of citizens in a democratic state. In such a state, citizens make claims on one another in virtue of their equality, not their inferiority, to others. Because the fundamental aim of citizens in constructing a state is to secure everyone's freedom, democratic equality's principles of distribution neither presume to tell people how to use their opportunities nor attempt to judge how responsible people are for choices that lead to unfortunate outcomes. Instead, it avoids bankruptcy at the hands of the imprudent by limiting the range of goods provided collectively and expecting individuals to take personal responsibility for the other goods in their possession.

The resulting theories of equality of fortune thus share a common core: a hybrid of capitalism and the welfare state. For the outcomes for which individuals are held responsible, luck egalitarians prescribe rugged individualism: let the distribution of goods be governed by capitalist markets and other voluntary agreements.' This reliance on markets responds to the objection that egalitarianism does not appreciate the

virtues of markets as efficient allocative mechanisms and as spaces for the exercise of freedom. For the outcomes determined by brute luck, equality of fortune prescribes that all good fortune be equally shared and that all risks be pooled. "Good fortune" means, primarily, unproduced assets such as unimproved land, natural resources, and the income attributable to native endowments of talent. Some theorists would also include the welfare opportunities attributable to possession of unchosen favorable mental and physical traits. "Risks" mean any prospects that reduce one's welfare or resources. Luck egalitarians thus view the welfare state as a giant insurance company that insures its citizens against all forms of bad brute luck. Taxes for redistributive purposes are the moral equivalent of insurance premiums against bad luck. Welfare payments compensate people against losses traceable to bad brute luck, just like insurance policies do.

9.4 EQUALITY, PRIORITY OR SUFFICIENCY (SCHEFFLER, PARFIT, FRANFURT)

Scheffler

In “What is Egalitarianism?” Samuel Scheffler argues that the luck egalitarian (LE) answer to that question is inadequate, in part because it misconstrues the nature of the question. The article has three primary aims:

To disprove the claim Rawls’s arguments in A Theory of Justice, when properly understood, imply luck egalitarianism or supply its fundamental motivation;

To argue that luck egalitarianism is a flawed interpretation of the ideal of social equality;

To argue that plausible forms of egalitarianism ought to be animated by a vision of a society of social and political equals; concerns for distributive equality are most powerful when derived from this broader egalitarian ideal.

Scheffler's argument strikes me as right on all three counts (especially the first and last). The last idea –it should be noted—is not original to Scheffler. It forms the backbone of Rawls's own conception of justice, and has been forcefully defended by Elizabeth Anderson in her classic paper "What's the Point of Equality?" In several ways, Scheffler's paper should be read as a supplement to Anderson's. In this post, I sketch the main arguments of Scheffler's paper.

Luck Egalitarianism

The core idea behind luck egalitarianism is that 'inequalities in the advantages that people enjoy are acceptable if they derive from the choices that people have voluntarily made, but that inequalities deriving from unchosen features of people's circumstances are unjust.' These 'unchosen circumstances' include both social factors (e.g. one's class and the family one is born into) and nature factors (e.g. native talents and abilities).

This view both overlaps with and diverges from what Scheffler calls the 'prevailing political morality [=PPM] in most liberal societies' (whether there is such a thing, I do not know) in two dimensions. First, although PPM agrees with luck egalitarians that many inequalities deriving from people's circumstances – particularly, their social circumstances—are unjust, luck egalitarianism goes far beyond PPM, which readily tolerates inequalities derived from unequal natural endowments. Second, while PPM agrees luck egalitarians with luck egalitarians that some inequalities (e.g. choosing to work longer hours) deriving from choices are tolerable, PPM does not, in general, attempt to identify which inequalities result from choices and which result from circumstances.

A Rawlsian Motivation for Luck Egalitarianism

A standard story about the motivation for luck egalitarian traces its origins to Rawls. Indeed, luck egalitarians claim, that LE is more faithful to two basic motivations for Rawls's principles of justice. The first

motivation –found textually in Rawls's reject of the system of natural liberty as a distributive model—is that egalitarian views ought to 'mitigate the influence of social contingencies and natural fortunes on distributive shares' because these factors are morally arbitrary. The second motivation—found in Rawls's discussion of his reasons for adopting primary goods as the appropriate basis for interpersonal comparisons –holds that it is morally relevant that citizens have the capacity to assume responsibility for their own ends. Rawls's own theory, luck egalitarians then argue, is unfaithful to these two insights, for (1) the difference principle does not make special provisions for those who have medical needs which results from unchosen natural conditions, and (2) its maximization of the position of the worst off is insensitive to the fact that some members of that class might have simply chosen the work less.

Some luck egalitarians, on the basis of this reading of Rawls, conclude that Rawls is being inconsistent. Scheffler thinks this interpretation is a mistake: the reason Rawls does not respect the choice/circumstances distinction is because he is not attempting to respect it. Rawls's theory derives from different premises. Moreover, it relies on a different conception of equality that is not, in the first case, distributive. Scheffler takes up these points later in the essay. But first, he registers some more general doubts about luck egalitarianism.

Luck Egalitarianism and Utilitarianism

Scheffler begins by pushing a parallel between utilitarianism and luck egalitarianism.

First, transforming the claim that we should maximize welfare into the claim that we should equalize welfare, certain objections are also transformed: the utility monster objection becomes the problem of expensive tastes.

Second, like some utilitarians, luck egalitarians have focused on addressing internal debates, and more on developing their own positions. Luck egalitarians have typically focused on two questions: (1) what should egalitarians equalize? (2) which forms of disadvantage should receive compensation in the name of equality. As a result, there has been little defense of the 'moral core' of luck egalitarianism. Yet, there are several objections one might make to LE.

Standard Doubts about Luck Egalitarianism

(1) The distinction between choices and circumstances cannot bear the philosophical weight placed upon it. This can be seen from looking at some problems with how is the distinction is typically cashed out.

–According to the simple model, whatever belongs to the causal order is beyond an individual's control and does not implicate his personhood, and whatever is voluntary is fully under the individuals control. This is untenable: unchosen circumstances are constitutive of one's identity, and ordinary choices are influenced by unchosen aspects of a person's life and circumstances. The simple view seems to presuppose an implausible metaphysics of choice.

–According to Dworkin's view, the distinction should be draw from 'ordinary ethical experience'. This means that things not strictly voluntary or chosen belong on the 'choice' side of the line, for two reasons: (a) certain personality features are relevant to one's choices and (b) people identity – 'take responsibility for,' in Fischer and Ravizza's phrase—aspects of their identity that are not chosen (such as expensive tastes). This way of drawing the line fails to justify LE. Like certain personality traits, many of people's natural talents (for example) are relevant to their choices in the way Dworkin suggests, and people take responsibility for them.

(2) LE places too much moral weight on choice. It is morally implausible that all unchosen disadvantages ought to be compensated, while all

chosen ones ought not. Both sides of the generality fail: many unchosen attributes do not merit compensation; controversially, a person's urgent needs merit treatment, even if they result from his own foolish choices.

(3) LE treats equality as an 'essentially distributive ideal' whose fundamental aim is to minimize the influence of brute luck. As a result, it encourages 'strongly inward looking' judgments and highly moralized assessments of the responsibility the disadvantaged share for their own misfortune. This is both epistemically difficult and morally problematic.

Luck Egalitarianism and Relational Egalitarianism

Scheffler then suggests an alternative way to think about egalitarianism: equality is not, in the first instance, a distributive consideration, but 'a moral ideal governing the relations in which people stand to one another.' The animating idea is that 'everyone's life is equally important and that all members of society have equal standing'. The fundamental egalitarian concern is not minimizing luck, but oppression. Scheffler terms the ideal here 'the social and political ideal of equality'.

This social and political ideal has distributive implications. It may even require that certain things be equalized. But 'unless distributive egalitarianism is anchored in some version of [the social and political ideal]…it will be arbitrary, pointless [and] fetishistic.

If one acknowledges this point, the appeal of luck egalitarianism seems limited, Scheffler thinks. For the social and political ideal of equality seems not to support LE. On this view, the fundamental concern of egalitarians ought to be ensuring that political and social arrangements are not incongruous with the idea of a society of equals. If this is right, we ought to care about (e.g.) that people's basic needs are met, that certain vast inequalities are eliminated. This may mean that some elements of luck are minimized. But the ambition behind addressing the effects of luck is very different.

Why Luck Egalitarianism is Not Rawlsian?

This background helps explain why Scheffler thinks that luck egalitarianism is not Rawlsian. Rawls, in fact, contrasts his own conception of justice with the 'principle of redress,' suggesting the two cohere in some ways, but are ultimately different. Rather than concern himself with minimizing luck, Rawls's concern is with what it takes to create a 'fair system of cooperation among free and equal people'.

His discussion of the moral arbitrariness of natural attributes should be read in this context. Rawls's claim is that the 'system of natural liberty' allows people's material prospects to be influenced by natural assets and social circumstances to too great an extent. His objection has two components: (1) that such factors are morally arbitrary, and (2) that a system which tacks natural and social contingencies will compromise the status of some citizens as equals.

Rawls's defense of primary goods should be similarly so read. Here, is point about responsibility is not a metaphysical distinction between voluntary choices and unchosen circumstances. It is rather a point about how his principles allocate responsibility between society and the inidivudual. Rawls's suggestion is that it is reasonable that citizens do their fair share and, viewing them as free, we ought to regard their ends as adjustable.

Rawls's views may be subject to several criticisms (in particular, his views about leisure time and health care). But, Scheffler argues, the underlying idea is that of ensuring and preserving everyone's status in a society of equals.

Scheffler suggests there are two conclusions to draw from this: (1) if LE is looking for a rationale, it must look beyond Rawls; (2) a plausible for of distributive egalitarianism can be anchored in 'a more general conception of equality as a social and political ideal'. Indeed, the later forms, in Scheffler's view, the 'core' value of equality:

The core of the value of equality does not, according to this understanding, consist in the idea that there is something that must be distributed or allocated equally, and so the interpretation of the value does not consist primarily in seeking to ascertain what that something is. Instead, the core of the value is a normative conception of human relations, and the relevant question, when interpreting the value, is what social, political, and economic arrangements are compatible with that conception (200).

Luck Egalitarianism and The Value of Equality

Luck egalitarians can either reject the view of equality Scheffler has argued for, or argue that it implies LE. In the final section of the paper, Scheffler considers whether LE can be anchored in the social and political conception of equality after all.

It may seem, initially, that it can: LE is an attempt to make sense of the idea that people have equal worth and, as such, they should not be made worse off by factors beyond their control. But this idea is only part of LE. Luck egalitarians also believe it is not unfair that some are worse off as a result of their choices. Arguing that this view of persons follows from equal respect at least requires argument; it seems less plausible than the 'common view' that the fairness circumstances depends on background institutional contexts and relational concerns.

Scheffler also considers and rejects Dworkin's attempt to ground LE in the idea of equality as 'equal treatment'. I will not summarize this part of the text.

Scheffler concludes by suggesting that most compelling versions of that idea, both politically and philosophically, will be those whose source in an ideal of genuine social equality can be vividly and convincingly demonstrated (207).

Parfit

In his article, Parfit 'Equality', Nagel imagines that he has two children, one healthy and happy, the other suffering from a painful handicap. He could either move to a city where the second child could receive special treatment, or move to a suburb where the first child would flourish. Nagel writes: This is a difficult choice on any view. To make it a test for the value of equality, I want to suppose that the case has the following feature: the gain to the first child of moving to the suburb is substantially greater than the gain to the second child of moving to the city. He then comments: If one chose to move to the city, it would be an egalitarian decision. It is more urgent to benefit the second child, even though the benefit we can give him is less than the benefit we can give to the first child. This urgency is not necessarily decisive. It may be outweighed by other considerations, for equality is not the only value. But it is a factor, and it depends on the worse off position of the second child.' My aim, in this lecture, is to discuss this kind of egalitarian reasoning. Nagel's decision turns on the relative importance of two facts: he could give one child a greater benefit, but the other child is worse off. There are countless cases of this kind. In these cases, when we are choosing between two acts or policies, one relevant fact is how great the resulting benefits would be. For Utilitarians, that is all that matters. On their view, we should always aim for the greatest sum of benefits. But, for Egalitarians, it also matters how well off the beneficiaries would be. We should sometimes choose a smaller sum of benefits, for the sake of a better distribution. How can we make a distribution better? Some say: by aiming for equality between different people. Others say: by giving priority to those who are worse off. As we shall see, these are different ideas. Should we accept these ideas? Does equality matter? If so, when and why? What kind of priority, if any, should we give to those who are worse off? These are difficult questions, but their subject matter is, in a way, simple. It is enough to consider different possible states of affairs, or outcomes, each involving the same set of people. We imagine that we know how well off, in these outcomes, these people would be. We then ask whether either outcome would be better, or would be the outcome

that we ought to bring about. This subject we can call the ethics of distribution. Some writers reject this subject. For example, Nozick claims that we should not ask what would be the best distribution, since that question wrongly assumes that there is something to be distributed. Most goods, Nozick argues, are not up for distribution, or redistribution.

They are goods to which particular people already have entitlements, or special claims. To decide what justice demands, we cannot look merely at the abstract pattern: at how well off, in the different outcomes, different people would be. We must know these people's histories, and how each situation came about. Others make similar claims about merit, or desert. To be just, these writers claim, we must give everyone their due, and people's dues depend entirely on the differences between them, and on what they have done. As before, it is these other facts which are morally decisive. These objections we can here set aside. We can assume that, in the cases we are considering, there are no such differences between people. No one deserves to be better off than anyone else; nor does anyone have entitlements, or special claims. Since there are some cases of this kind, we have a subject. If we can reach conclusions, we can then consider how widely these apply. Like Rawls and others, I believe that, at the fundamental level, most cases are of this kind. But that can be argued later

Franfurt

Harry Frankfurt’s newest book, another slim volume modeled after his best-selling 2005 On Bullshit, is not really about inequality. Rather, and this distinction is important to Frankfurt’s entire purpose, the book contains a strident argument against economic equality as an independent moral imperative. “Against Equality,” then, might have been a better title.

Put simply, Frankfurt believes that economic equality is not a worthy goal for its own sake. He thinks we should pursue the goal of the elimination of poverty (a condition in which some people have too little)

rather than the goal of the equality of resources (a condition in which everyone has the same amount). On Inequality contains just two chapters, lightly updated versions of essays Frankfurt published in the 1980s and 1990s titled "Equality as a Moral Ideal" and "Equality and Respect." These chapters make two versions of essentially the same point: "equality as such has no inherent or underived moral value at all."

You might ask why I'm making all this fuss about terms. Isn't an argument against equality as a moral imperative relevant to contemporary debates about inequality? Well, no. In Frankfurt's own words: "nothing I shall say concerning these issues implies anything of substance as to the kinds of social or political policies it may be desirable to pursue or avoid." There is a vigorous debate concerning the causes and consequences of the recent rise of inequality in the United States, and the possible policy responses that might decrease inequality or its pernicious effects. If you are looking for a book relevant to this debate, look elsewhere.

Instead, Frankfurt devotes his book to attacking the doctrine of "economic egalitarianism," the idea that "it is desirable for everyone to have the same amounts of income and of wealth." He argues that egalitarians have put their emphasis in the wrong place. The problem is not inequality as such, but that some people do not have "enough." Put differently, Frankfurt argues that ending poverty is a moral imperative, but achieving economic equality is not. This argument proceeds via a rebuttal of certain claims made about the diminishing marginal utility of income (the idea that one dollar provides less enjoyment to a millionaire than to someone in poverty).

Frankfurt provides several (highly stylized) counterexamples when economic equality actually produces clearly worse outcomes to some kind of inequality and thus correctly notes that diminishing marginal utility isn't sufficient to guarantee that complete equality maximizes social welfare. My favorite hypothetical is a desert island–style example where 10 people have enough food for eight to survive if two people are

given none, but all will starve if the food is divided evenly. Fair enough, and worth keeping in mind if one is trapped on a desert island with precise knowledge of one's food supply and time to rescue. Frankfurt thus contributes to an old genre of debate about the problem of adding up individual utility functions to make claims about optimal policymaking — or, as is more often the case, to clarify what claims we can't make.

Frankfurt's book is a philosophical treatise on how complete economic equality fails as a moral compass. I can imagine a world in which such an argument would be an important intervention. I do not believe we live in that world. Who exactly is Frankfurt arguing against? As a sociologist who studies the history of debates over income inequality, I admit to significant confusion. Frankfurt never really cites examples of the argument he is criticizing; he seemingly takes for granted that proponents of radical equality are everywhere. Perhaps they are, in some corner of American philosophy. In the public debate over economic inequality, I have not seen any. Even communists argue "to each according to his need," which is not exactly a call for complete equality: it is, instead, rooted in the concern for having "enough" that Frankfurt thinks should be paramount.

Instead, as Frankfurt admits, that public debate focuses on inequality because of its pernicious effects. We care about inequality not because we believe that everyone should have the exact same economic resources but because contemporary inequality has grown to a level that is recognized to have terrible consequences. Research by academics across the social sciences has shown how increased inequality — and especially the growing affluence of the very rich, documented by economists Thomas Piketty, Emmanuel Saez, and colleagues — produces harmful effects for our politics, our health, and our economy itself. The political scientists Martin Gilens and Benjamin Page argue that the opinions of economic elites have far more influence on policy outcomes than the opinions of average Americans. In turn, Jacob Hacker and Paul Pierson argue that this outsized policy influence helps create inequality, as economic elites use their control of policy to weaken unions and lower

taxes. Beyond politics, the epidemiologists Richard Wilkinson and Kate Pickett document, in their book The Spirit Level, how unequal societies fare worse across various measures of population health including life expectancy, obesity, and more. And a new literature in economics has begun to find evidence that more equal economies experience faster economic growth, contrary to conventional wisdom about a tradeoff between equality and efficiency.

Frankfurt agrees that there are compelling reasons to care about real-world inequality, but he argues that we should not hold the principle of economic equality sacred. Instead, we should focus on fighting inequality to the extent that such inequalities produce negative effects. To my eye, that seems to be an accurate characterization of political debates on the left. So what's the problem?

Frankfurt does attempt to motivate his argument around one negative consequence of holding economic equality as an independent moral imperative. He claims that valuing economic equality (rather than the elimination of poverty) leads to a form of "alienation." By this he means not alienation in the Marxist sense, but rather a jealous materialism where individuals care more about what others have than whether they have enough and thus contribute to "the moral disorientation and shallowness of our time." On reading these lines, I admit to experiencing a bit of moral disorientation myself. From the vantage point of 2015, the current mobilization for economic justice seems to be a very healthy political response to the worsening inequality of the past 30 years and the attendant negative consequences. Frankfurt looks at calls for economic equality and somehow sees a reinforcement of crass materialism. I don't get it.

Perhaps Frankfurt's case could have been strengthened if he'd included any examples of actual egalitarian discourse. His discussions of economic egalitarianism largely take the form of attacking a doctrine, not presenting any examples of its deployment in political debates. I suppose that's to be expected from a philosopher, but it makes understanding and

substantiating a claim about the supposed alienating effects of egalitarian discourse very difficult. Put another way: Frankfurt makes an empirical claim that egalitarian doctrines produce alienation, but offers no evidence for that claim.

The one example provided of contemporary political discourse is an unsourced quote from President Obama calling inequality "the defining challenge of our time." Frankfurt then chides him for overemphasizing inequality instead of poverty: "It seems to me, however, that our most fundamental challenge is not the fact that the incomes of Americans are widely unequal. It is, rather, the fact that too many of our people are poor." Frankfurt misreads the president, and this example suggests how he misreads the entire contemporary debate on inequality. President Obama's quote comes from a speech titled "Remarks by the President on Economic Mobility" in which he identifies mobility combined with inequality as the "defining challenge." The tone of the speech is very much in line with Frankfurt's idea of emphasizing having enough. President Obama frames the challenge of mobility around the problem of middle class families no longer feeling like they are getting by: "Their frustration is rooted in their own daily battles — to make ends meet, to pay for college, buy a home, save for retirement." In other words, we have defined enough in a way that many people can no longer meet it, because the gaps between the haves and have-nots have grown, and fewer and fewer people can achieve the status of "haves." Obama's quote is not an example of valuing equality for its own sake, but a measured response rooted in an understanding of the negative consequences that have flowed from increases in inequality and declines in mobility.

Frankfurt's On Inequality ultimately disappoints. If you happen upon a philosophical debate about the merits of complete economic equality — perhaps conducted during those long empty hours on your desert island — Frankfurt's book will prove invaluable. Alas, for the rest of us, an argument against equality tells us next to nothing about inequality.

Check Your Progress 2

Note : a) Use the space provided for your answer.

b) Check your answer with those provided at the end of this unit.

1. Discuss Luck egalitarianism and its critique (Elizabeth Anderson).

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2. Write Equality, Priority or Sufficiency (Scheffler, Parfit, Franfurt).

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9.5 LET US SUM UP

I end with three final remarks. First, it is not my contention that basic capability equality can be the sole guide to the moral good. For one thing morality is not concerned only with equality.

For another, while it is my contention that basic capability equality has certain clear advantages over other types of equality, I did not argue that the others were morally irrelevant. Basic capability equality is a partial guide to the part of moral goodness that is associated with the idea of equality. I have tried to argue that as a partial guide it has virtues that the other characterisations of equality do not possess. Second, the index of basic capabilities, like utility, can be used in many different ways. Basic capability equality corresponds to total utility equality, and it can be extended in different directions, eg., to leximin of basic capabilities. On the other hand, the index can be used also in a way similar to

utilitarianism, judging the strength of a claim in terms of incremental contribution to enhancing the index value. The main departure is in focussing on a magnitude different from utility as well as the primary goods index. The new dimension can be utilised in different ways, of which basic capability equality is only one. Last, the bulk of this lecture has been concerned with rejecting the claims of utilitarian equality, total utility equality, and Rawlsian equality to provide a sufficient basis for the equalityaspect of morality - indeed, even for that part of it which is concerned with needs rather than deserts. I have argued that none of these three is sufficient, nor is any combination of the three. This is my main thesis. I have also made the constructive claim that this gap can be narrowed by the idea of basic capability equality, and more generally by the use of basic capability as a morally relevant dimension taking us beyond utility and primary goods. I should end by pointing out that the validity of the main thesis is not conditional on the acceptance of this constructive claim.

9.6 KEY WORDS

Equality:Social equality is a state of affairs in which all people within a specific society or isolated group have the same status in certain respects, possibly including civil rights, freedom of speech, property rights and equal access to certain social goods and social services.

Priority:the fact or condition of being regarded or treated as more important than others.

Sufficiency:the condition or quality of being adequate or sufficient.

9.7 QUESTIONS FOR REVIEW

3. Equality of What? (Welfare, Resources, Capability).
4. Discuss Luck egalitarianism and its critique (Elizabeth Anderson).
5. Write Equality, Priority or Sufficiency (Scheffler, Parfit, Franfurt).

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- On the last point, see W.D. Ross, Foundations of Ethics, p. 89

9.9 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. See Section 9.3

Check Your Progress 2

1. See Section 9.4
2. See Section 9.5

UNIT 10: DEBATES ON JUSTICE

STRUCTURE

10.0 OBJECTIVES

After this unit, we can able to understand:

- To discuss the Consequentialist vs. Deontological (Utilitarians, Rawls, Nozick)
- To know the Justice as Fairness (Rawls)
- To describe Communitarian and Feminist Conceptions (Walzer, Sandel, Okin)
- To highlight the Global Justice (Thomas Pogge)

10.1 INTRODUCTION

Few issues have the power to both unite and divide like criminal justice. Progressive reform efforts -- including the 2018 First Step Act -- have created unlikely (if temporary) political alliances across the ideological spectrum from President Donald Trump and his senior adviser Jared Kushner to House Speaker Nancy Pelosi and Kim Kardashian West. Yet criminal justice has become one of the most hotly contested issues among 2020 Democratic presidential candidates, driving sharp wedges

between leading contenders. Look for criminal justice to emerge as a defining issue at this week's debates, throughout the Democratic primaries and, ultimately, in the general election.

Much of the fire has been aimed at current Democratic frontrunner and former Vice President Joe Biden, who -- as chair of the Senate Judiciary Committee -- was a driving force behind the 1994 Violent Crime Control and Law Enforcement Act. The bill, which Democrats advanced to combat the "soft on crime" label, created a federal "three strikes" law requiring mandatory life imprisonment for certain offenders, provided billions of dollars in federal funding to hire police officers and build prisons, financially incentivized states to require inmates to serve higher proportions of their sentences, and expanded the federal death penalty.

While the 1994 bill also contained certain progressive features -- including an assault rifle ban and funding to promote community policing, require background checks on guns and create drug courts -- it now has emerged as a paragon of destructive tough-on-crime policies that contributed to mass incarceration and exacted a disproportionate toll on African American and other minority communities. This view of the federal 1994 crime bill as the dominant cause of mass incarceration is debatable. In fact, the vast majority of incarceration occurs at the state level, and incarceration rates were rising generally -- and among minorities, well before the bill's passage. But, at a minimum, the 1994 bill maintained and expanded certain pre-existing policies that contributed to mass incarceration.

Democratic candidates are on the attack. New Jersey Sen. Cory Booker has argued, "That crime bill was shameful, what it did to black and brown communities like mine (and) low-income communities from Appalachia to rural Iowa." Booker later bluntly called Biden an "architect of mass incarceration." California Sen. Kamala Harris similarly has claimed that the 1994 bill "did contribute to mass incarceration in our country." Biden's own fiery and racially-tinged rhetoric -- including a 1993 speech in which he warned of "predators on

the streets" who were "beyond the pale" -- could create devastating sound bites that his opponents likely will weaponize against him.

Biden has defended his support for the crime bill, arguing that "it did not generate mass incarceration." And he now has swung hard toward progressive criminal justice policies, recently rolling out a plan to eliminate certain mandatory minimum sentences, end cash bail and end the federal death penalty, among other features. But Biden's prior actions and words may be more than he can fix with a policy proposal now.

Even the staunchest supporters of the 1994 crime bill have since retreated. Vermont Sen. Bernie Sanders (who was in the House of Representatives at the time) recently conceded, "I'm not happy I voted for a terrible bill." President Bill Clinton, who signed the bill into law, in 2015 completed a full backtrack, declaring that he "signed a bill that made the problem worse and I want to admit it."

President Donald Trump -- likely sensing an opportunity to sow discord among his Democratic rivals and to take a shot at potential general election foes Biden and Sanders -- has eagerly jumped in on the action, tweeting that "Anyone associated with the 1994 Crime Bill will not have a chance of being elected" and touting his own support of the First Step Act.

While Harris and Booker throw haymakers over the 1994 bill, they must also guard their own flanks on criminal justice. Harris has come under fire for her policies and practices as San Francisco district attorney and then California attorney general, including fighting against a ban on the death penalty, opposing legalization of marijuana, opposing statewide standards on use of police body cameras and fighting to uphold controversial convictions based on tainted or questionable evidence. Harris has defended her record, arguing that she was a "progressive prosecutor," and rolling out a criminal justice reform plan for her presidential campaign.

And Biden recently attacked Booker for his record as mayor of Newark, New Jersey, where systematic civil rights violations by the police department caused the Department of Justice to intervene. Biden claims Booker objected to federal intervention, but Booker has defended his record.

There are few issues before the candidates that are as dynamic, multidimensional and potentially explosive as criminal justice reform. In a field of contenders seeking differentiation, expect to see the leading contenders go hard after one another at this week's debates and beyond.

Pelosi is setting the bar higher than it needs to be, apparently as a hybrid political-legal play. Pelosi claimed this week that Mueller's testimony established "crimes that were committed against our Constitution," while Nadler declared that Trump had committed "high crimes and misdemeanors" -- the precise standard for impeachment set forth in Article 2 of the Constitution. Yet, curiously, Pelosi and Nadler also claim that they need more evidence before proceeding on impeachment, though Nadler also has (paradoxically) asserted that he personally believes Trump "richly deserves impeachment."

But if there is already evidence that the President has committed crimes, and if Trump already "richly deserves impeachment," then why does the House need more before moving to impeach? Legally, there is no requirement that the House obtain anything beyond the Mueller report itself. In 1998, the House impeached then-President Bill Clinton based on the written report of Independent Counsel Kenneth Starr and the underlying evidence, without anything new or supplemental.

The move here is part political and part legal. Politically, the "we need more evidence" refrain allows Pelosi to continue walking a fine line to satisfy the different factions within the House Democratic Caucus. And, legally, House Democrats have filed suit seeking Mueller's grand jury information and have promised court action to enforce a subpoena on former White House counsel Don McGahn. A "we need more

information" position will aid House Democrats in those legal battles far more than a "we already have enough" position would.

Racial DisparitiesAs the candidates emphasized Wednesday night, racial disparities in the U.S. criminal justice system are vast. One reason (though only one of many) is the difference in how crack and powder cocaine possession are punished at the federal level, which the recently enacted First Step Act partially addressed. Due also to overpolicing in black neighborhoods and implicit bias among judges and prosecutors, one in 10 black children in this country has a parent behind bars, compared with about one in 60 white kids.Yet in a little-noted development, these disparities have actually been on the decline for nearly two decades. Between 2000 and 2015, the rate at which black men were imprisoned dropped by more than 24 percent. Among women, the trend was even more dramatic: a drop of 50 percent.The racial disparity in women's incarceration was once 6-to-1, but now it has dropped to 2-to-1.No candidate pointed this out last night. But understanding why it is happening is key to accelerating and protecting the progress that's been made, experts say. One theory is that most criminal justice reform has been taking place in cities, where more black people live, while rural areas have fewer reform-minded prosecutors and nonprofits working on these problems. Another is that the War on Drugs has shifted its focus from crack and marijuana to meth and opioids, which more white people use.Even at the current rate, though, racial divides would not disappear for many, many decades. And importantly, disparities in juvenile justice are getting much worse. This may be because that system has over the same two decades begun to offer youth who pass "risk-assessment" tests more alternatives to incarceration—but mostly white kids have reaped the benefits.—Eli Hager

Final Justice

The Lowdown breaks down the rituals and routines of the criminal justice system.

