



JOHN RAWLS ON JUSTICE AS FAIRNESS:
A CRITICAL STUDY

Ms. MAO SIM

A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENT FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY IN PHILOSOPHY

GRADUATE SCHOOL OF PHILOSOPHY AND RELIGION
ASSUMPTION UNIVERSITY
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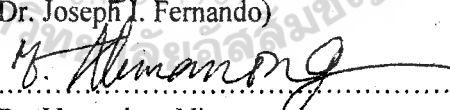
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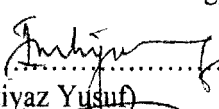
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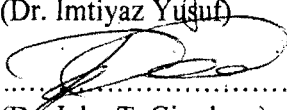

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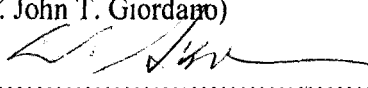
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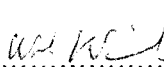

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ABSTRACT

John Rawls gained worldwide acclaim as the leading political and moral philosopher with his famous work, *A Theory of Justice*, in 1971 and its revision in 1999; in both, he describes justice in terms of fairness. Justice as fairness is a theory that can guide a constitutional democratic society in expressing numerous ideas such as being impartial, moral, reasonable and liberal. He pioneered the concept of “justice as fairness” by uniting the two Aristotelian concepts, justice and fairness, in one theory, and declaring that justice as fairness must be the primacy concern and “the first virtue” of social institutions, in the sense that a society is just if and only if it cares for and guarantees basic rights, liberties, opportunities, and self-respect equally and fairly for every one of its members.

In *A Theory of Justice*, he developed a new way of constructing a social contract theory that went far beyond the earlier social contract theories of Rousseau, Locke, Kant, and others by creating a device called the original position. Using this heuristic device, Rawls let his imaginary people work out a set of unbiased, reasonable, moral principles of justice which would be their new, timeless hypothetical social contract.

This study shows how the key features of a fair and just society are arrived at through the original position device, and guarantees equality and the broadest form of liberty possible, limited only by not being allowed to infringe on others’ liberty, and calls for distribution of benefits and services in a way that respects liberties and provides equality of opportunity for all, and maximum possible help for those with minimal resources. His “Justice as Fairness” implies ethical compassion, caring for the feelings of all parties and especially those who are in need, as he mentioned, as we all pursue our own interests under the condition of freedom which is legally permitted, yet no advantage can morally exist if it does not care for or benefit those who are highly in need.

Rawls's theory, as he points out, is applicable in all liberal democracies and "decent" nations, where governments are responsive to their people and freedom and equality are respected.

This study describes his theory's basic concepts and structure, and then it compares it to and contrasts it with its four main rival philosophies of justice.

Finally, the theory of justice as fairness, expanded in succeeding works such as *Political Liberalism* and *The Law of Peoples*, is assessed to see if it can perhaps be applied to three issues that are associated with liberal democracies, and threaten to undermine the fortunes of subsequent human generations: injustice between nations and economic entities, the widespread abuse of humanity's home planet, and the burden of debts currently being created by liberal democracies. Considerable time is spent examining terrorism as a threat to stability and terrorism's root causes.

Criticisms of Rawls's theory of justice from competing philosophical systems and from feminists and an ethnic minority group are evaluated, and the limitations of the theory are addressed.

This study ends with a series of suggestions aimed at encouraging philosophers and other opinion makers to join forces in a concerted effort to change the attitudes of everyone they influence so that everyone is made aware of the demands of fairness, and they are inspired to do the things necessary to provide better lives for those who will populate Earth in the future.

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Chapter I. Introduction

I.1. Background and Significance of Study

As the twenty-first century begins, democracy is probably the most popular form of government, though countries describing themselves as “democratic” are often far from the ideal described below. Democracy is acknowledged by most people as a good and acceptable way to govern a society. A leader and members of a country, for instance, would be very proud to describe their country as a democratic one.

By its definition, a democracy is a government which is ruled by the people: In Greek, democracy = *demos* + *kratos*; “*demos*” means “people,” and “*kratos*” means “rule.” In our time, we seem to appreciate democracy as the best form of government compared to other forms, such as dictatorship, oligarchy or monarchy, because it is established by the people and ruled by the people, and it cares for the people’s basic freedoms, rights, equality and justice, whereas the other forms are ruled by a single individual or selected group, who usually favor their own group and may or may not care about other members as a whole. In these forms, the rulers have more power than other members, whereas democracy is egalitarian and ideally it regards everyone equally in the sense that they equally share their political power as the basis of rights and freedom.

Thus, democracy is appreciated because it promotes the basic rights and dignity of human beings and the rights to freedom and equality.

However, democracy, though generally accepted as the best form of government, has some weak points concerning decision making when the questions of the controlling majority, for example, in voting, is dominant. This seems philosophically to ignore the minority groups, and they are not equal in privilege and

rights compared to the majority because their opinions are ignored. Moreover, the minority's basic liberty is threatened and even reduced because their voice is rarely heard and they are ignored when the majority's decisions are put into practice. Thus, Tocqueville (1835), and later J.S. Mill (1859), are right in asserting that democracy is "the tyranny of the majority," (see Routledge Encyclopedia of Philosophy, Version 1.0, London: Routledge) and democracy, without adequate protections for minorities, creates the dictatorship of the majority Tocqueville and Mill described.

Due to this weakness of democracy, Plato (427-347BC) and Aristotle (384-322BC), the two great ancient Greek philosophers, never appreciated democracy. They denied that democracy was the best form of government. Plato, for instance, as a disciple of Socrates, witnessed the death of Socrates under the decision-making of the majority under the Athenian democracy at his time. Thus, he never proposed democracy to be the best form, because the majority's opinion is not always right and the minority's opinion is not always wrong. Thus, he said the best form of government a society can have, in terms of assuring the happiness of the people, is one ruled by a philosopher; the ruler would be called "the philosopher-king," because he regarded wisdom as the greatest virtue to decide on what is best for the country.

In the case of Aristotle, although he understands democracy differently from the way Plato does, he is more reasonable in judging democracy. In fact, he approves democracy because it promotes freedom and lets the majority rule. However, he decries democracy if it means that "freedom and equality mean doing as one likes," (D.R. Bhandari, 1980, p73), and especially if the majority is ignorant with regard to the technique of administration and so on. Thus, he proposes that democracy in its best form is Aristo-democracy in the sense that "only the best citizens would present the actual governing authority and machinery," (D.R. Bhandari, 1980, p73), though he

believes that the majority of the people have the greater virtue and ability than the rest of the population.

It seems, then, that democracy is not the best alternative for us when it puts all power in the hands of the majority, like Plato and Aristotle said. However, we should take a look at what the realities of “democracy” meant in the time of Plato and Aristotle. Unlike the democracy today, the ancient democracy in Athens, the city regarded as the greatest ancient democracy at that time, was direct democracy in the sense that “all citizens could speak and vote in assemblies... [It] did not presuppose equality of all individuals; the majority of the populace, notably slaves and women, had no political rights,” (see Microsoft Encarta Reference Library 2004) because slaves and women were not considered citizens. In reality, it was a government by an elite minority of men.

Thus, democracy as used in their time was insufficiently developed and ignored the values of the majority of the people, the women and slaves. And respectfully speaking, we cannot follow the forms of government proposed by Plato and Aristotle in our world today as the world is becoming more and more global through information technology and since people are becoming more and more educated, and they want their opinions to be heard and recognized. The experience of people since ancient days, and even the twentieth century, when the world was tormented by the dictatorships of Hitler, Stalin, and Pol Pot, for instance, has helped guide us in developing forms of democracy that are seen as the best kind of government today. Modern democracy is appreciated insofar as it promotes basic freedom and equality of the people, and allows people to be responsible for their own destiny. Other forms of government, as mentioned above, are not the best alternative because they are ruled by the one particular person or group and their governance can be either good or bad

depending upon the whims of an individual or group, thus they seem unreliable if not dangerous or tyrannical. They deprive the majority of the people of a voice in running the nation.

It is morally vicious when either the majority or the minority is ignored. Thus, we need philosophical justification of the way a government operates so that the philosophical justification is fair for both the majority and the minority in a country which consists of various sub-minority groups with different ethnicities and religious beliefs, etc.

Our main concern here is that we make the idea of democracy, which promotes human basic freedom and equality, better in the sense that it should care for all people, not only the majority, but also the minority, and offer a stable way of securing the liberties and rights of all the people of the country.

Morally speaking, it is unacceptable and very dangerous to accept the idea that only the majority has rights while ignoring the minority, or to accept the demands of a minority while ignoring the majority. One example of disorder resulting from ignoring the demands of a minority is the indiscriminant bombings and murders that characterize terrorism¹. They are a reaction by minority groups responding to perceived injustice and unfairness on the part of the governing majority. Through it, the minority attempts to manipulate government policies by raising chaos and disorder to an intolerable level in the society, forcing the government to capitulate to the terrorists' demands.

¹ Terrorism is considered as an unlawful use or threatened use of force or violence by a person or an organized group against people or property with the intention of intimidating or coercing societies or governments. Usually, the terrorists are not part of or officially serving in the military forces, law enforcement agencies, intelligence services, or other governmental agencies of an established nation-state.

Terrorism deliberates the creation and exploitation of fear for bringing about political change. It has occurred throughout history for various reasons: Its causes can be historical, cultural, political, social, psychological, economic, or religious—or any combination of these. (See more in Microsoft Encarta Reference Library 2004.)

The researcher condemns terrorism and the violent actions performed by terrorists. Such criminal activities create many problems and promote hatred in our world by destroying many lives and much property. In fact, even when terrorism forces the government to give in to the terrorists' demands, it usually creates deep, long-lasting resentment and a thirst for revenge on the part of the victims, and dims hopes for peaceful co-existence between the groups in conflict.

To win the hearts of the governing majority, I argue, violent means in any form, such as terrorism, are never right because they create both mental and physical scars, destroy property, and can lead to bad consequences in the future that can be unimaginable. Rather than increase the nation's wealth and the people's liberty, they diminish both.

It is reasonable to suggest that the best alternative solution for perceived unfairness is to win the hearts of the ruling people through peaceful and nonviolent means, and there are good examples which have been used successfully, as we have seen in the past century, for instance, the nonviolent civil rights movement led by Martin Luther King, Jr. which touched the conscience of the U.S.A. and abolished institutional racial segregation in the United States, and the winning of the Indian Independence from the British by swaying worldwide public opinion through the nonviolent leadership of Mahatma Gandhi.

A well designed democracy is seen as the best form of government by most philosophers because it promotes freedom and equality of all the people, not only for the majority but also for the minority groups as well. If correctly structured, it can provide stability by giving everyone broad liberties, thus promoting personal initiative and wealth building, and fair access to opportunity and at least the minimum

requirements for life. It will not be forced to capitulate to terrorists because terrorists will have little credibility in a land where even minorities are respected and cared for.

Utilitarian Principles, Imperfect Justice: We see that where utilitarianism is practiced the idea of benefiting the majority and ignoring individual rights creates problems because it denies equality to individuals in the minority. When a proposal is made that will benefit many or most people, such as the development of a large seaport, a utilitarian democracy will ignore the rights of the few people living along the shore of the bay, and seize their property in order to build the port. While doing what is “best for most people,” it can move quickly and efficiently in whatever direction it wants to, and it can become a very popular form of government, and easily win public support for public projects, and because the “majority” always profits from the projects, the government has a high likelihood of being reelected time after time. Because utilitarianism is so profoundly positive and influential in so many people’s daily lives, it has been promoted as a form of democracy to be followed everywhere, serving as a good example for every democracy’s thinking and practice. The utilitarian principle holds that a policy or action is morally right if it is acceptable to “most” and if it “produces the greatest happiness for the members of society” (Kymlicka, 2002, p10).

The problem that this presents is this: democracy is desirable if and only if it promotes the basic liberty and equality of the people as a whole, not only the majority, but also the minority. What Rawls has contributed is a set of principles and priorities that are based on a completely different and much more enlightened way of determining what is truly “just” or fair or moral. Applying his principles is seen by his many supporters to be an effective way to deal with and solve the problems of our world today and far more effective and stable than utilitarianism. Since internal peace

and stability often seem to hinge on the perceived fairness or unfairness of government policies, Rawls's theory of justice as fairness, by preserving peace and stability, should be seen as far superior to utilitarianism.

A Short Look at the Life of John Rawls

John Rawls (1921-2002) was an American moral and political philosopher, and is regarded by many people as the most influential and important moral and political philosopher in our time. Rawls was born in Baltimore, Maryland on February 21, 1921. He was raised in an upper-class southern family. He was the second of five sons. In his early education, Rawls attended Kent School, an Episcopalian preparatory school in Connecticut, and graduated in 1939.

He entered Princeton University, and obtained his Bachelor of Arts degree in 1943. While at the university, he became interested in philosophy and was a member of The Ivy Club. After graduating, he joined the US army and served in New Guinea and the Philippines, and, when World War II ended, he served in Japan and was one of the witnesses of the aftermath of the atomic bombing of Hiroshima. Because of his experience of the war, he declined an offer of officer training and left the army as a private.

He returned to Princeton University for his doctoral degree in moral philosophy and graduated four years later in 1950. In 1949 he married Margaret Fox, who shared his interests. From 1950 to 1952, he taught at Princeton. He received a Fulbright Fellowship to Oxford University, where he was influenced by the liberal political theorist and historian of ideas Isaiah Berlin and, more strongly, the legal theorist H.L.A. Hart.

Shortly after this, he returned to the United States to take a position as Assistant professor, then full professor at Cornell University. Soon he gained a tenured position

at Massachusetts Institute of Technology. In 1964 he moved to Harvard, and remained there for almost forty years.

Professor Samuel Freeman was a lawyer who was so inspired by reading *A Theory of Justice* that he left the legal profession for graduate work in philosophy, never dreaming he would have the good fortune of studying with Rawls, becoming his professor's good friend, and eventually edit Rawls's *Collected Papers* (Harvard University Press, 1999) and *The Cambridge Companion to John Rawls* (2003). He describes Rawls as

... a quiet, modest, and gentle man. He did not seek fame, and he did not enjoy the spotlight. A private person, he devoted himself to research and teaching, or to relaxing with his family and friends. He declined almost all requests for interviews and chose not to take an active role in public life. In part, that was because he felt uncomfortable speaking before strangers and large groups, and often stuttered in those settings. (Freeman, "*John Rawls, Friend and Teacher*," pB12).

Freeman adds that Rawls was

a conscientious teacher. His lectures were carefully prepared and written out, and he continually revised them after reading the most recent scholarship and rethinking his positions. He made his lecture notes available to his students, acknowledging that he sometimes stuttered and was not sure that he could be understood. A better reason, surely, is that his lectures were very intense and hard to digest upon one hearing (or even two or three). (Freeman, "*John Rawls, Friend and Teacher*," pB12).

In 1995, twenty four years after publishing *A Theory of Justice*, Rawls suffered several strokes. He retired from teaching, but continued to work out his ideas about justice. Several works appeared in the next years, and on November 24, 2002, he died quietly at his home. He had written his final book, *The Law of Peoples*, which contains the most complete statement of his views on international justice.

Martha Nussbaum, a noted professor at the University of Chicago, described Rawls as

the most distinguished moral and political philosopher of our age. Rawls played a major role in reviving an interest in the substantive questions of

political philosophy. What makes a society just? How is social justice connected to an individual's pursuit of the good life? . . . The influence of his ideas and his impact as a teacher. . . have made those questions central to philosophy, and our age rich in arguments about justice, respect, and Liberty. (Nussbaum, "*The Enduring Significance of John Rawls*," pB7).

As Professor Nussbaum suggests, in leading philosophers out of the fruitless pursuits of logical positivism, Rawls could freely express his fondness for Abraham Lincoln:

He admired Lincoln because he saw him as the president who most appreciated the moral equality of human beings, and because Lincoln was the rare statesman who did not compromise with evil. [Rawls] frequently quoted Lincoln's assertion – "If slavery is not wrong, then nothing is wrong." – as the best example of a fixed moral conviction that anyone with a sense of justice must believe. (Freeman, "*John Rawls, Friend and Teacher*," pB12).

His most influential work, *A Theory of Justice* (1971), has had a profound impact on moral and political philosophy since its publication. He proposes "justice as fairness," as an alternative to the utilitarian theory. Rawls considers utilitarianism a threat to basic human rights because it initiates and justifies actions that provide the greatest benefits for the majority of the people while ignoring the plight of the minority. This neglect of the minority will ultimately bring about instability as members of the minority resort to desperate means to have their needs met.

Thus, Rawls centers his theory on "justice as fairness." Justice as fairness consists of a number of egalitarian, moral and liberal ideas which, if applied in the institutions of a liberal constitutional democracy, can justify its existence and serve as guiding principles in its operations.

In regard to this, he proposes two principles of justice which determine how social benefits are to be distributed among individuals fairly and impartially. Rawls's two principles of justice hold that the practices of a government must affirm the priority of equal basic liberties over other political concerns, and, moreover, they

must require fair opportunities for all citizens in regard to inequalities of wealth and social positions. The principles are as follows:

- a. Each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all.
- b. Social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society. (Rawls, *Political Liberalism*, 1993, p291; see *A Theory of Justice*, 1971, pp60, 302; and see *A Theory of Justice: Revised Edition*, 1999, p53).

Later, we will refer to these two principles, calling the first (a.) the Liberty Principle, and the second (b.), which is divided into two parts, we will refer to as the Difference Principle, providing maximum support for those with minimum advantages, and the Equal Opportunity Principle, where it refers to opportunities to improve one's lot.