Wednesday night's debate saw the first extended discussion of criminal justice issues as the Democratic presidential candidates jockey in a crowded and competitive field. Several candidates teed off those issues to score political points and jab at opponents. While their exchanges covered a wide range of topics, there were also critical issues that no one even mentioned. Here's a guide, curated by our experts here at The Marshall Project, to what's behind the one-liners and talking points—and what was left out. We include suggestions for further reading for those who want to delve deeper.RacialDisparitiesAs the candidates emphasized Wednesday night, racial disparities in the U.S. criminal justice system are vast. One reason (though only one of many) is the difference in how crack and powder cocaine possession are punished at the federal level, which the recently enacted First Step Act partially addressed. Due also to overpolicing in black neighborhoods and implicit bias among judges and prosecutors, one in 10 black children in this country has a parent behind bars, compared with about one in 60 white kids.Yet in a little-noted development, these disparities have actually been on the decline for nearly two decades. Between 2000 and 2015, the rate at which black men were imprisoned dropped by more than 24 percent. Among women, the trend was even more dramatic: a drop of 50 percent.The racial disparity in women's incarceration was once 6-to-1, but now it has dropped to 2-to-1.No candidate pointed this out last night. But understanding why it is happening is key to accelerating and protecting the progress that's been made, experts say. One theory is that most criminal justice reform has been taking place in cities, where more black people live, while rural areas have fewer reform-minded prosecutors and nonprofits working on these problems. Another is that the War on Drugs has shifted its focus from crack and marijuana to meth and opioids, which more white people use.Even at the current rate, though, racial divides would not disappear for many, many decades. And importantly, disparities in juvenile justice are getting much worse. This may be because that system has over the same two decades begun to offer youth who pass "risk-assessment" tests more alternatives to incarceration—but mostly white kids have reaped the benefits.—Eli Hager

— The Victims Who Don't Count

— Subway Policing in New York City Still Has a Race Problem

— Are Traffic Stops Prone to Racial Bias?Origins of Mass IncarcerationFormer Vice President Joe Biden has taken a lot of heat from the other candidates for helping to pass the 1994 Violent Crime Control and Law Enforcement Act. Many have argued the legislation provided a framework for today's mass incarceration crisis. Yet while the 1994 bill did include provisions such as "three-strikes-you're-out," which punished repeat offenders with lengthy sentences, there is actually much more to the story.For one, prison populations started to rise in 1973 and reached record highs in the 1980s, before the law ever came into being."This was a national phenomenon, largely taking place at the state level, where more than 85 percent of prisoners are housed," wrote Marc Mauer, executive director of the Sentencing Project, in a commentary for The Marshall Project.State legislators were already implementing laws that sent people to prison for decades. Here is where the crime bill did have an effect: The law provided states with funding to build new prisons. It also incentivized states to pass truth-in-sentencing laws, which required prisoners to serve the majority of their sentences before becoming eligible for parole.State and local prosecutors, too, bear much of the blame of the incarceration explosion of the past four decades, as Fordham law professor John Pfaff has argued. And they were elected on tough-on-crime platforms—endorsed by American voters.—Nicole Lewis

Death Penalty

Most candidates on the debate stage Wednesday night united in denouncing the death penalty, a reflection of new political realities. Public support has ebbed for capital punishment as cases of people on death row being exonerated by DNA evidence have come to light. And there is ample evidence of racial bias—the majority of those sentenced to death in the last decade have been people of color.

According to a Gallup poll, support for the death penalty in murder cases dropped from 80 percent in 1994—when the crime bill passed—to 56 percent last year.More states are also declaring moratoriums on executions, as California's governor did earlier this year. While 29 states still allow capital punishment, only 13 have actually executed anyone in the last six years. California, which leads the nation with over 700 death row inmates, has not executed anyone since 2006. Just 2 percent of counties in the U.S. have been responsible for the majority of executions since 1976.Meanwhile, only three people have ever been executed by the federal government since 1988, and the last federal execution occurred in 2003. But this is about to change—Attorney General William Bar recently announced the federal government would resume carrying out the death penalty, setting five dates for executions in December and January. No candidate brought this up in the debates, though the move drew criticism from some quarters on both the left and the right.—Jack Brook

Cash Bail

Julián Castro, the former housing secretary, and Rep. TulsiGabbard touched briefly on the topic, yet the consequences of the monetary bail system, within a national jail system of more than 12 million admissions per year, are profound. Two-thirds of individuals currently being held in local jails across the country have yet to be convicted of a crime, and many are there because they could not afford to pay bail. That disproportionately affects the poor, women and people of color.Although presumed innocent under the law, people who spend time in jail before trial may have their basic rights—such as the right to vote—taken from them. They may also lose their jobs and housing, on top of being pummeled with court fees.Studies show that the inability to pay bail also affects trial outcomes. Because being behind bars limits people's ability to access legal aid and enroll in treatment programs, when their trial arrives, their arguments for lesser sentences are weakened compared to those released on bail.—Margo Snipe

10.2 CONSEQUENTIALIST VS. DEONTOLOGICAL (UTILITARIANS, RAWLS, NOZICK)

Consequentialist vs. Deontological

Consequentialism and **Deontological** theories are two of the main theories in ethics. However, consequentialism focuses on judging the moral worth of the results of the actions and deontological ethics focuses on judging the actions themselves.

Consequentialism focuses on the consequences or results of an action. One of the most well known forms of consequentialism is **utilitarianism** which was first proposed by Jeremy Bentham and his mentee J.S. Mill. This is about comparing the utility of the consequences of an action. J.S. Mill proposes this as **"the greatest happiness for the greatest number"** as the guiding principle within utilitarianism. Some have argued that this is flawed as it does not allow for one to be able to follow certain moral rules and it concentrates too much on the ends rather than the means.

Deontological ethics focuses on how actions follow certain moral rules. So, the action is judged rather than the consequences of the action. The biggest proponent of deontological ethics was **Immanuel Kant** who said that moral rules should be adhered to if universalising the opposite would make an impossible world. So, "Do not steal" is a rule because if everyone stole as a rule, there would be no concept of private property. Some have argued that deontological ethics is flawed as it is too absolutist - it says that some actions are always good or always bad without any judgement of the context of the action.

Consequentialism is the class of normative ethical theories holding that the consequences of one's conduct are the ultimate basis for any judgment about the rightness or wrongness of that conduct. Thus, from a consequentialist standpoint, a morally right act (or omission from acting) is one that will produce a good outcome, or consequence.

Consequentialism is primarily non-prescriptive, meaning the moral worth of an action is determined by its potential consequence, not by whether it follows a set of written edicts or laws. One example would entail lying under the threat of government punishment to save an innocent person's life, even though it is illegal to lie under oath.

Consequentialism is usually contrasted with deontological ethics (or deontology), in that deontology, in which rules and moral duty are central, derives the rightness or wrongness of one's conduct from the character of the behaviour itself rather than the outcomes of the conduct. It is also contrasted with virtue ethics, which focuses on the character of the agent rather than on the nature or consequences of the act (or omission) itself, and pragmatic ethics which treats morality like science: advancing socially over the course of many lifetimes, such that any moral criterion is subject to revision. Consequentialist theories differ in how they define moral goods.

Some argue that consequentialist and deontological theories are not necessarily mutually exclusive. For example, T. M. Scanlon advances the idea that human rights, which are commonly considered a "deontological" concept, can only be justified with reference to the consequences of having those rights. Similarly, Robert Nozick argued for a theory that is mostly consequentialist, but incorporates inviolable "side-constraints" which restrict the sort of actions agents are permitted to do. Derek Parfit argued that in practice, when understood properly, rule consequentialism, Kantian deontology and contractualism would all end up prescribing the same.

State consequentialism

It is the business of the benevolent man to seek to promote what is beneficial to the world and to eliminate what is harmful, and to provide a model for the world. What benefits he will carry out; what does not benefit men he will leave alone.

— Mozi, Mozi (5th century BC) Part I

State consequentialism, also known as mohist consequentialism, is an ethical theory which evaluates the moral worth of an action based on how much it contributes to the welfare of a state. According to the Stanford Encyclopedia of Philosophy, Mohist consequentialism, dating back to the 5th century BCE, is the "world's earliest form of consequentialism, a remarkably sophisticated version based on a plurality of intrinsic goods taken as constitutive of human welfare".

Unlike utilitarianism, which views utility as the sole moral good, "the basic goods in Mohist consequentialist thinking are... order, material wealth, and increase in population". During Mozi's era, war and famines were common, and population growth was seen as a moral necessity for a harmonious society. The "material wealth" of Mohist consequentialism refers to basic needs like shelter and clothing, and the "order" of Mohist consequentialism refers to Mozi's stance against warfare and violence, which he viewed as pointless and a threat to social stability. Stanford sinologist David Shepherd Nivison, in The Cambridge History of Ancient China, writes that the moral goods of Mohism "are interrelated: more basic wealth, then more reproduction; more people, then more production and wealth... if people have plenty, they would be good, filial, kind, and so on unproblematically".

The Mohists believed that morality is based on "promoting the benefit of all under heaven and eliminating harm to all under heaven". In contrast to Jeremy Bentham's views, state consequentialism is not utilitarian because it is not hedonistic or individualistic. The importance of outcomes that are good for the community outweigh the importance of individual pleasure and pain. The term state consequentialism has also been applied to the political philosophy of the Confucian philosopher Xunzi.

On the other hand, the "Legalist" Han Fei "is motivated almost totally from the ruler's point of view".

Utilitarianism

Jeremy Bentham, best known for his advocacy of utilitarianism

Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think...

— Jeremy Bentham, The Principles of Morals and Legislation (1789) Ch I, p 1

In summary, Jeremy Bentham states that people are driven by their interests and their fears, but their interests take precedence over their fears, and their interests are carried out in accordance with how people view the consequences that might be involved with their interests. "Happiness" on this account is defined as the maximization of pleasure and the minimization of pain. It can be argued that the existence of phenomenal consciousness and "qualia" is required for the experience of pleasure or pain to have an ethical significance. Historically, hedonistic utilitarianism is the paradigmatic example of a consequentialist moral theory. This form of utilitarianism holds that what matters is the aggregate happiness; the happiness of everyone and not the happiness of any particular person. John Stuart Mill, in his exposition of hedonistic utilitarianism, proposed a hierarchy of pleasures, meaning that the pursuit of certain kinds of pleasure is more highly valued than the pursuit of other pleasures. However, some contemporary utilitarians, such as Peter Singer, are concerned with maximizing the satisfaction of preferences, hence "preference utilitarianism". Other contemporary forms of utilitarianism mirror the forms of consequentialism outlined below.

Ethical egoism

Ethical egoism can be understood as a consequentialist theory according to which the consequences for the individual agent are taken to matter more than any other result. Thus, egoism will prescribe actions that may be beneficial, detrimental, or neutral to the welfare of others. Some, like Henry Sidgwick, argue that a certain degree of egoism promotes the general welfare of society for two reasons: because individuals know how to please themselves best, and because if everyone were an austere altruist then general welfare would inevitably decrease.

Ethical altruism

Ethical altruism can be seen as a consequentialist ethic which prescribes that an individual take actions that have the best consequences for everyone except for himself. This was advocated by Auguste Comte, who coined the term "altruism," and whose ethics can be summed up in the phrase "Live for others".

Rule consequentialism

In general, consequentialist theories focus on actions. However, this need not be the case. Rule consequentialism is a theory that is sometimes seen as an attempt to reconcile deontology and consequentialism—and in some cases, this is stated as a criticism of rule consequentialism. Like deontology, rule consequentialism holds that moral behavior involves following certain rules. However, rule consequentialism chooses rules based on the consequences that the selection of those rules has. Rule consequentialism exists in the forms of rule utilitarianism and rule egoism.

Various theorists are split as to whether the rules are the only determinant of moral behavior or not. For example, Robert Nozick held that a certain set of minimal rules, which he calls "side-constraints", are necessary to ensure appropriate actions. There are also differences as to how absolute these moral rules are. Thus, while Nozick's side-constraints are absolute restrictions on behavior, AmartyaSen proposes a theory that

recognizes the importance of certain rules, but these rules are not absolute. That is, they may be violated if strict adherence to the rule would lead to much more undesirable consequences.

One of the most common objections to rule-consequentialism is that it is incoherent, because it is based on the consequentialist principle that what we should be concerned with is maximizing the good, but then it tells us not to act to maximize the good, but to follow rules (even in cases where we know that breaking the rule could produce better results).

Brad Hooker avoided this objection by not basing his form of rule-consequentialism on the ideal of maximizing the good. He writes:

…the best argument for rule-consequentialism is not that it derives from an overarching commitment to maximise the good. The best argument for rule-consequentialism is that it does a better job than its rivals of matching and tying together our moral convictions, as well as offering us help with our moral disagreements and uncertainties.

Derek Parfit described Brad Hooker's book on rule-consequentialism Ideal Code, Real World as the "best statement and defence, so far, of one of the most important moral theories".

Rule-consequentialism may offer a means to reconcile pure consequentialism with deontological, or rules-based ethics.

Two-level consequentialism

The two-level approach involves engaging in critical reasoning and considering all the possible ramifications of one's actions before making an ethical decision, but reverting to generally reliable moral rules when one is not in a position to stand back and examine the dilemma as a whole. In practice, this equates to adhering to rule consequentialism when one can only reason on an intuitive level, and to act

consequentialism when in a position to stand back and reason on a more critical level.

This position can be described as a reconciliation between act consequentialism – in which the morality of an action is determined by that action's effects – and rule consequentialism – in which moral behavior is derived from following rules that lead to positive outcomes.

The two-level approach to consequentialism is most often associated with R. M. Hare and Peter Singer.

Motive consequentialism

Another consequentialist version is motive consequentialism which looks at whether the state of affairs that results from the motive to choose an action is better or at least as good as each of the alternative state of affairs that would have resulted from alternative actions. This version gives relevance to the motive of an act and links it to its consequences. An act can therefore not be wrong if the decision to act was based on a right motive. A possible inference is, that one can not be blamed for mistaken judgments if the motivation was to do good.

Negative consequentialism

Most consequentialist theories focus on promoting some sort of good consequences. However, negative utilitarianism lays out a consequentialist theory that focuses solely on minimizing bad consequences.

One major difference between these two approaches is the agent's responsibility. Positive consequentialism demands that we bring about good states of affairs, whereas negative consequentialism requires that we avoid bad ones. Stronger versions of negative consequentialism will require active intervention to prevent bad and ameliorate existing harm. In weaker versions, simple forbearance from acts tending to harm others

is sufficient. An example of this is the Slippery Slope Argument, which encourages others to avoid a specified act on the grounds that it may ultimately lead to undesirable consequences.

Often "negative" consequentialist theories assert that reducing suffering is more important than increasing pleasure. Karl Popper, for example, claimed "…from the moral point of view, pain cannot be outweighed by pleasure...". (While Popper is not a consequentialist per se, this is taken as a classic statement of negative utilitarianism.) When considering a theory of justice, negative consequentialists may use a statewide or global-reaching principle: the reduction of suffering (for the disadvantaged) is more valuable than increased pleasure (for the affluent or luxurious).

Teleological ethics

Teleological ethics (Greek telos, "end"; logos, "science") is an ethical theory that holds that the ends or consequences of an act determine whether an act is good or evil. Teleological theories are often discussed in opposition to deontological ethical theories, which hold that acts themselves are inherently good or evil, regardless of the consequences of acts. The saying, "the end justifies the means", meaning that if a goal is morally important enough, any method of achieving it is acceptable.

Teleological theories differ on the nature of the end that actions ought to promote. Eudaemonist theories (Greek eudaimonia, "happiness") hold that the goal of ethics consists in some function or activity appropriate to man as a human being, and thus tend to emphasize the cultivation of virtue or excellence in the agent as the end of all action. These could be the classical virtues—courage, temperance, justice, and wisdom—that promoted the Greek ideal of man as the "rational animal", or the theological virtues—faith, hope, and love—that distinguished the Christian ideal of man as a being created in the image of God.

John Stuart Mill, an influential liberal thinker of the 19th century and a teacher of utilitarianism

Utilitarian-type theories hold that the end consists in an experience or feeling produced by the action. Hedonism, for example, teaches that this feeling is pleasure—either one's own, as in egoism (the 17th-century English philosopher Thomas Hobbes), or everyone's, as in universalistic hedonism, or utilitarianism (the 19th-century English philosophers Jeremy Bentham, John Stuart Mill, and Henry Sidgwick), with its formula of the "greatest pleasure of the greatest number".

Other utilitarian-type views include the claims that the end of action is survival and growth, as in evolutionary ethics (the 19th-century English philosopher Herbert Spencer); the experience of power, as in despotism; satisfaction and adjustment, as in pragmatism (20th-century American philosophers Ralph Barton Perry and John Dewey); and freedom, as in existentialism (the 20th-century French philosopher Jean-Paul Sartre).

The chief problem for eudaemonist theories is to show that leading a life of virtue will also be attended by happiness—by the winning of the goods regarded as the chief end of action. That Job should suffer and Socrates and Jesus die while the wicked prosper, then seems unjust. Eudaemonists generally reply that the universe is moral and that, in Socrates' words, "No evil can happen to a good man, either in life or after death," or, in Jesus' words, "But he who endures to the end will be saved." (Matt 10:22).

Utilitarian theories, on the other hand, must answer the charge that ends do not justify the means. The problem arises in these theories because they tend to separate the achieved ends from the action by which these ends were produced. One implication of utilitarianism is that one's intention in performing an act may include all of its foreseen consequences. The goodness of the intention then reflects the balance of the good and evil of these consequences, with no limits imposed upon it by the nature of the act itself—even if it be, say, the breaking of a

promise or the execution of an innocent man. Utilitarianism, in answering this charge, must show either that what is apparently immoral is not really so or that, if it really is so, then closer examination of the consequences will bring this fact to light. Ideal utilitarianism (G.E. Moore and Hastings Rashdall) tries to meet the difficulty by advocating a plurality of ends and including among them the attainment of virtue itself, which, as John Stuart Mill affirmed, "may be felt a good in itself, and desired as such with as great intensity as any other good".

Acts and omissions, and the "act and omissions doctrine"

Since pure consequentialism holds that an action is to be judged solely by its result, most consequentialist theories hold that a deliberate action is no different from a deliberate decision not to act. This contrast with the "acts and omissions doctrine", which is upheld by some medical ethicists and some religions: it asserts there is a significant moral distinction between acts and deliberate non-actions which lead to the same outcome. This contrast is brought out in issues such as voluntary euthanasia.

Rawls

Some people are multi-billionaires; others die because they are too poor to afford food or medications. In many countries, people are denied rights to free speech, to participate in political life, or to pursue a career, because of their gender, religion, race or other factors, while their fellow citizens enjoy these rights. In many societies, what best predicts your future income, or whether you will attend college, is your parents' income.

To many, these facts seem unjust. Others disagree: even if these facts are regrettable, they aren't issues of justice. A successful theory of justice must explain why clear injustices are unjust and help us resolve current disputes.John Rawls (1921-2002) was a Harvard philosopher best known for his A Theory of Justice (1971), which attempted to define a just

society. Nearly every contemporary scholarly discussion of justice references A Theory of Justice. This essay reviews its main themes.

1. The ‘Original Position’ and ‘Veil of Ignorance’

Reasonable people often disagree about how to live, but we need to structure society in a way that reasonable members of that society can accept.[4] Citizens could try to collectively agree on basic rules. We needn’t decide every detail: we might only worry about rules concerning major political and social institutions, like the legal system and economy, which form the ‘basic structure’ of society.

A collective agreement on the basic structure of society is an attractive ideal. But some people are more powerful than others: some may be wealthier, or part of a social majority. If people can dominate negotiations because of qualities that are, as Rawls (72-75) puts it, morally arbitrary, that is wrong. People don’t earn these advantages: they get them by luck. For anyone to use these unearned advantages to their own benefit is unfair, and the source of many injustices.

This inspires Rawls’ central claim that we should conceive of justice ‘as fairness.’ To identify fairness, Rawls (120) develops two important concepts: the original position and the veil of ignorance:

The original position is a hypothetical situation: Rawls asks what social rules and institutions people would agree to, not in an actual discussion, but under fair conditions, where nobody knows whether they are advantaged by luck. Fairness is achieved through the veil of ignorance, an imagined device where the people choosing the basic structure of society (‘deliberators’) have morally arbitrary features hidden from them: since they have no knowledge of these features, any decision they make can’t be biased in their own favour.

Deliberators aren’t ignorant about everything though. They know they are self-interested, i.e., want as much as possible of what Rawls calls

primary goods (things we want, no matter what our ideal life looks like). They are also motivated by a minimal 'sense of justice': they will abide by rules that seem fair, if others do too. They also know basic facts about science and human nature.

2. Rawls's Principles of Justice

Rawls thinks a just society will conform to rules that everyone would agree to in the original position. Since they are deliberating behind the veil of ignorance, people don't know their personal circumstances, or even their view of the good life. This affects the kinds of outcomes they will endorse: e.g., it would be irrational for deliberators to agree to a society where only Christians have property rights since if, when the veil is 'lifted,' they turn out not to be Christian, that will negatively affect their life prospects. Similarly, deliberators presumably won't choose a society with racist, sexist, or other unfairly discriminatory practices, since beyond the veil, they might end up on the wrong side of these policies.

This gives rise to Rawls' first principle of justice:

all people have equal claims to as much freedom as is consistent with everyone else having the same level of freedom.

Rawls further claims that, because their ignorance includes an ignorance of probabilities, deliberators would be extremely cautious, and apply what he calls a 'maximin' principle: they will aim to ensure that the worst possible position they could end up in is as good as possible in terms of primary goods.

If we imagine ourselves as deliberators, we might be tempted by the idea of total equality in primary goods. This ensures, at least, that nobody will be better off than you for arbitrary reasons. However, some inequality might be useful: the possibility of earning more might incentivize people

to work harder, growing the economy and so increasing the total amount of available wealth.

This isn't a wholehearted endorsement of capitalism, as Rawls' second principle, which addresses social and economic inequalities, makes clear. The second principle has two parts:

First, people in the original position will tolerate inequalities only if the jobs that pay more aren't assigned unfairly. This gives us the ideal of fair equality of opportunity: inequalities are allowed only if they arise through jobs that equally talented people have equal opportunity to get. This requires, for instance, that young people receive roughly equal educational opportunities; otherwise, a talented individual might be held back by a lack of basic knowledge, either about their own talents, or about the world.

Second, since their reasoning is governed by the 'maximin' principle, deliberators will only tolerate inequalities that benefit the worst off: since, as far as they know, they might be the worst off, this maximizes the quality of their worst possible outcome. This is called the difference principle.

These principles are ordered, which tells us what to do if they clash: equal liberty is most important, then fair opportunity, and finally the difference principle. So, neither freedoms nor opportunity are governed by the difference principle.

We can now see how Rawls' theory might evaluate the issues raised earlier. At least within specific societies, each seems to violate his basic principles of justice, and so would be condemned as unjust. So, even if we ultimately reject Rawls' approach, it at least seems to offer intuitively correct answers in several important cases, and for plausible reasons.

Robert Nozick's Political Philosophy

Robert Nozick (1938–2002) was a renowned American philosopher who first came to be widely known through his 1974 book, *Anarchy, State, and Utopia* (1974),which won the National Book Award for Philosophy and Religion in 1975. Pressing further the anti-consequentialist aspects of John Rawls' *A Theory of Justice*, Nozick argued that respect for individual rights is the key standard for assessing state action and, hence, that the only legitimate state is a minimal state that restricts its activities to the protection of the rights of life, liberty, property, and contract. Despite his highly acclaimed work in many other fields of philosophy, Nozick remained best known for the libertarian doctrine advanced in *Anarchy, State, and Utopia*.

Criticism:

G. E. M. Anscombe objects to consequentialism on the grounds that it does not provide ethical guidance in what one ought to do because there is no distinction between consequences that are foreseen and those that are intended.

The future amplification of the effects of small decisions is an important factor that makes it more difficult to predict the ethical value of consequences, even though most would agree that only predictable consequences are charged with a moral responsibility.

Bernard Williams has argued that consequentialism is alienating because it requires moral agents to put too much distance between themselves and their own projects and commitments. Williams argues that consequentialism requires moral agents to take a strictly impersonal view of all actions, since it is only the consequences, and not who produces them that are said to matter. Williams argues that this demands too much of moral agents—since (he claims) consequentialism demands that they be willing to sacrifice any and all personal projects and commitments in any given circumstance in order to pursue the most beneficent course of action possible. He argues further that consequentialism fails to make sense of intuitions that it can matter whether or not someone is

personally the author of a particular consequence. For example, that participating in a crime can matter, even if the crime would have been committed anyway, or would even have been worse, without the agent's participation.

Some consequentialists—most notably Peter Railton—have attempted to develop a form of consequentialism that acknowledges and avoids the objections raised by Williams. Railton argues that Williams's criticisms can be avoided by adopting a form of consequentialism in which moral decisions are to be determined by the sort of life that they express. On his account, the agent should choose the sort of life that will, on the whole, produce the best overall effects

10.3 JUSTICE AS FAIRNESS (RAWLS)

The Main Idea of The Theory of Justice

My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant. In order to do this we are not to think of the original contract as one to enter a particular society or to set up a particular form of government. Rather, 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. Thus we are to imagine that those who engage in social cooperation choose together, in one joint act, the principles which are to assign basic rights and duties and to determine the division of social benefits. Men are to decide in advance how they are to regulate their claims against one another and what is to be the foundation charter of their society. Just as each person must decide by rational reflection what constitutes his good, that is, the

system of ends which it is rational for him to pursue, so a group of persons must decide once and for all what is to count among them as just and unjust. The choice which rational men would make in this hypothetical situation of equal liberty, assuming for the present that this choice problem has a solution, determines the principles of justice. 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, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice? Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain. For given the circumstances of the original position, the symmetry of everyone's relation to each other, this initial situation is fair between individuals as moral persons, that is, as rational beings with their own ends and capable, I shall assume, of a sense of justice. The original position is, one might say, the appropriate initial status quo, and the fundamental agreements reached in it are fair. This explains the propriety of the name "justice as fairness": it conveys the idea that the principles of justice are agreed to in an initial situation that is fair. The name does not mean that the concepts of justice and fairness are the same, any more that the phrase "poetry as metaphor" means that the concepts of poetry and metaphor are the same.

The Original Position and Justification

I have said that the original position is the appropriate initial status quo which insures that the fundamental agreements reached in it are fair. This fact yields the name "justice as fairness." It is clear, then, that I want to say that one conception of justice is more reasonable than another, or justifiable with respect to it, if rational persons in the initial situation would choose its principles over those of the other for the role of justice. Conceptions of justice are to be ranked by their acceptability to persons so circumstanced. Understood in this way the question of justification is settled by working out a problem of deliberation: we have to ascertain which principles it would be rational to adopt given the contractual situation. This connects the theory of justice with the theory of rational choice. …

There is, however, another side to justifying a particular description of the original position. This is to see if the principles which would be chosen match our considered convictions of justice or extend them in an acceptable way. We can note whether applying these principles would lead us to make the same judgments about the basic structure of society which we now make intuitively and in which we have the greatest confidence; or whether, in cases where our present judgments are in doubt and given with hesitation, these principles offer a resolution which we can affirm on reflection. There are questions which we feel sure must be answered in a certain way. For example, we are confident that religious intolerance and racial discrimination are unjust. We think that we have examined these things with care and have reached what we believe is an impartial judgment not likely to be distorted by an excessive attention to our own interests. These convictions are provisional fixed points which we presume any conception of justice must fit. But we have much less assurance as to what is the correct distribution of wealth and authority. Here we may be looking for a way to remove our doubts. We can check an interpretation of the initial situation, then, by the capacity of its principles to accommodate our firmest convictions and to provide guidance where guidance is needed. In searching for the most favored description of this situation we work from both ends. We begin by describing it so that it represents generally shared and preferably weak

conditions. We then see if these conditions are strong enough to yield a significant set of principles. If not, we look for further premises equally reasonable. But if so, and these principles match our considered convictions of justice, then so far well and good. But presumably there will be discrepancies. In this case we have a choice. We can either modify the account of the initial situation or we can revise our existing judgments, for even the judgments we take provisionally as fixed points are liable to revision. By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium. It is an equilibrium because at last our principles and judgments coincide; and it is reflective since we know to what principles our judgments conform and the premises of their derivation. At the moment everything is in order. But this equilibrium is not necessarily stable. It is liable to be upset by further examination of the conditions which should be imposed on the contractual situation and by particular cases which may lead us to revise our judgments. Yet for the time being we have done what we can to render coherent and to justify our convictions of social justice. We have reached a conception of the original position.

Two Principles of Justice

I shall now state in a provisional form the two principles of justice that I believe would be chosen in the original position. In this section I wish to make only the most general comments, and therefore the first formulation of these principles is tentative. As we go on I shall run through several formulations and approximate step by step the final statement to be given much later. I believe that doing this allows the exposition to proceed in a natural way The first statement of the two principles read as follows: First: each person is to have an equal right to the most extensive basic liberty compatible with similar liberty 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.

Check Your Progress 1

Note : a) Use the space provided for your answer.

b) Check your answer with those provided at the end of this unit.

1. Discuss the Consequentialist vs. Deontological (Utilitarians, Rawls, Nozick).

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2. Write about Justice as Fairness (Rawls).

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10.4 COMMUNITARIAN AND FEMINIST CONCEPTIONS (WALZER, SANDEL, OKIN)

Communitarian and Feminist Conceptions

As second-wave feminism crested in the 1980s, feminist intellectuals began to radically reappraise liberalism by developing a communitarian "ethic of care" that promised to remake American society and politics. The new communitarianism, however, could not be reconciled with feminist defenses of abortion rights. This tension became increasingly untenable in the late 1980s as *Roe v. Wade* faced new political

challenges. Feminist communitarians responded by re-embracing liberalism, especially its emphasis on autonomy and independence. This history suggests that many feminist intellectuals regard their support for abortion rights as something that is prior to their larger philosophical commitments, such as liberalism and communitarianism.