We will later discuss these ideas at length, but right now let us return to the current question, "How can we decide on what is fair, since we are living in a society that is unequal and we may have different interpretations of what the good life means in regard to each individual?" Rawls proposes a new heuristic stratagem he calls the *original position* that is a hypothetical situation which he uses to see if a policy or practice is "fair" or just, and to justify the principles a government follows. The original position is an impartial social contract which provides a new approach to the traditional social contract theories of Jean Jacques Rousseau, John Locke, and Immanuel Kant. Though similar to the older theories, it is designed as a reasoning device to determine whether a particular arrangement would be seen as fair and acceptable to "rational" and "moral" individuals who are, under the rules of the device, unaware of their own identity, gender, social class and so forth, and are thus able to judge things objectively and impartially. He claims the results would be "fair"

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if “reasonable” people would agree to the terms of the hypothetical contract, and would be willing to live under its terms forever without the possibility of undoing the agreement. Then, he claims, the terms of the contract are “just” because they are reasonable and fair. This idea presupposes that people in the original position agree with the basic principles of justice because they are free and moral beings who are capable of a “thin” sense of justice and goodness, yet they are operating under his unique “veil of ignorance,” situated equally and ignorant of their particular situation in life, including their race, gender, economic status, and so on when they finally agree rationally upon the principles they will follow in order to secure their equal status and freedom, and to pursue freely their conceptions of the good life.

As he puts it, in the original position,

[n]o 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 relations 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 thus 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. (Rawls, *A Theory of Justice*, 1971, p12; see also p19).

Thus, moral agents in the hypothetical situation who are capable of having senses of justice and goodness would agree on the principles, seeing them as just and fair and not a threat any other individual’s basic rights and liberty.

To merit this respect, first of all a principle must guarantee as much as possible the *basic rights and liberties* of each individual equally, because it respects the basic dignity of human being in general. The Liberty principle is designed to do this. The other principle concerns the social and economic inequalities which are acceptable only if they are managed so as to help those who are the least advantaged.

Of course some critics attack Rawls on this point. They argue that there is nothing wrong in pursuing the benefits of one's liberties if they do not harm anyone. Rawls replies to the critics this way: Every one of us pursues our advantage; however, no advantage can morally exist if it does not care for or benefit those who are highly in need.

According to some critics, Rawls seems to start at the wrong point in his theory of justice when he tries to create the "hypothetical contract" between different rational people who may be members of different ethnic groups, with conflicting interests. They ask, "How can these people be ignorant of their own gender, status, religious beliefs, and so on?" These kinds of criticisms typically arise from people with "communitarian" tendencies, which will be described later. Rawls's response to this question would be:

In order to find out if a practice is fair or unfair, we must create an imaginary situation, since no real situation can do the things we need to do to determine whether rational people would accept a policy or other action. It is only by imagining individuals existing for a short time in a state of selective amnesia regarding their own self interest that we can ask them if they would prefer living forever in *Hypothetical Situation A* or in *Hypothetical Situation B*. They have no way of knowing whether either situation would benefit or harm them personally in real life, because they do not know anything about their own real life status. In making their decision to support this or that action, they are agreeing to an imaginary contract which will, by the rules of the 'game,' be a permanent and irrevocable choice. It is safe to assume that under this set of rules, rational people with at least a 'thin concept' of morality will make a conservative and fair choice. This choice would be something that others of competing ethnic groups could accept and recognize as fair, for it would not favor this

or that group to the detriment of competing groups except by offering the very worst off individuals special consideration in terms of maximizing the benefits held out to the minimally well off, without robbing anyone of the enjoyment of the widest liberty possible. Thus we can say that we have established a system which leads us to true justice because it is fair to all, and where inequalities exist, it favors the least well-off over those wealthier or those of higher status.

To give a simple example, imagine that two soccer teams have come together to play a crucial game, but there are no certified referees there except for Kalib, who is the assistant coach for the Green team. The Red team agrees to let Kalib referee, but only if he takes a special pill which, for the duration of the game, will render him unaware of his identity and his association with the Green. After taking the pill, the Reds are sure he will make every effort to be impartial, because if he chooses to favor one team over the other, he might be harming his own team. He would realize that following the rule book is his sole concern, and his calls would probably be much more accurate than usual, because of his special impartial condition.

This is the kind of imaginary situation that must exist as the “hypothetical contract” is formulated, for it establishes a set of conditions which transform a rational person with an everyday amount of bias into a model deliberator acting on pure reason rather than bias. This is accomplished by a special kind of unawareness, called “the veil of ignorance,” which enables the deliberators to formulate the “hypothetical contract” in an unbiased state of mind, establishing the “original position” for the production of the principles of fairness and justice that will be acceptable to all reasonable, rational, and moral parties. Thus, the “veil of ignorance” is similar to the “special pill” referred to in the soccer game example above.

Rawls' original position device resembles the "natural state" earlier philosophers described when discussing the old "social contracts" mentioned by Hobbes, Rousseau, Locke, and Kant. His "original position" is, then, a mental procedure allowing us to visualize how good and reasonable parties in a liberal democracy could function cooperatively in peace and harmony, without outbreaks of violence and terror.

Moreover, people in the original position are represented as free and equal individuals who hold moral powers in hand to contribute their participation in social cooperation. The principles of justice present a good and reasonable mental model for a democracy.

Applicability of Rawls's Theory in Today's World

Rawls's theory of justice as fairness is very relevant to our world today, especially with regard to pluralistic societies. Rawls was American, and he saw first hand how the United States, as a country composed of many sub-groups representing different races, cultures, beliefs and values living together under the liberal democratic form of government, could serve as a good example to other countries who claim the title "democratic country." His ideas contribute significantly to the philosophy of government and can be applied to other societies on the grounds that we are all human beings and have similar needs. Furthermore, not only the United States, but also other countries consist of people of different religious beliefs, cultures, and moral ideas that permeate their own personal lives and provide a social context in which to find one's identity and grow to become "somebody." For example, in Canada there are people who are Buddhists, Muslims, Christians, and others, from a variety of foreign nations, and with great differences in personal power and wealth. As diverse as these groups may be, they are all Canadians. Other liberal

democracies have similarly heterogeneous populations which enjoy enough stability and economic success to assure their longevity.

In his major later work, *Political Liberalism* (1993), Rawls goes beyond the scope of his earlier work, *A Theory of Justice*. In this work, he focuses more fully on the political arena, especially on the problem of justice within a strongly pluralistic society where many different groups are living together. He even proposes a second version of the “original position,” which has members of groups, under the special “veil,” deliberating and arriving at a contract that will satisfy the various groups and provide long-term stability. This will be discussed later and following.

He invites us to reflect on the idea of justice while recalling that in a free society, people have religious, philosophical and moral views which are inevitably quite diverse; thus, the social unity can be reached best through public reason that is based on a shared public conception of justice. He considers Justice as Fairness the most appropriate and reasonable basis for a social unity in diversity, because it is a result of moral ideas which are shared by all citizens in the society, considering that they are free and equal moral beings, and its main concern is justice in terms of fair social cooperation. Its justification is human reason, so it does not depend upon the principles of a particular religion or philosophy of life.

His main concern is to provide the public justification for justice as fairness which will be acceptable to all citizens of a well-ordered democracy.

To the question of how people from different comprehensive doctrines or backgrounds in a free society can come together for an agreement to form a specific political conception or organization, he gives his answer based upon the convincing idea of “overlapping consensus.”

The overlapping consensus model can be applied to a free society where all citizens are free to express their opinions and beliefs. Rawls maintains that an *overlapping consensus* must have the following three characteristics, namely:

It is a *consensus of groups of people holding reasonable comprehensive doctrines*. It deals with *reasonable* or *rational pluralism*, not simply *pluralism*, since Rawls argues that a free institution must guarantee and provide its citizens liberty, justice and equality, so that the citizens can exercise their rights and freedoms, and, according to Rawls, pluralism and rational pluralism are different. In a *pluralistic* society, people's basic dignity, rights and liberty might not be guaranteed. They may be governed by unjust, irrational, violent, and unfree institutions, but in a *rational*, and especially in a *reasonable* pluralistic society, people's lives are in the fortunate conditions where the government's institutions care for their happiness, freedom, justice and equality, and the like. Thus, according to Rawls, the *overlapping consensus* takes place where there is *justice and equality* under the conditions of freedom, and members of the reasonable pluralistic society who are associated with various *comprehensive doctrines* are free to follow their own path and accept principles based on human reason alone. As he puts it,

The fact of reasonable pluralism is not an unfortunate condition of human life, as we might say of pluralism as such, allowing for doctrines that are not only irrational but mad and aggressive. In framing a political conception of justice so it can gain an overlapping consensus, we are not bending it to existing unreason, but to the fact of *reasonable pluralism*, itself the outcome of the *free exercise of free human* reason under conditions of liberty. [Italics added.] (Rawls, *Political Liberalism*, 1993, p144).

The second characteristic of overlapping consensus is, *in a constitutional democracy the public conception of justice should be, so far as possible, presented as independent of comprehensive religious, philosophical, and moral doctrines*. This implies that, first of all, justice as fairness is seen as “a freestanding view that

expresses a political conception of justice. It does not provide a specific religious, metaphysical, or epistemological doctrine beyond what is implied by the political conception itself.” (Rawls, *Political Liberalism*, 1993, p144).

Of course, religious, philosophical, and moral considerations influence our understanding, and this affects our decisions and actions. However, a political standard has to be something beyond that, something that stands on its own merit, based only on human reason, because tying basic constitutional principles to one *comprehensive doctrine*, such as a religion, political philosophy, or metaphysical view of the world, would be regarded as unfair and unacceptable by people following a different or competing *comprehensive doctrine* that this is the only way to bring about unity among the diverse elements of society.

This idea of justice as fairness in Rawls’s argument is very clear. It implies justice for all, regardless of any ideologies, beliefs, and so on in a diverse society.

Differently from specific religious, epistemological, metaphysical or moral doctrines, which have various ideologies and explanations to support each system of belief, political thought must be free from any separate or independent ideologies, and must imply universal standards of equal fairness for every citizen in that society, yet it must respect the various beliefs of diverse cultures because they form sensitive parts of human lives, feelings, and values.

As Rawls mentions, “the political conception is a module [or] an essential constituent part [of a society’s underlying philosophy], that in different ways fits and can be supported by various reasonable, comprehensive doctrines that endure in the society regulated by it.” (Rawls, *Political Liberalism*, 1993, pp144-5).

The third characteristic aspect of an overlapping consensus operating in a *rational pluralistic* society is, it is enduring and promotes stability. Rawls bases this

on the principles of moral psychology. He endeavors to demonstrate that citizens in a well-ordered democratic society perform their actions with due regard to the principles of justice, and, since people are rational beings and are capable of a sense of justice and goodness, they will, in pursuing their plan in life, act from the reasonable, good and just principles and accept the validity and value of the *overlapping consensus* because it provides them peace and security which are necessary for the enjoyment of liberty and equality. These positive and reasonable qualities of human nature are considered to be *rational instruments* and it is appropriate to cultivate these capacities by doing just things so that the benefits of social cooperation can be achieved.

And of course, all the groups believing in reasonable comprehensible philosophical, religious, and political doctrines can acknowledge and appreciate the principles of the *overlapping consensus* because first, they are based on universally accepted processes of human reason, and second, they provide the stability a diverse and pluralistic society needs, along with powerful guarantees of freedom and equality.

We might think that Rawls's theory is similar to Marx's theory of justice in the sense that it supervises patterned distribution of goods and services to all people. However this overlooks two important facts: first, Marx did not start his system as a simple patterned plan for distributing the wealth while sustaining a liberal democracy with a capitalist economic system. Instead, he declared capitalism and its treatment of the workers vicious and attacked it at its roots, claiming that misery springs from the fact that people like property owners and factory owners are by their nature exploitive of their labor force and corrupt because they are rich. He declared that the workers in a capitalist system are unhappy, unproductive, and destructive because of "alienation"

from the fruits of their labor, from themselves, from their co-workers, and from humanity itself.

Instead of calling for improvement in existing systems, he felt the only way to cure the ill of the nineteenth century world, which, for him, was basically Europe, was to destroy the entire government and seize the entire economic system, strip everyone of the right to own anything but what their own labor produced, and replace the “old order” with a new and egalitarian order, a classless society that would produce a “workers’ paradise.” In short, his system promised to replace time honored establishments and codes of law, even religious beliefs and “counter-revolutionary” educators, politicians, and bureaucrats, and either reeducate them, imprison them, or execute them.

This bleak view of the “proletariat” and the “bourgeoisie” was not based on the kind of documented evidence we demand today, which would cite a wide variety of specific cases to support his claims. Instead, he based his principles on what might be considered today insufficient evidence and questionable generalizations. Instead of looking forward to and leading a gradual “procedural” improvement in the lot of the workers, which has resulted in the wealth and freedoms enjoyed by citizens of liberal democracies today, Marx looked at the early stages of the owner-worker arrangement in those places he lived in, using the tools he had at his disposal, and, appalled by what he saw, he called for revolutions and upheavals which would rid the world of capitalism and oppression of the masses by people who owned the land and mines and factories where people worked. Unfortunately, relationships between owners and workers had not evolved when he and Engels wrote their Communist Manifesto that called for revolutions. Tragically, the revolutions which followed were often disasters for the nations and peoples involved. The workers, robbed of liberty, and the nations

involved, stripped of the talents and creativity of ambitious and ingenious capitalists, placed the fate of industries, banks, communications, health care, education and transportation in the hands of bureaucrats loyal to the ruling revolutionary leaders and communist party doctrines and generally unresponsive to the needs of the populace. Unfamiliar with and hostile toward the workings of international trade, law, and finance, the Marxist nations often made backward progress, delaying for nearly a century the kind of development liberal democracies quickly came to enjoy. Untold numbers of tragedies and broken lives followed as the monolithic bureaucracy, headed by unscrupulous leaders or elitist cliques of party loyalists imposed unthinkable suffering and even genocidal starvation, political correctness, and even the aggressive take-over of neighboring countries in the name of “equality,” “agrarian reform,” and “justice.”

It took most communist or “socialized” countries decades of struggle to finally evolve into something which resembles in some ways the freedoms and efficient economic practices that liberal democracies developed generations ago without undergoing the destructive and misguided revolutions that sprang from the blind acceptance of and misapplication of the doctrines of Karl Marx.

On the contrary, Rawls does not call for upheavals or revolutions, but provides a method for assuring that people will continue to enjoy their basic right to private property and the liberty to actively pursue wealth and power through legitimate businesses and other pursuits, like professional sports, the arts, and other enlightened professions. His Liberty principle is a guarantee of freedom from undue government interference in one’s life, and his Difference and Fair Opportunity principles are designed to produce benefits for all. By preserving the right to property and wealth, Rawls preserves the incentives that prompt the more able or ambitious to produce

more goods and services, and the resulting commerce works to the benefit of all and provides enough goods to allow patterned distribution to perform its stabilizing function.

Further, rather than calling for a revolutions and a disruptive leap into an untested utopian system, Rawls's theory of justice assures stability by taking care of all factions, with any inequalities being arranged to give the worst-off the greatest access to advancement and the maximum possible share of patterned distributions of benefits. In dealing with the many diverse minority groups in a democracy, Rawls's "overlapping consensus" scheme provides the means of satisfying minority needs and assuring them that the government does care about their needs and does respect their feelings. By insisting that his principles of Liberty and Difference be applied in lexical order, he maintains the supreme value of liberty and at the same time assures that the freedoms of the less fortunate individuals and minority groups as well as the well-to-do will be respected and their welfare will be treated as a top priority.

Rawls's constant critic, Robert Nozick, the Libertarian, claims that any patterned distribution of wealth or services must necessarily deprive those on the upper level of society of their rights because it forces them into involuntary service to others by taxing their income and giving it to the less well off. Some would agree with him that, like Marx, Rawls advocates the unwarranted seizure of property or wealth of the well-off and redistributing it to the poor through a scheme that ignores the basic human rights to property and the fruits of one's labor, and unjustly seizes property or wealth by force of law from those more fortunate or more industrious and ambitious people and gives it away to the poor, who in some cases are not deserving of pity and have not merited help. Depriving the wealthy of liberties and rights is vicious, and by lowering the rewards for productive enterprise, it discourages

capitalism and reduces the general wealth of the nation, leaving less to distribute to the poor.

Rawls dismisses this by pointing out that his Liberty principle protects the wealthy by preventing instability, and is not aimed at distributing the liberties themselves equally to all, since the poor will always have less “liberty” of action and fewer options than the wealthy. Instead, he insists that taxing the wealthy in a reasonably designed way does not amount to servitude or slavery, and can be carried on in a civilized way without violating due process or civil rights.

Nozick also feels that he has no duty to help the less fortunate, especially if it deprives him of some of what he earns by his own labor or enterprise. Rawls replies that, in any system of social contract, there must be provisions made to relieve the worst off. His system of obtaining agreement through the “original position” and “hypothetical contract” provides a means of establishing what kind of sharing or redistribution will be acceptable to every “rational” and “reasonable” person. *Overlapping consensus* assures that minority groups will feel they are being treated fairly, adding to the stability and promoting peace in the community.

The answer to Nozick’s complaint about losing his liberty is found in Rawls’s insistence on the Liberty principle, which has “lexical priority” over all other considerations. His principle demands that rather than reducing liberty, the state should increase it for everyone to the broadest possible extent, limited only when it comes into conflict with other people’s liberty and tends to reduce the freedom of others.

In short, Rawls’s idea of justice as fairness has offered a new justification for the existence of government by introducing the “hypothetical contract” to replace the traditional “social contract” of Rousseau and others. This new contract is based on a

concept of fairness and justice derived by rational people in the “original position,” freed from self-interest and moral bias by his use of a selective, imaginary amnesia or ignorance so that they follow their rational sense of fairness to make arrangements that assure maximum liberty and access to privileges, goods, and services for all, especially the least well-off individuals in the society. This system promises to offer solutions to a broad array of problems confronting the world today. His theory protects the minorities while guaranteeing the greatest possible liberty to all, and a fair and equitable arrangement for distribution goods and services to those with least resources.

It is in this way that Rawls contributed possible solutions for the problems of our world today.