Michael Laban **Walzer** (/ˈwɔːlzər/; born 1935) is a prominent American political theorist and public intellectual. A professor emeritus at the Institute for Advanced Study (IAS) in Princeton, New Jersey, he is co-editor of Dissent, an intellectual magazine that he has been affiliated with since his years as an undergraduate at Brandeis University. He has written books and essays on a wide range of topics—many in political ethics—including just and unjust wars, nationalism, ethnicity, Zionism, economic justice, social criticism, radicalism, tolerance, and political obligation. He is also a contributing editor to The New Republic. To date, he has written 27 books and published over 300 articles, essays, and book reviews in Dissent, The New Republic, The New York Review of Books, The New Yorker, The New York Times, Harpers, and many philosophical and political science journals.

Michael Walzer is usually identified as one of the leading proponents of the communitarian position in political theory, along with Alasdair MacIntyre and Michael J. Sandel. Like Sandel and MacIntyre, Walzer is not completely comfortable with this label. However, he has long argued that political theory must be grounded in the traditions and culture of particular societies, and has long opposed what he sees to be the excessive abstraction of political philosophy. His most important intellectual contributions include Just and Unjust Wars (1977), a revitalization of just war theory that insists on the importance of "ethics" in wartime while eschewing pacifism; the theory of "complex equality", which holds that the metric of just equality is not some single material or moral good, but rather that egalitarian justice demands that each good be distributed according to its social meaning, and that no good (like money or political power) be allowed to dominate or distort the distribution of goods in other spheres; and an argument that justice is primarily a moral

standard within particular nations and societies, not one that can be developed in a universalized abstraction.

In On Toleration, he describes various examples of (and approaches to) toleration in various settings, including multinational empires such as Rome; nations in past and current-day international society; "consociations" such as Switzerland; nation-states such as France; and immigrant societies such as the United States. He concludes by describing a "post-modern" view, in which cultures within an immigrant nation have blended and inter-married to the extent that toleration becomes an intra-familial affair.

Michael J. **Sandel** (/sænˈdɛl/; born 1953) is an American political philosopher. He is the Anne T. and Robert M. Bass Professor of Government Theory at Harvard University Law School, where his course Justice was the university's first course to be made freely available online and on television. It has been viewed by tens of millions of people around the world, including in China, where Sandel was named the "most influential foreign figure of the year" (China Newsweek). He is also known for his critique of John Rawls' A Theory of Justice in his first book, Liberalism and the Limits of Justice (1982).

Sandel subscribes to a certain version of communitarianism (although he is uncomfortable with the label), and in this vein he is perhaps best known for his critique of John Rawls' A Theory of Justice. Rawls' argument depends on the assumption of the veil of ignorance, which he claims allows us to become "unencumbered selves".

Sandel's view is that we are by nature encumbered to an extent that makes it impossible even in the hypothetical to have such a veil. Some examples of such ties are those with our families, which we do not make by conscious choice but are born with, already attached. Because they are not consciously acquired, it is impossible to separate oneself from such ties. Sandel believes that only a less-restrictive, looser version of the veil of ignorance should be postulated. Criticism such as Sandel's inspired

Rawls to subsequently argue that his theory of justice was not a "metaphysical" theory but a "political" one, a basis on which an overriding consensus could be formed among individuals and groups with many different moral and political views

Sandel is the author of several publications, including Democracy's Discontent and Public Philosophy. Public Philosophy is a collection of his own previously published essays examining the role of morality and justice in American political life. He offers a commentary on the roles of moral values and civic community in the American electoral process—a much-debated aspect of the 2004 US election cycle and of current political discussion.

Sandel gave the 2009 Reith Lectures on "A New Citizenship" on BBC Radio, addressing the "prospect for a new politics of the common good". The lectures were delivered in London on May 18, Oxford on May 21, Newcastle on May 26, and Washington, DC, in early June, 2009.

He is also the author of the book What Money Can't Buy: The Moral Limits of Markets (2012), which argues some desirable things—such as body organs and the right to kill endangered species—should not be traded for cash.

Okin was born in 1946 in Auckland, New Zealand. She attended Remuera Primary School and Remuera Intermediate and Epsom Girls' Grammar School, where she was Dux in 1963.

She earned a bachelor's degree from the University of Auckland in 1966, a master of philosophy degree from Oxford in 1970 and a doctorate from Harvard in 1975.

She taught at the University of Auckland, Vassar, Brandeis and Harvard before joining Stanford's faculty.

Okin became the Marta Sutton Weeks Professor of Ethics in Society at Stanford University in 1990.

Okin held a visiting professorship at Harvard University's Radcliffe Institute for Advanced Study at the time of her death in 2004.

Okin was found dead in her home in Lincoln, Massachusetts on March 3, 2004. She was 57 years old. The cause of death is still unknown, but authorities do not believe there was any foul play.

Okin, like many liberal feminists of her time, highlighted the many ways in which gender-based discrimination defeats women's aspirations; they defended reforms intended to make social and political equality a reality for women.

In 1979 she published Women in Western Political Thought, in which she details the history of the perceptions of women in western political philosophy.

Her 1989 book Justice, Gender, and the Family is a critique of modern theories of justice. These theories include the liberalism of John Rawls, the libertarianism of Robert Nozick, and the communitarianism of Alasdair MacIntyre and Michael Walzer. For each theorist's major work she argues that a foundational assumption is incorrect because of a faulty perception of gender or family relations. More broadly, according to Okin, these theorists write from a male perspective that wrongly assumes that the institution of the family is just. She believes that the family perpetuates gender inequalities throughout all of society, particularly because children acquire their values and ideas in the family's sexist setting, then grow up to enact these ideas as adults. If a theory of justice is to be complete, Okin asserts that it must include women and it must address the gender inequalities she believes are prevalent in modern-day families.

Okin discusses two opposing feminist approaches to ending legal sex-based discrimination against women in her 1991 essay "Sexual Difference, Feminism, and the Law". She says that examining the history and current ramifications of sex-based discrimination, and debating the best way to end inequality between the sexes, were prominent topics in that decade of feminist legal theory.Okin contrasts Wendy Kaminer's A Fearful Freedom, which champions an equal rights approach, backing gender-neutral laws and equal, not special treatment for women, with Deborah Rhode's Justice and Gender, which argues that an equal rights approach is insufficient to compensate for the past discrimination against women. In Okin's view, a failure to address whether the differences between men and women are founded in biology or culture is a shortcoming of both arguments. The essay concludes with a call to the feminists on both sides to stop fighting against one another, and work together in improving the disadvantaged situations of many women at the time.

In 1993, with Jane Mansbridge, she summarized much of her own and others' work in the article on "Feminism," in Robert E. Goodin and Philip Petit, eds., A Companion to Contemporary Political Philosophy, 269-290, (Oxford: Blackwell, 1993), and the next year, also with Mansbridge, published a two-volume collection of feminist writing, entitled Feminism (schools of thought in politics).[Aldershot, England and Brookfield, Vermont, USA: E. Elgar. ISBN 9781852785659].

In her 1999 essay, later expanded into an anthology, "Is Multiculturalism Bad for Women?" Okin argues that a concern for the preservation of cultural diversity should not overshadow the discriminatory nature of gender roles in many traditional minority cultures, that, at the very least, "culture" should not be used as an excuse for rolling back the women's rights movement.

10.5 GLOBAL JUSTICE (THOMAS POGGE)

On common accounts, we have a state of justice when everyone has their due. The study of justice has been concerned with what we owe one another, what obligations we might have to treat each other fairly in a range of domains, including over distributive and recognitional matters. Contemporary political philosophers had focused their theorizing about justice almost exclusively within the state, but the last twenty years or so has seen a marked extension to the global sphere, with a huge expansion in the array of topics covered. While some, such as matters of just conduct in war, have long been of concern, others are more recent and arise especially in the context of contemporary phenomena like intensified globalization, economic integration and potentially catastrophic anthropogenic climate change.

John Rawls's Law of Peoples was an especially important work and greatly stimulated thinking about different models of global justice (Rawls 1999). Several questions soon became prominent in discussions including: What principles should guide international action? What responsibilities do we have to the global poor? Should global inequality be morally troubling? Are there types of non-liberal people who should be tolerated? What kind of foreign policy is consistent with liberal values? Is a "realistic utopia" possible in the global domain? How might we transition effectively towards a less unjust world?

Contemporary events also played an enormous role in prompting philosophical inquiries. Prominent cases of genocide, ethnic cleansing, forms of terrorism uncommon prior to 2001, intensified interest in immigration to affluent developed countries, increased dependence on the labor of those from poor developing countries, and enormous threats to well-being, security and the environment became common catalysts for further work. Philosophers began to reflect on questions such as: Is it ever permissible to engage in coercive military action for humanitarian purposes, such as to halt genocide or prevent large-scale violations of human rights? Can terrorism ever be justified? Should affluent developed countries open their borders more generously than they currently do to those from poor developing countries who would like to immigrate to

them? Are our current global economic arrangements fair ones and if not, how should they be transformed? What responsibilities do we have to one another in a globalized, post-Westphalian world order? How should we allocate responsibilities for reducing global injustice in our world, such as in the case of distributing costs associated with addressing climate change?

Increased interest concerning issues of global justice has also coincided with enhanced interest in the place and value of nationalism. These explorations also track contemporary events such as nationalist clashes which have spilled over into widespread suffering (notably in the former Yugoslavia and Rwanda), increased calls for national self-determination to carry considerable weight, such as in state recognition for Palestinians or Tibetans, and also in the case of secession (prominently, Quebec). In this area global justice theorists have been concerned with a range of important questions such as: Under what conditions should claims to national self-determination be granted substantial weight? When should self-determination yield to concern for protecting human rights? Are commitments to nationalism and global justice compatible? Is genuine democracy only possible at the state level or are there robust forms of democracy that are possible in more international fora? How are ideals of democracy best incorporated into defensible global institutional arrangements? Is world justice possible without a world state?

The primary purpose of this article is to give an orientation to the enormous and rapidly expanding field of global justice. There are several entries in this encyclopedia that already cover some of the core topics well and these will be cross-referenced. But there are still many important gaps, along with some missing context as to how some topics fits together. This entry aims primarily to address these needs.

What is a Theory of Global Justice?

In general, a theory of global justice aims to give us an account of what justice on a global scale consists in and this often includes discussion of the following components:

- identifying what should count as important problems of global justice
- positing solutions to each identified problem
- identifying who might have responsibilities in addressing the identified problem
- arguing for positions about what particular agents (or collections of agents) ought to do in connection with solving each problem and
- providing a normative view which grounds (1)–(4).

Theories of global justice aim to help us understand our world better and what our responsibilities are in it. While some theorists aim purely at theoretical understanding, others hope also to provide an analysis that can be useful in practical policy making concerning global justice matters.

When is a Problem a Global Justice Problem?

A problem is often considered to constitute a global justice problem when one (or more) of the following conditions obtain:

Actions stemming from an agent, institution, practice, activity (and so on) that can be traced to one (or more) states negatively affects residents in another state.

Institutions, practices, policies, activities (and so on) in one (or more) states could bring about a benefit or reduction in harm to those resident in another state.

There are normative considerations that require agents in one state to take certain actions with respect to agents or entities in another. Such actions might be mediated through institutions, policies, or norms.

We cannot solve a problem that affects residents of one or more states without co-operation from other states.

So, in general, a problem is one of global justice when the problem either affects agents resident in more than one state or the problem is unresolvable without their co-operation. For the problem to be considered genuinely global rather than regional it should affect more than one regional area.

Philosopher Thomas Pogge in his seminal book, World Poverty and Human Rights, asks a deceptively simple and ultimately moral question on the nature of what he calls the 'global institutional order': can authentic reform be made of this international order, and can any proposed reform better align with our moral values in order to alleviate the suffering of the global poor?

By Global Institutional Order (GIO) he is referring to the architecture of global economic, financial and political governance, for example the World Trade Organisation, the International Monetary Fund, the European Union, and increasingly private actors such as multinational corporations and financial investment instruments; private equity and hedge funds for example.

By moral values, he is referring to the moral norms which are, hopefully, alive and well within global civil society and in the actions and motivations of our governments, especially the wealthy and influential governments of the Global North. The kind of values he proclaims which have historically led to the abolition of state organised slavery in the 18th century and which have tried in the 20th century to restrain and contain, through International Law and other means, genocide and colonialism-or, as he terms them, historical 'paradigms of injustice'.

How successful and even genuine these attempts have been are of course open to question. Nevertheless international society particularly since the Second World War has at least attempted to act morally, legally, and politically in some way or form to overcome these successive paradigms of injustice.

Global Poverty and Economic Inequality: The Principle Paradigm of Injustice of the 21st Century

Global poverty and its close correlate, economic inequality, are according to Pogge the principle moral questions facing global society today. The figures on poverty and inequality are truly staggering, and at times overwhelming. Extreme poverty is measured in monetary terms by the World Bank as the percentage of people living below the $1.25-a-day threshold. Currently according to the Bank's data in 2011, 14.5 % of the world's population eke out a life on $1.25-a-day, over a billion people. Also, according to the Bank, there has been a drop in extreme poverty globally. These somewhat optimistic assertions however are disputed.

The World Bank's data, and in particular the figure of $1.25 a day as an indicator of extreme poverty, has been criticised as 'extremely misleading' and 'overly optimistic' by Robin Broad and John Cavanagh for example, as they give a distorted account of the actual global figures in poverty. The Banks' designated poverty line in other words according to Pogge and others is much too low, the truth is much starker: the bottom half of humanity lives in serious poverty, over 3.5 billion.

Add in the unequal distribution of global and national wealth, now at an all-time high, and extraordinarily, wealth disparity is even more extreme than income disparity. Oxfam, in January of this year reported that the richest 1 percent have, "seen their share of global wealth increase from 44 percent in 2009 to 48 percent in 2014 and at this rate will be more than 50 percent in 2016".

Nevertheless taking the data at face value over a billion people live in extreme poverty. This, Pogge argues, and the chronic undernourishment, lack of basic sanitation and lack of access to adequate drugs for example which accompanies such poverty is at its fundamental core a question of global justice, and not something that technocratic fixes, grand humanitarian gestures or overly optimistic economic indicators can possibly address.

Pogge asserts an uncomfortable point in relation to global poverty, inequality and global justice: which is that western governments are at least partially responsible for the severe poverty afflicting those of the "bottom billion". Through intergovernmental negotiations, large corporations, banks and industry lobbies are in an especially advantageous position to influence trade deals in their own favour. The institutional rules of global trade have a direct and negative effect on the poor. The GIO is designed to benefit the powerful, consequently disempowering the global poor. Pogge contends that since western governments are powerful participants in trade negotiations, acting in our name in essence, therefore as a result we all as citizens share responsibility for the harms that slanted supranational institutional arrangements inflict on the global poor. Essentially, he argues that we have as citizens of rich western states have influence on the behaviour of our governments in these negotiations and talks, and therefore we have a moral duty to stop actively harming the global poor.

In other words, international economic rules are 'fixed' to serve the interests of rich countries: the global economic institutional order produces, reproduces the rules to suit the powerful global actors and so repeatedly contributes, and exacerbates, global poverty.

For example, **Pogge** considers the current WTO treaty system which as part of the global institutional order:

Permits the affluent countries to protect their markets against cheap imports (agricultural products, textiles and apparel, steel, and much else) through tariffs, anti-dumping duties, quotas, export credits, and huge subsidies to domestic producers. Such protectionist measures reduce the export opportunities from poor countries by constraining their exports into the affluent countries and also, in the case of subsidies, by allowing less efficient rich-country producers to undersell more efficient poor-country producers in world markets."

We have Pogge proclaims a moral imperative to act, to act that is to redress the wrongs done to the global poor in 'our name'. It is undoubtedly a challenging view.

If Pogge's thought-provoking challenge on global justice, however, can be distilled to a concise summary it would be this: Poverty and extreme inequality are not predetermined by any man-made or supernatural laws. Poverty is not socially, economically or politically inevitable-the poor are not "always with us" as the erroneous maxim suggests. Rather poverty and inequality are largely the result of global economic and political decisions. And, working within the global GIO framework, the gross inequality and poverty is a result of choices, & policies by governments, multilateral financial and economic institutions, and global corporations.

Check Your Progress 2

Note : a) Use the space provided for your answer.

b) Check your answer with those provided at the end of this unit.

1. Discuss Communitarian and Feminist Conceptions (Walzer, Sandel, Okin)

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2. What is Global Justice (Thomas Pogge)?

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10.6 LET US SUM UP

The unit represents some of the finest recent work by political philosophers and political theorists in the area of global justice. Covering both theoretical and applied issues, these papers are distinguished by their exceptional quality. Moreover, they give the reader a sense both of the scope of the field as it is currently emerging and the direction that the debates seem to be taking. This anthology is essential reading for anyone serious about understanding the current pressing issues in Global Justice Studies.

As a first step, suppose that the basic structure of society distributes certain primary goods, that is, things that every rational man is presumed to want. … For simplicity, assume that the chief primary goods at the disposition of society are rights and liberties, powers and opportunities, income and wealth. (… the primary good of self-respect has a central place.) These are the social primary goods. Other primary goods such as health and vigor, intelligence and imagination, are natural goods; although their possession is influenced by the basic structure, they are not so directly under its control. Imagine, then, a hypothetical initial arrangement in which all the social primary goods are equally distributed: everyone has similar rights and duties, and income and wealth are evenly shared. This state of affairs provides a benchmark for judging improvements. If certain inequalities of wealth and organizational powers would make everyone better off than in this hypothetical starting situation, then they accord with the general conception. Now it is possible, at least theoretically, that by giving up some of their fundamental liberties men are sufficiently compensated by the resulting social and economic gains. The general conception of justice imposes no restrictions on what sort of inequalities are permissible; it only requires that everyone's position be improved. We need not suppose anything so drastic as consenting to a condition of slavery. Imagine instead that men forego certain political rights when the economic returns are significant and their capacity to influence the course of policy by the exercise of these rights would be marginal in any case. It is this kind of exchange which the two principles as stated rule

out; being arranged in serial order they do not permit exchanges between basic liberties and economic and social gains. The serial ordering of principles expresses an underlying preference among primary social goods. When this preference is rational so likewise is the choice of these principles in this order.

10.7 KEY WORDS

Communitarian:Communitarianism is a philosophy that emphasizes the connection between the individual and the community. Its overriding philosophy is based upon the belief that a person's social identity and personality are largely molded by community relationships, with a smaller degree of development being placed on individualism.

Feminism:Feminism is a range of social movements, political movements, and ideologies that share a common goal: to define, establish, and achieve the political, economic, personal, and social equality of the sexes.

Global Justice:Global justice is an issue in political philosophy arising from the concern about unfairness. It is sometimes understood as a form of internationalism.

10.8 QUESTIONS FOR REVIEW

3. Discuss the Consequentialist vs. Deontological (Utilitarians, Rawls, Nozick).
4. Write about Justice as Fairness (Rawls)
3. Discuss Communitarian and Feminist Conceptions as per Walzer, Sandel, and Okin.
4. What is Global Justice (Thomas Pogge)?

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10.10 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. See Section 10.2
2. See Section 10.3

Check Your Progress 2

1. See Section 10.4
2. See Section 10.5

UNIT 11: DEBATES ON RIGHTS

STRUCTURE

11.0 OBJECTIVES

Human rights are based on the idea that every single person on the planet deserves to be treated with dignity and respect. It is truly a profound idea that has changed the course of human history over the past century. Struggles to achieve dignity and equality have spread dramatically across the globe, sometimes meeting failure, and at other times achieving resounding success. When we think of human rights, we think of the inspiring movements for freedom led by people such as Mahatma Gandhi, Martin Luther King Jr., and Nelson Mandela.

After this unit, we can able to understand:

- To know the Moral vs. Legal conceptions
- To discuss the Choice and Interest theories
- To know Conflicts between rights
- To know Rights as Trumps

11.1 INTRODUCTION

Decades later, many of the consequences (both intended and unintended) of the Great Society era continue to be debated. More fundamental to the debate on those specific issues is a debate about the nature of rights themselves. Do they come from God and/or nature, or do they come from government?

On one side of these debates are those people who believe that rights come from God and/or nature. Because inalienable rights are natural rights, we are all born with them. Nobody - government or otherwise - has to provide us with anything for us to have those rights. We need government though, to ensure our security in these rights which would be vulnerable to attack from others in a "state of nature." We are born with the capacity and the right to believe, to speak, to develop and exercise our consciences. Those on this side of the debate would likely support laws that limit government to protecting the natural rights to life, liberty, and property. Though they support state and local governments providing education, they would be skeptical of federal involvement in public schools. And though they might favor state-based welfare programs and be personally charitable, they would not support the national government's role in redistributing wealth. They might support a federal safety net for the poor, but not middle-class entitlements.

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government's role in redistributing wealth. They might support a federal safety net for the poor, but not middle-class entitlements.
Government should provide us with security in our equal natural rights through just laws and consistent enforcement of them. Equal rights make for inequality because people with different capacities exercise them differently. So government makes possible the various inequalities that justice requires. Therefore, those who perform better are compensated better.

On the other side of the debate are progressive liberals who believe that natural and inalienable rights are not enough for everyone to reach their full potential. They believe that rights include a basic standard of living and the means to thrive on a level playing field. They believe it would be possible for government to provide these things, and that it should have the power to try.

They would likely support the national government requiring employers to pay a minimum wage, access to education paid for by the public, and affordable health insurance paid for by the public as rights, even if it meant that government could take from some in order to give to others. This positive view of rights holds that natural and inalienable rights are not enough for everyone to reach their full potential.

Therefore, government has the responsibility not only to protect our natural rights, but also to provide us with certain goods and services, such as education, healthcare, law enforcement, military defense.
Without this help some people would not be able to exercise their rights "meaningfully." Therefore positive rights in practice come at the expense of rights in the negative sense: greater restrictions on liberty and higher taxes.

The controversy over the Affordable Care Act (ACA) is a modern example of this debate. The ACA has so far been one of the most divisive pieces of federal legislation in the history of the United States. Debate about it often centers on the law's requirement that all people buy

a certain product (health insurance) whether they want it or not, or pay a penalty. In response to a constitutional challenge to the law's individual mandate, the Supreme Court declared that the fines imposed by the law amounted to a "tax" and were therefore constitutional. Significantly, though, the Court held that the Commerce Clause did not give the national government the power to force citizens to buy a certain product.

Another doubtful aspect of the ACA from the conservative standpoint depends on the nature of rights. This controversial provision is the ACA's requirement that companies provide insurance that covers birth control with no co-payments - including drugs that prevent the implantation of a fertilized egg, which Catholics consider to be abortion - and sterilization. Catholics and some Protestants see these practices as morally wrong. But the law requires them to provide insurance options that cover these services even if they run counter to their religious beliefs. While the law exempts churches, it contains no exemption for religious organizations that are not houses of worship.

The right to free exercise of religion is a constitutional right protected by the First Amendment.

But like all individual rights, it is not unlimited. You cannot take whatever action you want in the name of religion. Further, there is a history of constitutional laws stopping people from doing certain things even though their religions require it. For example, there are laws banning bigamy although some Mormon fundamentalist sects believe plural marriage is a requirement. General laws banning animal cruelty are constitutional, even if some religions practice animal sacrifice.

But the Affordable Care Act's mandate was challenged not because it stops people from doing things required by their religion, but because it forces citizens to actively participate in an action that they believe to be evil, or pay fines. This provision of the ACA has been challenged by numerous individuals and associations, including Catholic universities, professional organizations, and religious communities such as Little Sisters of the Poor (nuns who operate nursing homes for the elderly).

David Green, the CEO of Hobby Lobby, a company who challenged the law, wrote in USA Today:

"A new government health care mandate says that our family business must provide what I believe are abortion-causing drugs as part of our health insurance. Being Christians, we don't pay for drugs that might cause abortions. Which means that we don't cover emergency contraception, the morning-after pill or the week-after pill. We believe doing so might end a life after the moment of conception, something that is contrary to our most important beliefs. It goes against the biblical principles on which we have run this company since day one. If we refuse to comply, we could face $1.3 million per day in government fines" (David Green, "Christian companies can't bow to sinful mandate," USA Today, September 12, 2012).

In Burwell v. Hobby Lobby (2014), the Supreme Court held that Hobby Lobby and other similar companies could not be forced to provide certain types of birth control to which they object on religious grounds, namely those which they believe cause abortions. The Court held that doing so violates the Religious Freedom Restoration Act. According to Justice Alito, author of the majority opinion, employees of such corporations, similar to employees of non-profit organizations, will be still be able to obtain these types of birth control through the insurance company to which the company is a client.

Some see a conflict of rights in this situation. But there is only a conflict of rights if you believe birth control or sterilization paid for by someone else is a "right." If you do not believe birth control or sterilization paid for by someone else is a right, then there is no conflict. This is why the debate on the nature of rights matters.

11.2 MORAL VS. LEGAL CONCEPTIONS

Moral rights are rights accorded under some system of ethics. These might be grounded in mere humanity — they might be rights that all people deserve just because they are humans, or because they are rational

beings, or whatever. Examples might be the right to be treated fairly, or the right to privacy. If I have a right to privacy, then you (and others) are obligated not to invade my privacy.

(Not everyone believes in moral rights. The philosopher Jeremy Bentham, for example, once wrote that moral rights were "nonsense upon stilts" — in other words, the silliest kind of nonsense. Bentham thought that all rights that made sense had to be legal rights.)

Legal rights are rights that people have under some legal system, granted by a duly authorized legal authority or government. For example, where I live, kids have a legal right to an education (Kindergarten up to Grade 12). And consumers have a legal right to know the basic ingredients and nutritional profile of packaged foods.

There is likely to be lots of overlap between moral and legal rights. For example, in most places, someone accused of a crime has a legal right to know what they're accused of. But most people would argue that the law here is merely recognizing what is really a moral right — it would be immoral to jail someone and put them on trial without letting them even know what they are being charged with.

1. Legal Rights

Legal rights are, clearly, rights which exist under the rules of legal systems or by virtue of decisions of suitably authoritative bodies within them. They raise a number of different philosophical issues. (1) Whether legal rights are conceptually related to other types of rights, principally moral rights; (2) What the analysis of the concept of a legal right is; (3) What kinds of entities can be legal right-holders; (4) Whether there any kinds of rights which are exclusive to, or at least have much greater importance in, legal systems, as opposed to morality; (5) What rights legal systems ought to create or recognise. Issue (5) is primarily one of moral and political philosophy, and is not different in general principle

from the issue of what duties, permissions, powers, etc, legal systems ought to create or recognise. It will not, therefore, be addressed here.

A preliminary point should be mentioned. Do all legal systems have a concept of rights? Their use is pervasive in modern legal systems. We talk of legislatures having the legal right to pass laws, of judges to decide cases, of private individuals to make wills and contracts; as well as of constitutions providing legal rights to the citizens against fellow citizens and against the state itself. Yet it has been suggested that even some sophisticated earlier systems, such as Roman law, had no terminology which clearly separated rights from duties (see *Maine* (1861), 269–70). The question is primarily one for legal historians and will not be pursued here, but it may be remarked that it may still be legitimate when describing those systems to talk of rights in the modern sense, since Roman law, for example, clearly achieved many of the same results as contemporary systems. Presumably, it did so by deploying some of the more basic concepts into which rights can, arguably, be analysed.

Are Legal Rights Conceptually Related to Other Types of Rights?

The position of many important writers on legal rights is difficult to ascertain on this point, because it is not one they addressed directly. Hohfeld (1919), for example, confined his discussion entirely to legal rights and never mentioned moral ones. Hart did write about moral rights (1955, 1979) as well as legal ones (1973, 1994), but not in a way that allows for much direct comparison. Bentham (1970 [1782]) wrote extensively about the analysis of legal rights, but, notoriously, thought that the idea of natural moral rights was conceptual nonsense.

Mill (1969 [1861]), whilst endorsing Bentham's overall Utilitarian position, did not share his scepticism about moral rights, and seems to have thought that moral and legal rights were, analytically, closely connected — "When we call anything a person's right, we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion." Those things which ought to be so protected were, in his view, those which concerned

the fundamentals of human well-being, and were therefore a sub-set of those things which a person ought to have on grounds of utility.

Whilst not necessarily sharing Mill's view about all rights being related to fundamentals of well-being, many contemporary writers (e.g., Raz 1984a, 1984b; Wellman 1985, 1995) agree that the core concept of a right is something common to law and morality, though some have argued that jurisprudential writers, particularly Hohfeld, provide a better and clearer starting-point for general analysis than previous writers in moral philosophy. The view that the core concept is common to both would appear to be consistent with maintaining that, nevertheless, in terms of justification in practical reasoning, legal rights should be based on moral ones.

2. The Conceptual Analysis of Legal Rights

Not all philosophers have agreed that rights can be fully analysed. White (1984), for example, argued that the task is impossible because the concept of a right is as basic as any of the others, such as duty, liberty, power, etc (or any set of them) into which it is usually analysed. He agreed, however, that rights can in part be explained by reference to such concepts. White's approach, based largely on close linguistic analysis, has remained something of a minority one.

The remaining approaches can be categorised in different ways, but a main division is between those who think that rights are singled out by their great weight as practical reasons, and those who think that rights are not special in this regard, but instead are to be analysed into duties, permissions, powers, etc, or some combination of these, perhaps with the addition of other conditions.