I.2. Research Question

In this dissertation, I would like to propose a hypothesis that,

John Rawls's Theory of Justice as Fairness may be the best alternative to other theories of distributive justice because, if applied well, it promises to afford a government security and stability; the guarantees offered in his Liberty, Difference, and Fair Opportunity principles offer a promise of security to the people; the apparent fairness inherent in his unique hypothetical contract system offers the possibility reducing terrorism and providing long-term stability because it is designed to minimize the feelings of unfairness or helplessness that lead to resentment among minorities and fuel rebellion and terrorism. In applying Rawls's theory to the affairs of the liberal democracies of Europe, the U.K., and North America, following his principles of fairness in business relations between nations and international global corporations, and in the respect and care people must show for our planet and its living and non-living beings it can show us the way to reduce terrorism, reduce national debts, and show or reverse the damage our economies and lifestyles do to the planet, all of which will benefit ensuing generations of humans and non humans that will inhabit Earth in the coming years, centuries, and millennia.

To begin this dissertation, the research will set out the scope of the research which will be limited to the following topics:

1. Utilitarianism

2. Marxism and socialism
3. Libertarianism
4. Communitarianism
5. Liberalism
6. Democracy
7. Terrorism and other violent actions
8. Respect for the planet
9. Responsible national finances

I.3. Objectives

This dissertation has the following objectives:

1. To critically examine and explain John Rawls's Theory of justice as fairness in order to form a comprehensive understanding of it, to see how his original position and hypothetical contract model theory are like and unlike the traditional social contract theories, and show that his theory is soundly constructed and designed to prevent unfairness and instability.
2. To demonstrate critically why Rawls's theory is fairer and more reasonable than other leading theories of Distributive justice that form the basis of most of the criticism directed at Rawls by comparing it to and showing how it differs from Utilitarianism, Marxism, Libertarianism, and Communitarianism. Moreover, this research will also evaluate his theory in light of some of the Feminist and Ethnic Minority Criticism directed at it.
3. To study Rawls's theory of justice as fairness critically, showing its weaknesses and strengths, to see if this research suggests that applying his theory might help solve some of today's worldwide problems such as instability and terrorism, public debt, and global warming.

I.4. Definitions of the Terms Used

* Democracy: The term "democracy" refers to the rule by the people, which is different from the rule by a particular person or group. "It is a system of decision

making in which everyone who belongs to the political organism making the decision is actually or potentially involved. They all have equal power.”²

This implies that in terms of participation, everyone should share their opinion in making decisions. As a citizen of a democratic country, everyone has the right to vote for any representatives or proposals that they think are best for their country. In democracy, each person counts, and the person or proposal with the most votes wins.

* Equality: Politically and philosophically speaking, equality is a controversial concept, but it is important. It implies a state of being equal in terms of basic rights, freedom, treatment, and value, which apply to all individuals equally in a group and fairly for all under the law.

* Fairness: it is the state of being fair, just, unbiased and appropriate.

* Justice: Justice is one of the most important concepts in moral and political philosophy. Along with other virtues, it plays an important role, establishing how one should interact with others, and it is the chief virtue of social institutions.

Justice implies fairness; it demands fair and equal treatment so that each individual can pursue their own good while not violating others' rights. Justice is closely connected to equality and morality; that is to say *to be just is to be fair*.

* Liberty: Liberty means a state of being politically, legally and morally free from any confinement, servitude and other unjust actions. It implies the basic rights of each individual to act and express themselves in their own decision.

* Terrorism: Terrorism is sometimes defined as an unlawful use or threatened use of force or violence by a person or an organized group against people or property with the intention of intimidating or coercing societies or governments. Usually, the terrorists are neither part of nor officially serving in the military forces, law

² Ross Harrison: Routledge Encyclopedia of Philosophy, Version 1.0, London: Routledge

enforcement agencies, intelligence services, or other governmental agencies of an established nation-state.

Terrorism advocates the creation and exploitation of fear for bringing about political change. It has occurred throughout history for various reasons: Its causes can be historical, cultural, political, social, psychological, economic, or religious—or any combination of these. (See in Microsoft Encarta Reference Library 2004). The fear is created by use of bombs, kidnappings, beheadings, and other violence aimed at targets that carry the highest likelihood of getting media attention.

* Violence: Violence is any kinds of mental and/or physical force which is used to violate, abuse or kill other people or destroy or damage things in wrong and unjust ways.

I.5. Limitation of the Research

This dissertation intends to critically provide a comprehensive understanding of John Rawls's theory of justice as fairness, including his innovative hypothetical contract device, and will demonstrate why his theory is fair and more reasonable than other distributive justice theories, such as Utilitarianism, Marxism, Libertarianism and Communitarianism, which includes criticism from Feminists and Ethnic Minorities; finally, it will show the theory's strengths and weaknesses, suggesting ways that his theory might help solve some of today world problems.

This research limits itself by focusing on:

1. Rawls's concepts of justice as fairness and other relevant ideas, such as principles of justice as fairness, the role of original position, reflective equilibrium, overlapping consensus, public reason, and the like
2. The traditional social contract theories of Hobbes, Rousseau, Locke, Kant and others

3. The Distributive Justice Theories of Utilitarianism, Marxism, Libertarianism, Communitarianism including Feminism and Minority, Democracy's problems with terrorism and other violent actions, and with diversity among religious beliefs, cultures, and philosophical and moral doctrines.

I.6. Research Methodology

This critical research study requires both primary and secondary sources. The sources will be the books and articles in journals and newspapers which are available in the libraries of many universities in Thailand, for instances, libraries of Assumption University, Chulalongkorn University, Thammasat University, Ramkhamhaeng University and others. The researcher has taken advantages of the "on line" information from the Internet as well.

Furthermore, the researcher consults also teacher-experts on John Rawls's theory of justice as fairness, watches the news, i.e. CNN, and BBC, and reads the *Bangkok Post* and *Wall Street Journal* newspapers, in order to make the research up to date and to have a deeper understanding of current issues.

To avoid repeating research done by others on this problem, the researcher has also searched the Assumption University library's online databases.

The investigation of this research will be a critical analysis that is focused on conceptual argumentation based on analysis and evaluation of the concept. The investigation will begin with a documented description, analysis, evaluation, and criticism of John Rawls's contributions to political philosophy.

Chapter II. John Rawls on Justice as Fairness

II. 1. What is Justice?

Justice is usually regarded as an ideal, moral, and correct concept of the way persons interact. Justice is related to concepts such as freedom, equality and so on. It is the fundamental objective study related to areas such as ethics, politics, and law.

Justice is normally defined as the system that assures that a person receives what is due for their performance and contributions. It can be seen as “A day’s pay for a day’s work.” Let us mention various forms of justice, and then move into an analysis and evaluation of Rawls’s conception of justice.

Justice can be seen as formal, substantive, retributive, corrective, commutative or reciprocal, and distributive.

First of all, *formal* justice is the equal and consistent applications of the principles of a state’s laws, whether the laws themselves are “just” or not.

Substantive justice is concerned with the actual “rights,” or what an individual can realistically demand of the government.

Retributive justice is concerned with providing retribution or punishment for an offense against the state, corporate entities, associations, or individuals. This has expressed itself as a desire to “get even” for sufferings caused by a person or group, and as a means of deterring future offenses.

Corrective justice is a matter of setting things right by imposing judgments requiring compensation for civil damages. (See Audi, Robert, ed. *The Cambridge Dictionary of Philosophy*, 1995. p395).

Distributive justice and *commutative* justice are often seen as complimenting one another. *Distributive* justice dictates fairness between the state and the people,

especially in regard to the distribution of public benefits and burdens. *Commutative* justice governs exchanges between individuals or commercial enterprises. The two are inseparable because the welfare of the state (the common good) is closely linked to the fairness and credibility of the exchanges between individuals or commercial entities.

In order to understand the concept of justice more clearly, we should take a look at views of justice expressed by the two greatest philosophers of the Western world, Plato and Aristotle.

Many others agree with their views, for they consider justice the most significant virtue. Others, such as charity, loyalty, compassion, integrity, and so on flow from it. However, Plato and Aristotle understand “justice” in two different ways.

In his *Republic*, Plato sees justice as the greatest and highest virtue, separate from the other virtues. For him, “We speak of justice as residing in an individual man and also as residing in an entire city...” (Plato, “Republic.” See in Steven M. Cahn, ed. *Political Philosophy: The Essential Texts*. 2005, p59).

According to Richard Kraut, Plato defines justice as a personal state,

a unitary psychological phenomenon that . . . is at bottom a relationship one has to oneself involving a relationship among the parts of one’s soul, that it is most fully exhibited by philosophers, and that it is best understood by being placed in the context of an ideal society. (Kraut, Richard. *Aristotle: Political Philosophy*, p100).

In his work, *The Republic*, Plato understands justice as “the condition of the soul that allows each of its components to do its own work: reason rules, spirit serves as its ally, and the appetites obey.” (Kraut, Richard, *Aristotle: Political Philosophy*, p121). In his own terms, found in *The Republic*,

‘... we must remember that each of us will be just and perform his proper function only if each part of him is performing its proper function.’

‘Yes, we must certainly remember that.’

‘So the reason ought to rule, having the wisdom and foresight to act for the whole, and the spirit ought to obey and support it.’

‘Certainly.’ (Plato. *The Republic*. Translated with an Introduction by Desmond Lee. 2nd Edition, 1974, pp218-9).

Plato classifies people into three classes according to their soul’s traits: philosophers, soldiers and workers. In a society where there are interactions of these various types of people, justice is found when these people do their own jobs properly, that is to say the elements of the soul, reason, spirit, and appetite, are properly and harmoniously related. He also mentions that justice is a harmonious inner state that exists within a person, so that the just person treats others fairly as a consequence of this inner harmony.

‘So there will be no difference between a just man and a just city, so far as the element of justice goes.’

‘None.’

‘But we agreed that a state was just when its three natural constituents were each doing their job, and that it was self-disciplined and brave and wise in virtue of certain other states and dispositions of those constituents.’

‘That is so,’ he said. (Plato. *The Republic*. Translated with an Introduction by Desmond Lee. 2nd Edition, 1974, p209).

Injustice, for Plato, is a result of conflicts among these elements of the soul. For instance, a person decides by his reason to refrain from eating, yet the appetite refuses to follow this. In a similar way, one may wish to be fair in an exchange of goods, but appetite leads one to demand too much from the other party.

Aristotle, on the contrary, understands justice differently. Unlike Plato, Aristotle, in his *Nicomachean Ethics*, considers justice as the greatest and most important virtue of all in terms of political philosophy. He focuses his attention on this. Differently from Plato, Aristotle is said to hold that “Justice is not a relationship of the parts of one’s soul but a relationship among separate human beings, and political justice (the most important aspect of this virtue) requires that one treat others

in ways that accord with the rules of one's community—defective though that community may be.” (Kraut, Richard, *Aristotle: Political Philosophy*, p101).

To understand justice, we need to understand injustice in the sense that we recognize beauty, for instance, because we can distinguish it from ugliness. It is similar with justice and injustice. Aristotle regarded justice as the complete and supreme virtue, not an absolute virtue in itself or in the soul, but found in relations to other virtues as mentioned; on the other hand, injustice is vice, not a part of some other vice, but a whole vice in itself. Of course, justice is a virtue, but to make a distinction between justice and virtue is possible by looking into the relations each has with other virtues. Justice is a moral state in relation to others virtues; and virtue is also a moral state, but in an absolute sense, unrelated to other elements.

Thus, justice is “the moral state which makes people capable of doing what is just, and which makes them just in action and in intention;” whereas injustice “is the [opposite] moral state which makes them unjust in action and in intention.” (Aristotle. *The Nicomachean Ethics*. J. E. C. Welldon, trans., 1987, p142).

Furthermore, he distinguishes between two kinds of justice: in a broad sense, justice is “lawfulness,” and in a narrow sense it is “equality or proportionality, which comes in three kinds (distributive, corrective, and reciprocal).” (Kraut, Richard, *Aristotle: Political Philosophy*, p98). For example, a *just* person is in one sense, lawful; in another, equal; whereas an *unjust* person is, in one sense, lawless; in another, unequal. The unjust person is someone who is not satisfied with an equal share. He allocates to himself too much and he leaves for others too little. As Aristotle mentioned,

[A person] is said to be unjust, if he breaks the law of the land; he is also said to be unjust, if he takes more than his share of anything. It is clear then that the just man will be (1) one who keeps the law, (2) one who is fair. Accordingly what is just is (1) what is lawful, (2) what is

fair; what is unjust is (1) what is unlawful, (2) what is unfair. (Aristotle. *The Nicomachean Ethics*, p144).

Since some laws are unjust, what does Aristotle mean by “lawfulness”? By lawfulness he means in accord with laws created by people that are harmonious with the natural laws, which he defines as “general principles of conduct which are ascertained by reason,” (D. R. Bhandari, *History of European Political Philosophy*, p63), in the sense that they are moral, that is to say, they are characterized by morality and universality. We should also note that Aristotle conceives natural laws not the same as natural rights, for in fact he does not believe in natural rights, though he appreciates natural laws.

Now we come to justice in its narrow sense, consisting of equality or proportionality. It can be understood in regard to these three kinds of justice: distributive, corrective, and reciprocal.

Distributive justice is “the distributions of honour or wealth or any other things which are divided among the members of the community, as it is here that one citizen may have a share which is equal or unequal to another’s”; it is determined, according to Aristotle, by merit which is understood differently according to people: the democrats understand freedom, the oligarchs wealth or nobility, and the aristocrats virtue (See Aristotle, *The Nicomachean Ethics*). Thus, for Aristotle, distributive justice appoints to every man his due in a society in regard to his contributions to the society. It is clearly similar to proportionate equality that is involved with his merit or desert in the sense that he is treated in accordance with his social actions and contributions.

Corrective justice is “*corrective of wrong* in private transactions.” It is primarily concerned with voluntary commercial transaction like sales, hiring, furnishing of security, etc., and other things like aggression on property and life,

honor, and freedom. Of course, for Aristotle, the private transactions are concerned with two transactions: the first one is voluntary: entered into by people's free will, for instance, selling, buying, lending at interest, giving security, lending without interest, depositing money, hiring. The other one is involuntary which can be either *secret*, i.e., theft, adultery, poisoning, pandering, enticing slaves away from their masters, assassination, and false witness; or *violent*, i.e., assault, imprisonment, murder, rape, mutilation, slander, and contumelious treatment. (See Aristotle. *The Nicomachean Ethics*, pp150, 151).

For corrective justice, Aristotle holds that "a community will not succeed in achieving its goal—the well-being of all—unless its members regard each other as equals, despite differences among them in power, wealth, education, and the like;" whereas "distributive justice requires distinctions based on merit, and it serves the good of all to have such hierarchies, when they are in fact based on merit." (Kraut, Richard, *Aristotle: Political Philosophy*, p149).

The last one, reciprocal justice, is akin to *commutative* justice; for Aristotle, it is seen in the daily commercial activities wherein both citizens and non-citizens participate: buying, selling, lending, renting, and the like. It deals with just relation with commercial exchange. His basic idea is "goods should be exchanged for goods on an equal basis." (Kraut, Richard, *Aristotle: Political Philosophy*, p152).

Aristotle's concept of reciprocal justice is not the same as the Pythagoreans'; in fact he criticizes their concept. The Pythagoreans' rule is "should one suffer the things one did, right justice would be done (V.5 1132b27)." Since the Pythagoreans' justice as reciprocity can be interpreted in two ways: "it might mean not only that good should be returned for good, but also that evil should be returned for evil," (Kraut, Richard, *Aristotle: Political Philosophy*, p152); according to Aristotle, in

some regard, this principle is agreeable in the sense that “evil should be returned for evil: those who do injustice deserve to suffer some punishment. But this is because justice requires a restoration of status that serves the public good—not merely the piling up of harms.” (Kraut, Richard, *Aristotle: Political Philosophy*, p153).

Aristotle criticizes Pythagoreans. First, “Pythagoreans go wrong because their definition of justice is unqualified (1132b21-2): they equate justice with reciprocity, as though that were the whole of this virtue.” Second, their formula: “‘should one suffer the things one did, right justice would be done,’ gives us bad [ad]vice in particular cases (1132b28-30).” (Kraut, Richard, *Aristotle: Political Philosophy*, pp152, 153).

Aristotle claims that happiness is impossible unless everyone has an adequate supply of material goods. They cannot achieve this unless they practice some form of trade or commerce, using some kind of currency to facilitate their transactions.

He goes on to note that people will not trade unless they can be assured that they will get a fair exchange. They must be able to protect themselves from those who enjoy getting more than they deserve. Those who have established a good reputation can be relied upon, and it is such people who support the system that provides the goods.

Those who are driven by greed in commercial relations harm the people they cheat and they also damage the whole society, because they discourage trading and free exchanges of goods by souring the experience and destroying trust. According to Aristotle, “Justice in economic relations is not exemplified by builders building and farmers farming, but by citizens and non-citizens alike abiding by the rules of exchange that serve the common good.” (Kraut, Richard, *Aristotle: Political Philosophy*, p156).

In modern times distributive justice is seen in new ways, leading to various discussions and different ideas on the problem of distributive justice. For example, instead of the old arguments about fair wages and fair prices, there has been the enormous historical struggle over the distribution of property, position, and wealth embodied in the rise of Marxism and the Soviet Union, modern China, and the smaller Marxist and socialist republics like Cuba, Vietnam, North Korea, Venezuela, and the like.

Though the modern controversies and evolving concepts involve a meaning of “equality” very different from that of ancient Athens and its illustrious philosophers, today’s systems of justice and philosophers of justice are deeply indebted to the ancients’ way of thinking. No one will deny that justice demands that *equals be treated equally*. What has changed is the concept of the distinction between classes, such as females and males, citizens and slaves, and scholars, workers, and soldiers. Today *egalitarianism* is taken for granted by nearly every political thinker. It usually means that “*all are equal by virtue of being human beings*.” (Barry, Vincent, *Applying Ethics: A Text with Readings*, Second Edition, 1985, p71). Aristotle, although imbued with his culture’s traditional concepts of a stratified society, expressed his concern for the welfare of the least powerful members of society, a burning issue social justice even today on national and international levels. Plato was concerned with justice for people at large, seeing it as a question of who is entitled to what, and asking for what reason individuals are “entitled” to share in the community’s bounty.