Dworkin (1973, 1975, 1981, 1986), in one formulation of his theory of rights, was a proponent of the first view. According to that, rights enjoy a categorial priority in weight over any other consideration which is not itself right-based. Clearly, it is true of many legal systems that

constitutional rights, or some of them, should outweigh any other consideration which is not itself derived from a constitutional right. But that seems to be primarily because of the constitutional status of the right. Both in law and in morality many rights are of a rather trivial nature. In morality such rights can, arguably, sometimes be justifiably outweighed even by considerations of personal convenience (cf. Raz 1978). Similarly in law it seems that many prima facie rights can be defeated by what the court regards as considerations of the general interest. Dworkin's (1977) response to the latter type of criticism was to argue that, on closer inspection, the consideration opposing the right can be seen as itself an instantiation of another general right. But this depends on the contentious claim that the only considerations that courts can justifiably rely upon are pre-existing rights. The objection has also been raised that, as a general theory of the nature of rights, it risks being self-defeating, since any consideration whatsoever can then be argued to be right-based, which leaves rights with no special role in practical reasoning. (For discussion of Dworkin's theory, including his other formulations, see Yowell 2007.)

Most writers have, instead, favoured the view that rights are to be analysed into other, more basic, notions, principally those of duty, permission and power, with perhaps the addition of other criteria. This means that not all rights will be of great importance. Their importance will vary with the strength of the grounds for the duty, permission or power. Before looking more closely at these accounts, another point should be mentioned. Theorists are divided between those who think that rights are, as it were, the 'reflex' of the duty, permission or power, and those who think that the right has a priority over them. The question is whether the duty, etc, grounds the right, or the right the duty. Most older writers (e.g., Bentham, Austin, Hohfeld, Kelsen) appear to have adhered to the first view, whilst more recent writers (e.g., MacCormick, Raz, Wellman) take the second. The second view has the implication that the force of a right is not necessarily exhausted by any existing set of duties etc, that follow from it, but may be a ground for creating new duties as

circumstances change. This latter view seems to accord better at least with the way that constitutional legal rights work.

Amongst those who think that rights can be analysed, at least in part, into duties, permissions and powers, there is a further main division. Some think that the essence of a right is to have choice or control over the corresponding duty etc. Others think that the main thing is that one's interests are protected by the duty etc. Hart and Wellman are amongst the proponents of the first view, Bentham, Austin, MacCormick and Raz are amongst those maintaining some version of the second.

An outline of Hart's (1973) theory may be given as an illustration of the first view. According to Hart, someone (call him 'X') may be a legal right-holder primarily in one of two ways. First of all, X may have a bilateral permission to perform some action, i.e., X is permitted both to A and to not-A (together with there being some prohibitions on others interfering). Secondly, someone else may have a duty (e.g., to pay X £10) over which X has control, primarily by waiving or enforcing it. Since X has a choice in each case that explains why he is referred to as being a right-holder. One difficulty about this kind of theory is to explain our apparent reference to rights when there is no choice, eg when one is not only entitled to vote in elections, but also obliged by law to do so.

Two different versions of the interest theory can be seen, corresponding to the question about the priority of rights mentioned above.

According to older versions, such as those of Bentham and Austin, X is a right-holder because he is the beneficiary, or intended beneficiary, of another's duty, or perhaps of the absence of a duty on him which the law might otherwise have imposed. For example, if X has a right to be paid £10 by Y, then this is explained by saying that Y has a duty, the performance of which (handing over the £10) is intended to benefit X. One problem about this theory is to explain why the criminal law, although it may in part exist to protect moral rights, is not generally regarded as directly conferring legal rights on individual citizens, despite

the fact that they are intended beneficiaries of the corresponding duties. (There may, of course, in many systems be parallel civil law rights, but that is a contingent matter. See more on this point below.)

A more modern version of this theory was proposed by MacCormick (1977), who argued that a right-holder was the intended beneficiary of a specific share of benefit, rather than just being a generalised beneficiary of the rules. However, even with this amendment, it remains difficult to explain third party rights under contracts. Suppose X and Y enter into a contract which imposes duties on each of them with the intention that performance of these will benefit Z. According to the theory, Z must (conceptually) be a legal right-holder. But it is in fact an entirely contingent matter as to whether Z is or not. Some legal systems recognise Z as having rights in such a situation and others do not. In Britain, for example, Scots Law long recognised such rights under certain conditions, but English Law did not until the position was changed by statute in 1999.

More recent versions, such as those of Raz (1984a, 1984b), take a different tack altogether. According to them, to say that X is a right-holder is to say that his interests, or an aspect of them, are sufficient reason for imposing duties on others either not to interfere with X in the performance of some action, or to secure him in something. This, inter alia, gets round the third-party rights' problem, because the explanation is simply that it is all a question of whether the system recognises the interests of Z as part of the reason for X and Y's duties, or whether it is only the interests of X and Y. Raz (1997) has emphasised that this does not mean that only the right-holder's interests are relevant to the question of whether something should be recognised as a right. Considerations of the general or common interest may be relevant too.

Whilst discussion has continued on the relative merits of the choice and benefit theories, and ever more sophisticated versions of each have been proposed (see, for example, the three-sided debate in Kramer, Simmonds and Steiner 1998, Kramer 2010, Vrousalis 2010, Van Duffel 2012), some

writers have attempted to offer different, or combined, approaches. Wenar (2005) argues for what he calls a 'several functions' theory. According to this, any 'Hohfeldian incident' (or combination of them) which grants exemption, discretion or authorisation, or entitles the holder to protection, provision or performance is a right. Kramer and Steiner (2007) claim, however, that this is really no more than another version of benefit theory, and not superior to existing ones. Another proposal is made by Sreenivasan (2005), which is intended to apply only to claim-rights and not to other varieties of right. The essence of it is that Y has a claim-right that X perform an action if and only if Y's measure of control over X's duty matches (by design) the measure of control that advances Y's interests on balance. This, too, is criticised by Kramer and Steiner (2007) on the basis that it would include the case in which someone has, on the basis of his own interests, deliberately not been granted any such power at all. Yet this, they claim, would lead to a highly implausible expansion of the class of those who would have to be regarded as right-holders.

A number of subsidiary questions can be raised.

Firstly, should rights be analysed solely in terms of duties on others (together with some other condition), or do we need to bring in also other concepts, such as permission, power and immunity? Hohfeld thought that, strictly speaking, something was a legal right only if it corresponded to a duty on another, but he argued that legal usage was often confusing because the reference was really to one of the other concepts. Thus, in his view, the law sometimes also said that X had a right if (1) he had a permission to A, (2) he had a legal power to A, (3) Y had no legal power to affect him.

While some (e.g., d'Almeida 2016), have maintained that Hohfeld was correct to assert that liberty-rights involve only permissions, others (e.g., Waldron 1981 and Raz 1984a, 1984b) have been exponents of the view that rights should be seen as giving rise only to duties. Hart (1973), following Bentham, had argued that a liberty-right should be seen as a

bilateral permission to A together with duties on others not to interfere with X's A-ing. Waldron and Raz argue that it is an important feature of rights that they entitle the right-holder to do not only that which is right, but also (within bounds) that which is wrong. This they regard as best explained by seeing rights as imposing only duties of non-interference on others, not as granting the right-holder a permission. (See also Herstein 2012, 2014.) An alternative view (Campbell 1997) is to see some rights as indeed granting permissions, but to point out that in granting a legal permission the law is not saying that there may not be reasons against performing the action, only that (within the bounds of the permission) the law will act as if there were not.

Powers raise a different issue. Many writers (e.g., Hohfeld 1919, Hart 1973) have considered them as being a type of right. By a legal power we mean the ability to bring about changes in legal rules or their application (plus some further conditions). Usually, of course, the lawmaker in granting a power also grants a right to exercise it, but occasionally this is not so, for example where the exercising of the right would itself be a crime or a civil wrong. In English Law, for example, until the position was recently changed by statute, a thief had, in certain special circumstances, the legal power to pass good title in the goods he had stolen to a third party, even though by doing so he committed a civil, and possibly also a criminal, wrong. This seems to indicate that powers should not be thought of as being rights themselves.

Powers also illustrate a general problem about the analysis of legal rights, and arguably of rights in general. Namely that of whether an element should be seen as part of the very essence of the concept of a right, or whether it is merely an element in that which is (contingently) its content, i.e., that which there is a right to do or have.

Relatedly, of the four fundamental types of rights which Hohfeld claimed to identify, immunities raise problems, though somewhat different ones. An immunity arises when Y has no power to change X's legal position. But is an immunity itself a right or is it simply a means of protecting a

right, i.e., by making it immune from removal or alteration? As with powers, views have differed about this.

3. What Kinds of Entities Can be Legal Right-holders?

There has been much dispute amongst philosophers as what to kinds of entities can be right-holders. Corresponding pretty much to the general dispute about the very nature of rights, some have argued that any entity which would benefit from the performance by others of legal duties can be a right-holder; others that it has to be an entity which has interests; others that it has to be an entity capable of exercising some kind of control over the relevant legal machinery. And there are variants of all these positions.

There has to be a sense in which legal systems can confer rights on such entities as they please. This is because it has long been recognised that legal systems can regard as legal persons such entities as they please. In England, for example, 'the Crown' has, for centuries, been regarded as a legal entity, although what this means in terms of office-holders, far less the actual human beings who occupied those offices, has changed greatly over that time. Likewise, all modern societies recognise the legal existence as persons of companies or corporations and frequently of such entities as trade unions, government departments, universities, certain types of partnerships and clubs, etc.

One of the most contentious areas in recent years has been whether young children, the severely mentally ill, non-human animals, areas of endangered countryside, etc, can properly be regarded as legal right-holders. Clearly anyone who has locus standi before a court must be a holder of some rights within the system. But it does not seem to follow automatically that an entity which does not, or which is physically or mentally incapable of bringing a legal action, is not thereby a right-holder. For it may be the intention of the system that the interests of that entity should be represented by another person. Given then, that all these entities may be protected by law, and that someone can bring some kind

of legal action to ensure that those duties are enforced, when would we say that the entity itself is a right-holder and when not?

The answer will often turn upon whether one embraces an interest- or a choice-theory of rights. MacCormick (1976), for example, argued that any theory of rights which could not accommodate children's rights must be deficient, and this was a reason, in his view, for adopting an interest theory. Wellman (1995), on the other hand, claims that to assert that very young children or the severely mentally ill can have legal rights is to distort the concept of a right, since they lack the relevant control of the legal machinery. Instead, he argues, the relevant rights should be seen as belonging only to those who can bring the relevant actions on their behalf. For example, in his view a very young child would not have a right not to be negligently injured by the conduct of another. Rather, it would be the case that the child's parent had a right that their child not be negligently injured. One difficulty about this position appears to be that it does not easily square with the relevent remedial rights (e.g., to damages) that the law would recognise. In this example the law would clearly compensate the child's loss in being injured, not the parent's loss in their child being injured (though the latter might be a separate ground of action in some systems).

4.Moral vs. Legal Rights

The distinction drawn between moral rights and legal rights as two separate categories of rights is of fundamental importance to understanding the basis and potential application of human rights. Legal rights refer to all those rights found within existing legal codes. A legal right is a right that enjoys the recognition and protection of the law. Questions as to its existence can be resolved by simply locating the relevant legal instrument or piece of legislation. A legal right cannot be said to exist prior to its passing into law and the limits of its validity are set by the jurisdiction of the body which passed the relevant legislation. An example of a legal right would be my daughter's legal right to receive an adequate education, as enshrined within the United Kingdom's

Education Act (1944). Suffice it to say, that the exercise of this right is limited to the United Kingdom. My daughter has no legal right to receive an adequate education from a school board in Southern California. Legal positivists argue that the only rights that can be said to legitimately exist are legal rights, rights that originate within a legal system. On this view, moral rights are not rights in the strict sense, but are better thought of as moral claims, which may or may not eventually be assimilated within national or international law. For a legal positivist, such as the 19th. Century legal philosopher Jeremy Bentham, there can be no such thing as human rights existing prior to, or independently from legal codification. For a positivist determining the existence of rights is no more complicated than locating the relevant legal statute or precedent. In stark contrast, moral rights are rights that, it is claimed, exist prior to and independently from their legal counterparts. The existence and validity of a moral right is not deemed to be dependent upon the actions of jurists and legislators. Many people argued, for example, that the black majority in apartheid South Africa possessed a moral right to full political participation in that country's political system, even though there existed no such legal right. What is interesting is that many people framed their opposition to apartheid in rights terms. What many found so morally repugnant about apartheid South Africa was precisely its denial of numerous fundamental moral rights, including the rights not to be discriminated against on grounds of colour and rights to political participation, to the majority of that country's inhabitants. This particular line of opposition and protest could only be pursued because of a belief in the existence and validity of moral rights. A belief that fundamental rights which may or may not have received legal recognition elsewhere, remained utterly valid and morally compelling even, and perhaps especially, in those countries whose legal systems had not recognized these rights. A rights-based opposition to apartheid South Africa could not have been initiated and maintained by appeal to legal rights, for obvious reasons. No one could legitimately argue that the legal political rights of non-white South Africans were being violated under apartheid, since no such legal rights existed. The systematic denial of such rights

did, however, constitute a gross violation of those peoples' fundamental moral rights.

From the above example it should be clear that human rights cannot be reduced to, or exclusively identified with legal rights. The legal positivist's account of justified law excludes the possibility of condemning such systems as apartheid from a rights perspective. It might, therefore, appear tempting to draw the conclusion that human rights are best identified as moral rights. After all, the existence of the UDHR and various International Covenants, to which South Africa was not a signatory in most cases, provided opponents of apartheid with a powerful moral argument. Apartheid was founded upon the denial of fundamental human rights. Human rights certainly share an essential quality of moral rights, namely, that their valid existence is not deemed to be conditional upon their being legally recognized. Human rights are meant to apply to all human beings everywhere, regardless of whether they have received legal recognition by all countries everywhere. Clearly, there remain numerous countries that wholly or partially exclude formal legal recognition to fundamental human rights. Supporters of human rights in these countries insist that the rights remain valid regardless, as fundamental moral rights. The universality of human rights positively entails such claims. The universality of human rights as moral rights clearly lends greater moral force to human rights. However, for their part, legal rights are not subject to disputes as to their existence and validity in quite the way moral rights are. It would be a mistake to exclusively identify human rights with moral rights. Human rights are better thought of as both moral rights and legal rights. Human rights originate as moral rights and their legitimacy is necessarily dependent upon the legitimacy of the concept of moral rights. A principal aim of advocates of human rights is for these rights to receive universal legal recognition. This was, after all, a fundamental goal of the opponents of apartheid. Human rights are best thought of, therefore, as being both moral and legal rights. The legitimacy claims of human rights are tied to their status as moral rights. The practical efficacy of human rights is, however, largely dependent upon their developing into legal rights. In

those cases where specific human rights do not enjoy legal recognition, such as in the example of apartheid above, moral rights must be prioritised with the intention that defending the moral claims of such rights as a necessary prerequisite for the eventual legal recognition of the rights in question.

11.3 CHOICE AND INTEREST THEORIES

The interests theory approach

Advocates of the interests theory approach argue that the principal function of human rights is to protect and promote certain essential human interests. Securing human beings' essential interests is the principal ground upon which human rights may be morally justified. The interests approach is thus primarily concerned to identify the social and biological prerequisites for human beings leading a minimally good life. The universality of human rights is grounded in what are considered to be some basic, indispensable, attributes for human well-being, which all of us are deemed necessarily to share. Take, for example, an interest each of us has in respect of our own personal security. This interest serves to ground our claim to the right. It may require the derivation of other rights as prerequisites to security, such as the satisfaction of basic nutritional needs and the need to be free from arbitrary detention or arrest, for example. The philosopher John Finnis provides a good representative of the interests theory approach. Finnis (1980) argues that human rights are justifiable on the grounds of their instrumental value for securing the necessary conditions of human well-being. He identifies seven fundamental interests, or what he terms 'basic forms of human good', as providing the basis for human rights. These are: life and its capacity for development; the acquisition of knowledge, as an end in itself; play, as the capacity for recreation; aesthetic expression; sociability and friendship; practical reasonableness, the capacity for intelligent and reasonable thought processes; and finally, religion, or the capacity for spiritual experience. According to Finnis, these are the essential

prerequisites for human well-being and, as such, serve to justify our claims to the corresponding rights, whether they be of the claim right or liberty right variety.

Other philosophers who have defended human rights from an interests-based approach have addressed the question of how an appeal to interests can provide a justification for respecting and, when necessary, even positively acting to promote the interests of others. Such questions have a long heritage in western moral and political philosophy and extend at least as far back as the 17th. Century philosopher Thomas Hobbes. Typically, this approach attempts to provide what James Nickel (1987:84) has termed 'prudential reasons' in support of human rights. Taking as the starting point the claim that all human beings possess basic and fundamental interests, advocates of this approach argue that each individual owes a basic and general duty to respect the rights of every other individual. The basis for this duty is not mere benevolence or altruism, but individual self-interest. As Nickel writes, 'a prudential argument from fundamental interests attempts to show that it would be reasonable to accept and comply with human rights, in circumstances where most others are likely to do so, because these norms are part of the best means for protecting one's fundamental interests against actions and omissions that endanger them.' (ibid). Protecting one's own fundamental interests requires others' willingness to recognize and respect these interests, which, in turn, requires reciprocal recognition and respect of the fundamental interests of others. The adequate protection of each individual's fundamental interests necessitates the establishment of a co-operative system, the fundamental aim of which is not to promote the common good, but the protection and promotion of individuals' self-interest.

For many philosophers the interests approach provides a philosophically powerful defence of the doctrine of human rights. It has the apparent advantage of appealing to human commonality, to those attributes we all share, and, in so doing, offers a relatively broad-based defence of the plethora of human rights considered by many to be fundamental and

inalienable. The interests approach also provides for the possibility of resolving some of the potential disputes which can arise over the need to prioritise some human rights over others. One may do this, for example, by hierarchically ordering the corresponding interests identified as the specific object, or content, of each right.

However, the interests approach is subject to some significant criticisms. Foremost amongst these is the necessary appeal interests' theorists make to some account of human nature. The interests-approach is clearly operating with, at the very least, an implicit account of human nature. Appeals to human nature have, of course, proven to be highly controversial and typically resist achieving the degree of consensus required for establishing the legitimacy of any moral doctrine founded upon an account of human nature. For example, combining the appeal to fundamental interests with the aspiration of securing the conditions for each individual leading a minimally good life would be complicated by social and cultural diversity. Clearly, as the economic philosopher AmartyaSen (1999) has argued, the minimal conditions for a decent life are socially and culturally relative. Providing the conditions for leading a minimally good life for the residents of Greenwich Village would be significantly different to securing the same conditions for the residents of a shanty town in Southern Africa or South America. While the interests themselves may be ultimately identical, adequately protecting these interests will have to go beyond the mere specification of some purportedly general prerequisites for satisfying individuals' fundamental interests. Other criticisms of the interests approach have focused upon the appeal to self-interest as providing a coherent basis for fully respecting the rights of all human beings. This approach is based upon the assumption that individuals occupy a condition of relatively equal vulnerability to one another. However, this is simply not the case. The model cannot adequately defend the claim that a self-interested agent must respect the interests of, for example, much less powerful or geographically distant individuals, if she wishes to secure her own interests. On these terms, why should a purely self-interested and over-weight individual in, say, Los Angeles or London, care for the interests

of a starving individual in some distant and impoverished continent? In this instance, the starving person is not in a position to affect their overweight counterpart's fundamental interests. The appeal to pure self-interest ultimately cannot provide a basis for securing the universal moral community at the heart of the doctrine of human rights. It cannot justify the claims of universal human rights. An even more philosophically oriented vein of criticism focuses upon the interests' based approach alleged neglect of constructive human agency as a fundamental component of morality generally. Put simply, the interests-based approach tends to construe our fundamental interests as pre-determinants of human moral agency. This can have the effect of subordinating the importance of the exercise of freedom as a principal moral ideal. One might seek to include freedom as a basic human interest, but freedom is not constitutive of our interests on this account. This particular concern lies at the heart of the so-called 'will approach' to human rights.

c. The Will Theory Approach

In contrast to the interests approach, the will theory attempts to establish the philosophical validity of human rights upon a single human attribute: the capacity for freedom. Will theorists argue that what is distinctive about human agency is the capacity for freedom and that this ought to constitute the core of any account of rights. Ultimately, then, will theorists view human rights as originating in, or reducible to, a single, constitutive right, or alternatively, a highly limited set of purportedly fundamental attributes. H.L.A. Hart, for example, inferentially argues that all rights are reducible to a single, fundamental right. He refers to this as 'equal right of all men to be free.' (1955:77). Hart insists that rights to such things as political participation or to an adequate diet, for example, are ultimately reducible to, and derivative of, individuals' equal right to liberty. Henry Shue (1996) develops upon Hart's inferential argument and argues that liberty alone is not ultimately sufficient for grounding all of the rights posited by Hart. Shue argues that many of these rights imply more than mere individual liberty and extend to include security from violence and the necessary material conditions for personal survival. Thus, he grounds rights upon liberty, security, and

subsistence. The moral philosopher Alan Gewirth (1978, 1982) has further developed upon such themes. Gewirth argues that the justification of our claims to the possession of basic human rights is grounded in what he presents as the distinguishing characteristic of human beings generally: the capacity for rationally purposive agency. Gewirth states that the recognition of the validity of human rights is a logical corollary of recognizing oneself as a rationally purposive agent since the possession of rights are the necessary means for rationally purposive action. Gewirth grounds his argument in the claim that all human action is rationally purposive. Every human action is done for some reason, irrespective of whether it be a good or a bad reason. He argues that in rationally endorsing some end, say the desire to write a book, one must logically endorse the means to that end; as a bare minimum one's own literacy. He then asks what is required to be a rationally purposive agent in the first place? He answers that freedom and well-being are the two necessary conditions for rationally purposive action. Freedom and well-being are the necessary means to acting in a rationally purposive fashion. They are essential prerequisites for being human, where to be human is to possess the capacity for rationally purposive action. As essential prerequisites, each individual is entitled to have access to them. However, Gewirth argues that each individual cannot simply will their own enjoyment of these prerequisites for rational agency without due concern for others. He bases the necessary concern for others' human rights upon what he terms the 'principle of generic consistency' (PGC). Gewirth argues that each individual’s claim to the basic means for rationally purposive action is based upon an appeal to a general, rather than, specific attribute of all relevant agents. I cannot logically will my own claims to basic human rights without simultaneously accepting the equal claims of all rationally purposive agents to the same basic attributes. Gewirth has argued that there exists an absolute right to life possessed separately and equally by all of us. In so claiming, Gewirth echoes Dworkin's concept of rights as trumps, but ultimately goes further than Dworkin is prepared to do by arguing that the right to life is absolute and cannot, therefore, be overridden under any circumstances. He states that a 'right is absolute when it cannot be overridden in any

circumstances, so that it can never be justifiably infringed and it must be fulfilled without any exceptions.' (1982:92). Will theorists then attempt to establish the validity of human rights upon the ideal of personal autonomy: rights are a manifestation of the exercise of personal autonomy. In so doing, the validity of human rights is necessarily tied to the validity of personal autonomy. On the face of it, this would appear to be a very powerful, philosophical position. After all, as someone like Gewirth might argue, critics of this position would themselves necessarily be acting autonomously and they cannot do this without simultaneously requiring the existence of the very means for such action: even in criticizing human rights one is logically pre-supposing the existence of such rights.

Despite the apparent logical force of the will approach, it has been subjected to various forms of criticism. A particularly important form of criticism focuses upon the implications of will theory for so-called 'marginal cases'; human beings who are temporarily or permanently incapable of acting in a rationally autonomous fashion. This would include individuals who have diagnosed from suffering from dementia, schizophrenia, clinical depression, and, also, individuals who remain in a comatose condition, from which they may never recover. If the constitutive condition for the possession of human rights is said to be the capacity for acting in a rationally purposive manner, for example, then it seems to logically follow, that individuals incapable of satisfying this criteria have no legitimate claim to human rights. Many would find this conclusion morally disturbing. However, a strict adherence to the will approach is entailed by it.

Some human beings are temporarily or permanently lacking the criteria Gewirth, for instance, cites as the basis for our claims to human rights. It is difficult to see how they could be assimilated within the community of the bearers of human rights on the terms of Gewirth's argument. Despite this, the general tendency is towards extending human rights considerations towards many of the so-called 'marginal cases'. To do otherwise would appear to many to be intuitively wrong, if not ultimately

defensible by appeal to practical reason. This may reveal the extent to which many peoples' support of human rights includes an ineluctable element of sympathy, taking the form of a general emotional concern for others. Thus, strictly applying the will theorists' criteria for membership of the community of human rights bearers would appear to result in the exclusion of some categories of human beings who are presently recognized as legitimate bearers of human rights.

The interests theory approach and the will theory approach contain strengths and weaknesses. When consistently and separately applied to the doctrine of human rights, each approach appears to yield conclusions that may limit or undermine the full force of those rights. It may be that philosophical supporters of human rights need to begin to consider the potential philosophical benefits attainable through combining various themes and elements found within these (and other) philosophical approaches to justifying human rights. Thus, further attempts at justifying the basis and content of human rights may benefit from pursuing a more thematically pluralist approach than has typically been the case to date.

Check Your Progress 1

Note : a) Use the space provided for your answer.

b) Check your answer with those provided at the end of this unit.

1. How do you know the Moral vs. Legal conceptions?

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2. Discuss the Choice and Interest theories.

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11.4 CONFLICTS BETWEEN RIGHTS

Claim Rights & Liberty Rights

To gain an understanding of the functional properties of human rights it is necessary to consider the more specific distinction drawn between claim rights and liberty rights. It should be noted that it is something of a convention to begin such discussions by reference to W.N. Hohfeld's (1919) more extended classification of rights. Hohfeld identified four categories of rights: liberty rights, claim rights, power rights, and immunity rights. However, numerous scholars have subsequently tended to collapse the last two within the first two and hence to restrict attention to liberty rights and claim rights. The political philosopher Peter Jones (1994) provides one such example.

Jones restricts his focus to the distinction between claim rights and liberty rights. He conforms to a well-established trend in rights' analysis in viewing the former as being of primary importance. Jones defines a claim right as consisting of being owed a duty. A claim right is a right one holds against another person or persons who owe a corresponding duty to the right holder. To return to the example of my daughter. Her right to receive an adequate education is a claim right held against the local education authority, which has a corresponding duty to provide her with the object of the right. Jones identifies further necessary distinctions within the concept of a claim right when he distinguishes between a positive claim right and a negative claim right. The former are rights one holds to some specific good or service, which some other has a duty to provide. My daughter's claim right to education is therefore a positive claim right. Negative claim rights, in contrast, are rights one holds against others' interfering in or trespassing upon one's life or property in

some way. My daughter could be said to possess a negative claim right against others attempting to steal her mobile phone, for example. Indeed, such examples lead on to the final distinction Jones identifies within the concept of claim rights: rights held 'in personam' and rights held ‘in rem’. Rights held in personam are rights one holds against some specifically identified duty holder, such as the education authority. In contrast, rights held in rem are rights held against no one in particular, but apply to everyone. Thus, my daughter's right to an education would be practically useless were it not held against some identifiable, relevant, and competent body. Equally, her right against her mobile phone being stolen from her would be highly limited if it did not apply to all those capable of potentially performing such an act. Claim rights, then, can be of either a positive or a negative character and they can be held either in personam or in rem.

Jones defines liberty rights as rights which exist in the absence of any duties not to perform some desired activity and thus consist of those actions one is not prohibited from performing. In contrast to claim rights, liberty rights are primarily negative in character. For example, I may be said to possess a liberty right to spend my vacations lying on a particularly beautiful beach in Greece. Unfortunately, no one has a duty to positively provide for this particular exercise of my liberty right. There is no authority or body, equivalent to an education authority, for example, who has a responsibility to realize my dream for me. A liberty right can be said, then, to be a right to do as one pleases precisely because one is not under an obligation, grounded in others' claim rights, to refrain from so acting. Liberty rights provide for the capacity to be free, without actually providing the specific means by which one may pursue the objects of one's will. For example, a multi-millionaire and a penniless vagrant both possess an equal liberty right to holiday in the Caribbean each year.

Substantive categories of human rights

The above section was concerned to analyse what might be termed the 'formal properties' of rights. This section, in contrast, proceeds to consider the different categories of substantive human rights. If one delves into all of the various documents that together form the codified body of human rights, one can identify and distinguish between five different categories of substantive human rights. These are as follows: rights to life; rights to freedom; rights to political participation; rights to the protection of the rule of law; rights to fundamental social, economic, and cultural goods. These rights span the so-called three generations of rights and involve a complex combination of both liberty and claim rights. Some rights, such as for example the right to life, consist of both liberty and claim rights in roughly equal measure. Thus, the adequate protection of the right to life requires the existence of liberty rights against others trespassing against one's person and the existence of claim rights to have access to basic prerequisites to sustaining one's life, such as an adequate diet and health-care. Other rights, such as social, economic, and cultural rights, for example, are weighted more heavily towards the existence of various claim rights, which requires the positive provision of the objects of such rights. The making of substantive distinctions between human rights can have controversial, but important, consequences. Human rights are typically understood to be of equal value, each right is conceived of as equally important as every other. On this view, there can exist no potential for conflict between fundamental human rights. One is simply meant to attach equal moral weight to each and every human right. This prohibits arranging human rights in order of importance. However, conflict between rights can and does occur. Treating all human rights as of equal importance prohibits any attempts to address or resolve such conflict when it arises. Take the example of a hypothetical developing world country with severely limited financial and material resources. This country is incapable of providing the resources for realising all of the human rights for all of its citizens, though it is committed to doing so. In the meantime, government officials wish to know which human rights are more absolute than others, which fundamental human rights should it immediately prioritise and seek to provide for? This question, of course, cannot be answered if one

sticks to the position that all rights are of equal importance. It can only be addressed if one allows for the possibility that some human rights are more fundamental than others and that the morally correct action for the government to take would be to prioritise these rights. A refusal to do so, no matter how consistent it may be philosophically would be tantamount to dogmatically sticking one's head in the metaphorical sands. Attempting to make such distinctions is, of course, a philosophically fraught exercise. It clearly requires the existence of some more ultimate criteria against which one can 'measure' the relative importance of separate human rights. This is a highly controversial issue within the philosophy of human rights and one which I shall return to when I consider how philosophers attempt to justify the doctrine of human rights. What remains to be addressed in our analysis of the concept of a human right are the questions of what adequately implementing human rights generally requires, and upon whom does this task fall; who has responsibility for protecting and promoting human rights and what is required of them to do so?