Having considered the ancient Greek conceptions of justice, let us now look at what Rawls means by “justice as fairness.”

II. 2. Justice as Fairness

Hailed as the greatest and most influential philosopher in the fields of political and moral philosophy in our time and, for many, the greatest political philosopher in the 20th century, John Rawls argues that justice should be understood in terms of fairness. What does Rawls mean by “justice as fairness”?

His theory of justice is based on the idea that justice *is* fairness. By fairness he means *impartiality*. In his famous book, *A Theory of Justice*, chapter one is entitled, “Justice as Fairness,” Rawls describes justice as “the first virtue of social institutions, as truth is of systems of thought.” (Rawls. *A Theory of Justice*. 1971, p3.)

Does Rawls see no difference between the terms *justice* and *fairness*? It seems that the title of the book’s first chapter, “Justice as Fairness,” implies that justice is not different from fairness, but Rawls clearly argues that they are not the same. In the first chapter, he writes: “The name [justice as fairness] does not mean that the concepts of justice and fairness are the same.” (Rawls. *A Theory of Justice*. 1971, pp12-3; see *A Theory of Justice: Revised Edition*, 1999, p11.) In fact, he wishes to demonstrate that fairness is the most *fundamental concept* in justice, but it remains only a *part* of justice.

In this paper I wish to show that the fundamental idea in the concept of justice is fairness; and I wish to offer an analysis of the concept of justice from this point of view...I shall then argue that it is this aspect of justice for which utilitarianism, in its classical form, is unable to account, but which is expressed, even if misleadingly, by the ideas of the social contract. (Rawls, John, quoted by D.D. Raphael, *Concepts of Justice*. 2001, p197.)

More than this, he says ‘justice as fairness’ is an attempt to “convey the idea that the principles of justice are agreed to in an initial situation that is fair.” (Rawls, *A Theory of Justice*, 1971, p12.)

Rawls's contribution to justice concerns not only what is right, but also what is good. It means something is right when it is fair and good. Moreover, goodness for a person is the satisfaction of a rational desire. Every person has different ideas and plans for life. To pursue each one's plan for living, each might see that what is good for him/her, it might be not good for the others, because they may seek to satisfy different rational desires.

Rawls sees this very clearly, and suggests that right must be set down in the social contract so that each member's liberty, opportunity, self-respect and so on can be guaranteed equally, justly and fairly. This is established in the condition Rawls calls the "Original Position," which will be explained later on in this chapter.

II. 3. A Free and Equal Person

According to Rawls, justice as fairness is a foundation for a fair society. He considers the fundamental idea of a fair society as "a fair system of cooperation." This fair system of cooperation developed over generations as a result of two essential elements: The first is "the idea of citizens as free and equal persons;" and the second is "the idea of a well-ordered society as a society effectively regulated by a public political conception of justice." (Rawls, *Political Liberalism*, 1993, p35.)

What does he mean by "citizens as free and equal persons"?

First of all, Rawls sees citizens as political and declares they as free in three respects: first, "they conceive of themselves and of one another as having the moral power to have a conception of the good." (Rawls, *Political Liberalism*, 1993, p30.) Second, "they regard themselves as self-authenticating sources of valid claim," (Rawls, *Political Liberalism*, 1993, p32), in which they regard themselves as having duty and obligation to their society and to make claims to advance their conception of

the good which is compatible to the public conception of justice. Third, “they are viewed as capable of taking responsibility for their ends and this affects how their various claims are assessed.” (Rawls, *Political Liberalism*, 1993, p33.)

Finally Rawls concludes that citizens are regarded as free and equal persons because they possess two qualities which represent their powers of moral personality; they are ‘the capacity for a sense of justice’ and ‘the capacity for a conception of the good.’ (Rawls, *Political Liberalism*, 1993, p34; also see in *A Theory of Justice*, 1971, p505.) These two qualities in individuals as free and equal persons are necessary for the two ideas of cooperation: in terms of fairness and of each participant’s pursuit of rational advantages.

II. 4. A Just Society

Rawls’s theory of justice is a call for consistent, deeply respected fair practice in a community, an institution, or a society. He regards the basic structure of a society, for instance, as a subject matter of justice. From our experience, we see that some institutions ignore the matter of justice, and in fact, cause resentment, envy, alienation, exploitation and so on. This is the main concern of Rawls’s theory, because a community, an institution or a society plays a very significant role in assuring that every one of its member can enjoy their rights and privilege in terms of equality and fairness, in order to avoid or at least reduce the exploitation and resentment mentioned above.

His theory of justice is designed to foster equality in terms of a fair distribution of advantages as the basic concern for constitutional and legal provisions that structure social institutions. He clearly sees that a fair community, institution, or society plays a significant role in everyone’s life in the sense that it influences the opportunity of everyone in it and guarantees that everyone is free to exercise their

basic liberties within the fair set of rules fostered by that community, institution or society.

In order to make this ideal a reality, Rawls's theory of justice regards "the basic structure of society" as the primary subject of justice, which he defines as

the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements.... The justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of society. (Rawls, *A Theory of Justice*, 1971, p7.)

Thus, a society is a fair one if and only if it cares for its citizens as free and equal individuals and provides a set of fair rules so that everyone can exercise their rights, freedoms, and equality in order to avoid injustice, inequality, and exploitation in their living activities, such as social, economic, political undertakings.

II. 5. The Principles of Justice as Fairness

The reason why Rawls defines justice in terms of fairness is because the basic structure of a society centers on what he calls the object of the original agreement. Here, fairness is the sought-after ideal of justice which the contractors are to agree about. In this sense, the principles of justice play a very important role as the basic structure of a society in which the basic rights and duties are to be assigned and the division of social benefits is to be determined rationally and fairly.

What are the principles of justice, according to Rawls? Rawls calls his concept "justice as fairness" because in it the principles of justice 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 [would] 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. (Rawls, *A Theory of Justice*, 1971, p11.)

According to Rawls, there are two principles of justice as *fairness* which address two different aspects of the basic structure of society concerning of basic primary goods:

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

Second: Social and economic inequalities are to be arranged so that they are both:

(a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity. (Rawls, *A Theory of Justice*, 1971, pp60, 302.)

II. 5.1. First Principle of Justice as Fairness

The first principle of justice as fairness is the Liberty Principle. It deals with rights and states “*each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others*” and addresses the essentials of the constitutional structure which assure that each citizen has access to an equal claim of basic rights and liberties like everyone else in the society. As very clearly mentioned by Rawls, in regard to the first principle,

The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly, liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. These liberties are all required to be equal by the first principle, since citizens of a just society are to have the same basic rights. (Rawls, *A Theory of Justice*, 1971, p61.)

Since we are in the society, our basic rights and liberty have to be in agreement with other citizens; if not, it leads to a violation of other people’s basic rights and liberty. Thus, Rawls argues that the rights and liberties are set by the public rules of the basic structure of society, and each individual’s freedom is determined by these

rules equally with everyone else in the society. This is what he wrote to explain this first principle of justice:

The first principle simply requires that certain sorts of rules, those defining basic liberties, applying to everyone equally and that they allow the most extensive liberty compatible with a like liberty for all. The only reason for circumscribing the rights defining liberty and making men's freedom less extensive than it might otherwise be is that these equal rights as institutionally defined would interfere with one another. (Rawls, *A Theory of Justice*, 1971, p64.)

II.5.2. Second Principle of Justice as Fairness

The second principle is mainly about social advantages: *"Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity,"* addresses the fundamental aspects of the basic structure of society referring to its citizen's distribution of opportunities, income, wealth and so on.

The second principle is divided into two parts: the first part is called the "Difference Principle": *"Social and economic inequalities are to be arranged for the greatest benefit to the least-advantaged members of society"*; and the second part is called "the Principle of Fair Opportunity": *"Social and economic inequalities are to be arranged so that offices and positions must be open to everyone under conditions of fair equality of opportunity."*

Rawls sees very clearly that in a democratic society where freedom and equality of the people are of great importance, the two principles of justice are needed so that each citizen can enjoy personal freedom, that is to say, all economic factors are subordinate to personal freedom. Probably the reason why he raises this issue is that a person's liberty is limited when he is poor. Assuring that everyone has

at least some minimum basic economic foundation guarantees that he will have at least some liberty. As we shall see later, the deliberators in the Original Position deliberations know it is better to have a guaranteed minimum than it is to gamble on being one of those with better circumstances and hence more liberty because once the hypothetical contract is in place, if one finds he has lost his gamble, and is among the poorest without at least a minimum amount of wealth, he will have to live in misery forever.

This is the reason why Rawls argues that, for a fair and just society, we have to care primarily for the basic liberty and rights of the people. Furthermore, the first principle is absolute more or less in the sense that it cannot be violated by any other principles; let's say the second one, even though it is violated for the sake of the second one. As he mentioned, the first principle is lexically prior to the second principle. He gives more details about this in the priority rules. (See II.5.3.)

Thus, Rawls urges for the first principle that people's basic equality and freedom have to be safeguarded for all with no exception.

However, in the second principle, Rawls suggests exceptional cases of inequality and he acknowledges that inequality in a basic structure of society is acceptable. He is aware, however, that the two principles are different. If the difference is arranged in such a way that even the least advantaged has the minimum fulfillment of his needs, the system works for the benefit of everyone.

I shall maintain. . . that the persons in the initial situation would choose two rather different principles: the first requires equality in the assignment of basic rights and duties, while the second holds that social and economic inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society. (Rawls, *A Theory of Justice*, 1971, pp14-5.)

Moreover, inequality is acceptable if “All social values—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone’s advantage,” (Rawls, *A Theory of Justice*, 1971, pp62, 303), and the least favored receive the maximum possible benefit. That is to say, “*each* individual must be better off with that inequality than without it.” (Lichtenstein, Peter M. “*Economic Democracy: The Rawls – Vanek – Sraffa Connection*”. See in Review of Social Economy, Vol. XLII, No. 2. Date: October 1984. P173.)

In short, the social and economic inequality is acceptable if and only if it is arranged with conditions given below in **II.5.2.1** and **II 5.2.2.:**

II.5.2.1. The Difference Principle

This principle’s main concern is income and wealth. According to Rawls, social and economic *inequality is acceptable when it is arranged for helping those who are the least fortunate persons in society.*

II.5.2.2. The Principle of Fair Opportunity

This principle requires that *the social structure that relates to the distribution of social advantages, i.e. wealth or income, must care for the fair equality of opportunity for every citizens of a society.* In this case, the inequality that is related with the positions or offices or jobs in a society is acceptable because if it benefits everyone and especially it helps those who have talents, yet they have no chance to express, contribute or develop their talents. So society has an important role in helping those who are in need.

According to Rawls, the two principles of justice are fair because they care for the basic liberty and rights of the people, and also assure for everyone equal opportunity in their pursuit of wealth and income. More than this, they are fair when

the method of applying them into praxis is also fair. Thus, if the two principles of justice are applied successfully, Rawls believes that they will provide the best chance of maximum advantages for both society and citizens in terms of liberty, rights and the enjoyment of social advantage for all of the members in that society, maximizing benefits for the least well-off.

II.5.3. The Priority Rules

In regard to the priority rules, Rawls is well aware that for some cases the two principles can be in conflict with one another. He has mentioned that there are two priority rules: the first priority rule he calls *the Priority of Liberty*, whereas the second priority rule he calls *the Priority of Justice over Efficiency and Welfare* (Rawls, *A Theory of Justice*, 1971, pp302-3). In this sense, he ranks his first principle on equal basic liberty for all as the first priority, and the second principle on distribution of wealth and income as the second priority.

Concerning on the first priority rule, Rawls argues that the principles of justice must be ranked in lexical order so that liberty can be restricted only for the sake of liberty. He proposes that it would be better to avoid finding a single overriding principle and instead rank them in a serial or lexical order in the sense that we should give “priority to principle A until it is *fully* satisfied (or unless it does not apply) before we are allowed to move on to implement principle B, which in turn must be fully satisfied before we may move on to implement principle C, and so on.” (Raphael, D.D, *Concepts of Justice*, p202.)

Moreover, the principles of justice should be lexically ordered in the sense that a society is justified when it does not decrease its member’s liberty by increasing its social and economic advantages. Thus, he raises the specific priority for two cases:

(a) a less extensive liberty must strengthen the total system of liberty shared by all;

(b) a less than equal liberty must be acceptable to those with the lesser liberty.

For the second priority rule, Rawls argues that the second principle of justice is lexically prior to the principle of efficiency and to that of maximizing the sum of advantages; and fair opportunity is prior to the difference principle. He raises two cases:

(a) an inequality of opportunity must enhance the opportunities of those with the lesser opportunity;

(b) an excessive rate of saving must on balance mitigate the burden of those bearing this hardship.

In short, we can conclude that the priority of his principles of justice, in case there is any conflict between the two principles when the decision is made, the first principle on equal basic liberty has to be the first priority whereas the second one is regarded as the second priority, because the second principle of justice's main concern is also for the sake of equal liberty for all.

If justice is regarded as fairness, when principles of justice are imposed on the people, these questions arise: What should fairness be? What does fairness require? How do we know that the principles are fair?

The answers to these questions of what justice as fairness is can be seen later as we analyze meaning of the original position.

II. 6. The Role of the Original Position

John Rawls, along with other philosophers like Hobbes, Rousseau, Locke and Kant, has talked about a social contract. However, Rawls did not base his theory on a traditional social contract, which concerned the way a government receives its

legitimacy by the general agreement of the people governed; instead, he created a mental stratagem called the “Original Condition,” analogous to the “natural state” of earlier theories, to arrive at principles set down in a “hypothetical contract” that would establish how the state would distribute freedom and public wealth to the people. Instead of justifying the existence of the state, it attempts to justify the contract that governs the actions of the state in regard to the people under it. As he puts it,

...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.
(Rawls, *A Theory of Justice: Revised Edition*, 1999, p10.)

His “original position” in which people agree to a hypothetical contract that will govern the state in its dealings with the people is formed by the people (not real people, but hypothetical moral and reasonable people) operating under an imaginary “veil of ignorance” about themselves and their social position, even their gender, and, considering the possible ways their government might distribute wealth, privilege, and freedom among its real people represented by the imaginary people involved in selecting the terms of the hypothetical contract. Rawls has us picture in our minds imaginary people creating and agreeing on a “hypothetical contract” which guarantees that people will enjoy the widest possible liberty and the state will distribute goods and services in ways that provide the maximum amount of support for the persons who have the minimum amount of wealth, privilege, and status.

Rawls called the imaginary condition in which the contractors consider the terms of the contract the “Original Position.” It is, as stated above, analogous to the “natural state” of man under Rousseau, Locke, and others. He justifies its use by showing that it minimizes all self-interest and bias by veiling the parties’ social position and economic status while using the stratagem of “finality,” meaning the

contract will be valid and binding forever once agreed upon, to eliminate risk-taking that could lead deliberations to gamble on setting up a biased contract with the hope of discovering that they are actually among those who benefit from bias. By making the contract forever binding, someone must give up all hope of living decently if they gamble and lose. Rational people, Rawls affirms, will never take such a gamble because being assured of winning something small but decent is better than risking being miserable, ending up with nothing, without hope of improvement.

Rawls's idea on original position is radically different from the traditional "social contract" theories because the old contracts were designed to show how the people agreed to form a government, and under what condition they could legitimately dissolve the government. Rawls's use of the original position to form a hypothetical contract is not a method of entering a particular society, setting up a government, or legitimizing the state, as the original social contracts sought to do. Instead it establishes the principles which "are the object of the original agreement." (Rawls, *A Theory of Justice*, 1971, p11; and *A Theory of Justice: Revised Edition*, 1999, p10.) To put it simply, his work seeks to create or legitimize a liberal government that assures that individual liberty will be extended as far as it can be, limited only because it is not allowed to encroach on or limit other people's liberty, and assures that all will be assured of what amounts to a "decent" life, with a fair opportunity to advance.

In regard to distributive justice, it attempts to arrange everything so that maximum benefits are allotted to the minimally advantaged. The original social contracts sought to guarantee a decent life by setting up a government to protect the people from the most common threats of the time: invasion by rapacious foreign peoples, and attack by domestic criminals. Rawls's new contract shields the

individual's right from unjust limitations imposed by the government, and establishes principles of operation to assure every citizen a fair opportunity to seek and hold positions of power, and is assured the basic necessities of a decent life.

Rawls asks us to understand his "original position" concept, not in terms of what he calls the actual historical state of affairs, but as "a purely hypothetical situation characterized so as to lead to a certain conception of justice." (Rawls, *A Theory of Justice*, 1971, p12; *A Theory of Justice: Revised Edition*, 1999, p11.) Furthermore, he argues that in this hypothetical situation, everyone is in a state of ignorance because they do not know their place in society, their class position, or financial status, and their good or bad fortune in the distribution of natural assets and abilities, such as their intelligence, strength, and so on. Thus, Rawls assumes that, under the special veil of ignorance, "the parties do not know their conceptions of the good or their special psychological propensities." (Rawls, *A Theory of Justice*, 1971, p12).

One thing to be remembered is that the hypothetical state proposed by Rawls is just a mental device allowing people to discuss his theory of original position. He asked us to imagine ourselves without any government and to think of what kind of principles we would have to follow to achieve justice in terms of fairness.

It is similar to the state of nature described by Hobbes, Rousseau and Locke in the theory of social contract because it is, in theory, the condition people were in before entering into the state or society. As Hobbes said, the state of nature never exists in the actual sense and human beings were never actually in the state of nature. Hobbes just wants to describe how people could leave a state of nature by a hypothetical social contract.