11.5 RIGHTS AS TRUMPS

Rights are more than mere interests, but they are not absolute. And so two competing frames have emerged for adjudicating conflicts over rights. Under the first frame, rights are absolute but for the exceptional circumstances in which they may be limited. Constitutional adjudication within this frame is primarily an interpretive exercise fixed on identifying the substance and reach of any constitutional rights at issue. Under the second frame, rights are limited but for the exceptional circumstances in which they are absolute. Adjudication within this frame is primarily an empirical exercise fixed on testing the government’s justification for its action. In one frame, the paradigm cases of rights infringement arise as the consequences of governing poorly. In the other, the paradigm cases arise as the costs of governing well.

The first frame describes the approach of the U.S. Supreme Court over roughly the last half century. The second frame describes the approach of the rest of the developed world over the same period. Neither frame is

perfect; many of their flaws track the inherent limits of judicial review in a democracy. The two frames might indeed produce similar results in particular cases. But across time and space, the choice of frame has profound consequences for constitutional law and for its subjects. In particular, the first frame, the one that dominates U.S. courts, has special pathologies that ill prepare its practitioners to referee the paradigmatic conflicts of a modern, pluralistic political order.

Rights are constantly at stake. And while we take rights seriously enough, we do not do so reasonably enough. Therein lies the path to rebuilding American politics, a feat that is, if I may, worthy of Hercules.

Professor Fallon's strong rejection of the notion that "rights are trumps" by making four points. First, rights are trumps in the single, but important, sense that they preclude the exercise of powers granted to government by the constitutional text. Second, rights sometimes operate as trumps on governmental powers in the very purse sense that they cut off all consideration of governmental interests. Third, even when the Court considers government interests in dealing with rights, it often does so on such a restricted basis that the description of rights as "trumps" remains accurate. Finally, even accepting the proposition that the fixing of rights inescapably involves a broad-based balancing of government and individual interests, there is a need to state principles for striking the balance at a very high level of generality. In my view, given our long, wise, and textually compelled constitutional heritage of individual liberty and equality, there is much to be said, both descriptively and normatively, for a constitutional vocabulary that proclaims that, at least sometimes, rights are trumps.

Check Your Progress 2

Note : a) Use the space provided for your answer.

b) Check your answer with those provided at the end of this unit.

1. What do you know Conflicts between rights?

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2. What do you know Rights as Trumps?

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11.6 LET US SUM UP

Many of the issues relating to this are not confined to rights, but are shared with duties and powers, so only a brief outline will be given.

In most modern legal systems certain fundamental rights are conferred by the constitution. This usually gives them a certain degree of priority over competing legal considerations, but this can vary from system to system. Sometimes constitutional rights will have an absolute priority over any other consideration not itself based on a constitutional right. Sometimes they will merely favour one legal outcome rather than another, without dictating it.

Constitutions will vary, too, as to whether certain rights are 'entrenched' or not. Entrenchment can be absolute, in which case the rights cannot be removed or altered by any constitutional means (as is the case with some of the 'basic rights' in the German Constitution), or it can be relative, requiring only a more onerous procedure than that for normal legislation (as with the Constitution of the USA.).

Constitutions will also vary on the extent to which human rights recognised under international law or treaty is recognised in national law. For example, in some countries in Europe, the European Convention on Human Rights and decisions of the European Court of Human Rights

thereon, are incorporated into national law and override any national law inconsistent with them. In others, such as the United Kingdom, the courts have, so far as possible; to interpret legislation to be consistent with the Convention, but have no power to strike it down even if they find it to be clearly inconsistent.

Other rights can be conferred by normal legislation or by common law (ie. the tradition of judge-made law). One interesting point is that, arguably, many legal rights are conferred by no positive law, but arise simply from the absence of any law to the contrary. That is, it is probably a practical necessity that every legal system has an unwritten 'closure rule' to the effect that whatever is not prohibited is permitted. If some types of rights are essentially permissions, then many such rights arise in this way. In most legal systems my right to cross the street, for example, is of this nature. Probably no positive law will say that I can do so, and possibly no more general enacted right will imply it.

11.7 KEY WORDS

Human rights:Human rights are moral principles or norms that describe certain standards of human behaviour and are regularly protected as natural and legal rights in municipal and international law

Political and moral conceptions:In one important strand of the philosophical debate, human rights are seen as a practical benchmark to evaluate and orient matters of national politics, international relations and global governance. The article investigates the possible benefits and problems of this approach.

11.8 QUESTIONS FOR REVIEW

3. How do you know the Moral vs. Legal conceptions?
4. Discuss the Choice and Interest theories.
3. What do you know Conflicts between rights?
4. What do you know Rights as Trumps?

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11.10 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. See Section 11.3
2. See Section 11.4

Check Your Progress 2

1. See Section 11.5
2. See Section 11.6

UNIT 12: CIVIL DISOBEDIENCE AND SATYAGRAHA

STRUCTURE

12.0 OBJECTIVES

After this unit we can able to know:

- To know Concept of Civil Disobedience
- To discuss the History of the Concept of Civil Disobedience
- To understand Theory of Civil Disobedience and Existentialist Philosophy
- To describe Gandhian Concept of Civil Disobedience and Satyagraha
- To know Civil Disobedience in Practice.

12.1 INTRODUCTION

The concept of civil disobedience movement has become an important element in the political power structure in contemporary world. This movement has spread around the world. It has been exemplified by Dr.

Martin Luther King, Jr. in the civil rights movement in the United States, the 'people's power' movement in the Philippines, the non-violent collapse of communism in Eastern Europe and so on. The success of Gandhi and Dr. Martin Luther King, Jr. had a lot to do with the emergence of satyagraha as an organisational power. To discuss about the history of the twentieth century, without exploring the impact of civil disobedience and satyagraha is to malign the very basis of the people's movement and the study of social science. The Gandhian method of civil disobedience and satyagraha has given a new dimension to the concept of statecraft. While delivering the most prestigious Gandhi Memorial Lecture on "Towards a World without war- Gandhism and the Modern World" on 11 February 1992, Dr. Daisaku Ikeda said, "As we approach the end of this century of unprecedented wars and violence, we seek as our common goal the creation of a world without war. At this critical juncture what can we – must we- learn from this great philosopher – a man whose spiritual legacy could rightly be termed as one of humanity's priceless treasures, a miracle of the twentieth century." The basic aim of every political system is to assist in the process of self-actualisation of individuals to fulfil the inner requirements for a continuous moral growth. The very concept of satyagraha has provided a new meaning and orientation to the concept of politics. Dr. Martin Luther King, Jr. was so much influenced by the concept of civil disobedience and satyagraha that he said, "If humanity is to progress, Gandhi is inescapable. He lived, thought and acted, inspired by the vision of humanity evolving towards a world of peace and harmony". The Swedish economist, Gunnar Myrdal said, "In a time of deepening crisis in the underdeveloped world, of social malaise in the affluent societies, it seems likely that Gandhi's ideas and techniques will become increasingly relevant." In a violent international climate, with struggle for economic hegemonism and ever escalating systemic process of violence, not to mention about human rights violations, poverty, and hunger, the concept of civil disobedience and satyagraha of Gandhi is gaining more and more momentum. The concept of Civil Disobedience and Satyagraha has played an important role in the theory and practice of human liberation movements. It has, indeed, continued to inspire the social and political movements

throughout the world. The Gandhian principles of non-violence and civil disobedience are rooted in his concept of Satyagraha. The anti-nuclear and Green Movements, the termination of statist communist administration in Czechoslovakia in 1987, and the popular resistance movement in Kosovo against the Serbian ethnic persecution are some of the important civil disobedience movements of the last century. The rise of racial and ethnic chauvinism, and retrogressive character of the globalisation process have again highlighted the role of civil disobedience and satyagraha as a strategy of social and political movements.

The term originated in a competition in the news-sheet Indian Opinion in South Africa in 1906. Mr. Maganlal Gandhi, grandson of an uncle of Mahatma Gandhi, came up with the word "Sadagraha" and won the prize. Subsequently, to make it clearer, Gandhi changed it to Satyagraha. "Satyagraha" is a tatpuruṣa compound of the Sanskrit words satya (meaning "truth") and āgraha ("polite insistence", or "holding firmly to"). Satya is derived from the word "sat", which means "being". Nothing is or exists in reality except Truth. In the context of satyagraha, Truth therefore includes a) Truth in speech, as opposed to falsehood, b) what is real, as opposed to nonexistent (asat) and c) good as opposed to evil, or bad. This was critical to Gandhi's understanding of and faith in nonviolence: "The world rests upon the bedrock of satya or truth. Asatya, meaning untruth, also means nonexistent, and satya or truth also means that which is. If untruth does not so much as exist, its victory is out of the question. And truth being that which is can never be destroyed. This is the doctrine of satyagraha in a nutshell." For Gandhi, satyagraha went far beyond mere "passive resistance" and became strength in practising non-violent methods. In his words:

Truth (satya) implies love, and firmness (agraha) engenders and therefore serves as a synonym for force. I thus began to call the Indian movement Satyagraha, that is to say, the Force which is born of Truth and Love or non-violence, and gave up the use of the phrase “passive resistance”, in connection with it, so much so that even in English writing we often

avoided it and used instead the word “satyagraha” itself or some other equivalent English phrase.

In September 1935, a letter to P. K. Rao, Servants of India Society, Gandhi disputed the proposition that his idea of Civil Disobedience was adapted from the writings of Henry David Thoreau especially Civil Disobedience of 1849.

The statement that I had derived my idea of civil disobedience from the writings of Thoreau is wrong. The resistance to authority in South Africa was well advanced before I got the essay of Thoreau on civil disobedience. But the movement was then known as passive resistance. As it was incomplete, I had coined the word satyagraha for the Gujarati readers. When I saw the title of Thoreau’s great essay, I began the use of his phrase to explain our struggle to the English readers. But I found that even civil disobedience failed to convey the full meaning of the struggle. I therefore adopted the phrase civil resistance. Non-violence was always an integral part of our struggle."

Civil disobedience is the active, professed refusal of a citizen to obey certain laws, demands, orders or commands of a government. By some definitions, civil disobedience has to be nonviolent to be called 'civil'. Hence, civil disobedience is sometimes equated with peaceful protests or nonviolent resistance.

Henry David Thoreau popularized the term in the US with his essay Civil Disobedience, although the concept itself has been practiced longer before. It has inspired Mahatma Gandhi in his protests for Indian independence against the British Raj; and Martin Luther King Jr.'s peaceful protests during the civil rights movement in the US. Although civil disobedience is considered to be an expression of contempt for law, King regarded civil disobedience to be a display and practice of reverence for law: "Any man who breaks a law that conscience tells him is unjust and willingly accepts the penalty by staying in jail to arouse the

conscience of the community on the injustice of the law is at that moment expressing the very highest respect for the law.

12.2 CONCEPT OF CIVIL DISOBEDIENCE

The phrase, "Civil Disobedience" which is so widely used as a strategy to ensure social justice throughout the world does not have any precise and specific connotation. Henry David Thoreau is generally credited with using this phrase as the title of an essay in 1849.Thoreau changed the title of his essay from "Resistance to Civil Government" to "Civil Disobedience". There is, however, neither any documentary evidence to show that Thoreau himself coined this phrase nor any reason given by him to indicate as to why he changed the title of his essay. The concept of Civil Disobedience has a long and varied history covering almost the whole stream of human thought from the Greek era to the present day. The justification and analysis of the concept has been attempted from a variety of philosophical, political and linguistic angles. The concept of Civil Disobedience implies an act or process of public defiance of a law or policy, duly formulated and created by a governmental authority, which an individual or a group considers to be unjust and/ or unconstitutional. The defiance of the governmental law or policies must be a pre-meditated act and the movement has to be announced in advance. The defiance of law might take either violent or non-violent form. It may be either active or 'passive'. As the basic spirit of the civil disobedience movement is to arouse public conscience, the individual or the group must be prepared to accept punishment for the violation of law or policies. The action or non-action of civil disobedience has to be openly insisted on in order to be qualified as civil disobedience. The mere non-compliance of legal provisions does not itself constitute civil disobedience. The concept of Civil Disobedience is grounded in justice and common good, and its end must be a limited one. The basic aim of civil disobedience movement is to arouse consciousness in the adversaries and appeal to their conscience. Although the methodology of civil disobedience is not restricted within the limited framework of either violent acts or ' non-violent action', for a variety of historical or psychological reasons, most of the practitioners of the civil rights

movement are committed to non-violence. Some of the pacifist believers of civil disobedience even assume that a complete commitment to nonviolence is ethically superior to the possible use of violence. In contemporary literature, the concept of civil disobedience has been understood as a political strategy adopted by Mahatma Gandhi and his followers in India to oppose British colonial administration. Martin Luther King Jr., during the Civil Rights movement in the United States, also successfully used this strategy Referring to the concept of civil disobedience, Mahatma Gandhi said, "I shall consider it (civil disobedience) to be a public, non-violent and conscientious act contrary to law, usually done with the intent to bring about a change in the policies or laws of the government. Civil Disobedience is a political act in the sense that it is an act justified by moral principles, which define a conception of civil society and the public good. It rests then, on political convictions as opposed to a search for self or group interest. In the case of a constitutional democracy, we may assume that this conviction involves the conception of justice that involves around the constitution itself."

12.3 HISTORY OF THE CONCEPT OF CIVIL DISOBEDIENCE

The concept of civil disobedience has a long and varied history. The concept was very popular as the Antigone theme in the Greek dramas. It was the basic theme of the anti-war motif of Lysistrata where the women, apart from leaving their men, captured the Acropolis and the Treasury of Athens. This conflict between civil law and conscience could be seen in the passive resistance of Jews to the introduction of icons into Jerusalem. Throughout the long history of human civilisation, there has always been a conflict between individual freedom and political authorities of the state. The freedom to choose whether to obey the dictates of state law or not has always been the basic theme of civil disobedience movement. Socrates considered obedience to and search for truth as the fundamental aim of human life. To him, justice is an element of truth. Although he strongly believed that an individual could only develop in a well ordered society, and it was his moral duty to obey the state, he was not prepared

to sacrifice the realm of conscience. He strongly advocated that the state has no right to force an individual to act unjustly. This is the area in which he justified the role of civil disobedience. The early Christians used civil disobedience movements as justification for religious and moral obedience to God. This was the first non-violent civil disobedience movement in the West. The doctrine of civil disobedience movement has been used as an instrument of socio-political transformation on a number of occasions. The modern concept of civil disobedience had its origin in the writings of empiricists like Thomas Hobbes. The political situation of England in the seventeenth century made Hobbes espouse the doctrine of fundamental natural rights as a basis for obedience to government. He was convinced that in order to guarantee rights to the individuals, the state must ensure a climate of civil peace. He was not prepared to grant the right to dissent to the individuals in the state. The only condition under which the individuals were entitled to have the right to dissent was when the state was not strong enough to protect the rights of the individual and to ensure civil peace in society. The right to civil disobedience was indeed inherent in the specific conditionality of Hobbes. John Locke was of the opinion that the people have a "right to resume their original liberty and to establish a new government." Even if he was not so precise and clear about the propriety of resistance to the authorities of the state, he was convinced that the people have the right to have both non-violent and violent civil disobedience movements to ensure liberties, properties and social justice. While analysing the empirical utilitarian approach to determine the concept of the right to resist, Henry David Thoreau adopted an idealistic anarchist view. He strongly believed that all civil laws that try to encroach upon the areas of moral law have no moral justification to exist. The Universal Declaration of Human Rights of 1948, which emphasised humanistic foundations for man's basic rights, supports the contention of Thoreau. In his Treatise of Human Nature, David Hume provided a libertarian concept of civil disobedience. Jeremy Bentham advocated that conscientious citizens have to "enter into measures of resistance as a matter of duty as well as interest." James Mill adopted a paradoxical attitude towards the concept of civil disobedience. He supported the right to a violent revolution while

opposing the right to advocate limited civil disobedience. All the empiricists like Thomas Hobbes, John Locke, David Hume, Jeremy Bentham and James Mill were in favour of a negative concept of individual freedom. They put emphasis on the absence of restraints as the basic requirement of individual freedom. Their views against all improper use of governmental authority provided the basic ground for the modern theories of civil disobedience. The Idealist School was less hospitable to the concept of civil disobedience. From Aristotle to Rousseau and supporters of Hegelian as well as Marxist traditions, all have emphasised the importance of state over individuals. While emphasising the positive concept of freedom, the Idealists were of the opinion that the positive concept of freedom could only be achieved by an unconditional loyalty to a collectivity. The Syndicalistsemphasised the obedience to democratic trade union leadership only so as to have access to the areas of positive freedom. One must not forget that the Anarchists in the idealist (Tolstoy) or socialist (Bakunin, Kropotkin) tradition have always pleaded for a total rejection of state system based on the positive concept of freedom. In fact, they provided a new approach to the realisation of man's social self through civil disobedience. Political theorists consider the idea of natural law as an important basis of the modern idea of civil disobedience. Although both Aristotle and Cicero failed to develop a theory of civil disobedience, their views on the subject have definitely paved the way for the justification of a civil disobedience movement. Aristotle said, that "unjust law is not a law." Cicero was of the view that "a true law – namely right reason- which is in accordance with nature, applies to all men and is unchangeable and eternal.". These views have provided a strong ground for the civil disobedience movement. Thomas Acquinas considered unjust laws as "acts of violence rather than laws". To him, "such laws do not bind in conscience." However, he would not allow any disobedience to the Church at all and, disobedience to the state, only in rare cases. Modern Neo-Thomists have adopted the same cautious attitude of Acquinas regarding the issues of civil disobedience. Pope Pius XII was criticized for not adopting a bold stand against the genocide of European Jews. Rolf Hochhuth in his play, The Deputy (1963),

criticisedthe Pope for not doing enough to disobey or resist Hitler's aggression. In recent years, the Church has taken a bold stand regarding civil disobedience. The right to disobedience is no more, limited to violation of divine laws. Pope John said, "For to safeguard the inviolable rights of the human person and to facilitate the fulfillment of his duties, should be the essential office of every public authority. This means that, if any government does not acknowledge the right of man or violates them, it not only fails in its duty, but its orders completely lack juridical force."

12.4 THEORY OF CIVIL DISOBEDIENCE AND EXISTENTIALIST PHILOSOPHY

Principles

Gandhi envisioned satyagraha as not only a tactic to be used in acute political struggle, but as a universal solvent for injustice and harm.

He founded the Sabarmati Ashram to teach satyagraha. He asked satyagrahis to follow the following principles (Yamas described in Yoga Sutra):

1. Nonviolence (ahimsa)
2. Truth – this includes honesty, but goes beyond it to mean living fully in accord with and in devotion to that which is true
3. Not stealing
4. Non-possession (not the same as poverty)
5. Body-labour or bread-labour
6. Control of desires (gluttony)
7. Fearlessness
8. Equal respect for all religions
9. Economic strategy such as boycott of imported goods (swadeshi)

On another occasion, he listed these rules as "essential for every Satyagrahi in India":

1. Must have a living faith in God

2. Must be leading a chaste life, and be willing to die or lose all his possessions
3. Must be a habitual khadi weaver and spinner
4. Must abstain from alcohol and other intoxicants

Rules for satyagraha campaigns

Gandhi proposed a series of rules for satyagrahis to follow in a resistance campaign:

1. Harbour no anger.
2. Suffer the anger of the opponent.
3. Never retaliate to assaults or punishment; but do not submit, out of fear of punishment or assault, to an order given in anger.
4. Voluntarily submit to arrest or confiscation of your own property.
5. If you are a trustee of property, defend that property (non-violently) from confiscation with your life.
6. Do not curse or swear.
7. Do not insult the opponent.
8. Neither salute nor insult the flag of your opponent or your opponent's leaders.
9. If anyone attempts to insult or assault your opponent, defend your opponent (non-violently) with your life.
10. As a prisoner, behave courteously and obey prison regulations (except any that are contrary to self-respect).
11. As a prisoner, do not ask for special favourable treatment.
12. As a prisoner, do not fast in an attempt to gain conveniences whose deprivation does not involve any injury to your self-respect.
13. Joyfully obey the orders of the leaders of the civil disobedience action.

In view of the Nazi persecution of the Jews in Germany, Gandhi offered satyagraha as a method of combating oppression and genocide, stating:

If I were a Jew and were born in Germany and earned my livelihood there, I would claim Germany as my home even as the tallest Gentile German might, and challenge him to shoot me or cast me in the dungeon; I would refuse to be expelled or to submit to discriminating treatment. And for doing this I should not wait for the fellow Jews to join me in civil resistance, but would have confidence that in the end the rest were bound to follow my example. If one Jew or all the Jews were to accept the prescription here offered, he or they cannot be worse off than now. And suffering voluntarily undergone will bring them an inner strength and joy [...] the calculated violence of Hitler may even result in a general massacre of the Jews by way of his first answer to the declaration of such hostilities. But if the Jewish mind could be prepared for voluntary suffering, even the massacre I have imagined could be turned into a day of thanksgiving and joy that Jehovah had wrought deliverance of the race even at the hands of the tyrant. For to the God-fearing.

When Gandhi was criticized for these statements, he responded in another article entitled "Some Questions Answered":

Friends have sent me two newspaper cuttings criticizing my appeal to the Jews. The two critics suggest that in presenting non-violence to the Jews as a remedy against the wrong done to them, I have suggested nothing new... What I have pleaded for is renunciation of violence of the heart and consequent active exercise of the force generated by the great renunciation."

In a similar vein, anticipating a possible attack on India by Japan during World War II, Gandhi recommended satyagraha as a means of national defense (what is now sometimes called "Civilian Based Defense" (CBD) or "social defence"):

...there should be unadulterated non-violent non-cooperation, and if the whole of India responded and unanimously offered it, I should show that, without shedding a single drop of blood, Japanese arms—or any combination of arms—can be sterilized. That involves the determination

of India not to give quarter on any point whatsoever and to be ready to risk loss of several million lives. But I would consider that cost very cheap and victory won at that cost glorious. That India may not be ready to pay that price may be true. I hope it is not true, but some such price must be paid by any country that wants to retain its independence. After all, the sacrifice made by the Russians and the Chinese is enormous, and they are ready to risk all. The same could be said of the other countries also, whether aggressors or defenders. The cost is enormous. Therefore, in the non-violent technique I am asking India to risk no more than other countries are risking and which India would have to risk even if she offered armed resistance.

The theme of alienation, drawn from existentialist philosophy, is an important aspect of contemporary theories of civil disobedience. Albert Camus is considered a leading contributor in this area. Although both Albert Camus and Jean Paul Sartre and other existentialist thinkers believe that there is no valid basis for any moral or political authority's claim to validity (or legitimacy) or to obedience, Camus was more forthright regarding his views on resistance to oppression. He was of the opinion that respect for the dictates of justice must precede respect for law. In his Nobel Prize address, Camus strongly advocated his 'refusal to lie about what we know and resistance to oppression'. He was not even averse to the use of physical force, although he always regarded it as a supreme evil, to counteract the worst violence of the state. He considered every power elite and authority of the state as the enemy of justice. He considered pacifists as 'bourgeois nihilists'.

Check Your Progress 1

Note : a) Use the space provided for your answer.

b) Check your answer with those provided at the end of this unit.

1. How do you know Concept of Civil Disobedience?

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2. Discuss the History of the Concept of Civil Disobedience.

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3. Discuss Theory of Civil Disobedience and Existentialist Philosophy.

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12.5 GANDHIAN CONCEPT OF CIVIL DISOBEDIENCE AND SATYAGRAHA

Mahatma Gandhi is considered to be the leading theorist in the history of civil disobedience movement. The Gandhian concept of civil disobedience and satyagraha is the greatest contribution to mankind in our times. Albert Einstein said, "It is my belief that the problem of bringing peace to the world on a supranational basis will be solved only by employing Gandhi's method on a large scale." Martin Luther King Jr. said, "From my background I gained my regulating Christian ideals, from Gandhi, I learned my operational technique." Gandhi called his concept of civil disobedience as the doctrine of 'Satyagraha' or 'Truth Force'. For him, the adjective 'civil' in the phrase ' civil disobedience' referred to peaceful, courteous, and a 'civilised' resistance. To him, the concept of passive resistance is inadequate to grasp the full implications of the concept of 'satyagraha'. He said that one must not only resist passively the injustice and arbitrariness of the government, but also must

do so without any feeling of animosity. In the earlier phase, Gandhi had spoken of passive resistance as an 'all-sided sword'. He said, "…it blesses him who uses it and him against whom it is used. Without draining a drop of blood, it produces far-reaching results….Given a just cause, capacity for endless suffering and avoidance of violence, victory is a certainty." Subsequently, Gandhi abandoned the term 'passive resistance', and chose the term 'satyagraha'. The concept of satyagraha is devoid of any feelings of hatred and violent means. It is based on spiritual purity. Like Tolstoy, Gandhi was opposed to all forms of violence in his commitments to political actions. Arne Naess, a leading theoretician on Gandhi has stressed Gandhi's "constructive imagination and uncommon ingenuity in finding and applying morally acceptable forms of political action." Satyagraha, the unique system of non-violent resistance to the government's arbitrary methods and actions is, indeed, his greatest gift to mankind. For Gandhi, Ahimsa (non-violence) and Truth were inseparable. He said that "Ahimsa is the means; Truth is the end." Gandhi used satyagraha as a lever for social movements. In order to understand the Gandhian concept of civil disobedience and satyagraha, it is desirable to know Gandhi's view on the subject in detail. Gandhi said, "Satyagraha largely appears to the public as Civil Disobedience or Civil Resistance. It is civil in the sense that it is not criminal. The lawbreaker … openly and civily breaks (unjust laws) and quietly suffers the penalty for their breach. And in order to register his protest against the action of the lawgivers, it is open to him to withdraw his cooperation from the state by disobeying such other laws whose breach does not constitute moral turpitude. In my opinion, the beauty and efficacy of Satyagraha are so great and doctrine so simple that it can be preached even to children." Gandhi strongly advocated that it was the birth right of every individual to offer civil disobedience in the face of unjust laws. He wrote in 1920, "I wish I could persuade everybody that civil disobedience is the inherent right of a citizen, He does not give it up without ceasing to be a man. Civil disobedience, therefore, becomes a sacred duty. When the state has become lawless, or which is the same thing, corrupt. And a citizen that barters with such a state, shares in corruption or lawlessness." In his evidence before the Hunter Committee

that was constituted by the Government of India to enquire into the disturbances in 1919, Gandhi argued that civil disobedience would be called for and is legitimate even in a democracy. He highlighted its constitutional aspects. In his reply to the Hunter Committee as to what he would have done towards the breakers of laws if he would have been a Governor himself, Gandhi replied, "If I were in charge of government and brought face to face with a body who entirely in search of truth, were determined to seek redress from unjust laws without inflicting violence, I would welcome it and would consider that they were the best constitutionalists, and as a Governor I would take them by my side as advisers who would keep me on the right path." Some people have questioned the efficacy of Satyagraha as a universal philosophy. Gandhi's vision was not confined to the attainment of independence from foreign rule, the control of government by the Indians. He struggled for the Indian soul, not merely for a visible polity. In the concept of 'civil disobedience and satyagraha' both 'civil disobedience' and 'satyagraha' are deeply interlinked as a theory of conflict resolution. Gandhi said, "Experience has taught me that civility is the most difficult part of Satyagraha. Civility does not here mean the more outward gentleness of speech, cultivated for the occasion but an inborn gentleness and desire to do the opponent good. These should show themselves in every act of satyagraha." This new orientation of the concept has provided a visionary dimension to the very approaches of conflict resolution in statecraft. The present threat, indeed, to the very existence of mankind could only be removed by the Gandhian approach of a revolutionary change of heart in individual human beings. The basic aim of every political system is to create a social, political and economic climate in which the individuals can fulfil inner requirements of their continuous moral growth. The Gandhian method of civil disobedience and satyagraha alone helps in creating conditions in civil society whereby all spiritual values and methods could be appreciated in the state system as a vital necessity for progress and prosperity. Dr. King very successfully implemented this Gandhian method during the civil rights movement. He said, "A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law." In

the language of Thomas Aquinas, an unjust law is a human law that is not rooted in eternal and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statues are unjust because segregation distorts the soul and damages the personality Gandhi emphasised 'civil' in 'civil disobedience' to imply non-violence. Non-violence, as it is highlighted in the analysis, has a positive as well as a negative connotation. In its negative form, it implies ' non-injury' to any living being. In its positive form, it means, 'the greatest love' and 'the greatest charity'. In Buddhist literature, it is highlighted as an attitude of creative coexistence. According to Henry Thoreau, if there is a conflict between 'higher values' and 'lower values', then the citizen in no way should resign his conscience to the legislation of the state. He said that "legislators, politicians serve the state chiefly with their heads; and as they rarely make any moral distinctions, they are as likely to serve the devil, without intending it, as God. A very few serve the state with conscience also, and so necessarily resist it for the most part…, no undue respect for law is required as it will commit one to do many unjust things. Where 'immorality' and 'legality' come into conflict, the only obligation which I have a right to assume is to do at any time what I think right, what I have to do is to see, at any rate, that I do not lend myself to the wrong which I condemn". The Congress Party organised the Civil Disobedience Movement in pursuance of the resolution on independence passed in the Lahore session of the Congress in December 1929.It was the result of British refusal to accept the Congress demand for Dominion Status. Factors such as the Lahore Conspiracy Case, the tragic death of Jatin Das in jail in 1929, the Meerut Conspiracy Case also forced the Congress to demand independence.