So we can review now, asking “What does Rawls mean by “original position?” “What is the connection between this original position and his principles of justice?” Rawls defines the original position as “the most philosophically favored interpretation of this initial choice situation for the purposes of a theory of justice.” (Rawls, *A Theory of Justice*, 1971, p18; *A Theory of Justice: Revised Edition*, 1999, p16.)

According to Rawls, in the hypothetical state, the parties do not know themselves in terms of the concepts of the good and, do not even know their innate tendencies because they are behind a veil of ignorance. Even though people are rational beings and capable of a sense of justice, he specifies that “The principles of justice are chosen behind a veil of ignorance” (Rawls, *A Theory of Justice*, 1971, p12) and all the contractors have is “a thin concept of the good.”

Here I would like to clarify some more points:

What is the veil of ignorance? Why is it necessary to select the principles of justice in this altered state of mind? What guarantees that the contractors will choose just and fair principles? What are the consequences of using the Rawls’s special way of reasoning called the “Original Position”? What finally “wakes up” the contractors that form the “hypothetical contract?”

The veil of ignorance is a vital element of the Original Position. It insures that all contractors are fair and just. Rawls has us consider that they “don’t know certain kinds of particular facts.” (Rawls, *A Theory of Justice*, 1971, p137.) The certain kinds of particular facts include most very personal and sometimes private facts, such as,

- a). their place in society, their class position or social status;
- b). their fortune in the distribution of natural assets and abilities, their intelligence and strength, and the like.
- c). their personal conception of the good, the particulars of their rational plan of life, or even the special features of their psychology such as their aversion to risk or liability to optimism or pessimism.

d). the particular circumstances of their own society: They do not know its economic or political situation, or the level of civilization and culture it has been able to achieve.

e). any information about to which generation they belong. (Rawls, *A Theory of Justice*, 1971, p137; *A Theory of Justice: Revised Edition*, 1999, p11.)

The hypothetical contract must be drawn up while the contractors are shielded from self-knowledge because they must operate without self-seeking and without bias.

The fact that once the principles are agreed to by the contractors, they will apply to all the people, and cannot be revoked, will eliminate the temptation to gamble on biased principles. For example, a person might think, “I don’t know if I’m really in the top 90%, or in the bottom 10% of the people, but I’m going to make life very good for the top 90% at the expense of those at the bottom, because I’ll probably find out that I am in the larger number of people, the better off people, and thus I’ll live a better life than if I compromised and surrendered some of the top 90%’s wealth to assist the bottom 10%.”

Rawls is sure no “moral and reasonable” person would take such a gamble, because he would realize that if he turned out to actually be in the poorest sector of the economy, his biased rules would keep him there forever, without hope of relief, and unable to lead a “decent” life. The fact that securing an assured decent existence with the hope of improvement is infinitely better than the risk of losing all hope forever will deter moral and reasonable people from accepting biased terms in the original position and the hypothetical contract will reflect the best and most reasonable terms for everyone.

Now, we have to define what Rawls means by the consequences of the principles. The principles that people choose in the original position can have two

results, just or unjust. But why would reasonable people, limited by the veil of ignorance, tend to choose the just principles rather than unjust ones?

The answer lies in self-interest. The contractors, under the veil of ignorance, know that once the contract is in effect, their plans of life and work will be carried out under the terms the deliberators chose. Thus, in the original position, they would create a society that is just, because people do whatever serves their own interests. When the contractors awaken and the contract is in effect, they want to be sure that they will be free enough and well enough provided for so they can be sure of a decent life, if not an ideal one. The reason why Rawls invented the veil of ignorance in the original position was to assure that the contractors find the best principles possible which are just and fair for everyone in the society, in regard to education, social welfare, job opportunities and so on. Thus, they need the principles that are fair to everyone.

Furthermore, although Rawls realizes the fact that the contractors selecting principles of justice need a limited amount of social information so that they can adjust the veil of ignorance to each characteristic of the social system of cooperation, according to Rawls, the reason why the hypothetical parties tend to choose just principles rather than unjust ones is because they have only the most general facts about their society as a group of people. Thus they are able to make workable and fair judgments they will all be subject to under the circumstances of justice. They know the more general facts about the society, for example, they understand political affairs and the basic principles of economic theory, they know the basis of social organization and the laws of human psychology; this helps them make reasonable choices.

Moreover, in the original position, general social information is admissible because people are seen as rational beings that are capable of having conceptions of goodness and justice, and the veil of ignorance lets deliberators choose without individualistic bias. People's sense of justice and goodness would be stable when the principles of justice are associated with the basic structure of society that help people acquire the corresponding sense of justice; and the moral lessons from the principles help them develop a desire to behave in regard to the principles.

Rawls declares that people choose the just principles rather than unjust ones because if we believe that humans are social animals, the principles that they establish must be for the favor of everyone in the society. If deliberators disadvantage others, it means that they cannot guarantee that they will not disadvantage themselves, because they and others are in the same boat and are interrelated. As Rawls mentions, "if a group were to decide to band together to the disadvantage of the others, they would not know how to favor themselves in the choice of principles. Even if they could get everyone to agree to their proposal, they would have no assurance that it was to their advantage, since they cannot identify themselves either by name or description." (Rawls, *A Theory of Justice*, 1971, p140.)

Based on these considerations, Rawls holds that people will fail to choose unjust principles and will choose just ones instead. Let us look at the issue of saving wealth and or resources for the use of future generations. The veil of ignorance prevents the contractor from knowing which generation he is in, the current generation, or one to come later. In setting down principles of fairness and justice in the way the country handles its wealth and resources, the temptation may be to place no limits on the depletion of resources during the current generation, and may place no restrictions of the amount of money the nation should borrow during the current

generation. This can appeal to one who is sure he will spend his life in the current generation, and suffer no discomfort, leaving future generations to do without resources and pay off the debts.

But under the Original Condition, there is no guarantee that, once the contract is ratified, the amoral and unreasonable contractor would actually wake up and be in the current generation. He might be arriving in society in fifty or a hundred years hence, and living in a depleted, debt-ridden country without hope of escape.

The probability that a really moral and reasonable person would establish and agree to live under such a system is very low or nonexistent. In this case, people of every generation are deliberating now, even those from future generations. As Rawls puts it,

Previous generations have saved or they have not; there is nothing the parties can now do to affect that. So in this instance the veil of ignorance fails to secure the desired result. (Rawls, *A Theory of Justice*, 1971, p140; *A Theory of Justice: Revised Edition*, 1999, p121.)

But since we can reasonably include persons from both the current and future generations in our contract deliberations, it would seem unlikely that people who realize they may belong to a future generation would accept principles skewed to the advantage of the current generation.

Therefore, the consequences flowing from a hypothetical contract drawn up in the original position are 1). The principles will be acceptable to everyone, because they are fair, and 2). the society as a whole will benefit because liberty to own property and incentives to build wealth and advance in society are guaranteed to everyone, encouraging enterprise and stability by freeing people to build wealth, and assuring the government of a growing supply of wealth which can be distributed as needed to provide goods and services, with the greatest benefits arranged to help the

least advantaged. This is, in fact, the sort of arrangement modern capitalistic states use to ensure economic growth and provide benefits for all the people.

In order to overcome this veil of ignorance and move on to form a society, no matter if it is just, unjust, fair or unfair, the contractors must choose the principles “the consequences of which they are prepared to live with whatever generation they turn out to belong to.” (Rawls, *A Theory of Justice*, 1971, p137.) Once they have formed the contract and accepted it unconditionally, they “wake up,” and can see how they fit into the new scheme of things. According to Rawls, if they made moral and reasonable choices and set up fair principles, they will be happy, but if they acted in a biased way, they may regret it. In fact, of course, the contractors are imaginary, and do not really exist, but for the sake of his theory, they will, given the opportunity and operating reasonably, they would be happy, because they arranged things in a fair and just fashion, and were willing to accept the consequences.

In short, Rawls suggests that the veil of ignorance makes a complete harmony or agreement of a particular conception of justice possible through the use of his special limitations of knowledge on the part of the contractors. Moreover, a principle is not a just one if it threatens the advantage of the others, but is just if it represents a genuine reconciliation of interests and stands as the public basis of social cooperation. “If the original position is to yield agreements that are just, the parties must be fairly situated and treated equally as moral persons. The arbitrariness of the world must be corrected for by adjusting the circumstances of the initial contractual situation.” (Rawls, *A Theory of Justice*, 1971, p141.)

Furthermore, Rawls concludes that people are free in the original position in the sense that they have equal rights in the procedure for choosing principles, making proposals and submitting proposal for others to accept and so on. They are equal in

the sense that they have dignity as human beings and as moral persons they have some idea of what goodness is and are capable of having a sense of justice. However, the ignorance of about whom they really are, their place in a society, their innate strength or intelligence and so on, leads them to seek out the principles that could serve their advanced interest.

This implies that in the hypothetical state, we all are equal similarly in terms of sharing the advantages from the outcome of natural chance or the contingency of social chance. Let us recall the following reference, which we have already quoted above; in it, Rawls concludes that for the original position,

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 relations 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 thus 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. (Rawls, *A Theory of Justice*, 1971, p12; see also p19.)

Thus, Rawls has developed the original position based on the grounds that everyone makes their own decision on which principles of justice to follow from behind a veil of ignorance. The veil of ignorance makes people blind about the facts about what they are, what they need, and so on. In the original position, the ignorance about their entire personal identity will lead them to establish principles that are fair to all and treat all equally and particularly they will establish the principles which are a kind of the maximin strategy to help those in the least fortunate circumstances.

Rawls believes that if a society is a free one, its people must have widely different point of views about life and how to live ethically and so on. Thus, Rawls

proposes a theory of justice for a free society because he thinks, like Kant, that the theory of justice implies moral principles which he regards as the object of rational choice and people are rational, equal and free beings,

For once we think of moral principles as legislation for a kingdom of ends, it is clear that these principles must not only be acceptable to all but public as well. Finally Kant supposes that this moral legislation is to be agreed to under conditions that characterize men as free and equal rational beings. The description of the original position is an attempt to interpret this conception. (Rawls, “*The Kantian Interpretation of Justice as Fairness*,” p149, see Kenneth F. Rogerson, ed. *Introduction to Ethical Theory*. 1991.)

For Rawls, furthermore, a theory that is based on moral foundations that are widely disputed among reasonable people cannot be accepted as a theory of justice. Rawls disagrees with J.S. Mill and utilitarianism in that Mill’s idea about liberalism presupposes that utilitarianism is true, however, according to Rawls, “utilitarianism is disputed by reasonable people and thus cannot be the basis of a theory of justice which aims to justify political institutions to reasonable people.” (Brighthouse, Harry. *Justice*, 2004, p31). Indeed, Rawls suggested that it is reasonable to “think of people as deserving whatever it is justice says they should have, rather than thinking of justice as having to give people what they deserve.” (Brighthouse, Harry. *Justice*, 2004, p33.)

One of the few things communitarians have in common is the opinion that it would be impossible for a person to be impartial under any circumstances. Thus no one could really live “behind a veil of ignorance” that would hide their own identity, position, cultural background, or gender and allow them to form objective judgments about matters of policy. They would, these insist, always react in a way that favors their own kind.

Of course, Rawls would not object to the idea of preserving the cultural identity of a community. However, it is hard to imagine the adherents of this kind of

thinking living peacefully in a multiethnic neighborhood or working cooperatively in any kind of mixed work force. If all people are always going to act in a biased way, there seems little point of having philosophical discussions, which claim to be objective. It is hard to take such criticism at face value. How could we have impartial juries if this is true?

It is seldom possible to state that people will “always” do a certain thing, and it is therefore questionable to believe that reasonable and moral people will always act according to the way their group acts. Living day to day requires that people put aside their group’s biases about gender, race, and ethnicity in order to function in a complex world. Thus it is clear that, with the aid of will power, people do act in ways that run counter to some of their community feelings.

As for the matter of placing so much faith in “imaginary” people, a true philosopher with a liberal education can be assumed to be familiar with imaginary numbers and thought experiments based on imaginary but useful concepts; that is what Rawls’s original position is, a heuristic device for reaching true conclusions.

Communitarians must also admit that human nature is astoundingly resilience and flexible, and presents us with cases in which valuable understandings and powerful agreements can be reached through everyday thought processes applied in rational ways that reach conclusions that contradict one’s habitual way of thinking and acting. To think that all, or even most, members of any sub-community or minority group are incapable of such free self determination seems to be unjustified.

The role of the original position is to persuade us to accept as unbiased any agreements reached in the hypothetical contract. The agreement it leads to is hypothetical because the people who establish the principles based on consensus about what is just and fair are only imaginary and do not actually exist; still, we

would probably agree that the agreement reached is fair, because its principles are sound and moral. It is non-historical because the circumstances of the original position never existed in the ordinary sense of the word in real historical time. Yet it is hypothetically true in a real sense, like a moral tale is “true” even if it is fictional. In the original position, then, according to Rawls, after people agree on the principles that govern rights, duties, and so on, the principles would regulate the distribution of social and economic advantages across society over a long period. One must recall that the “natural state” mentioned by Rousseau, Locke and others was also a non-historical but “true” state that served a valid purpose without having ever actually existed.

II. 7. Reflective Equilibrium

Since our judgments are based on the sense of justice and goodness, and the principles of justice as fairness are also based on this justification, which, according to Rawls, is “a matter of the mutual support of many considerations, of everything fitting together into one coherent view.” (Rawls, *A Theory of Justice*, 1971, p579.)

Now, we can come to consider the reasons why in the reflective equilibrium, considered judgments are not a peculiar or strange idea in moral philosophy.

Since, according to Rawls, each person possesses a sense of judgment of what is right or wrong, just or unjust, everyone has the capacity to develop this sense of judgment intellectually under normal social circumstances. By facing each circumstance, we are required to exercise the skill and judge things to be just or unjust and also find reasons that support our judgments. Without reasons that support them, our judgments are considered to be invalid or capricious. Of course, the ways

we perform the judgments are complicated, and it is not always easy to express our judgments and support them with clear and easily understood reasons.

According to Rawls, it is difficult to define moral philosophy as describing our moral capacity, or as describing our sense of justice (Rawls, *A Theory of Justice*, 1971, p46), because this kind of description does not refer to a list of judgments provided by institutions that can label as “just” or “unjust” certain actions that we would like to perform. Thus, Rawls proposes instead that what moral theory or philosophy should be is “a formulation of a set of principles which, when conjoined to our beliefs and knowledge of the circumstances, would lead us to make these judgments with their supporting reasons were we to apply these principles conscientiously and intelligently.” (Rawls, *A Theory of Justice*, 1971, p46.)

This is one of the reasons why moral philosophy has a great influence on our thoughts and actions. Rawls also realizes that our sense of morality is characterized by a sense of justice especially when we make our judgments in everyday life in regard to these principles. Moreover, when the principles are justly and morally applicable, and they offer acceptable and reasonable guidance in the judgments we make in daily life, they can be regarded as part of the valid and sound premises of an argument:

These principles can serve as part of the premises of an argument which arrives at the matching judgments. We do not understand our sense of justice until we know in some systematic way covering a wide range of cases what these principles are. Only a deceptive familiarity with our everyday judgments and our natural readiness to make them could conceal the fact that characterizing our moral capacities is an intricate task. The principles which describe them must be presumed to have a complex structure, and the concepts involved will require serious study. (Rawls, *A Theory of Justice*, 1971, pp46-7.)

Furthermore, since we are not sure whether the common sense precepts or principles that we are familiar with can provide adequate support to characterize our

sense of justice as valid, we cannot have enough reason to assure that. Thus, Rawls argues that, to be correct, our moral capacities should be derived from both principles and theoretical constructions that go beyond the norms and standards that we face in daily life; this probably also requires “fairly sophisticated mathematics as well,” (Rawls, *A Theory of Justice*, 1971, p47), because the theory of justice is partly based on the theory of rational choice, which involves questions of probability which require mathematical analysis.

By considered judgments, Rawls means, “those judgments in which our moral capacities are most likely to be displayed without distortion.” (Rawls, *A Theory of Justice*, 1971, p47.)

From this consideration, since there are many kinds of judgments regarding the decisions our judgment tells us to make, and the actions we should perform, Rawls suggests that we may choose some and rejects the others. For instance, we may throw away those judgments that are made with hesitation or little confidence, or those judgments that are made when we are upset or frightened, or when we stand to gain one way or the other (see Rawls, *A Theory of Justice*, 1971, p47). These kinds of judgments should be avoided because they imply error and they may be partial and arbitrary, and are apt to be influenced by our emotions rather than by reason.

Thus, we can conclude that considered judgments are the judgments that are made in regard to justice and righteousness under favorable conditions. Usually, the sense of justice is regarded as a mental capacity that involves the exercise of thought, and the right judgments should be made under conditions that benefit all: “Considered judgments are simply those rendered under conditions favorable to the exercise of the sense of justice, and therefore in circumstances where the more

common excuses and explanations for making a mistake do not obtain.” (Rawls, *A Theory of Justice*, 1971, pp47-8.)

Rawls reminds us that the principles of justice that we usually talk about in describing our personal sense of justice are different from the principles of justice that are chosen during the hypothetical original position. The principles we use in daily life and even those based on our own “considered judgments” are much simpler and easy to apply than the principles worked out in the Original Position which are incorporated in the hypothetical contract;

[O]ne might say that justice as fairness is the hypothesis that the principles which would be chosen in the original position are identical with those that match our considered judgments and so these principles describe our sense of justice. *But this interpretation is clearly oversimplified.* (Rawls, *A Theory of Justice* (1971), p48, italic added.)

Instead, Rawls suggests, from a moral philosophical view point, the principles of justice are derived from the person’s sense of justice and the person’s sense of justice “not the one which fits his judgments prior to his examining any conception of justice, but rather the one which matches his judgments in reflective equilibrium.” (Rawls, *A Theory of Justice*, 1971, p48.) The original position is a complex state, and reflective equilibrium is a complex notion because reflective equilibrium characterizes the study of principles of justice that “govern actions shaped by self-examination.” (Rawls, *A Theory of Justice*, 1971, p48.) Rawls suggests that we should follow the Socratic Method to see if

we may want to change our present considered judgments once their regulative principles are brought to light. And we may want to do this even though these principles are a perfect fit. Knowledge of these principles may suggest further reflections that lead us to revise our judgments. This feature is not peculiar though to moral philosophy, or to the study of other philosophical principles such as those of induction and scientific method. (Rawls, *A Theory of Justice*, 1971, p49.)

Rawls realizes that different persons might have different interpretations of “reflective equilibrium.” The differences are dependent upon whether we present the interpretation just to describe it in order to see if it matches our existing judgments or whether we present it in a way that describes all possibilities that not only may match our everyday judgments, but also to show how it related to all other relevant philosophical arguments that we might face in reflecting on our most complex judgments and about how the principle deals with all arguments that may arise against it.

From this, there derive two kinds of reflective equilibrium: the first one is derived from the first interpretation; Rawls said, “we would be describing a person’s sense of justice more or less as it is although allowing for the smoothing out of certain irregularities.” The second one is derived from the second kind of interpretation, and once the more comprehensive reflection is examined, “a person’s sense of justice may or may not undergo a radical shift.” (Rawls, *A Theory of Justice*, 1971, p49.)

Rawls then says, in moral philosophy, the second kind of reflection is what we care for, because in order to justify something we need to consider all possible arguments and produce good reasons to support our position. However, he also realizes that it is not easy to reach to this state, even though we have all possible descriptions and well-sufficient philosophical arguments at our disposal. He suggests we apply ourselves “to study the conceptions of justice known to us through the tradition of moral philosophy and any further ones that occur to us, and then to consider these.” (Rawls, *A Theory of Justice*, 1971, p49.) This is one of the reasons why, when Rawls argues for “justice as fairness,” he has to compare its principles, the principles of justice, and its arguments, with other similar thoughts.

Therefore, he concludes that, finally,

justice as fairness can be understood as saying that the two principles [of justice]... would be chosen in the original position in preference to other traditional conceptions of justice, for example, those of utility and perfection; and that these principles give a better match with our considered judgments on reflection than these recognized alternatives. Thus justice as fairness moves us closer to the philosophical ideal; it does not, of course, achieve it. (Rawls, *A Theory of Justice*, 1971, pp49-50.)

Even though it is just a philosophical ideal, it is the kind of philosophical proposal we can profit from, and taking a critical look at it is worth the effort involved. It is useless to ask such questions as, “Does reflective equilibrium exist?” and “If it exists can equilibrium ever actually be reached?” In fact, Rawls would suggest that we should look at his theory of justice as fairness as an ideal and not as a reality, bearing in mind that it provides the principles which govern “our moral powers, more specifically, our sense of justice.” (Rawls, *A Theory of Justice*, 1971, p51.) It is ideal; however, it plays a very important role in the rules of method and as a “device used in setting up the general structure of theory.” (Rawls, *A Theory of Justice*, 1971, p51.)

Thus, Rawls proposes that the two principles of justice are the only reasonable answer to the questions presented by the original position, and his intention is to show to us that the principles are “everyone’s best reply, so to speak, to the corresponding demands of the others. In this sense, the choice of this conception of justice is the unique solution to the problem set by the original position.” (Rawls, *A Theory of Justice*, 1971, p119.) In order to do this, Rawls argues, we must assume that the hypothetical parties, as rational beings, capable of a sense of justice and caring about the well being of others, have agreed on the two principles as the best way to make everyone feel secure, based mainly on their knowledge, beliefs, and interests.

Just in case our considered judgments are not smooth, and create conflict in some way, we need to adjust our various beliefs until they arrive at the balanced (equilibrium) state. This means that once our considered judgments are smooth, not in conflict with others' any more, they become stable and they can be the practical and consistent guidance for our actions. Rawls argues also that principles derived through reflective equilibrium give stability, because people in the society agree, accept, and practice them as fair rules for their lives.

Rawls also suggests that the society or institution plays an important role in securing its own stability, and "stability is secured by sufficient motivation of the appropriate kind acquired under just institutions," (Rawls, *A Theory of Justice*, 1971, pp142-3), and stability is also based on accepting the concepts that citizens are reasonable and rational, free and equal.

That is why, according to Rawls, reflective equilibrium is a way to determine a set of principles that are rooted in our sense of justice. When reflective equilibrium is not actually in equilibrium, and society is unstable, the system will have to change in regard to the people's attitudes toward the principles. Both the principles and the attitudes may need to be adjusted in order to reach or reestablish equilibrium.

However, he also says that once a situation is balanced (is in equilibrium) or even stable, there is no guarantee the situation is just or right. Where long standing animosity exists, the situation may be in equilibrium, but it does not mean that there is no hatred or hostility in it, but in fact, it is probably stable because of a balance of hatred and hostility. Also stability may exist because people are given a false estimate of their position, and thus, they "act effectively to preserve it." (Rawls, *A Theory of Justice*, 1971, p120.) Moreover, if a situation contains hatred and hostility, we can conclude that "any feasible change will be worse." Thus, the best way to

respond to it is to say that it “may be a condition of lesser injustice rather than of greater good.” (Rawls, *A Theory of Justice*, 1971, p120.)

Moreover, the situation and its judgment or evaluation are dependent on the circumstances that shape them. It is the same thing in the equilibrium situation, which shows a very strong relationship between the original position and moral philosophy, as Rawls said, “The moral assessment of equilibrium situations depends upon the background circumstances which determine them. It is at this point that the conception of the original position embodies features peculiar to moral theory.” (Rawls, *A Theory of Justice*, 1971, p120.)

II. 8. Public Reason

In a pluralist society, public reason is very important. Rawls often refers to the common reason of all citizens. The decisions, plans and actions conducted by the individuals, families, and institutions of a political society are arrived at through reason, whether they involve intellectual or moral reasoning.

Rawls explains that reasoning can be “rational and reasonable.” *Reasonable* means the person reasoning is ready to “propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so.” (Rawls, *Political Liberalism*, p49.) In this sense, the *reasonable* refers to justifiable. Reasonable thinking regards society as a system of fair cooperation, fair for all because it is reasonable for all to accept it in terms of reciprocity, which implies altruistic and mutual advantages.

Rational, on the other hand, is not the same as the reasonable, and it “applies to a single, unified agent (either individual or corporate person) with the powers of judgment and deliberation in seeking ends and interests peculiarly its own.” (Rawls,

Political Liberalism, p50.) The rational person would consider adopting, affirming, and giving priority of these ends and interests that benefit self. Decisions about means and ends are based on what is best for self rather than on altruism and mutual advantages. To “adopt the most effective means to ends, or to select the more probable alternative, other things equal,” (Rawls, *Political Liberalism*, p50), is rational, but may not be reasonable.

It may seem that the *rational* person is solely self-interested. According to Rawls, it is not true, because a person has to plan his life, and the rational person knows how to balance between the means and the ends. According to Rawls, moreover, self-interest does not always result in benefits to oneself. As Rawls puts it, “Every interest is an interest of a self (agent), but not every interest benefits the self that has it.” (Rawls, *Political Liberalism*, p51.) This implies that as a person we have self-interest, but as a rational person one may have all kinds of affections for others, and we have “attachments to our communities and places, including love of country and of nature” (Rawls, *Political Liberalism*, p51) that are based not only on selfishness, but also on reasonable altruism as well.

What is lacking in the rational person is “the particular form of moral sensibility that underlies the desire to engage in fair cooperation as such, and to do so on terms that others as equals might reasonably be expected to endorse.” (Rawls, *Political Liberalism*, p51.)

The reasonable individual or group could be lacking moral sensibility too, but Rawls wants to show us that the strictly rational entity lacks the idea of fair cooperation, whereas the reasonable one does not. However, Rawls also shows us that both reasonable and rational thinking are needed and are complementary ideas in regard to fair cooperation in the sense that,

Each is an element in this fundamental idea and each connects with its distinctive moral power, respectively, with the capacity for a sense of justice and the capacity for a conception of the good. They work in tandem to specify the idea of fair terms of cooperation, taking into account the kind of social cooperation in question, the nature of the parties and their standing with respect to one another. (Rawls, *Political Liberalism*, p52.)

Thus, they need each other because without the rational, the reasonable “would have no ends of their own they wanted to advance by fair cooperation;” and without the reasonable, the rational would lack “a sense of justice and fail to recognize the independent validity of the claims of others.” (Rawls, *Political Liberalism*, p52.)

Reason can also be categorized as public and nonpublic reason, because according to Rawls, not all reasons are public, and e.g. the reasoning of churches, universities, and some other associations in civil society may be nonpublic. Here Rawls is influenced by Kant, who characterizes reasons as public and private ones in his article, *What is Enlightenment?* (1784), though the Rawls’s concept of reasons in *Political Liberalism* are not completely the same to Kant’s.

So now we can ask, what is public reason? And what kind of reason is considered nonpublic?

Rawls argues that public reason is the basic trait of people in a democratic regime because it is “the reason of its citizens, of those sharing the status of equal citizenship.” (Rawls, *Political Liberalism*, p213.) Rawls mentions that public reason is possible in the democratic regime, where people are equal, because “public reason is the reason of equal citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and in amending their constitution.” (Rawls, *Political Liberalism*, p214.)

Moreover, the purpose of this public reason is for the *good of the public*, because the political conception of justice requires two sorts of reason; the first is

more general, “of society’s basic structure of institutions,” and the second is more specific, “of the purpose and ends [basic goals] institutions are to serve.” (Rawls, *Political Liberalism*, p213.)

Rawls maintains that public reason in a democracy is *public* for three reasons: First, it is public because is done by the public and “it is the reason of the public.” (Rawls, *Political Liberalism*, p213.) Second, public reason is *public* is because its subject or purpose is to serve the good of all, the *public*, in matters of fundamental justice. The third way reason is public is due to the essence of it: “its nature and content is public,” (Rawls, *Political Liberalism*, p213) in the sense that this reason is the result of the ideals and principles of justice as fairness shared by all citizens in the society, and it is practiced publicly on this basis.

Ideally, in Rawls’s society, the citizens accept and honor this public reason because it is just and fair, not because it is a matter of law.

Nonpublic reason is peculiar to people and institutions operating within their own frame of reference. There are various nonpublic reasons in a diverse population, whereas there is only one public reason.

Nonpublic reason, for instance, is the reasoning found in aristocratic and autocratic regimes.¹ If the regimes care for the good of the society, this is not the result of reasoning on the part of the public (the citizens), but it is done by the rulers. Whether the rulers are good or bad is not the result of the thinking of the whole population, so it is not public reason, though it does often relate to the way the

¹ **Aristocracy** (Greek *aristos*, “best”; *kratos*, “power”), form of government in which the sovereign power is vested in a small number of citizens who are theoretically the best qualified to rule, as opposed to monarchy, in which the supreme authority is vested in one person, and to democracy, in which the ultimate authority is exercised by the entire body of citizens or their representatives. In an aristocracy, although the power of government is wielded by a few, theoretically the administration of government is carried on for the welfare of the many. Whenever the interests of the people as a whole are made subservient to the selfish interests of the rulers, aristocracy becomes a form of government known as oligarchy. (Microsoft Encarta Reference Library 2004.)

Autocracy, in a country or state, is a form of government ruled by a single person with having unlimited power.

government treats the public. The people living under these regimes are not considered as equal and free and their basic rights and freedoms are limited. If such a society and its members are lucky, they have good rulers who care for the welfare of all. On the contrary, if they are not fortunate and they have bad rulers who care only about their own group(s), and not the good of society at large, it is simply a result of the aristocratic or autocratic form of government. Because the thinking of the public at large (public reason) is not a part of the aristocratic form of government, the problems may remain until a new form of government develops.

Any kind of reason that is not common to all is what Rawls calls nonpublic reason. Nonpublic reason is the reason that is contributed to by some people who are in power or who take charge of an institution or society. The decisions they make are based on nonpublic reason. Even when they apply to the public, they remain nonpublic, for the public has no part in the reasoning leading to decisions.

In many cases related to associations such as churches and universities, scientific societies and professional groups, both public reason and nonpublic reason are seen. They exercise nonpublic reason when considering matters related to the internal functioning of the associations. They may act reasonably and responsively, whether they are corporate bodies, or associations of individuals, when they act only in regard to their members. Yet they also practice public reason “with respect to political society and to citizens generally” (Rawls, *Political Liberalism*, p220) by being responsive to the attitudes of the public and making decisions that affect the public.

In the case of a charitable institution, for example, the association regulates its membership and manages its budget using nonpublic reasoning, but its budget reflects the needs and attitudes of the public also, so where matters of distribution of goods

and services are concerned, the reasoning of the charity is public. Religious associations, and particular philosophical and professional organizations, and other entities involved in the welfare of the public, may thus employ nonpublic reason in this sense for the good of the public because its reason for being may be to provide for the good of the people in general. Rawls argues that we have learned from experience that, in a democratic society, the nonpublic power, such as that wielded by

the authority of churches over their members, is freely accepted. In the case of ecclesiastical power, since apostasy and heresy are not legal offenses, those who are no longer able to recognize a church's authority may cease being members without running afoul of state power. (Rawls, *Political Liberalism*, p221.)

One can then voluntarily join or leave nonpublic organizations, saying "whatever comprehensive religious, philosophical, or moral views we hold are also freely accepted, politically speaking; for given liberty of conscience and freedom of thought, we impose any such doctrine on ourselves." (Rawls, *Political Liberalism*, p222.) He means that as free and equal citizens we exercise our freedom and rights within the basic constitutional rights and liberties when we join or leave a non-public group.

Moreover, nonpublic reason impacts on the public reason of civil society and belongs to what Rawls calls the 'background culture,' in contrast with the public political culture. (Rawls, *Political Liberalism*, p220.) These kinds of nonpublic reasons imply social, not private, interests, though it seems that the term "nonpublic" is normally equivalent to "private."

In a liberal democracy, is there anything like private reasoning?

Rawls denies private reason. For him, there is no such thing. All reasoning is either public or nonpublic. Of course, he acknowledges that there are other forms of

reason that we participate in and they allow us to exercise and enjoy our rights as equal citizens.

Rawls says “the many reasons of associations in society which make up the background culture,” and domestic reason, “the reason of families as small groups in society,” (Rawls, *Political Liberalism*, on footnote p220), are opposite to public reason.

Rawls also mentions limitations of the public reason imposed to secure political stability. His argument laying out the limits of public reason has been debated and remains controversial, but it is significant. As mentioned above, in a democratic society, “public reason is the reason of equal citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and in amending their constitution.” (See Rawls, *Political Liberalism*: 214). Thus, he proposes two kinds of limitations imposed by public reason to be features of public reason. First of all, the public reason limits itself by not applying to “all political questions,” but only applying to “those involving what we may call ‘constitutional essentials’ and questions of basic justice.” (Rawls, *Political Liberalism*, p214.)

For instance, public reason is concerned with the fundamental questions, such as problems of voting, freedom of religion, and fair equality of opportunity: “who has the right to vote, or what religions are to be tolerated, or who is to be assured fair equality of opportunity, or to hold property,” (Rawls, *Political Liberalism*, p214), and the like. Public reason must not be confined to strictly fundamental matters, but may apply to things such as “tax legislation and many laws regulating property; statutes protecting the environment and controlling pollution; establishing national parks and preserving wilderness areas and animals and plant species; and laying aside funds for museums and the arts.” (Rawls, *Political Liberalism*, p214.)

Moreover, the public reason does not apply “to our personal deliberations and reflections about political questions, or to the reasoning about them by members of associations such as churches and universities, all of which form a vital part of the background culture.” (Rawls, *Political Liberalism*, p215.) However, one might argue that it is not possible to ignore the religious, philosophical, or moral considerations apart from political decisions when citizens make up their minds about principles that will govern their lives.

Of course, Rawls acknowledges that the religious, philosophical, and moral considerations also play important roles because they are characteristic parts of people’s self-understanding which affects their decisions and actions. Yet, public reason should and must go beyond these considerations to avoid civil conflict in the society. Public reason must incorporate the ideal of fairness, regardless of any religious beliefs, philosophical tendencies, and so on. Thus, its basic concern is the fair terms of social cooperation in the matters of basic justice, as mentioned.

II. 9. Overlapping Consensus

In 1993, John Rawls published *Political Liberalism*. After *A Theory of Justice*, he was concerned that liberal democracies were sometimes shaken by groups within them that did not accept the conventions that made up an unwritten consensus and kept relations between rival churches, philosophical systems, political parties, ethnic groups, and so on relatively peaceful and allowed life to proceed in a smooth and orderly fashion.

In his 1993 book, then, Rawls tried to establish a second original position. This time, instead of having individuals as his imaginary deliberators, he had groups that, behind their veil of ignorance, would use their sense of fairness and the good to

establish the essential (“constitutional” class) principles free from their own identity and ignorant of their own religious, philosophical, political or ethnic affiliations or leanings, trying to establish the principles such as religious and ethnic tolerance, fairness and equality of opportunity, and so forth that could be valued and endorsed on the basis on reason alone. Every sub-group in the population could live in freedom and its rights would be secure. The kind of principles that the veiled groups would agree to could be written into a constitutional document, to give it the force of law, and later, as people became used to it, they could form a more elaborate unwritten and tacit code of action based on the positive experiences the groups had once they were back from their hypothetical deliberations. The feeling everyone had about how individuals and groups should act in a liberal democracy formed what Rawls termed an *overlapping consensus* or agreement to honor certain ways of acting toward one another so that friction would be reduced and everyone could enjoy their daily lives.

Overlapping Consensus, then, is Rawls’s term meaning the kind of agreement, based on “public reason,” that describes a kind of overall understanding among the citizens of a liberal democracy whereby diverse groups such as various religions, political parties, philosophical groups, and other kinds of minority groups can accept a general system of belief acceptable to all and protective of all, without having to have it based on one or many “comprehensive doctrines” such as Islam, Christianity, Marxism, and other systems that adherents accept as the basis for their personal concepts and values.