The civil disobedience movement got manifested in various forms such as the widespread defiance of law, boycott of British goods, withdrawal of support by the army and the police, and non-co-operation with the government. Gandhi highlighted all these demands in his letter to the government in 1930 to break the salt law. Gandhi started his Satyagraha movement in South Africa. Subsequently, on his return to India to lead

the non-co-operation movement against the British administration, he used it to remove the grievances of the oppressed workers and peasants of Champaran, Kheda, and Bardoli. To quote Gandhi, "… to speak of satyagraha is to speak of a weapon… a weapon which refuses to be limited by legality. Challenge, illegality, and action – there are so many keys with which satyagraha is equipped ….For though satyagraha rejects violence, it does not renounce illegality." Gandhi always emphasised the value of proper means. To him, "Improper means result in an impure end….One cannot reach truth by untruthfulness. Truthful conduct alone can reach truth. Non-violence is embedded in truth." Often Gandhi has been taken to task for his emphasis on self-suffering and Satyagraha. Some trace it to the streak of masochism in the character of Gandhi, while others have gone over to Hindu scriptures to emphasise Indian spirituality. But the Gandhian approach to self-suffering and satyagraha has little to do with individual self-mortification. It is a simple condition for the success of a cause. It does not imply that there would not be any suffering in the struggle for Satyagraha. It simply means the assertion of one's freedom and one's right to dissent. This method often works as a psychological way to change the minds of an opponent. Gandhi said, "While in passive resistance, there is a scope for the use of arms when a suitable occasion arrives, in satyagraha physical force is forbidden even in the most favourable circumstances. Passive resistance may be offered side by side with the use of arms. Satyagraha and brute force being each a negation of the other can never go together." The Gandhian concept of Satyagraha is the product of his faith in religion and spiritual values. He was convinced that the supreme law that governs all living beings and universe is nothing but love and non-violence, and Gita carried this message of non-violence as 'soul force'.

The Gandhian concept of satyagraha is not merely an instrument of conflict resolution or nonviolent resistance to injustice. It is an integrated concept, covering the whole life process of a satyagrahi. It includes: truth, non-violence, chastity, non-stealing, swadeshi, fearlessness, breadlabour, removal of untouchability, and so on. Civil disobedience is a 'branch' of 'satyagraha'. All 'satyagrahas' can never be civil

disobedience, whereas all cases of civil disobedience are cases of satyagraha. Gandhi said, "Its root meaning is holding on to truth, hence truth force. I have called it Love Force or Soul Force."

12.6 CIVIL DISOBEDIENCE IN PRACTICE

The Gandhian concept of civil disobedience and satyagraha has relevance in contemporary world. Rabindranath Tagore reflected the voice of the generation when he said, Gandhi was a 'living truth', a symbol of humanism. Gandhi used the civil disobedience method for the first time during his march to Transvaal in South Africa in 1913 to protest against the discriminatory policies of the South African government. This was the first real mass movement of civil disobedience led by Gandhi. Gandhi was not interested in embarrassing the Smuts administration. When he found that Mr. Smuts was in trouble, he called off one of his projected marches. Commenting on this action of Gandhi, Louis Fischer, a leading journalist wrote: "In the end, Gandhi had not won a victory over Smuts, he had won Smuts over." In 1918, Gandhi used the civil disobedience movement in India during his campaign for the textile workers of Ahmedabad. The Salt Satyagraha of 1930, the civil disobedience movement for independence in 1930, and his fast unto death for the development of social conditions of untouchables in 1939 are some of the examples of civil disobedience movements under the leadership of Gandhi in India. The people of South Africa used the Gandhian method of civil disobedience to demand independence from the colonial administration.

The civil disobedience movement against the apartheid policies of the South African Government in 1952, the Johannesburg bus boycott in 1957, and the 1960 march under the leadership of Chief Albert J Luthuli against the Sharpville massacre are some of the historic mass civil disobedience movements. The Civil Disobedience movement by the Buddhists in South Vietnam against the American bombing was inspired by the doctrine of non-violence. The other historic examples of civil disobedience movements were: the movement against German

occupation in Denmark and Norway, DaniloDolci's strike in Sicily in the 1950s, nuclear disarmament campaign in Western Europe, the non-violent demonstrations in Poland, the Vorkuta prison uprising in 1953 in the erstwhile Soviet Union, the Montgomery Civil rights march in 1955, and the anti-Vietnam war march towards the army base in Oakland in 1965. The Civil Disobedience movement is gaining momentum day by day throughout the world.

Check Your Progress 2

Note : a) Use the space provided for your answer.

b) Check your answer with those provided at the end of this unit.

1. Describe Gandhian Concept of Civil Disobedience and Satyagraha.

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2. What do you know Civil Disobedience in Practice?

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12.7 LET US SUM UP

The Anti-Vietnam war, Civil Rights, Draft Resistance, Anti-Nuclear Weapons movements, and a host of other movements in Western Europe, USA, and in other parts of the world have given rise to a lively debate about the Civil Disobedience strategy in a democratic setup. The issue is being debated and discussed from various angles in different parts of the

world and also its relevance in contemporary international system. Although there has been a significant volume of conservative opinions that would not tolerate any opposition to the laws that have been democratically passed by various state systems, there is also a considerable opinion of wellreasoned persons in favour of the Gandhian concept of civil disobedience movement. John Rawls, in discussing the concept of civil disobedience movement in a contemporary democratic set-up said, "The right to make laws does not guarantee that the discussion is rightly made; and while the citizen submits his conduct to the judgement of democratic authority, he does not submit his judgement to it. And if in his judgement, the enactments of a majority exceed a certain bound of injustice, the citizen may consider civil disobedience." He said that "Civil disobedience is a political act in the sense that it is an act justified by moral principles which define a conception of civil society and the public good." Burton Zwiebach said, "Democratic governments must include an agreement to respect differences of opinion concerning justice and right."

Civil Disobedience is not inconsistent with democracy. When traditional channels of meeting public grievances are incapable of fulfilling legitimate demands, civil disobedience becomes a strategy for the attainment of goods and social justice. Amid the fury of communalism, genocide and the market oriented process of social injustice, the Gandhian method of civil disobedience and satyagraha is becoming more and more popular in contemporary society. To a superficial observer, it might appear that the concept of civil disobedience and satyagraha goes against the very synthesis of ideals between different faiths and involves a clash of values between the activists of civil disobedience movement and the state. In fact, the Gandhian concept is a means for achieving social synthesis and harmony. It emphasises dialogues for a dialectical search for truth. T.H.Green in his 'Lectures on the Principles of Political Obligation' has rightly said, "The functions of government are to bring in those conditions of freedom, which are conditions of the moral life. If it ceases to serve this function it loses its claim on our obedience."

According to Barker, civil disobedience is virtually within the process of social thought; it is a method of persuasion rather than recourse to force.

12.8 KEY WORDS

Satyagraha:Satyagraha, or holding onto truth, or truth force, is a particular form of nonviolent resistance or civil resistance. It is not the same as passive resistance, and advocates resisting non-violently over using violence. Resisting non-violently is considered the summit of bravery.

Disobedience:failure or refusal to obey rules or someone in authority.

Civil Disobedience: Civil disobedience is the active, professed refusal of a citizen to obey certain laws, demands, orders or commands of a government. By some definitions, civil disobedience has to be nonviolent to be called 'civil'. Hence, civil disobedience is sometimes equated with peaceful protests or nonviolent resistance.

Conflict Resolution:Conflict resolution is conceptualized as the methods and processes involved in facilitating the peaceful ending of conflict and retribution.

12.9 QUESTIONS FOR REVIEW

3. Discuss the importance of satyagraha as a method of conflict resolution.
4. What is satyagraha? In what way does it differ from passive resistance?
5. What is the relevance of satyagraha and civil disobedience in the contemporary world?
6. What is Gandhi’s contribution to the theory and practice of satyagraha?
7. What are the various dimensions of the Gandhian concept of satyagraha?
8. How do you know Concept of Civil Disobedience?
9. Discuss the History of the Concept of Civil Disobedience
10. Discuss Theory of Civil Disobedience and Existentialist Philosophy

11. Describe Gandhian Concept of Civil Disobedience and Satyagraha
12. What do you know Civil Disobedience in Practice?

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12.11 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. See Section 12.2
2. See Section 12.3

Check Your Progress 2

1. See Section 12.4
2. See Section 12.5
3. See Section 12.6

UNIT 13: DEBATES ON DEMOCRATIC POLITICAL COMMUNITY

STRUCTURE

13.0 OBJECTIVES

After this unit, we can able to know:

- To know the Procedural vs. Substantive Conceptions of Democracy;
- To discuss Recognition and Democratic Struggles;
- To describe Political Community and the Challenges of Pluralism;
- To discuss Radical Democracy.

13.1 INTRODUCTION

In politics, there usually is an intermediary, a third party that mediates in negotiations, in conflicts. The commons can be thus seen as a “new” way to get rid of intermediaries, and let the public thing to be ruled in an alternative way. But, is this possible? Can we get rid of mediators?

Notes

Ben Said, in Elogio de la políticaprofana, says: if politics is the art of mediation, what is left when we have no politics? If we have no politics, we do have to come up with another way of organising democracies. But participation will not just suffice.

Without intermediaries, micro- and local experiences might work perfectly, but is that scalable to the macro level?

Democracy is the exception. Democracy has only been the norm during a few hundred of years: in the Vth century b.C. during the classical democracy in Ancient Greece, and in the last 200 years of the modern democracy since the Constitution of Philadelphia in 1787. The former one is a democracy without intermediators, and the latter a democracy full of intermediators.

Democracy in Athens was fully against representation: no one was elected to represent anyone as this was non-democratic. Only powerful people could ask to be elected as a representative, thus there was a bias towards power. Representatives were merely executive powers that did what the assembly commanded, and were usually chosen by random methods.

There were no political parties, and there was no interpretation of facts or ideological positioning. Democracy was totally direct and opinion shaping happened during assemblies that used to deliberate for hours. They had slaves that worked for them, which made it easier to participate in politics: only citizens could participate. The citizen acted not on selfishness, but thinking on the common benefit. Aristotle said that a citizen was someone that knew how to rule and how to be ruled upon.

Greek democracy was a strong democracy: it believed that there was a better future if people worked together and had common goals or projects.

Modern or liberal democracies, on the contrary, is a highly intermediated democracy. It is based on a strong non-confidence on one's peers to rule and be ruled. Liberal democracies are built to protect property and the mass is seen with fear and little capable to deal with public issues. The US Constitution builds a dense mesh of intermediators to separate people from power. Citizens can just glance up power in a blurry image.

The concept of citizenship in liberal democracies is a very individualistic one: people look for themselves and not for the common good, the citizen is absolutely selfish, whenever we become dreamers in common, we are becoming the dictators' of the others' dreams. The citizen is more a customer of the State rather than a citizen that takes part of it.

Greek democracy ended up as total failure. Assemblies were crowded out by specialists (demagogues, sophists) that mastered the art of dialogue. But they had not any responsibility on what was decided in the Assembly. Thus, dialogue was killed (and Socrates too…), and worst decisions were taken.

And liberal democracies are increasingly being seen as a total failure too. It is becoming unacceptable for the citizen to be totally alienated from power and decision-making.

We need intermediation, but we need to bring power closer to the citizen. There is a need for politics. But politics must keep a certain distance from the citizen too, to avoid populism, to try and be objective, to be able to provide answers.

Intermediation is also about deception: neither for you nor for me. It is about finding a middle point. And politics also needs authority, enforcement.

We need politics. But, surely, we also need another kind of politics. One that is strongly based in confidence and confidence that goes both ways:

from the State/politician to the citizen and from the citizen to the representative.

And if the citizenry does want to move towards a more direct democracy (like in Athens) is it absolutely necessary that it has to abandon the position of being a customer, and act more like a citizen, an engaged one that participates eagerly in politics.

13.2 PROCEDURAL VS. SUBSTANTIVE CONCEPTIONS OF DEMOCRACY

Procedural democracy is a democracy in which the people or citizens of the state have less influence than in traditional liberal democracies. This type of democracy is characterized by voters choosing to elect representatives in free elections.

Procedural democracy assumes that the electoral process is at the core of the authority placed in elected officials and ensures that all procedures of elections are duly complied with (or at least appear so). It could be described as a republic (i.e., people voting for representatives) wherein only the basic structures and institutions are in place. Commonly, the previously elected representatives use electoral procedures to maintain themselves in power against the common wish of the people (to some varying extent), thus thwarting the establishment of a full-fledged democracy.

Procedural democracy is quite different from substantive democracy, which is manifested by equal participation of all groups in society in the political process.

Certain southern African countries such as Namibia, Angola, and Mozambique, where procedural elections are conducted through international assistance, are possible examples of procedural democracies.

For procedural democrats, the aim of democracy is to embody certain procedural virtue. Procedural democrats are divided among themselves over what those virtues might be, as well as over which procedures best embody them. But all procedural democrats agree on the one central point: for procedural democrats, there is no "independent truth of the matter" which outcomes ought track; instead, the goodness or rightness of an outcome is wholly constituted by the fact of its having emerged in some procedurally correct manner.

Substantive democracy is a form of democracy in which the outcome of elections is representative of the people. In other words, substantive democracy is a form of democracy that functions in the interest of the governed. Although a country may allow all citizens of age to vote, this characteristic does not necessarily qualify it as a substantive democracy.

In a substantive democracy, the general population plays a real role in carrying out its political affairs, i.e., the state is not merely set up as a democracy but it functions as one as well. This type of democracy can also be referred to as a functional democracy. There is no good example of an objectively substantive democracy.

The opposite of a substantive democracy is a formal democracy, which is where the relevant forms of democracy exist but are not actually managed democratically. The former Soviet Union can be characterized in as such, since its constitution was essentially democratic but in actuality the state was managed by a bureaucratic elite

Although the concept of democracy is multifaceted, most scholarly definitions focus on the characteristics of the institutions and procedures used to make public policy. Democracies are typically identified as nations where citizens have regular opportunities to replace leaders through free elections, where electoral competition is robust, and where basic civil rights and liberties are protected. The widespread uprisings in the Middle East and North Africa—the ―Arab Spring‖—are frequently explained as driven by demands that authoritarian regimes be replaced

with representative governments. In order to understand the prospects and long term support for democratic reforms it is important to examine how people in the region understand the concept of democracy. In other words, what are people in the region likely to look for when they assess whether their goal of democratic governance has been achieved. We begin from the premise that support for the procedural elements of democracy are crucial to democratic institutions and stability. In order for a democratic system of governance to survive, citizens must be willing to see the democratic regime as legitimate so long as procedural standards are met—even when they are personally dissatisfied with the outcomes that the regime produces. Previous work has explored the predictors of stated support for democracy and levels of political tolerance with a particular eye toward the relationship between religiosity and feelings about democracy (Casanova 2005, Sarkissian 2011). Other work assesses the causes of support for Islamic rather than secular democracy (Tessler 2010). However, little work has examined what people mean when they say they support democracy. Research in the American context finds that even in countries where there is a long history of democratic governance, many people lack an understanding of the basic contours of democratic political institutions and the policy-making process (e.g., Delli-Carpini and Keeter 1997). Many people report preferences for political processes like replacing elected representatives with unelected policy experts that are strikingly at odds with scholarly notions of democratic governance (Hibbing and Theiss-Morse 2002). In situations with long-standing institutions, these lacunae in people‘s appreciation of democratic procedures may have few consequences because established political institutions are relatively stable and difficult to change. In contrast, in emerging democracies or situations where undemocratic governments are being threatened, public understanding of and principled support for structural elements of a democracy may be essential to the prospects for lasting democratic institutions. If support for democracy rests on expectations of substantial changes in redistributive policies or economic conditions, this support may falter if expectations are not met. Although some research finds evidence that democracy tends to reduce income inequality (e.g.,

Reuveny and Li 2003), there is little evidence of rapid reductions in income inequality or dramatically increased provision of basic services in new democratic regimes (e.g. Bollen and Jackman 1985; Deininger and Squire 1996; Simpson 1990). Additionally, research finds that global trends in economic trade appear to be increasing inequality (e.g., Dreher and Gaston 2008).

Thus, to the extent that a new democracy is able to address economic problems like income inequality and lack of access to basic resources, these effects may be dampened by factors beyond the new regimes control. Even if a new democratic regime succeeds in addressing the economic concerns of the public, democracy may prove fragile if people fail to object when leaders credited with improving conditions backslide on democratic procedures. Using data from a survey conducted in four Arab populations – Algeria, Jordan, Lebanon, and Palestine, we examine how people define democracy. The survey included questions asking respondents to indicate what they saw as the most and second most important characteristics of a democracy. They were provided with two options that focused on the procedural aspects of a democracy (the opportunity to replace leaders through a voting process and freedom to criticize those in power) and two items that focused on substantive outcomes (low income inequality and provision of basic necessities).

Over fifty percent of respondents in our sample indicated that one of the substantive outcomes was the most essential characteristics of democracy, with 31 percent prioritizing both of the substantive outcomes over the procedural options. This suggests that for many people in this region, assessments of the quality of a new democratic regime may rest on the substantive outcomes the government produces, rather than the procedural aspects of how the government operates. We make three contributions to our understanding of how people in the Arab world understand democracy. First, we examine the correlates of how individuals conceive of democracy. Specifically, we consider a variety of explanations for why some individuals see provision of substantive outcomes like low income inequality and provision of basic services as

central to democracy while others define democracy in terms of procedural considerations.

We find evidence that two broad dynamics shape understandings of the idea of democracy in the Arab world. First, those who are more likely to be knowledgeable about political matters—e.g., those with higher levels of education and those who report high levels of interest and participation in the political arena—are more likely to define democracy in procedural terms. Second, we find that, after controlling for factors that may directly affect formal knowledge about the meaning of democracy, individuals project what they see as particularly desirable outcomes onto the term ―democracy.‖ Second, we assess whether the correlates of how people understand the term ―democracy vary across political contexts. For the most part, the individual-level correlates of democracy are consistent across the four areas we study. However, we do find some evidence of differences across contexts. For example, female respondents are more likely than men to see substantive outcomes as the most important hallmarks of democracy in Jordan and Palestine, but this relationship is significantly weaker in Algeria and Lebanon. The most notable difference we find across models is that none of the individual level characteristics we examine significantly predict conceptions of democracy in Algeria.

These findings suggest that the factors that affect how people understand and evaluate democracy may vary substantially across historical and cultural contexts. Finally, in contrast to prior research that finds either inconsistent or insignificant relationships between religious observance (measured by reported frequency of reading the Quran) and attitudes related to democracy, we find robust evidence that individuals who read the Quran more frequently are more likely to define democracy in substantive terms (providing for the basic needs of the poor and reducing the income gap between the rich and poor). This relationship remains statistically significant after controlling for additional measures of religious attitudes associated with Islamist conservatism. We also report findings from supplementary analysis where we find a strong negative

relationship between Islamist conservatism and both diffuse and specific support for democracy but no relationship between frequency of reading the Quran and support for democracy.

These findings suggest that religious suggest that religious observance can significantly affect how people think about democracy in the Arab world and that observance should be treated as a concept that is distinct from attitudes about the role of Islam in politics or the appropriate role for women in society. In the next section of the paper we discuss the concept of democracy and review previous research that has examined support for democracy, as well as some work that has examined how people define democracy. Then we present our theoretical expectations regarding how a variety of individual level characteristics may shape people‘s understanding of democracy. We also discuss how previous work on public support for democracy can inform the question we address here. Next we describe our data and present our findings. In the final section of the paper we discuss the implications of our findings and suggest several avenues for future research.

Conceptions of Democracy When defining democracy, scholars typically point to structural aspects of a political system (e.g., Franck 1992, 64). Democratic theorists such as Schumpeter (1942), Dahl (1998), and Sorensen (1993) have all recognized the essential elements of democracy to be some combination of procedural structures such as free, fair and frequent elections, access to alternative sources of information, freedom of expression, or at the very least, under Schumpeter‘s narrow definition ―the ability to choose between leaders at election time‖ (Sorensen 1993, 10). Some scholars (Sartori, 1987; Sorensen, 1993) note that substantive concerns may affect the viability of an effective democratic system, pointing out the difficulty for democratic procedures in contexts of extreme poverty (Held, 1997). However, these substantive elements are viewed as helpful preconditions for the establishment of structural democracy, not as definitions of democratic governance. The notion that particular procedural arrangements are at the core of the idea of democracy is also reflected in scholarly attempts to quantify democracy,

such as the Polity IV project. These coding systems typically focus on procedural criteria such as the presence of institutions and procedures for the expression of public preference and constraints on government institutions and officials (Polity IV Global Report 2011, 6).

Check Your Progress 1

Note : a) Use the space provided for your answer.

b) Check your answer with those provided at the end of this unit.

1. Discuss the Procedural vs. Substantive Conceptions of Democracy.

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2. Discuss Recognition and Democratic Struggles.

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13.3 RECOGNITION AND DEMOCRATIC STRUGGLES

Recognition has both a normative and a psychological dimension. Arguably, if you recognize another person with regard to a certain feature, as an autonomous agent, for example, you do not only admit that she has this feature but you embrace a positive attitude towards her for having this feature. Such recognition implies that you bear obligations to treat her in a certain way, that is, you recognize a specific normative status of the other person, e.g., as a free and equal person. But recognition does not only matter normatively. It is also of psychological

importance. Most theories of recognition assume that in order to develop a practical identity, persons fundamentally depend on the feedback of other subjects (and of society as a whole). According to this view, those who fail to experience adequate recognition, i.e., those who are depicted by the surrounding others or the societal norms and values in a one-sided or negative way, will find it much harder to embrace themselves and their projects as valuable. Misrecognition thereby hinders or destroys persons' successful relationship to their selves. It has been poignantly described how the victims of racism and colonialism have suffered severe psychological harm by being demeaned as inferior humans (Fanon 1952). Thus, recognition constitutes a "vital human need" (Taylor 1992, 26).

Recognition theory is thought to be especially well-equipped to illuminate the psychological mechanisms of social and political resistance. As experiences of misrecognition violate the identity of subjects, the affected are supposed to be particularly motivated to resist, that is, to engage in a "struggle for recognition." Therefore, at least since the 1990s, theories of recognition have enjoyed a lively academic as well as public interest. They promise to illuminate a variety of new social movements—be it the struggles of ethnic or religious minorities, of gays and lesbians or of people with disabilities. None of these groups primarily fight for a more favorable distribution of goods. Rather, they struggle for an affirmation of their particular identity and are thus thought to be engaged in a new form of politics, sometimes labeled "politics of difference" or "identity politics." However, many accounts want to ascribe a much more fundamental role to the concept of recognition—covering the morality of human relationships in its entirety. From this more general perspective, also earlier campaigns for equal rights—are it by workers, women or African Americans—should be understood as "struggles for recognition." To frame these political movements in terms of recognition highlights the relational character of morality—and justice: Justice is not primarily concerned with how many goods a person should have but rather with what kind of standing vis-à-vis other persons she deserves (Young 1990).

This entry will first discuss some controversies surrounding the very concept of recognition

(1) before reviewing four dimensions of what is recognized (by whom and on what grounds) that have been highlighted by different theories of recognition

(2) However, even in light of these differentiations some authors have expressed the fear that concentrating on the issue of recognition might supplant the central problem of (re)distribution on the political agenda

(3) Finally, the often rather sanguine descriptions of recognition and its potential for emancipation

(4) have been fundamentally challenged: The concern is that because the need for recognition renders persons utterly dependent on the dominating societal norms it may undermine the identity of any critic.

Thus, some worry that struggles for recognition may lead to conformism and a strengthening of ideological formations.

In societies divided by a history of political violence, political reconciliation depends on transforming a relation of enmity into one of civic friendship. In such contexts, the discourse of recognition provides a ready frame in terms of which reconciliation might be conceived. Yet social theorists are divided in their assessment of the emancipatory potential of the struggle for recognition. For Charles Taylor, it establishes the possibility of reconciliation through a reciprocal dialogue oriented towards a fusion of horizons. Yet Frantz Fanon highlights the violent appropriation inherent in the logic of recognition that curtails the possibility of reconciliation. I demonstrate that Taylor's optimism about the possibility of reconciliation through a struggle for recognition is unwarranted. For, although recognition provides the rough ground in terms of which an ethical encounter between former enemies becomes possible, it tends to fix the terms on which a reconciliatory politics might be enacted in a way that reduces the prospect of community between

them. This argument is developed through a consideration of the legal-politics of reconciliation in Australia. But against Fanon's pessimism, I advocate an agonistic reconciliation, according to which political actors would indefinitely postpone the moment of positive recognition while staking the prospect of community on the non-identity of the other, i.e. that quality in the other that cannot be reduced to the terms of identity or otherness.

Elementary Recognition

Hegel's famous idea that we gain self-consciousness only through a process of mutual recognition has been taken up by some neo-Hegelian philosophers of mind. They make the socio-ontological claim that the world is always cooperatively (re)constructed by human agents (see Pinkard 1994, Pippin 2008, also the contributions in Ikäheimo/Laitinen 2011). Only mutual recognition that grants others the status of an epistemic authority allows us to construct a normative space of reasons: I know that the truth of my judgment depends on you being able to share it (Brandom 1994). Thus, such accounts try to explain how reason can enter the world in the first place—and therefore this kind of elementary recognition does not seem to depend on values or norms but rather be a source thereof. As early as the 1960s and 1970s, Karl-Otto Apel and Jürgen Habermas similarly developed their respective variants of discourse ethics stressing that the proper use of language already presupposes a certain form of recognition of all other speakers as equally authoritative (see on both Habermas 1991, ch. 2, for a critique of this argument Wellmer 1986, 108–111, for a good introduction Baynes 2015). However, human beings never create their world or the reasons they use from scratch. Rather, they are embedded in holistic webs of meanings which they jointly reproduce (and may hereby also redo). Theories of recognition hereby provide the ground for a critique of atomistic views of subjectivity (especially in Taylor 1989, part I).

Some have even argued that only empathy with other persons allows us to take over their perspective (Cavell 1969) which, again, seems to be a

prerequisite for sharing their evaluative reasons: recognition is primary to cognition (Honneth 2005, 40–44). These ideas have gained additional currency through psychological findings suggesting that the child's brain can only develop cognitively if she is able to be emotionally attached to her primary care-givers. Only by being interested in sharing experiences with other autonomous beings does the child gain access to the world of meaning (Tomasello 1999, Hobson 2002).

In this vein it has been argued that people come to recognize others as persons very early on. Already the baby learns to recognize her attachment figures as intelligible beings, i.e., as meaning-conferring and autonomous. Quite automatically, so the argument goes, the child then later perceives all other humans as humans. Only afterwards the subject may become blind to this "antecedent recognition" (Honneth 2005, 58). Such "forgetfulness of recognition" is supposedly caused either by reifying social practices which prompt individuals to perceive subjects merely as objects or by ideological belief systems that depict some human beings as non- or sub-human (Honneth 2005, 59–60).

In sum, this elementary form shows that recognition is not only needed for the creation and preservation of a subject's identity, but that it also denotes a basic normative attitude. Brandom emphasizes that—besides constituting self-consciousness as an "essentially, and not just accidentally, […] social achievement […]—recognition is a normative attitude. To recognize someone is to take her to be the subject of normative statuses, that is, of commitments and entitlements, as capable of undertaking responsibilities and exercising authority" (Brandom 2007, 136, emphasis in original). Whereas Brandom concentrates on rather basic normative ascriptions, all phenomena of recognition can be described as inherently normative. In particular, there is one specific form of recognition in modernity that seems to flow quite naturally from our basic capacity of recognizing each other in the elementary form sketched so far, namely equal respect.

The major emancipatory movements of the last two centuries—for instance the women's or the civil rights movements in the US—fought

for equal respect and rights. In contrast, in many of the contemporary social struggles persons or groups demand recognition of specific (e.g., cultural or religious) aspects of their identities which are neglected or demeaned by the dominant value and norm system of their society. It is these phenomena which have helped popularize the notions of a "politics of recognition" or "identity politics." However, it is contested why these differences should matter normatively: Do we owe such recognition to the affected as subjects with equal moral status (a) or because we should esteem their specific properties as valuable (b)?

(a) The first reading, which claims that we owe this kind of recognition to all subjects as equally entitled, allows only for a context-sensitive form of respect. By pointing to differences disregarded so far one hopes to show that the allegedly "neutral" state (or society) is by no means neutral, but rather based on a partial (for example, male-dominated, white, heterosexual) interpretation of citizenship or just on an arbitrary privileging of specific groups. Hereby all members are discriminated who do not fit the hegemonic understanding (already Taylor 1992, 42). If one tries to cancel out these disadvantages by taking into account the differences, e.g., by means of affirmative action intended to remove injustices, this serves the higher-ranking goal of treating persons in all their particularity as of equal status (Benhabib 1992). In order to arrive at such context-sensitive laws and regulations one has to more fully include the affected groups into the process of democratic decision-making, for example, through a vitalized public sphere and formal hearings (Habermas 1994). Additionally, it has been proposed that (formerly) oppressed groups should have a veto right with regard to all those questions that particularly affect them (Young 1990, 183–191).

(b) In contrast, the second reading claims that we should value particularity in itself. Such a politics of difference is not concerned with (context-sensitive) respect, but with the esteem

for specific characteristics or entire identities of individuals and—often enough—groups.

However, the idea of group identities has been hotly contested: Whereas some groups indeed want to (re)affirm their particular identity, the criticism has been voiced that such a homogenous reading of identity fails to take proper account of intersecting axes of identification (being a black, lesbian woman, for instance). The failure to admit of such heterogeneity has been suspected of legitimizing internal oppression within minority groups. According to some scholars, all identities have to be deconstructed. Again others have held onto the idea of group identities for political reasons (demanding secure exit-options for individual members) or have favored rainbow coalitions. In this context, it is also controversial whether cultures should be valued in themselves or only in their value for individuals and whether such cultural protection necessitates group rights (Kymlicka 1989, Taylor 1992, Habermas 1994, Laden/Owen 2007, Patten 2014). Finally, there seems to be an aporia as the alleged solution to equally value and promote all cultures may be no solution at all: Arguably, to esteem something without accurate knowledge or against one's own convictions is no real esteem but rather manifests an additional insult. Therefore, Taylor urges us to be "merely" maximally open towards the alien culture and to be led by the principle that traditions with a long history most certainly contain something valuable (Taylor 1992, 68–71).