Rawls understands that in creating a just society, where several groups of believers exist holding very different views of the world based on (rival) religious or ideological faiths, (what he called comprehensive doctrines), care must be taken to set

things up so that these groups, and people who do not belong to such groups, are all able to live peacefully together without fear.

Sinn Fein, the Catholic party in Northern Ireland, for example, adheres to their religion as a “comprehensive doctrine,” as do their rivals, the Protestants of the Democratic Unionist Party.

Recently Gerry Adams, the Sinn Fein leader accused of being a one-time commander of the terrorist I-R-A, or Irish Republican Army, met with his long-time adversary, Ian Paisley, leader of the Democratic Unionist Party, to sign an agreement to abide by rules of equality and tolerance, and give up armed struggle as a political tool. This may or may not bring lasting peace to Northern Ireland, but it serves as an excellent current example of the way rival and contentious groups with opposing comprehensive doctrines in a more or less liberal, more or less democratic society can come to an overlapping consensus to establish peace and equality where there had an absence of both for over a hundred years. Rather than base their agreement on the teachings of their deeply divided religions, the parties based their agreement on moral principles arrived at through the use of human reason alone. The agreement will be a quasi-constitutional document, and will allow for the members of both groups to associate and cooperate with one another enough that gradually a certain amount of mutual trust and even understanding may develop, which will allow the parties to work out unwritten ways of acting which will move the parties from a formal legal relationship to a more comprehensive and informal way of co-existing, for the benefit of both, based on unchanging moral principles and the common need of human beings to live together in peace and harmony.

For a liberal democratic society with a reasonable kind of diversity among its constituent ethnic, religious, racial, or political and philosophical groups, to function,

all parties must form an overlapping consensus about the need for tolerance, fair opportunity, equality under the law, and so on. People must be able, according to Rawls, to set aside their contradictory religious notions to accept, on reason alone, the necessity and value of such political unity and the virtues of tolerance and respect for others' views that guarantee on-going equality of treatment and mutual respect based on reason and good moral principles. Constitutional provisions for freedom of assembly, speech, conscience, religion, and so on can only provide a framework of law to bring about peace within a society. It takes an overlapping consensus to actually assure that rivalries do not cause intolerance and even armed conflict to develop within the country itself. Such a consensus will provide elders and opinion-makers with the means of controlling their more radical or unruly followers.

As used here, overlapping consensus means an agreement between most or all parties, including individuals and groups, to abide by written, but mostly unwritten rules in order to enjoy the liberties they can claim by virtue of being human. While their particular religious faith or political doctrines or philosophical positions are "comprehensive" in regard to the way people behave within their special group, the individuals and especially the leaders of each group must have an overlapping sense of the good and a concept of fairness. This consensus is needed in order for a liberal democracy to be stable and function in the complex modern world.

Where there is agreement between the competing groups about how they should be governed, and it is outside the boundaries of the group's internal consensus about their own doctrines and practices, it is possible that communities of Christians and Muslims, for example, or even Jews and Muslims, can agree to terms which can result in tolerance and stability.

Everyday consensus exists in many places where ancient enmities exist. For example, in parts of the world where violence is frequent, people still abide by the basic traffic rules for cities and highways. This way, everyone of any faith or party knows that in their country, everyone must drive on the left side of the road, for example. This has nothing to do with faith, but is very important in everyday affairs, allowing traffic of every kind to move in an orderly fashion.

Overlapping consensus will be studied under three aspects in a moment, but first, we must qualify our statements by saying that it applies only in a “free” liberal democracy, or at least in a “decent” country, where people are free to speak their minds without fear of retribution or conflict on matters of common interest.

This is very significant in a country populated by peoples who are members of various groups that are distinguished from one another by culture, race, religious or ideological beliefs, and so on. Rawls realizes that to be fair and rational, government institutions in such a pluralistic and diversified country must treat all impartially. Guarantees and provisions for members of each group to enjoy liberty, justice and equality, as a group and as individuals, must be firm and constant so citizens can exercise their civil rights and enjoy their freedoms while maintaining their group identity. Rawls sees this kind of arrangement as essential in a fair, just, and reasonable society. It must be unlimited in durations and must be legitimized by the laws of the government and based on the power of human reason without reference to the specific religious or political beliefs of one or another of the “comprehensive” belief systems that are peculiar to one or more of the groups in the population.

(i) Rawls distinguishes rational pluralism from pluralism by noting that pluralism itself allows for the simultaneous presence of competing and even hostile and intransigent beliefs and policies that effectively make coexistence with other

groups impossible. For example, when two theocratic political systems both have as their core value the destruction of the other, it is not possible to reach reasonable accommodations in which they can live side by side.

This leads Rawls to acknowledge that his model of a liberal democratic pluralist country can accommodate only a reasonable and rational pluralism, where the various groups are ready to make adjustments to their personal or group thinking so that, at least in the context of the overarching Rawlsian pattern, they can coexist fairly and successfully.

Peoples living in the Rawlsian society would be fortunate, for the Rawlsian institutions would care for their happiness, freedom, justice and equality, and the like equitably. The overlapping consensus theoretically exists where there is justice and equality under the conditions of freedom: Overlapping consensus, then, is “the outcome of the free exercise of free human reason under conditions of liberty.” (Rawls, *Political Liberalism*, p144.)

(ii) The overlapping consensus must be expressed in the fundamental political documents (in the constitution, or on the “constitutional level”) of the country (assuming it is a constitutional democracy) in such a way that it is based solely on human reason and stands alone, independent, without relying on any religious or ideological “comprehensive system” for its credibility.

Religious, philosophical, and moral doctrines, however sacred they may be, must, as far as possible, be left out of the wording of the essential constitutional documents so that all reasonable people can accept them as reasonable and obvious rules of government or rules of behavior. Such principles, arrived at through the reasoning process accessible to all human beings, are valid universally, and set standards of conduct equally for every citizen and every group in the society.

Rawls sums this up by saying, “the political conception is a module, an essential constituent part, that in different ways fits and can be supported by various reasonable comprehensive doctrines that endure in the society regulated by it.” (Rawls, *Political Liberalism*, pp144-5.)

iii). Attempting to be realistic in regard to the difficulty of establishing a general overlapping consensus among advocates of competing religious and ideological groups, Rawls anticipates four objections to his reason-based system, and tries to answer them satisfactorily.

Objection 1: How shall people and groups of people live in a reason-based system of basic principles? Is the consensus a mere *modus vivendi* or stop-gap arrangement, like a truce on the battlefield?

Rawls rejects this suggestion that trivializes the “overlapping consensus” concept as merely a temporary “*modus vivendi*” because the need for a stable and smoothly functioning government is easily grasped by reason, and as such, it is not just a temporary solution to a temporal problem, but an agreement based on basic, reasonable understanding of the on-going need to live in peace and harmony. A *modus vivendi* is forced upon two or more nations by the constraints of the moment. For example, if a plague breaks out, two warring nations may agree to stop the war while the plague rages. When it abates in either country, there might be the temptation to seize the advantage and renew the fighting while the other nation is still distressed by the plague. Because the overlapping consensus is based on reason, and founded on moral principles, it is timeless, and not subject to unfair maneuvers on the part of this or that group. All parties realize that for continued prosperity, all must abide by the rules of the consensus.

2. Rawls understands that critics might argue that even though the overlapping consensus seems to be stable, it is still unacceptable with regard to achieving political unity in overlapping consensus. The reason why it is still liable to be rejected is because the idea of political unity “abandons the hope of political community and settles instead for a public understanding that is at bottom a mere *modus vivendi*.”

Rawls’s reply to this criticism is that unless common ground can be established on the basis of reason alone, we must abandon hope of establishing a cohesive political community, because if one faction of the community insists on imposing its own comprehensive doctrine on all, reasonable pluralism must be abandoned and the oppressive use of the state power to enforce the official system must be accepted. This would not be allowed in a Rawlsian system of justice.

Rawls realizes that the values of community have a very important impact on the moral quality of the society and public life of the communities within it. He maintains that a liberal democracy is “an association or society whose unity rests on a comprehensive conception of the good.” (Rawls, *Political Liberalism*, footnote on p146.) Thus, if a community cares for good things enjoyed equally and justly for everyone in it, the values of the community are acceptable.

On the other hand, a sub-community that refuses to take its place inside a larger political system and insists on setting rules for other groups is unreasonable and incompatible with the establishment of overlapping consensus.

Rawls insists that the overall community cannot establish political unity founded on the overlapping consensus unless it is basically liberal and fair. While respecting the value a politically oriented sub group may provide to its members or to society as a whole, Rawls rejects the plans of groups that insist on imposing their political system on others. He continues to work toward the reason-based overlapping

consensus acceptable to all factions and individuals because it is “essential and realizable. . . first in the various associations that carry on their life within the framework of the basic structure, and second in those associations that extend across the boundaries of political societies, such as churches and scientific societies.” (Rawls, *Political Liberalism*, footnote on p146.)

Thus, the idea of political unity founded on overlapping consensus does not imply the establishment of a monolithic political community such as the one-party systems in pseudo democracies.

Going back to Rawls’s second Original Position as described in his 1993 book, *Political Liberalism*, when in the process of forming an overlapping consensus, the parties operate ignorant of their own interests and must be fair because reason tells them to, since bias may result in serious trouble if they tilt the results to a group to which they do not belong. By using the veil of ignorance, Rawls can assume that each group, like the individuals in his 1971 original system, will wisely refrain from gambling on a biased system which may ultimately cause them serious trouble. Agreements formed under Rawls’s special heuristic device are designed to be less self serving and more timeless than the *modus vivendi* agreements between states which are necessitated by temporary circumstances, such as a plague, as described above.

The *modus vivendi* is a temporal, contingent political object, while the overlapping consensus is a reasonable agreement clearly of benefit to all, having the stature of a constitutional level law, and, because it deals with what is right and wrong, it is essentially a moral document.

3. A third aspect of the overlapping consensus is its stability, which is also mentioned above. While the *modus vivendi* of two nations is based on contingencies, the moral principles of the Rawlsian agreement are timeless and therefore stable.

Some critics claimed that because he insists on basing his moral consensus on reason alone, and not religious principles, Rawls and his system are skeptical of the value of religion, and his system is godless.

But is this true? Is Rawls a hopeless skeptic, cynical about the religious truths that are the basis for moral conduct in religious subgroups? Is his system deliberately indifferent to the feelings of those who are asked to surrender their faith-based assumptions about right and wrong? Is Rawls denying the value of good works which allow the believers in most faiths to build up eternal capital through righteous living on earth in order to collect on one's meritorious investment in the afterlife?

Rawls answers that it would be foolhardy to allow overlapping consensus to conflict with truth, since it would put human reason, which is a gift, in opposition to truth, and would make him and his system outlaws in the eyes of so many believers in various comprehensive doctrines. On the other hand, if he were to assign one a higher value than another, he would be destroying the whole system, which attempts to bring everyone together in workable arrangements based on something everyone shares, the power of reason.

Rawls and his system are not skeptical, but both must be unbiased and remain neutral with reference to the beauty and value of one culture compared to another because to declare one the "winner" in a value contest, is to declare all the others "losers," which would assure the failure of the effort to bring all parties together to accomplish things that are impossible to any fragment of the society to accomplish, no matter how venerable or populous it may be.

Moreover, Rawls says that the principles of tolerance and equality are necessary and should be applied in the cases of conflicts among citizens' comprehensive views:

To apply the principles of toleration to philosophy itself is to leave to citizens themselves to settle the questions of religion, philosophy,

and morals in accordance with views they freely affirm.” (Rawls, *Political Liberalism*, p154.)

Rawls must repeatedly go back to the principle of tolerance because people adopt and cling to their moral, religious, and political views both as individuals and as members of their group, and they have strong emotional ties to these interconnected systems of thought and behavior. Anything that diminishes any of these deeply cherished values is hurtful and intolerable; therefore as a philosopher and proponent of peace and justice, he is in a very important position, where any word that offends one group or promotes another is taken very seriously. In order to achieve his ambitious goals of peace, harmony, and cooperation, understanding and tolerance must characterize everything he does. Actions speak louder than words, especially for someone in his unique situation.

The third objection is related to the idea that supposing an overlapping consensus is not a *modus vivendi*, then one argues that “a workable political conception must be general and comprehensive...It is useless, ..., to try to work out a political conception of justice expressly for the basic structure apart from any comprehensive doctrine.” (Rawls, *Political Liberalism*, p154.)

Rawls replies to this objection that a political conception need not be comprehensive. As Rawls has partly replied in the third view of the model case of the overlapping consensus, this objection is a pluralist view and is not systematically unified in the sense that “besides the political values formulated by a freestanding political conception of justice, it includes a large family of nonpolitical values.” (Rawls, *Political Liberalism*, p155.)

Moreover, Rawls replies that since the citizens are guaranteed security with regard to their basic rights and liberty by the fair constitutional-level laws of the liberal society, they can pursue their way of life in a fair way while respecting the

values of others. “With those constitutional guarantees secure, they think no conflict of values is likely to arise that justifies their opposing the political conception as a whole, or on such fundamental matters as liberty of conscience, or equal political liberties, or basic civil rights.” (Rawls, *Political Liberalism*, p155.)

Thus, when a political conception cares for its citizens’ basic freedom and rights, it can help reach the political agreement at least on “the constitutional essentials and the basic questions of justice.”

For Rawls, liberty is the most reasonable political conception of justice for a democratic regime, in the sense that “it protects the familiar basic rights and assigns them a special priority; it also includes measures to insure that all citizens have sufficient material means to make effective use of those basic rights. Faced with the fact of reasonable pluralism, a liberal view removes from the political agenda the most divisive issues, serious contention about which [would] undermine the bases of social cooperation.” (Rawls, *Political Liberalism*, pp156-7.)

Rawls pointed out that political values usually supersede other values. “[T]he . . . reason political values normally win out is that severe conflicts with other values are much reduced,” (Rawls, *Political Liberalism*, p157), in the sense that when an overlapping consensus supports the political conception, the political conception supports and protects other basic values such as religious, philosophical, and moral freedoms and other strongly held and highly valued values. Further, Rawls suggests that it is useless to talk about “the claims of political justice against the claims of this or that comprehensive view; nor need we say that political values are intrinsically more important than other values and that is why the latter are overridden. Having to say that is just what we hope to avoid, and achieving an overlapping consensus enables us to do so.” (Rawls, *Political Liberalism*, p157.)

Thus, we can properly conclude that a political conception need not be comprehensive; and when using public reason to establish a reasonable pluralism, we do not need to rely on general and comprehensive doctrines. Rawls has given us two reasons for avoiding reliance on general and comprehensive doctrines: first, the reasonable pluralism “identifies the fundamental role of political values in expressing the terms of fair social cooperation consistent with mutual respect between citizens regarded as free and equal;” and second, it provides “a sufficiently inclusive concordant fit among political and other values seen in a reasonable overlapping consensus.” (Rawls, *Political Liberalism*, p158.)

4. The fourth objection declares “the idea of overlapping consensus is Utopian” in the sense that “there are not sufficient political, social, or psychological forces either to bring about an overlapping consensus (when one does not exist), or to render one stable (should one exist).” (Rawls, *Political Liberalism*, p158.)

Rawls replies that an overlapping consensus develops in two stages: The first stage ends with a constitutional consensus, and the other stage ends with an overlapping consensus.

The first stage is when the agreement to live in peace is formulated at the constitutional level with a formal agreement, such as the one recently signed by Sinn Fein and the Democratic Unity Party in Northern Ireland. In this stage, constitutional, Rawls concludes that “the liberal principles of justice, initially accepted reluctantly as a *modus vivendi* and adopted into a constitution, tend to shift citizens’ comprehensive doctrines so that they at least accept the principles of a liberal constitution. These principles guarantee certain basic political rights and liberties and establish democratic procedures for moderating the political rivalry, and for determining issues of social policy.” (Rawls, *Political Liberalism*, p163.)

In the second stage an overlapping consensus evolves. This stage is derived from the first stage when “a constitutional consensus on certain principles of basic political rights and liberties and on democratic procedures becomes an overlapping consensus.”

Once the parties have enjoyed the freedom that the constitutional-level protections provide, and peace had become a continuing condition, parties begin to re-think some of their prior convictions and adjust their comprehensive assumptions based on their new and more secure status.

In this stage, Rawls says, we should consider the depth and breadth of the overlapping consensus. He maintains that the depth of an overlapping consensus requires that “its political principles and ideals be founded on a political conception of justice that uses fundamental ideas of society and person as illustrated by justice as fairness,” whereas its breadth “goes beyond political principles instituting democratic procedures to include principles covering the basic structure as a whole.” (Rawls, *Political Liberalism*, p164.)

As the depth and breadth of the consensus develop, the political principles of justice as fairness also create certain substantive rights, such as liberty of conscience, freedom of thought, fair equal opportunity, and principles covering certain essential needs.

Thus, the overlapping consensus centers mainly on the concept of justice in terms of fairness, which he calls the standard example. The reason is that when a society is created based on the consensus of the people, there is no doubt that justice as fairness is there with the consensus: “In a political society with a consensus of this kind, several conceptions of justice will be political rivals and no doubt favored by different interests and political strata. When overlapping consensus is characterized

this way, the role of justice as fairness will have a special place within conceptions defining the focus of the consensus.” (Rawls, *Political Liberalism*, p164.)

Thus, according to Rawls, this is his reply to the objection that says overlapping consensus is Utopian. Moreover, as he clearly mentions, as “overlapping consensus is not a *modus vivendi*,” in the sense that the political conception founded on the overlapping consensus “is affirmed as a moral conception and citizens are ready to act from it on moral grounds,” which means that it is based on unchanging principles rather than temporal contingencies.