There is another group of scholars which has argued that esteem should not be awarded to groups but to individuals—and not for the latter's wholesale identities but only for specific features. Yet, in light of the value pluralism so characteristic of modern societies, it remains unclear who could function as an impartial judge when it comes to determining what is (more) valuable and what is not. Every decision seems to run the danger of merely expressing a repressive majority opinion. Therefore, according to some accounts, esteem should play no role in public politics whatsoever: it is sufficient for individuals to be respected by all and to be esteemed by only some significant others, for example, by their family,

friends or fellow members of voluntary associations (Rawls 1971, § 67; Habermas 1994, 129).

Yet, an opposing camp claims that simply neglecting the dimension of esteem does not do justice to our everyday experiences: We are not only injured by humiliating behavior, but also if strangers insult us (either in the sense of not recognizing specific features of ourselves or actively devaluing them). After all, we have a need to be esteemed by society "as such" in order to be able to appear in public without shame. Bourdieu's social theory, for example, points to the pervasiveness of evaluative patterns and distinctions even in modern society, determining social status and class (Bourdieu 1984). In order to solve the dilemma of having to create an impartial value horizon for modern societies, in recent years some authors have proposed to focus on the notion of "achievement." The latter is supposed to be a sufficiently formal reference point for esteeming persons. "Achievement" is not only of great significance within capitalistic societies but remains open for historically and interculturally different ideas of what kind of achievement should count as relevant (Honneth 1992, 126; 2003a, 140–142; Margalit 1996, 46–47). It is supposed to allow for individual particularity (one's own achievement) but still to retain a common reference point (the contribution to the common good, however that may be defined). From this perspective, mass unemployment, for instance, is a social pathology because it denies this form of esteem to large parts of the population. This could only be counteracted by acknowledging activities outside of the labor market as achievements so that every citizen has the chance to see herself as a person who contributes to the flourishing of her society. Additionally, it constitutes an injustice if activities are devalued for arbitrary reasons (e.g., if specific jobs lose their status just because the ratio of women holding them increases, see Honneth 2003a, 153, or if women earn less than men for doing the same job).

Two sorts of arguments have been leveled against this idea of focusing on achievement. First, some have argued that it is impossible to find culturally neutral criteria of merit (Young 1990, 200–206). For instance,

the market is not interested so much in capacities or skills, but merely in outputs demanded by others regardless of the skills involved (see Schmidt am Busch 2011, 46–47). But some will argue that the market is thus not tracking the relevant feature. If it is true that the very definition of achievement or merit will remain essentially contested, the problem that was supposed to be solved only reappears again: we can only expect such recognition from those who share with us the same standards of achievement. Second, even if the citizenry could come up with a convincing standard, there remains a "recognition gap": not all, perhaps not even the central features that render us valuable in our own eyes can be understood as "achievements" in the sense of contributing to the common good (Iser 2008, 193).

Nonetheless, by highlighting the human dependency on evaluative horizons of esteem, many theories of recognition share important characteristics with communitarian approaches. The idea of a common, more substantial "ethical life" is especially important for those who think that we can only flourish if we live in meaning-bestowing relationships of mutual recognition. In such relationships people are supposed to experience the needs, desires and goals of their alter ego not so much as limitations but rather as furtherances of their own "social" freedom (in this vein Taylor 1992, 33–34; Neuhouser 2000, esp. ch. 1; Pippin 2008, ch. 7; Honneth 2014, chs. 3 and 6, Honneth 2015, esp. ch. I). The individual can only experience her deeds as really hers in living and acting in concert with others and feeling at home in the society's institutions. Here recognition is not only a precondition for valuing one's own (perhaps still individual) projects but is itself an integral part of (essentially social) endeavors. According to this picture, we face a lack of freedom where such relationships of mutual recognition are not fully realized. Thus, these accounts follow Hegel in generalizing experiences drawn from the intimate sphere of loving relationships.

13.4 POLITICAL COMMUNITY AND THE CHALLENGES OF PLURALISM

Contemporary democratic societies are characterized by pluralism. Pluralism can be seen as an enriching and essential component of a genuine liberal democracy. Often, however, pluralism is (rightly or wrongly) perceived as a threat to democratic, liberal and egalitarian values. In contemporary political thinking, different concepts, such a toleration and recognition, have been used to confront challenges of pluralism. Is the concept of "toleration" enough to address the demands of pluralist societies or these demands call for "recognition" of, say, cultural and religious difference? And, when it comes to dealing with undemocratic, illiberal and in egalitarian values and political ideologies, can the concepts of toleration and recognition be useful at all? In other words, should we recognise or even tolerate what seems to be intolerable?

In this module, we will address these questions and discuss which responses should be given to the challenges that different kinds of pluralism posit. We will do so by focusing on some pressing issues of pluralism, such as problems of religious accommodation, multicultural difference, same-sex marriage, freedom of speech, far-right politics and migration. Moreover, we will explore how the very ideas of "toleration" and "recognition" are vehemently contested by some not only as inadequate responses to the challenges of pluralism but also as tools of domination and "colonization".

"If diversity is seen as a source of strength, societies can become healthier, more stable and prosperous." In a speech at the Global Centre for Pluralism, Kofi Annan discusses the challenges of governing plural societies, promoting inclusive democracy in Kenya, and the moment at which Syria's deadly conflict could have been averted.

Your Highness The Aga Khan, Excellencies, fellow members of the Board, Ladies and Gentlemen, it is a pleasure to be with you today. The Global Centre for Pluralism has an extremely important mandate, and I feel priviledged to participate in its work.

Globalisation has brought us closer together. In the 21st century, we live for the first time in one global community. But it is a community composed of many strands which must be carefully woven together into a whole.

If diversity is seen as a source of strength, societies can become healthier, more stable and prosperous. But there is another side of the coin if we fail to manage the conflicting pressures that pluralism inevitably brings.

Without the institutions and policies to manage diversity, whole communities can feel marginalised and oppressed, creating conditions for conflict and violence. This is why pluralism is a key challenge for the 21st century.

Some look at recent developments and claim that our world is becoming fragmented into different civilisations. I strongly disagree. I see the world coming together in one global civilisation, to which each of us brings our own traditions, cultures, and beliefs.

Kofi Annan

My long experience has taught me that, whatever our background, what unites us is far greater than what divides us. My experience has also taught me that strong, healthy and cohesive societies are built on three pillars – peace and security; development; and the rule of law and respect for human rights.

Unfortunately stability and economic growth have, for too long, been the principal responses to national and global problems. We must not fall into this trap. For there can be no long-term security without development, and no long-term development without security. And no society can long remain prosperous or secure without respect for the rule of law and human rights. For a society to manage pluralism successfully, it must embrace and give equal weight to each of these three pillars.

But ladies and gentlemen, we must not shy away from the fact that plural societies, by their very nature, are challenging to govern. They bring with them competing claims or entitlements – each of which can be justified and defended, but which are not compatible. And it is important to recognise that no society – however democratic or respectful of the rule of law – resolves these challenges perfectly.

Europe, for example, has well-established legal systems and arrangements to protect minorities and reach acceptable compromises.Yet even within Europe, pluralism is sometimes seen as a threat. Levels of social prejudice have been rising against religious and cultural minorities and new immigrants. We have also seen a fall in trust and confidence in political institutions which has lead to increased support for more extreme political groupings.

These trends underline how important it is for countries to entrench democratic principles and norms, adopt inclusive policies to build and sustain trust, increase inclusion and reduce insecurity. And just as no country is born a democracy, no one is born a good citizen. Mutual respect and tolerance have to be fostered and taught.

We have to promote dialogue to combat fear, intolerance and extremism. We have to learn from each other, making our different traditions and cultures a source of harmony and strength, not discord and weakness. The Centre must help us do that, and it will have plenty of work to do.

Let’s not imagine that it can come up with a simple, one-size-fits-all formula that will solve the problems of diversity in all societies. Diversity is about difference, and there is diversity among countries, as well as between them.

The mix of policies and institutions required, for example, managing relations between indigenous communities and a majority of long-established incomers is not the same as that required to integrate and

protect "new" minorities who have only recently arrived. Many countries have to manage both situations at once.

Canada is one, and it has done so more successfully than most – although I am sure few Canadians would claim that there are no problems left to solve. Canada's prosperity, as well as its political system and strong institutions – including an independent judiciary – make it relatively well placed to deal with these challenges.

But in countries without such advantages, tensions all too often spill over into violence and conflict, leading, in the worst cases, to ethnic cleansing and genocide, such as we saw in Rwanda, and in Bosnia Herzegovina. Again, the origins of these stresses are different in each country. Most often, majorities hold a minority group responsible for their problems, or see it as a threat, and turn on it in fury. But there are also cases such as we saw in South Africa, where a minority clings to power and privilege, partly because it fears what will happen to it if power passes to the majority.

Each of these cases involves different realities and conditions. Each requires a different approach. But most have this in common: though these conflicts have security implications, they are, in essence, political problems requiring political solutions. While numerous political factors come into play, resolution of these conflicts often requires action to tackle long-standing injustice and discrimination.

This was certainly the case in Kenya, a country in which I have been closely involved, after sectarian violence exploded after the contested Presidential election in 2007. Kenya had successfully projected a vision of peace and stability so the violence, in which over one thousand people lost their lives and 650,000 people were displaced, shocked the world.

But this image was not rooted in reality. The truth is that widespread corruption and crony-capitalism had fueled a deep-seated sense of anger and grievance across the country. Kenya's political elite had sadly

adopted the ‘divide and rule’ form of its former colonial rulers with little attempt to build a cohesive national identity. Wealth and influence were passed between interchanging ethnic cliques. The rule of law had become less important than tribal bloodlines.

But while a few at the top amassed great wealth – which they spread to their close kin – the vast majority of the country’s citizens lived in abject poverty. This fuelled despair and resentment which exploded in the aftermath of the election, exposing the deep rifts within Kenyan society.

The violence was terrible. But I, and many others, was aware that the far worse shadow of Rwanda and Bosnia hung over Kenya. This threat thankfully led to a concerted international response from within Africa and outside which persuaded Kenya’s warring leaders to agree to mediation. By the time the team of Eminent African Personalities, comprised of Benjamin Mkapa, GracaMaçhel and myself, had arrived, we had the undivided backing of the African Union, the UN, the US, and the European Union for our work.

Such support made a huge difference and helped us, eventually, to persuade President Kibaki and RailaOdinga to agree to power-sharing. But it was also clear that what was needed was wide-ranging reform to address the country’s deeper tensions and the failure of its political system. This required engagement not just from the political elite but right across society through the Kenya National Dialogue and Reconciliation process.

This process delivered a new constitution, overwhelmingly supported in a national referendum, which provided Kenya with the chance of a fresh start. It opened the way for a much fairer political system built around devolved government, a new bill of rights, land reform and a permanent reduction in presidential powers. It gave each county and each community, including all its tribal and regional groups, access to power; a welcome antidote to destructive winner-takes-all politics. Reforms were put in place to strengthen the effectiveness, independence and trust

in the judiciary, police and electoral commission whose weakness had helped inflames the violence.

Alongside reform of the political system, work was begun to tackle the divisive political culture. Through the work of the Commission of Inquiry into Post-Election Violence and the Truth, Justice and Reconciliation Commission, Kenya began to look at not just the immediate events which led to the violence but the country's long history of human rights abuses. At the same time, the National Cohesion and Integration Commission were established to identify and eliminate all forms of discrimination.

Our aim was not to put a plaster over the wound but to try to help Kenya find a permanent solution to its deep divisions. In the past five years, it is to be welcomed – and to the credit of the country – that many of these reforms have been put in place.

We saw as well how the recent elections passed off largely peacefully. But the poll also confirmed that work must continue to reduce 'negative ethnicity' and strengthen Kenya's institutions and electoral management bodies. It is also far from clear that efforts to reform the culture of Kenya's political leaders have taken hold.

Reconstructing sound political institutions, and public trust in them, will require continued vigilance and effort over a long period from both inside Kenya and its friends.There are no shortcuts and, unfortunately, progress can be undone quickly. But the rapid intervention of the international community to this crisis did help Kenya pull itself back from the brink of the abyss.

This is in contrast to the conflict in Syria – another country where I have been involved – whose trauma has been worse in almost every respect. Here too, for a brief period, the international community had an opportunity to act. Negotiation on a political settlement was, I believe, still possible a year ago.

On 30 June 2012, the Action Group for Syria, met to agree a comprehensive plan to resolve the conflict.The final communiqué established principles and guidelines for a Syrian-led political transition that would meet the legitimate aspirations of the Syrian people.

These guidelines included:

- The establishment of a transitional governing body with full executive powers, to establish a neutral environment for the transition;
- An inclusive national dialogue;
- A review of the constitutional order and legal system;
- Continuity of government institutions and qualified staff;
- Commitment to accountability and national reconciliation, and a comprehensive package for transitional justice.
- Gender equality, protection of vulnerable groups, and provision of humanitarian aid.

Had this moment been seized rather than lost, Syria might have avoided the extreme violence that has now cost more than 80,000 lives, resulted in 1.5 million refugees, 4 million internally displaced peoples, and millions more facing daily terror and a humiliating struggle for survival.

The involvement of regional interests, proxy wars, and the paralysis of international decision-making, has created a truly poisonous mix that threatens to spill over into neighbouring countries.

And unfortunately, the conflict has taken a deeply sectarian turn. While it is not the primary or sole driver of the conflict, sectarianism and communal violence has risen to the fore. And while, of course, continued unrest in Kenya would have had a serious regional impact, the potential fallout from Syria is far more dangerous. Syria is an important country in a region that is strategic, diverse and unstable. Syria, unlike Libya, has

not imploded, if anything, it is likely to explode, and explode beyond its own borders:

Increased risk of ethnic conflict between Arab Sunni insurgents and Kurdish forces, which could drag in Turkey.

The violence threatens to spillover to Lebanon and Iraq, sparking conflicts amongst their own communities.

Rising tensions between the Gulf states and Iran, and the deepening of Sunni-Shia divisions, will also increase regional instability.

This has already greatly complicated attempts to find a political resolution – and will greatly complicate the implementation of any eventual post-conflict settlement. But I still believe that the conflict can only be ended though mediation and dialogue. So I am glad that Russia and the United States are working together on a 'Geneva 2' conference. It is imperative that the international community unites behind a plan to create new political arrangements that will be fairer, more tolerant and more accountable. Only with such unity can we hope to bring a halt to two years of violence and suffering.

Ladies and gentlemen, Kenya and Syria are two different examples from my own experience which show why the Aga Khan and the Canadian Government are to be commended for having the vision and generosity to create this institution.

Sound policy advice on pluralism are indispensible to the creation of stable, fair, societies where people can fulfil themselves and live together in harmony. But to be effective such advice also requires the understanding that solutions have to be tailored for the unique situation of every individual society. This is where the role of Centre will be invaluable.

The differing examples of Kenya and Syria, however, also underline the indispensible role that the international community can and must play in helping defuse trouble.

In a world more interconnected than ever, it would be reckless to believe that we can be indifferent to any country's traumas or let narrow national interests persuade us to stand back.

I wish the Centre well in its endeavours. It is hard to overestimate either the urgency or importance of your work.

Multiculturalism is today the focus of the widely discussed challenge of pluralism. Samuel Huntington (1998) summarizes this challenge famously as the 'clash of civilizations' according to which certain religions, nations, ethnic groups, or more generally communities with different civilizational backgrounds stand in an irreducible conflict with each other. For many political analysts the actual cultural clash in today's world takes place between the Islamic and western world and could be described in terms of 'Jihad vs. McWorld' (Barber, 1996). Hence, the possibility of intercivilizational and interreligious dialogue and toleration and generally the question of how different communities can live together peacefully lie at the heart of the current debate on pluralism.

Yet, multiculturalism does not only pose the challenge of pluralism, it also faces the challenge of pluralism. If the great political challenge of multiculturalism concerns the possibility of pluralism among communities or external pluralism, multiculturalism on its own is confronted with the question of pluralism within a community or internal pluralism. Communities do not just stand externally in conflict; they are internally riven by conflict as well. In particular, liberal and feminist thinkers criticize and attack multiculturalism for tolerating and in a certain sense legitimating in the name of communitarian values and ideals the oppression of political oppositions and non-conformist individuals as well as the patriarchal submission of women. Paul Berman (2004) reproaches multiculturalist positions with justifying totalitarian

and terrorist movements in Islam and Ayaan Hirsi Ali (2008) condemns western nations for deliberately overlooking oppressive aspects of Muslim culture – such as the 'culture of virginity' that threatens the liberty and lives of Muslim women – for the sake of cultural diversity. As a matter of fact, multicultural theory does by no means want to stand in opposition to basic human rights and individual freedoms by defending tyrannical cultural practices. From its very beginnings in German Romanticism multiculturalism is conceived as the true project of individual emancipation that contrary to the Enlightenment philosophies and contemporary theories of liberalism recognizes the individuals as they truly are – empirical not purely rational beings each with a particular psychological and social constitution. Multiculturalism wants to be in touch with the vast variety of human experiences and take seriously 'affections, commitments, and projects that make people what they are or at least make their lives what they are' (Williams, 2008: 32). A theory that has at its core each single individual's authenticity and what makes it the specific individual it is cannot turn against the individual it so wholeheartedly wants to flourish (Ferrara, 1998). Still in multicultural theories there exists the serious risk that communitarian values could justifiably trump dissenting individual ideas and projects with certain political results in the Muslim world but certainly also elsewhere that seem to confirm the multicultural nightmares of Berman and Hirsi Ali. Given the importance of the empirical constitution of the self and the centrality of cultural, social, or religious attachments and commitments for an individual's identity it is held to be impossible for individuals 'to detach [themselves] from any particular standpoint or point of view, to step backwards, as it were, and view and judge that standpoint or point of view from the outside' (MacIntyre, 2007: 126), 'to view their own culture and society as if from the outside' (ibid.: 125). 'But just for that reason they have no doubt that reality is as they represent it to themselves.' They have 'a view of the world for which they claim truth' (ibid.: 129).

In multicultural theories each community, culture, or religion can legitimately claim objectivity for its own standpoint and each one has its

own truth. This is not only the reason for which multiculturalism is at the root of a possible clash of civilizations and cultures, but also the reason for which multiculturalism might have serious problems with the justification of some significant form of internal pluralism. In short, multiculturalism needs to face the criticism a` la Berman and Hirsi Ali. The first scope of this article is to suggest that there is a connection between the external and internal challenges. Both challenges have their origin in a communitarian conception of identity according to which our cultural, social, or religious commitments are our source of normativity. As a consequence, not only communities might stand in conflict with each other but also the community and the single individual. Multicultural theory, fully aware of this double impasse, has, however, due to its communitarian roots, to distinguish an account of pluralism within a community clearly from pluralism among communities – with the result that a solution to the challenge of external pluralism seems more feasible than the accommodation of internal pluralism.

13.5 RADICAL DEMOCRACY

Within radical democracy there are three distinct strands, as articulated by Lincoln Dahlberg. These strands can be labeled as deliberative, agonistic and autonomist.

The first and most noted strand of radical democracy is the agonistic perspective, which is associated with the work of Laclau and Mouffe. Radical democracy was articulated by Ernesto Laclau and Chantal Mouffe in their book Hegemony and Socialist Strategy: Towards a Radical Democratic Politics, written in 1985. They argue that social movements which attempt to create social and political change need a strategy which challenges neoliberal and neoconservative concepts of democracy. This strategy is to expand the liberal definition of democracy, based on freedom and equality, to include difference.

According to Laclau and Mouffe "Radical democracy" means "the root of democracy". Laclau and Mouffe claim that liberal democracy and deliberative democracy, in their attempts to build consensus, oppress

differing opinions, races, classes, genders, and worldviews. In the world, in a country, and in a social movement there are many (a plurality of) differences which resist consensus. Radical democracy is not only accepting of difference, dissent and antagonisms, but is dependent on it. Laclau and Mouffe argue based on the assumption that there are oppressive power relations that exist in society and that those oppressive relations should be made visible, re-negotiated and altered. By building democracy around difference and dissent, oppressive power relations existing in societies are able to come to the forefront so that they can be challenged.

The second strand, deliberative, is mostly associated with the work of Jürgen Habermas. This strand of radical democracy is opposed to the agonistic perspective of Laclau and Mouffe. Habermas argues that political problems surrounding the organization of life can be resolved by deliberation. That is, people coming together and deliberating on the best possible solution. This type of radical democracy is in contrast with the agonistic perspective based on consensus and communicative means: there is a reflexive critical process of coming to the best solution. Equality and freedom are at the root of Habermas´ deliberative theory. The deliberation is established through institutions that can ensure free and equal participation of all. Habermas is aware of the fact that different cultures, world-views and ethics can lead to difficulties in the deliberative process. Despite this fact he argues that the communicative reason can create a bridge between opposing views and interests.

The third strand of radical democracy is the autonomist strand, which is associated with the more left-communist and critical post-Marxists ideas. The difference between this type of radical democracy and the two noted above is the focus on ¨the community¨. The community is seen as the pure constituted power instead of the deliberative rational individuals or the agonistic groups as in the first two strands. The community is resembles a ¨plural multitude¨ (of people) instead of the working class in traditional Marxist theory. This plural multitude is the pure constituted power and reclaims this power by searching and creating mutual

understandings within the community. This strand of radical democracy challenges the traditional thinking about equality and freedom in liberal democracies by stating that individual equality can be found in the singularities within the multitude, equality overall is created by an all-inclusive multitude and freedom is created by restoring the multitude in it´s pure constituted power. This strand of radical democracy is often a term used to refer to the post-Marxist perspectives of Italian radicalism - for example Paolo Virno.

Critique on the agonistic perspective

Laclau and Mouffe have argued for radical agonistic democracy, where different opinions and worldviews are not oppressed by the search for consensus in liberal and deliberative democracy. As this agonistic perspective has been most influential in academic literature, it has been subject to most criticisms on the idea of radical democracy. Brockelman for example argues that the theory of radical democracy is a Utopian idea. Political theory, he argues, should not be used as offering a vision of a desirable society. In the same vein, it is argued that radical democracy might be useful at the local level, but does not offer a realistic perception of decision-making on the national level. For example, people might know what they want to see changing in their town and feel the urge to participate in the decision-making process of future local policy. Developing an opinion about issues at the local level often does not require specific skills or education. Deliberation in order to combat the problem of groupthink, in which the view of the majority dominates over the view of the minority, can be useful in this setting. However, people might not be skilled enough or willing to decide about national or international problems. A radical democracy approach for overcoming the flaws of democracy is, it is argued, not suitable for levels higher than the local one.

Critique on the deliberative perspective

Habermas and Rawls have argued for radical deliberative democracy, where consensus and communicative means are at the root of politics. However, some scholars identify multiple tensions between participation and deliberation. Three of these tensions are identified by Joshua Cohen, a student of the philosopher John Rawls:

1. Wanting to improve the quality of deliberation can be at the expense of public participation. In this case, representatives and legislators are more focused on argumentation and deliberation than on seeking to advance the interests of their constituents. By focusing on reasonable deliberation the interests of particular constituents can be underrepresented.
2. Conversely, seeking to maximize the public participation can be at the expense of the quality of deliberation. Maximize public participation can be accomplished by popular initiatives like referendums. Referendums however allow people to decide on an important topic with a yes/no vote. By using a yes/no vote people can be discouraged to engage in a reasoned discussion in creating legislation. It is also argued that through maximizing public participation, manipulation and suppression become present.
3. Deliberation depends on sufficient knowledge and interests from all participants as well as adequate and easy accessible information. On many important issues however, the number of participators with sufficient knowledge is rather limited and thus the quality of deliberation declines when more uninformed participants enter the discussion.

Radical democracy and colonialism

Because of radical democracy's focus on difference, and challenging oppressive power relations, it has been seen as conducive to post-colonial theory and decolonization. However, the concept of radical democracy is seen in some circles as colonial in nature due to its reliance on a western notion of democracy. It is argued that liberal democracy is

viewed by the West as the only legitimate form of governance. Spreading liberal democracy through international law as a condition for recognition from and trade with the West can be seen as a form of new, informal imperialism. Radical democracy theory is criticized for being situated in this kind of Western modernity perspective. In their attempt of prescribing an ideal society, radical democracy theorists do not create a new kind, but rather reinvent the Western dominant tradition of liberal democracy. Also, radical democracy challenges consensus decision-making processes which are essential to many indigenous governing practices.

Check Your Progress 2

Note: a) Use the space provided for your answer.

b) Check your answer with those provided at the end of this unit.

1. Describe Political Community and the Challenges of Pluralism.
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2. Discuss Radical Democracy.
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13.6 LET US SUM UP

Multiculturalism is the theory that our moral outlooks, ways of life, habits, tastes and preferences are shaped by the communities we belong to. ‘Our categories, relationships, commitments, aspirations are all shaped by, expressed in terms of, the existing morality’ (Walzer, 1985:

20). Occupying a social role and being embedded in a community we discover ourselves to have social, cultural, or religious commitments that are of foremost importance in our moral life; they structure our actions and lives and provide us with a sense of who we are. 'That morality is authoritative for us because it is only by virtue of its existence that we exist as the moral beings we are' (ibid.). As members of the same community we share ethical concerns and are bound by common values; hence, communities are characterized by their respective ethical frameworks. From this point of view, multiculturalism can be defined as the theory of intra-communitarian monism and intercommunitarian pluralism.

It is precisely the concurrence of internal monism and external pluralism that gives rise to the political challenge of multiculturalism: different communities have to coexist finding political agreements in international relations as well as in multicultural societies without recurring to religious and cultural wars and national aggressions. Monism tends to put into question the possibility of inter-communitarian toleration: values that like communitarian values are justified and absolute (McIntyre, 2007: x–xii) could give rise to validity-claims that are not limited only to those individuals who endorse them but hold universally. Monism and pluralism might stand in strong contradiction with each other In Political Liberalism (1994) and The Law of Peoples (2001) John Rawls tries to reconcile the fact that our values and political ideas might justly stand in opposition to each other with the possibility of mutual tolerance. Rawls does not directly address the multicultural challenge, since he does not conceive our comprehensive doctrines as commitments we have by way of belonging to a community but as the result of individual reasoning: 'a reasonable doctrine is an exercise of theoretical reason' as well as 'practical reason' (Rawls, 1994: 59). Still, it is maintained that the conflict between comprehensive doctrines and the clash of civilizations can be treated analogously. In this regard, Rawls would propose that irreconcilable but reasonable communitarian doctrines with no imperial or missionary zeal – to which we can count many of the prevailing cultural and religious frameworks – can find a common ground and

endorse a free-standing political conception of tolerance through an overlapping consensus (Maffettone, 2010).

In contrast, Ju¨rgenHabermas (1996) does not believe that there is an unbridgeable conflict between communities. Unlike Rawls, he refuses monism, though he certainly recognizes the existence and centrality of communitarian commitments. Communities do not adhere to an independently justified ideal of toleration but find shared values engaging themselves and confronting each other in dialogue and democratic deliberation. Deliberation transforms and democratizes communitarian identities to a point in which different communities come to share a common political identity from within each tradition despite their respective differences. In Habermas' position communitarian values are not given and eternally fixed but are open for renegotiation. Similarly, multiculturalism does not advocate crude communitarian monism and does allow for some form of internal pluralism within the communities themselves. Multiculturalism is not a conservative theory justifying oppressive cultural and anti-emancipatory practices (Taylor, 1992).

13.7 KEY WORDS

Multiculturalism:The term multiculturalism has a range of meanings within the contexts of sociology, of political philosophy, and of colloquial use.

Democracy: Democracy is a form of government in which the people have the authority to choose their governing legislation. Who people are and how authority is shared among them are core issues for democratic development and constitution.

13.8 QUESTIONS FOR REVIEW

1. Discuss the Procedural vs. Substantive Conceptions of Democracy.
2. Discuss Recognition and Democratic Struggles.

3. Describe Political Community and the Challenges of Pluralism.
4. Discuss Radical Democracy.

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13.10 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. See Section 12.2
2. See Section 12.3

Check Your Progress 2

1. See Section 12.4
2. See Section 12.5
3. See Section 12.6

UNIT 14: CITIZENSHIP, VIRTUES AND DEMOCRATIC EDUCATION

STRUCTURE

14.0 OBJECTIVES

After this unit we can able to know:

- To know the Significance of Citizenship;
- To discuss Nature of Citizenship;
- To know Liberal Democracy, Citizenship and Civic Culture;
- To know Marxism and Citizenship;
- To know the Persons and Citizens;
- To discuss Group-Differentiated Citizenship.

14.1 INTRODUCTION

A distinctive relation that people share in common among relative equals in public life and the rights and privileges it confers and the duties and obligations that arise therefrom, has been noted and given expression to in several societies in the past. Citizenship denotes membership of a political community expressing such a relation. Such a relation often deeply marks other social relations in general and public life in particular. Some societies such as the Greeks, the Romans and the city-states of Medieval Europe gave definitive legal and political expression to this relation. With the rise of modern liberal states citizenship which was confined to a small fraction of the permanent residents of a polity came to be demanded and progressively extended to larger and larger segments of the population within such states. The demand for equality came to be mainly expressed as equal citizenship. Further citizenship became the normative tool for socio-political inclusion of groups struggling against prevalent forms of inequality, discrimination and exclusion. Today, everyone is the citizen of one or another state and even where citizenship is in dispute, several international and domestic provisions ensure a modicum of basic rights and obligations. While citizenship entitlement has become universal, there are unresolved contestations regarding the criteria that should inform inclusion and exclusion of claimants to citizenship; the rights and resources that should accompany it and duties and obligations expected of the citizen; the relation of the citizen to the state on one hand and to the community on the other; the relationship of citizenship to other cherished values such as freedom and equality and the civic and civilisational values and practices that should inform citizenship. Further, an activated citizenship is seen by many as offering solution to several ailments of the polity in our times. Given these complex demands, pulls and pressures the understanding of this notion remains deeply contested in the prevailing literature on the subject.

14.2 SIGNIFICANCE

The growing significance of citizenship has not put to rest the theoretical ambiguity associated with this notion. The importance of the concept of citizenship to engage with a series of political processes and values and therefore, as a major normative and explanatory variable has undergone significant changes over time. T.H. Marshal employed it initially to explain the striving for legal, political and social rights among the excluded social groups with particular reference to the working class. He traced the development of citizen rights and connected this development to the situation of the bourgeois on one hand, and the working classes on the other. Citizenship concerns, however, are much larger and ethnic groups and minorities of all sorts have resorted to it as a sheet-anchor. Bryan Turner explores the link between social movements and conflicts and citizenship identity. There are some writers who argue that citizenship rights in their origin are closely linked to elite structures. Antony Giddens and Ramesh Misra draw our attention to the deep ambiguity surrounding citizenship rights. Janoski regrets the missing link between citizenship rights and obligations and the absence of micro studies relating the two. In recent years, there have been major attempts to link citizenship with group identity and to defend a group differentiated conception of citizenship against a conception of citizenship based on individual rights. Sociologically, there are few studies to demonstrate how marginalised people are brought within the vortex of citizenship rights and how nations integrate strangers from other countries and cultures. Further, we know little about the causes that drive people towards the ideals of citizenship. There are wide differences in this regard from Marshall's attribution of the same to class to Maslow's hierarchy of needs. Further ideological predilections deeply qualify understanding and significance of citizenship. These are just a few highlights and concerns of the growing literature on citizenship in our times. There was no significant discussion on citizenship in social science literature in the recent past. However, in the last decade and a half, citizenship has suddenly emerged as a central theme in social science literature, both as a normative consideration and social phenomenon. Certain recent trends in the world and in India have increasingly suggested citizenship as a nodal concern. Increasing voter

apathy and long-term welfare dependency in the Western World; the nationalist and mass movements which brought down bureaucratic socialist regions in Eastern Europe and the Soviet Union; the backlash against welfare regimes in the West and centralized, often, one-party regimes in the Third World and the demographic shift in the Western World towards multicultural and multiracial social composition have increasingly drawn attention to the significance of citizenship. While the decline of authoritarian regimes which curbed citizenagency greatly highlighted the importance of the latter, governmental attack on welfare state brought to the fore threats to social rights so central to the inclusionary practices of citizenship. Critics of the welfare, socialist and authoritarian regimes have brought to the fore the importance of the non-state arena constituted of citizenship-agency. Philosophically the decline of positivism, which provided little scope for the free-play of citizenship-agency, has greatly heightened the significance of the choices that citizens make discretely and collectively. In India, an active citizenship is suggested as the need of the hour for the prevalent authoritarianism, lack of accountability of public offices, widespread corruption, intolerance of dissent, violation of fundamental rights, lack of citizens' grievance ventilation and redressal, lack of public spiritedness and work culture, transparency in administration and intolerance towards other citizens.

Overall, there is greater appreciation today of the qualities and attitudes of citizens for the health and stability of modern democracy. Their sense of identity and their relationship to regional, ethnic, religious and national identities is very important to ensure political stability in complex and plural democracies. Certain qualities like the ability to tolerate and work together with others who are different are important ingredients of successful democracy. Galston suggests that together with these qualities, the desire of the citizens to participate in the political process in order to promote the public good and hold political authorities accountable; their willingness to show self-restraint and exercise personal responsibility in their economic demands and in personal choices which affect their health and their environment and their sense of justice and commitment to a fair distribution of resources are called for

in any healthy democracy. He says that in their absence "the ability of liberal societies to function successfully progressively diminishes". Today, there is a greater consensus than ever before those mere institutional and procedural devices such as separation of powers, a bicameral legislature and federalism will not ensure the health and probity of a polity. Civic virtue and public spiritedness which are integral to citizenship are required for the purpose.

14.3 NATURE OF CITIZENSHIP

Definitions of citizenship are galore. It has also been approached from different perspectives. Tentatively, we can consider citizenship as membership of a political community with certain rights and obligations broadly acknowledged and shared in common. The membership that citizens enjoy is both passive and active. Considered passively, citizens are entitled to certain rights and obligations without their conscious involvement in shaping them. But citizenship also involves active engagement in the civic and political life of communities and this is reflected in the rights and obligations related to it. While increasingly certain rights are conceded to all human beings in normal times by states, citizens have certain specific rights which non-citizens do not possess. Most states do not grant the right to vote and to stand for public office to aliens. The same can be said about obligations too. What we regard as rights of citizens today were initially a preserve of the elite. However, eventually the great democratising processes led the large masses of residents – the marginalised, the ethnic groups, minorities, women and the disabled persons to the benefits and burdens of citizenship.

Just the fact that one is a citizen gives access to many rights which aliens do not enjoy. Aliens become naturalised as citizens with attendant rights and obligations. Passive membership often is associated with limited legal rights and extensive social rights expressing redistributive arrangements. The state plays a major role in devising and sustaining them. Active membership highlights citizen-agency and is closely linked with democracy and citizen participation. Most political communities of which citizens are members today are nation-states. Therefore, when we

talk about membership of political communities, we primarily refer to membership of nation states. Citizenship rights are universal in the sense that they pertain to all citizens and in all relevant respects. They are sought to be implemented accordingly. Universality of rights need not preclude enjoyment of group-related rights and to the extent that citizens belong to relevant groups, they are increasingly conceded such rights. Minorities and disadvantaged groups in many societies do enjoy certain special rights. However, often equal rights of citizens are seen as running into conflict with group-rights and cultural belonging of subgroups.

Citizenship invokes a specific equality. It may admit a wide range of quantitative or economic inequalities and cultural differences, but does not admit qualitative inequality wherein one man or woman is marked off from another with respect to their basic claims and obligations. If they are marked off for special consideration, it is on account of the disadvantages they suffer relative to others or due to their distinct collective identity. Citizenship invites persons to a share in the social heritage, which in turn means a claim to be accepted as full members of the society in which they have a claim. Therefore, it provides for equal access to and participation in the public fora and institutions which arbitrate on social heritage. Citizenship is supposed to be insulated from class and status considerations.

However, to the extent that citizens have equal access and participation in public life, they collectively decide to a great extent the framework and criteria that determines public life. Therefore, undoubtedly it has a levelling impact. In this context, one of the most important questions that comes to the fore is whether basic equality can be created and preserved without invading the freedom of the competitive market. However, in spite of the role of the market there has been an undeniable sociological tendency wherein citizenship in recent years has been inevitably striving towards social equality and it has been a significant social tendency for over 300 years now. There is a profound subjective dimension to citizenship. It involves a conscious agency, reflective and deliberative, qualifying his or her pursuits with public interests. It is a way of life

growing within a person and not something given from outside. Legal perspectives on citizenship, therefore, have their necessary limitations. Citizenship involves duties as well as rights. Over the years, an array of rights has been associated with it. The same cannot be said about the duties associated with citizenship. It has had long term consequences in terms of increasing the role of the state and shrinking citizen initiative.

Citizenship can be divided into three dimensions:

(i) Civil
(ii) Political and
(iii) Social

i) The civil dimension is composed of the rights necessary for individual freedom such as liberty of the person, freedom of speech, thought and faith, the right to own personal property and to conclude valid contracts and the right to strive for a just order. The last are the rights to defend and assert all one's claims in terms of equality with others under rule of law. Courts of justice are primarily associated with civil rights. In the economic field, the basic civil right is the right to work i.e., the right to follow the occupation of one's choice and in the place of one's choice subject to limits posed by other rights.

ii) The political dimension consists of the rights to participate in the exercise of political power as a member of the body that embodies political authority; to vote; to seek and support political leadership; to marshal support to political authority upholding justice and equality and to struggle against an unfair political authority.

iii) The social dimension consists of a whole range of claims involving a degree of economic welfare and security; the right to share in full the social heritage and to live the life due to one as per the standards prevailing in one's society. The social dimension also involves the right to culture which entitles one to pursue a way of life distinctive to oneself.

In feudal society that prevailed in large parts of the world prior to the onset of modernity, status was the mark of class and was embedded in inequality. There were no uniform standards of rights and duties with which men and women were endowed by virtue of their membership of society. Equality of citizens did not qualify inequality of classes. The caste system in India too ranked castes unequally in terms of rights and obligations, although the nature of inequality prevalent here differed in significant respects from that of the feudal society.

These ineqalitarian orders were progressively displaced by a system based on the civil rights of the individual, not on the basis of local custom, but the common law of the land. The evolution of different institutions representing and embodying different dimensions of rights was uneven. In Europe, the trajectory of the evolution of these rights can be marked as civil rights in the eighteenth century, political rights in the 19th century and social rights in the 20th century. However, in the colonies, particularly in India, we find the national movement and the independent regime that followed it invoked all these threefold dimensions together.

14.4 LIBERAL DEMOCRACY, CITIZENSHIP AND CIVIC CULTURE

In liberal democracy, public authority is exercised in the name of free and equal citizens. The free and equal citizens who are ruled are ruled in their own name, or in other words, they rule themselves. At the same time, the state is expected to play some role in the making of free and equal citizens in whose name it rules. Public education and other fora of culture supported by the state help form and sustain such an identity. The mode of education and other cultural institutions of liberal democratic society define its citizens as free and equal individuals who are incidentally members of particular ethnic, class and religious communities. Ethnic class and religious relations often beget hierarchical relations. Liberal democracy suggests that the hierarchies generated by such communities are irrelevant to the state in its treatment of citizens.

Marxists and in recent years, the communitarians have found that such an understanding of citizenship is idealistic and narrow and does not take seriously the embedded nature of citizens. However, public education in a liberal democracy till recently had the effect of relativizing the hierarchies and ranking systems generated by particularistic cultural communities. It suggested that the identities of citizens should not be wholly or exclusively governed by the principles and values underlying those hierarchies.

Civic education which was integral to the building up of citizenship attempted to inculcate certain normative standards such as the ideal attitudes, dispositions and values proper to citizens. Such a civic culture was seen as supportive of citizenship. However, it has to be noted that public education, in turn, created hierarchies distinctive of its own where institutions and disciplines came to be ranked according to the valorization they enjoyed in the market. Therefore, the civic culture that liberal democracy threw up was profoundly ambivalent. Civic culture as a specific form of culture pertaining to public life proposes world-views, ways of life, ideas of nature and standards of excellence that shape human behavior and self-understanding. It is created, transformed and reproduced by processes of persuasion. The norms proper to civic life are expected to be internalized by citizens in their interface with civic culture. However, while offering a normative order, ranking and directing citizen activity, a civic culture permits significant spaces for contestation and to propose alternative ways of life. It may, therefore, beget a widely plural understanding of citizenship. Therefore, civic culture itself needs to be wetted by the rule of law.

However, civic culture has with it certain resources by which the pluralism that it begets remains, normally, within certain limits. Civic culture lays down a civic moral ideal before its members based on the stand point of free and equal individuality. Further, given the fact that the self-understanding of members of a society are shaped by the moral standards of the particularistic cultural communities to which they belong, civic culture has a strong ‘contravailing edge’. The impact of the

former begins to tell strongly from birth itself, through the rituals and practices of the community while civic educational processes have their impact relatively late.

Check Your Progress 1

Note: a) Use the space provided for your answer

b) Check your answers with those provided at the end of the unit

1. Explain the natural significance of citizenship in democratic societies.

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2. Discuss the nature of citizenship.

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3. Discuss liberal democracy and its relation with citizenship.

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14.5 MARXISM AND CITIZENSHIP

The Marxist tradition has not engaged with the citizenship issue consistently but to the extent it does there is a deep ambivalence about it.

Marxism feels that the ideology of the capitalist state, by and large, recasts social relations as relations between citizens, putting a gloss on them as class relations. At the same time the human agency that citizenship furthers is appreciated as it sharpens the contradictions within capitalism itself. Marxism has not adequately reflected on how an older notion such as citizenship has been deployed under capitalism and made to play a role which is central in capitalist ideology. Such a perspective, therefore, makes certain notions closely bound with citizenship such as rights, justice and freedom ambivalent. For Marxism the basic social relations in all class divided societies are class relations. It is the relation between the peasantry and landlords under feudalism and between the working class and the bourgeoisie that decisively shape the social relations under feudalism and capitalism respectively. If class relations project themselves as basic, then social relations would be mired in class-struggle endangering social unity that is worth relying on, and bringing to the fore, the coercive character of the state to the full to hold classes and class-struggle at bay. The ideology of the state plays a major role in containing class-struggle and in reconstituting social relations on a basis other than class relations. Under capitalism, Marxists argue, social relations are formulated by this ideology as relations between citizens. The citizens are declared as free and equal and sometimes, as rooted in a cultural ethos and civilisational bond.

The freedom and equality of citizens has its counterpart in the exchange relations of the market where from a one-sided view, equals gets exchanged for equals and the agents of such a system of exchange are free to exchange the products they have. However, such an ideology formulated by the state can be seen as superficial and partial when understanding and analysis is not confined to the surface. In such an exercise, social relations are marked as class-relations that are caught in an irreversible struggle between basic classes. For Marxists, however, state ideology has a real basis in all societies including capitalism, although that real basis lies in an exclusive and one sided projection of social reality. It is not mere chimera. Social agents irrespective of the classes they belong to come to locate their role and place in society in

and through this ideology. In capitalist society, the force of this ideology remains persuasive and pervasive due to the massive institutional and ideological complexes of the state through which it is disseminated such as public education, the media, civic associations, political parties, trade unions, legal and juridical organisations and sometimes, religious organisations as well. The French philosopher, Louis Althusser, called them the ideological apparatuses of the state. The consciousness of social agents, routinely and prominently, under conditions of this ideology remains consciousness of citizens, unless and as long as it is not challenged by the contradictions of capitalism and class struggle to overcome them.

Marxism, therefore, calls for a double critique of the notion of free and equal citizenship avowed by liberal democracy without denying the worth of the notion itself. First, it expresses only the superficial face of the market related freedoms of the bourgeois society and hides the profound contradictions in which social relations under capitalism are caught. An entire array of public institutions rest on this notion and in their turn reinforces it. Secondly, rights and duties associated with citizenship are important and necessary to lay bare the contradictions of capitalist relations and mount struggles to overcome them. Social classes cannot organise themselves, if the basic freedoms associated with citizenship are denied to social agents.

14.6 PERSONS AND CITIZENS

Philosophically, human beings are conferred attributes and prerogatives that mark them off from other beings, but communities and states have given them little positive consideration unless they are insiders or they are brought within the larger civilisational matrix of which states and communities are parts. In modern times, however, there have been certain attempts to confer a set of rights on all human beings qua human beings. The universal declaration of rights is an apt example of the same. Citizens, however, have always been endowed with special rights be it with the Greeks, the Romans or members of city-states. In modern times, however, large social movements have striven towards an inclusionary

understanding of citizenship. These movements have also striven to bring about a social order where everyone enjoys equal rights. According to Turner, citizenship rights are "the outcome of social movements that either aim to expand or defend the definition of social membership." These movements, he feels, have been able to expand and universalise citizenship rights for an ever widening number of persons. At the same time, citizenship is an act of closure about a group of people it calls citizens. Consequently, states are very particular about whom they call citizens. Hoffman and Janoski suggest that:

(i) There are four categories of citizens who have been either excluded from citizenship or had to put up a relentless struggle to be accepted as citizens:

i) Stigmatized Humans: They are supposed to be those who suffer from a social defilement or infirmity. They include the class based poor, gender disqualified women, racial or ethnic groups who are attributed low status, gender despised homosexual groups etc. They are also the most common category of candidates for citizenship. These groups are seen as unable to perform the duties and accept the rights of citizenship due to their narrow interests which are unlikely to benefit the community. They are often charged by their social superiors as selling their votes, being in the control of their husbands or caretakers and not having enough education or mental capacity to make a decision. Cultural and value dissensions have sometimes brought religious minorities and gay groups too within this category. These groups had to put up relentless struggles for equal citizenship and the battles are still on.

ii) Impaired Humans: They may hail from established citizen groups but their competence to fulfil rights and obligations may be questioned due to physical or mental disabilities that preclude action or good judgement and make them dependent upon others. The inclusion movement in many countries, however, has brought about significant changes in the condition of the mentally and physically challenged.

iii) Potential Humans: They include the fetus in the womb, accident victims in a permanent coma, unconscious patients or aged citizens who have lost all thought and activity processes other than involuntary life sustenance. They, of course, have their rights but we can speak little of their obligations.

iv) Human-like Non-Humans or Quasi Humans: Nations, ethnic and even religious groups could be included in this category. They are endowed with certain group rights which we will discuss shortly. There are second types of social actors who fall in this category such as corporations and offices whose claim for being treated as corporate units are significantly different from nations, ethnic groups and religious communities. Corporate rights lead to systematic class and size bias and place them in contention with the notion of free and equal citizenship.

Check Your Progress 2

Note: a) Use the space provided for your answer

b) Check your answers with those provided at the end of the unit

1. Discuss the Marxist conception of citizenship.
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2. Explain the distinction between persons and citizens.
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14.7 GROUP-DIFFERENTIATED CITIZENSHIP

Till recently, for many liberals citizenship is by definition a matter of treating people as individuals with equal rights under the law. This they felt distinguished democratic citizenship from feudal and other pre-modern views that determined peoples' political status by their religious, ethnic or class membership. However, it is increasingly admitted today that mere avowal of equal rights may not ensure equal access and opportunities to certain groups who are culturally different. In fact, equal rights without certain safeguards to cultural minorities may tend to reinforce majoritarian domination over minorities. Group differentiated citizenship qualifies citizenship by cultural belonging. It sees citizenship as constituted of both equal rights and differences. A society avowing group differentiated citizenship appreciates the cultural differences in which equal and free citizens are anchored. While understanding of cultures are widely varied, Will Kymlicka has suggested that the pertinent notion of culture in terms of group-differentiated rights is societal culture; that is, "a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres". It is not merely shared memories or values, but also common institutions and values. Societal culture, according to him, is expressed in everyday vocabulary of social life and embodied in practices covering most areas of human activity such as in schools, media, economy, government etc. He argues that culture has the capacity to survive in modern times only by becoming a societal culture. Citizenship is deeply bound with such societal culture, and citizens through their activity shape and reshape this culture. Societal cultures play a major role in enabling and promoting contexts of freedoms. Kymlicka has suggested that "freedom involves making choices amongst various options and our societal culture not only provides these options, but also makes them meaningful to us".

It is with reference to culture that the value of practices comes to be underscored. It is in the background of cultural narratives that certain

authoritative lines of appropriate conduct is marked for us, conduct which, of course, can be subsequently revised by the exercise of our freedoms. This requires according to the famous philosopher of law, Ronald Dworkin, protection of our culture from "structural debasement or decay". The availability of meaningful options to people largely depends upon access to societal culture. Cultures are modes of life which are much more enduring. While there are instances of people making a successful transition from one culture to another, this is not a reasonable option for a vast number of people. Of course, cultures are not sterile waters. They do undergo significant changes over time, but across these changes they remain the self-same cultures. With liberalisation and globalisation, there has been a greater interface between cultures, but it cannot be said that the coming together of cultures have made people less aware of their own. If anything, it has been just the contrary. Margalit and Raz have advanced two major reasons for the endurance of cultures. The first cultural membership provides meaningful options. According to them, familiarity with a culture determines the boundaries of the imaginable and if a culture decays, the options and opportunities open to its members will shrink, become less attractive and their pursuit less likely to be successful. The second reason is that self-identity and recognition by others at a fundamental level depend on "criteria of belonging" and not as much on personal 'accomplishment'. Social identification and belonging that arises from it is important to people. Dignity and self-respect are deeply bound up with it. Cultural membership too makes one's accomplishments not as isolated instances, but bonded with and reproducing an entire tradition. When institutions are leavened by culture, the participation of people in them becomes spontaneous and lively too. It begets relationships of solidarity and trust. However, people employing their freedoms do revise their attachments and belonging and for a vast majority of people, the matrix of such a zone of belonging and exercise of their freedoms remains the nation-state informed by societal culture. A societal culture is not uniform. It is constituted of diverse streams and autonomous cultures. Often people access societal cultures through such streams and autonomous cultures. The distinct identities embedded in these streams are shaped by such a

culture as they in turn shape it as a whole. Two types of relationships are suggested between citizenship and its cultural embedment.

i) Citizenship as an attribute independent of cultural identity.

ii) Citizenship as a group-differentiated identity.

14.7.1 Citizenship as an Attribute Independent of Cultural Identity

Cultural identities constituted as communities uphold moral ideals that are supposed to hold good to all its members. Often they propose a comprehensive way of life which is supposed to be the embodiment of what good life should be for one and all. It revolves around certain definitive conceptions of what is important and what is not important in life with regard to such fundamental issues such as sex, friendship, work, suffering, sin, death and salvation. It provides definitive order and meaning to such issues. It ranks human qualities and orders aspirations in terms of a hierarchy of ends. Communities assign stable and well known duties and responsibilities. There are unambiguous standards to evaluate conduct. Communities orient human desire to definitive channels. Communication in such communities acquires clarity and effectiveness due to sharing in common a range of background assumptions. Communities do not entertain questions on meaning, purpose, value and responsibility on a whole range of activities they are constituted of. Inspite of such community anchoring, this conception of citizenship is defined independent of community. Citizenship is limited to membership and participation in political community and it does not aspire to uphold any comprehensive conception of good life or subscribe to any particular comprehensive conception of the good upheld by any specific community. It may encompass a multiplicity of diverse cultural communities holding ideals of good life distinctive to themselves. In such a situation, citizenship proposes the ideal of working with others to design public life without taking into account the separate ideals and values cherished by the respective communities, but at the same time

acknowledging the need to work with their members. In such a conception, while a citizen is committed to his communitarian identity and moral ideal, she at the same, respects and acts in consent with fellow citizens whose communitarian identities and ideals greatly differ from her. To move from the stand point of a member of community to a conception of a citizenship of this kind, a person needs to acquire the capacity for freedom, the capacity to define him or her independently of the specific community of anchor. However, citizenship itself may not provide cultural resources rich enough for a comprehensive life ideal. To affirm equality, a citizen is required to employ a double framework, one appropriate to the community and as a citizen extending equal consideration to all citizens. For the later purpose, there need to be a space, independent of social hierarchies, where citizens treat each other's as equals. It involves forging civic friendship to ensure reproduction of this space and institutions characteristic of it. It is not enough that citizens merely cultivate an attitude of live and let live, a posture of benign mutual indifference. Such a double framework can be difficult for many who have strong commitments to their community ideals. Beliefs and practices alien to us can be deeply threatening. Such a threat to deeply held beliefs and hallowed practices in interface with such an understanding of citizenship may give rise to parochial, sectarian, exclusivist, authoritarian and fundamentalist tendencies.

14.7.2 Citizenship as a Group Differentiated Identity

This perspective on citizenship lays greater stress on group differentiated identities whose internal resources are called upon to constitute an overlapping consensus expressed in a political community. The different cultural communities included within such a political community identify and cultivate within their own traditions resources supportive of citizenship, i.e., civic freedom and equality. Such a normative standpoint is addressed to citizens who have been shaped in their understanding and desires by the standards of the particularistic cultural communities to

which they belong. The later process virtually begins at birth. Grooming into citizenship is experienced relatively late.

The language associated with civic moral ideals is not designed to replace community moral ideals. Citizenship pursuits do not involve a process of conversion from a comprehensive ideal and way of life to another, but a reordering of community identity itself, given the fact of the existence of plurality of such community identities. In this conception, citizenship means very different things to different communities. The rights that different communities enjoy and the obligations they are expected to shoulder differ, although the principles on which they are grounded are the same. These principles are the significance of community for the constitution of the self and the need to ensure political stability under conditions of freedom and equality. Three types of rights are suggested under a differentiated understanding of citizenship, although it is possible to suggest a much more complex typology in this regard, considering the kind of deep diversity that prevails in countries like India, Russia, Indonesia and China.

i) Citizenship based on Polytechnic Rights

A large number of states are polyethnic in their composition today, although non-western societies have a much longer experience of such a composition. Western Societies have experienced major shifts in their ethnic composition following their colonial expansion and in the post-colonial period. Such ethnic groups have challenged the demand that they should abandon significant aspects of their ethnic heritage and assimilate themselves to the mainstream culture. Initially, they demanded the right to freely express themselves without discrimination in the larger society of which they were a part. It resulted in changes in educational curriculum and opened to them the arena of music and arts distinctive to them. Such a demand however did not make significant difference to such visible ethnic minorities, such as the Blacks in the U.S., except a small stratum within them. In recent years, these ethnic groups have demanded funding of ethnic associations, magazines and festivals as

integral part of the funding of arts and museums. They have sought exemption from Sunday closing or animal slaughter legislation, motor-cycle helmet laws and official dress-codes, ban on wearing headscarf (turban) and so on. These are stronger ethnic claims.

ii) Special Representation Rights

Special representation rights are demanded by certain groups because the prevailing political process may subject them to some systematic disadvantage whereby they are not able to effectively represent their views and interests. In India, Dalits have demanded special representation rights on this ground, while the Adivasis have demanded them along with ethnic rights.

iii) Self-Government Rights

Self-Government rights are a case of an extreme demand for the group-differentiated right. They tend to divide people into separate political spaces with their distinct history, territory and powers attributing to them the status of a separate political community. They may arrogate to themselves the loyalty of the members and make wider citizenship claims secondary.

Liberals have strongly expressed their apprehension about group-differentiated citizenship. In the American context, Nathan Glazier has argued that if groups are encouraged by taking into account their difference as constitutive of citizenship, then "the hope of a larger fraternity of all Americans will have to be abandoned". It has been argued that cultural or group rights are dangerous as they violate the primacy of individual rights. Some people have argued that group differentiated citizenship ceases to be "a device to cultivate a sense of community and a common sense of purpose". Such a notion of citizenship is inherently particularistic and may become discriminatory. It is felt that if citizenship is differentiated, it no longer provides a shared experience or common status. Group differentiated citizenship requires

representation of the group and group leaders rather than citizens themselves being invested with such rights. The privileging of ethnic groups under group-differentiated citizenship may lead to seeking selfdetermination and liberation through secession. Thereby, such a notion of citizenship is a clear threat to the state and the larger society advocating universal citizenship. It may foment civil wars and irreconcilable conflicts. In fact, liberals have argued that participatory structures, allowing for greater democratic control over local and regional resource distribution is a better way of handling empowerment of excluded groups than through differentiated citizenship. Some people fear that group-based claims are likely to erode public spiritedness further. They are likely to impede the integration of minorities and immigrants keeping them in "their different origins rather than their shared symbols, society and future". Most of these criticisms apply to extreme cases and on a doctrinaire understanding of citizenship rights and obligations. The primary issue that group-differentiated claims raise is whether a group is included within a political community as an equal or not. If they are excluded or partially excluded, members of such groups cannot lay much claim to equal rights. Often exclusion and discrimination precipitate self-government claims among people inhabiting a common territory and shared culture. Self-government and self-determination demands are largely confined today to cultural groups claiming a distinct nationhood. Sometimes, however, the border line between excluded groups occupying a distinct territory making demands for self-government and national self-determination remains very thin.

Check Your Progress 3

Note: a) Use the space provided for your answer

b) Check your answers with those provided at the end of the unit

1. Discuss the relationship between citizenship and cultural identity.

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2. Explain the various perspectives of citizenship in contemporary societies.

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14.8 LET US SUM UP

Citizenship is a highly valorised theme in recent political writings and concerns. A number of political developments of our times have contributed to this heightened interest in citizenship. While the notion of citizenship may go along with a great deal of economic and social inequalities, the level playing field it suggests on the basis of equal rights may make such inequalities an issue of target of concerned citizens. Many social movements of modern times have striven not merely for the inclusion of excluded social groups into the body of citizens, but also for extending and expanding the zone of equal rights. Inspite of such strivings, the notion of citizenship remains deeply ambivalent. Liberals tend to stress on the equality and freedom of citizens. Marxists, however, are not very enthusiastic regarding citizenship as they feel that it is a device employed by the capitalist state to restate social relations of classes as relations of citizens. They, however, feel that citizenship as a political device can be of immense use in activating social agents to subject public institutions to a critique and search for alternatives. Inspite of the ambiguities in which this concept is caught, there is a widespread agreement that the zone of citizenship be enlarged. This concern for the expansion of the zone of rights has brought within its fold, cultural communities and political minorities who have sought a range of rights, specific to their predicament. They have argued that along with equal rights, their specific differences be taken into account in ordering political communities and their institutions. Citizen -concerns are closely

related to some of the most important issues under public debate today such as civil society, participatory democracy and civic responsibility. The altered role of the state under conditions of globalisation and liberalisation invokes citizenship for the health of polity. Further, the horizon of citizenship is no longer limited to membership of nation-states any longer. Cultural and doctrinal attachments are increasingly brought in to mark a level playing field to citizens otherwise deeply divided in terms of their cultural attachments.

14.9 KEY WORDS

Liberalization: Liberalization is any process whereby a state lifts restrictions on some private individual activities. Liberalization occurs when something which used to be banned is no longer banned, or when government regulations are relaxed. Economic liberalization is the reduction of state involvement in the economy.

Globalization:Globalization or globalisation is the process of interaction and integration among people, companies, and governments worldwide.

14.10 QUESTIONS FOR REVIEW

3. Explain the natural significance of citizenship in democratic societies.
4. Discuss liberal democracy and its relation with citizenship.
5. Discuss the Marxist conception of citizenship.
6. Explain the distinction between persons and citizens.
7. Discuss the relationship between citizenship and cultural identity.
8. Explain the various perspectives of citizenship in contemporary societies.

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14.12 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. See Section 14.2
2. See Section 14.3
3. See Section 14.4

Check Your Progress 2

1. See Section 14.5
2. See Section 14.6

Check Your Progress 3

1. See Section 14.7
2. See Section 14.8