In addition to this, as mentioned above, Rawls argues for the two basic ideas which insure the stability of political liberalism based on public reason. “[F]undamental political questions can be settled by the appeal to political values expressed by the political conception endorsed by the overlapping consensus.” (Rawls, *Political Liberalism*, p169.)

The first is that “the values of the political are very great values and not easily overridden;” and second, “that there are many reasonable comprehensive doctrines that understand the wider realm of values to be congruent with, or supportive of, or else not in conflict with, political values as these are specified by a political conception of justice for a democratic regime.” (Rawls, *Political Liberalism*, pp168-9.)

The concept of overlapping consensus is, then, a practical concept, free from elements that foster contention, respectful of and protective of the comprehensive doctrines that are deeply loved and highly valued by various factions of society, and is, unlike some Utopian scheme, attainable in two distinct stages, which can be seen in operation in current history.

One might hope that someday it can develop in all the lands where unreasonable factionalism and internal strife exist today.

II. 10. Summary

Rawls sees his justice as fairness as the fundamental basis of a just society. It embodies his two principles: the first is the Liberty Principle, and the second principle consists of two parts the Difference Principle, and the Fair Opportunity Principle. The principles are governed by the priority rule and can be summarized as: “All social primary goods, such as Liberty and opportunity, income and wealth, and the bases of self-respect, are to be distributed equally, unless an unequal distribution of any or all of these goods is to the advantage of the least well-off.”

The principles are considered as morally just for any parties because moral and reasonable rational beings would choose the rules from a hypothetical starting point called “original position,” without being swayed by bias and where they are freed from self-interest, preference or any attachments by the condition he calls the “veil of ignorance.”

Reflective equilibrium is a state of balance that exists when basic principles of justice and the practices arranged in the hypothetical contract are congruent and compatible with a person’s considered judgments and deepest moral convictions. Rawls tends to use the phrase “reflective equilibrium” as a kind of adjective meaning “valid and acceptable” or “justified and fair” when describing a principle or set of principles a nation or a people accept and live by.

In his theory, the Original Position includes the social contract or “hypothetical contract” drawn up and agreed upon by his imaginary deliberators working under their veil of ignorance and arriving at the basic understandings that include his two

principles, the Liberty Principle and the Difference Principle. Details, he explains, must be worked out so that differences between what the “contract” says and the deepest, soundly reasoned, “reflections” must be “smoothed out.” He explains that it is a two-way process, allowing for possible clarifications or adjustments to the contract, and adjustments the person must make within himself or herself in order that the contract and the individual’s “considered judgments” are congruent and compatible.

Rawls suggests that the way the principles are applied might be adjusted as far as possible, and then any remaining issues could be worked out by readjusting the one’s own principles. The process of these back and forth “reflections” on applications and principles goes on until they finally reach a state where there is “equilibrium,” which implies no further adjustments have to be made. The method of reflective equilibrium ends up defining a realistic and stable social order by determining a practical and coherent set of principles that are properly grounded on citizens’ inherent moral motivation; leaving the people disposed to conform to them. Reflective equilibrium provides flexibility in the contract between the government and the governed, and it changes as the individuals encounter new individual issues or experience negative consequences resulting from their old principles applied to new conditions. Reflective equilibrium is a mechanism that promises to provide continuity and stability over time.

Rawls divides reasoning into reasonable reasoning and rational reasoning. When a person reasons reasonably, he is willing to offer ideas, listen to ideas, and abide by compromises that work for the benefit of all. When a person reasons rationally, he is thinking of ways to gain an advantage, either for himself or for someone else. Rawls says both kinds of reasoning are necessary and complimentary,

and can be carried out by individuals or corporate bodies like organizations, churches.

He further divided reason into public and non-public reasoning, and claims that there is no really private reasoning.

Public reason has three qualities: 1). It is the reasoning of the people at large. 2). It is the reasoning about the populace. 3). It is practiced and expressed openly in public. Non-public reasoning is not done by the public, it does or does not focus on the behavior or condition of the public, and it is not necessarily on the public record.

Governments may be based on public reason, as in a democracy, where the populace debate issues and elects its representatives in open and public view. In an aristocracy, the ruler and important functionaries rule the public, and then they make decisions affecting the public, but the reasoning behind decisions is not done by the public, is not generally responsive to the public, and is not displayed to the public, so it is non-public reason. It is a matter of luck whether the reasoning is benign or tyrannical.

In many institutions such as religions, fraternal organizations, charities, and so on, both public and non-public reason operate. In a charity providing health services, the directors and even the entire membership has to regulate itself internally with budgets, appointments to various positions, and general inside operations by a form of non-public reasoning because it is not accomplished by the entire population, does not relate to the general population, and is not done in public. When making decisions regarding the public welfare, such as how to fund research into public health, or which hospitals to endorse, the focus is on the public, and the decisions will be publicized and open to public review.

The organization may even seek public input and suggestions, and in these ways the charity is using public reason. Many non-public universities and professional organizations, churches and so on make important declarations, publish important articles and books, and otherwise deal with the public good and contribute influence the functions of society. Their deliberations and work form a vital part of what Rawls called the “background culture” and cannot easily be deemed either public or non-public reason. Rawls’s focus on liberal democracies implies that public reason is of equal or greater value than non-public reason.

By nature, a liberal democracy usually includes a number of sub-communities representing followers of various comprehensive doctrines, such as members of religions, political parties, philosophical or scientific organizations, and so on. Rawls concluded that his original position of 1971 should be expanded into a new original position where representatives of each such sub-community would formulate a set of rules and principles while under the veil of ignorance that would provide all reasonable people and reasonable groups constitutional-level guarantees of freedom and equality. He insisted that the new system must provide for construction of a new “overlapping consensus” based only on public reason because to base it on any comprehensive doctrine would create chaos. In Rawls’s term, overlapping consensus refers to an agreement between most or all reasonable parties, including individuals and groups, by which they will abide by written and unwritten rules in order to enjoy fully the liberty and equality due to all human beings. It is based on timeless moral principles and would be long-lived rather than temporary. It would be established in two historically attainable stages, first based on law, and later on unwritten understandings developed as tolerance and equality become habitual. Though limited

in application to liberal democracies and “decent” peoples, it can serve as an ultimate goal for developing societies all over the world.

Thus, his theory of justice as fairness and its principles are very attractive. They seem reasonable and appropriate because they assure people’s fundamental liberties and at the same time maximize the assistance given to the most unfortunate ones. The theory seems to offer ways of fulfilling the basic needs of all citizens in a society as much as possible, allowing them to enjoy their basic liberties without infringing on others’ liberties, and without distractions from economic factors.



Chapter III. Comparison of John Rawls's Theory of Justice with Other Rival Theories of Distributive Justice and His Critics

Rawls's theory of justice as fairness plays a very significant role in our world today. In moral and political philosophy, the discussions of justice and its distributions are very relevant and vital and Rawls's idea has gotten much attention and generated many discussions among other proponents of modern theories of distributive justice, for example, Utilitarians, Marxists, Libertarians, and Communitarians. Even though one might accept or reject his theory, one must give the reason why, as Professor Jonathan Wolff puts it, "Rawls is now such a dominant figure in political philosophy that those who reject his methodology need to explain why." (Wolff, Jonathan, 1996, p195.)

In this critical evaluation of Rawls's theory, the researcher argues that Rawls's theory is more appropriate and agreeable compared to the other leading theories of distributive justice proposed by competing philosophers. In doing so, first of all, let us present others' theories and then give the reasons why Rawls's theory seems more appropriate. Modern debates on theories of distributive justice usually involve the principles of *merit*, *community values*, *need*, and *utility* as the basis of state-mandated distribution of wealth and privilege.

The ideologies arising from these principles are: Utilitarianism, based on *utility*, represented by John Stuart Mill and others; Marxism, based on *need*, represented by Karl Marx; Libertarianism, based on *liberty and merit*, represented by Robert Nozick and others; John Rawls's theory of justice as fairness is a unique form of Liberalism, based on *liberty and need*; and Communitarianism, based on *community values*, represented by various philosophers.

Moreover, we will examine objections raised by Rawls's Feminist and Ethnic Minority critics, seen as parts of the communitarian movement.

III.1. Utilitarianism and Rawls's Theories of Justice

In Britain in the eighteenth and nineteenth century, there was a philosophical movement called utilitarianism. Utilitarianism is a moral theory which defines an action is morally acceptable when it contributes to overall utility. Jeremy Bentham (1748-1832) was considered the true founder of this school of thought, although utilitarianism was greatly influenced by a school of ancient Greek philosophy called Epicureanism.

The most famous utilitarian philosophers are Jeremy Bentham and John Stuart Mill (1806-1873). They said that justice should be meted out for the benefit of the social utility, that is, to provide the best benefit for society as a whole. According to Bentham, an action was good if it increased pleasure, bad if it increased pain. His utilitarian principle can be summarized as the doctrine that is "to maximize good and minimize evil. Good and evil, in return, reduce to utility, which he identifies with pleasure and pain." (W.T.Jones, Frederick Sontag, Morton O. Beckner, Robert J. Fogelin, eds. *Approaches to Ethics*. 977, p251.)

According to Bentham, an action or law would be good if it produced "The greatest happiness for the greatest number." He developed a "happiness calculus" in order to calculate for any action or law what the consequences in terms of pleasure or pain would be. As he points out,

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...

The *principle of utility* recognizes this subjection, and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law. Systems which attempt to question it, deal in sounds instead of sense, in caprice instead of reason, in darkness instead of light.

By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have argument or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or oppose that happiness.

By utility is meant that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness...or...to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is considered: if that party be the community in general, then the happiness of the community: if a particular individual, then the happiness of that individual. (Bentham, Jeremy. *"An Introduction to the Principles of Morals and Legislation."* See W.T.Jones, Frederick Sontag, Morton O. Beckner, Robert J. Fogelin, eds. *Approaches to Ethics*. 1977, pp251-2.)

When we take a look in the United States, for example, we see that those who have grown up there have been imbued with faith in the equality of all people simply because they are human beings. Though the country is rich in this kind of disposition, problems exist both in theory and in practice.

Often, ideals of equality seem to conflict with other values, as when educators, in the spirit of giving equal education to all, place low ability students in regular classrooms along with average and very high performing children. This results in slower progress for all, so that the principles of equality and the good of society clash. In medical practice, when selecting the recipients of scarce donor organs, should there be rules about who "deserves" the organs, so that a young, ill physician might have preference over an aged person who has damaged his body by smoking tobacco? Though those insisting of equality for all might insist on some kind of lottery, utilitarians would favor the young physician because extending her life would benefit many people.

Ancient Greeks, basing their judgments on “merit,” would have had no problem dealing with such a case. The utilitarian philosophers have argued the issue and come up with utilitarianism, where justice is equated with social utility.

John Stuart Mill’s milestone book, *Utilitarianism* (1863), is most explicit about the social utility philosophy. In his definition of what utilitarianism is, he writes,

The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain; by unhappiness, pain, and the privation of pleasure. To give a clear view of the moral standard set up by the theory, much more requires to be said; in particular, what things it includes in the ideas of pain and pleasure; and to what extent this is left an open question. (Mill, J.S. *Utilitarianism*. Roger Grisp, ed. 1998, p55.)

Nonetheless, he says, “the theory of life on which this theory of morality is grounded—namely, that pleasure and freedom from pain are the only things desirable as ends; and that all desirable things (which are as numerous in the utilitarians as in any other scheme) are desirable either for the pleasure inherent in themselves, or as means to the promotion of pleasure and the prevention of pain.” (Mill, J.S. *Utilitarianism*. Roger Grisp, ed. 1998, p55.) Pleasure and freedom from pain are the only things desirable as ends.

Mill holds that what is most useful is just. Mill believes that expediency is obviously more “just” than some nebulous “equality.” For example, he gives the case of dire necessity, where, “to save a life, it may not only be allowable, but a duty, to steal, or take by force, the necessary food or medicine, or to kidnap, and compel to officiate the only qualified medical practitioner.” (Mill, J.S. *Utilitarianism*. Roger Grisp, ed. 1998, p107.) Certainly what is done is not just, “we do not call anything justice which is not a virtue, we usually say, not that justice must give way to some

other moral principle, but that what is just in ordinary cases is, by reason of that other principle, not just in the particular case.” (Mill, J.S. *Utilitarianism*. 1998, p107.)

Mill holds that what is most useful is just. Mill believes that expediency is obviously more “just” than some nebulous “equality.” For Mill, ethics was based on expediency, and so was his concept of justice. He says that justice is not a virtue. This invites critical questions. To begin with, if we consider something expedient, should we also consider it “just”? If it is expedient and for the good of “most” of the people, is it just to displace 48 percent of the population of a city in order to build a huge seaport or a dam that will benefit 52 percent? And morally, is it just to base laws about euthanizing the handicapped on the assumed relief such killings might bring to “most” people?

Rawls's theory of justice would provide some help in working out answers to these and most similar questions, and ultimately show that utilitarianism is seriously flawed in terms of liberty and equality.

Rawls's system produces principles that would provide the widest possible liberty to everyone, while arranging taxes and other government revenues to see to it that in the distribution of goods and services, the maximum benefits possible are assured to the least well-off.

In keeping with the general feeling that everyone is equal and should have equal treatment, Rawls proposed his “Justice as Fairness” system as an alternative to utilitarianism, which was lacking in guarantees of liberty for those in a minority, and had no principle directed at assuring the least fortunate a chance at a decent existence.

By using his unique original position mental stratagem to establish the “hypothetical contract,” it became apparent to him that any system created by moral

and reasonable people, free from all bias, would assure that every individual's liberty was as wide as possible without infringing on other people's liberty. This assures that there will always be ample incentives and freedom to acquire and enjoy wealth. By enabling and encouraging wealth building, Rawls's system promotes economic growth, while at the same time his Difference principle secures enough resources to assure there will be sufficient public wealth to provide maximum benefits for minimally well-off people, thereby heading off discontent that might lead to terrorism and instability. Rawls's contract assures Fair Opportunity to advance into positions of status and authority. It is designed to reinstate *equality* as the basis of justice, and concerns itself primarily with the distribution of society's common economic goods and services to provide relief for those most in need. Economists call this fundamental rule "the maximin principle," for it calls for judging the justness of a situation by asking, "Does this provide the *maximum* benefit to the person with the *minimum* means?"

Rawls takes for granted what Americans already enjoyed: broad liberties, security against unjust government seizures of property or wealth, and systems of assuring care for the indigent, handicapped, and others in the "least well-off" category. Despite a person's social status, he has a fair opportunity to advance into higher status.

Rawls maintains that the utilitarian practice of taking away liberties to provide for "most people" is wrong, and justice as fairness sees to it that the *individual's liberty* is to be given priority over the liberty of the larger group, for example, a business corporation or a government. His equal-liberty principle calls for impartial and equitable application of all rules, laws, policies, and so on in order to assure the equality of individuals before the law.

III.2. Marxism and Rawls's Theories of Justice

"From each according to his abilities, to each according to his needs,"(Marx, Karl. *"From Each According to His Abilities, To Each According to His Needs."* See Michael Rosen & Jonathan Wolff, eds. *Political Thought*. 1999, p314), was the slogan that expressed Marx's vision of a new utopia, where workers (the *proletariat*) would be free from their masters (the *bourgeoisie*), and there would be no more private property, no more alienation of workers from their products, from themselves, from their fellow workers, and from humanity in general. The new society would have no money and no higher and lower classes. The state would confiscate all property and wealth, and distribute it equally to all the people.

Reflecting on the capitalistic world as he saw it, in its most primitive stage, he proclaimed "We have to grasp the real connexion between this whole system of alienation—private property, acquisitiveness, the separation of labour, capital and the land, exchange and competition, value and the devaluation of man, monopoly and competition—and the system of *money*,"... to understand that "[t]he worker becomes poorer the more wealth he produces and the more his production increases in power and extent. The worker becomes an ever cheaper commodity the more goods he creates."(Marx, Karl. *"Alienated Labour."* See W.T.Jones, Frederick Sontag, Morton O. Beckner, Robert J. Fogelin, eds. *Approaches to Ethics*. 1977, p314.)

For Marx, the fact that a worker produces a material product somehow transforms the product into "an *alien being*," (Marx. *"Alienated Labour,"* p315), somehow robbing the worker of a quantity of his personhood, transforming him into "an ever cheaper commodity the more goods he creates." (Marx. *"Alienated Labour,"* p314.)

Marx believed that individuals could enjoy what they made, but had no right to own what was produced by others. Further, Marx found property ownership unacceptable because it tended to enrich already affluent people at the expense of others, thereby forcing the others to work without benefit of the products of their labors. As he puts it,

Labor certainly produces marvels for the rich but it produces privation for the worker. It produces palaces, but hovels for the worker. It produces beauty, but deformity for the worker. It replaces labour by machinery, but it casts some of the workers back into a barbarous kind of work and turns the others into machines. It produces intelligence, but also stupidity and cretinism for the workers. (Marx. "*Alienated Labour*." p316.)

He thought of workers as being not only alienated from a part of themselves by selfish and destructive, and corrupted by society. "They direct their attacks not only against the bourgeois conditions of production, they direct them against the instruments of production themselves; they destroy imported wares that compete with their labour, they smash to pieces machinery, they set factories ablaze, they seek to restore by force the vanished status of the workman of the Middle Ages." (Karl Marx and Friedrich Engels. *The Communist Manifesto*. 1992, p11.) In a capitalist society, they were forced to provide for the needs of others and work at "meaningless" jobs to make wealthy owners even richer. He regarded workers as miserable people regardless of their wages, which, in some cases, were quite high. "The bourgeoisie has stripped of its halo every occupation hitherto honoured and looked up to with reverent awe. It has converted the physician, the lawyer, the priest, the poet, the man of science, into its paid wage-laborers." (Karl Marx and Friedrich Engels. *The Communist Manifesto*. 1992, p5.)

Marx envisioned workers overthrowing the capitalistic system to return to a more "natural state." They would not cease working, for work is ennobling and humanizing. Instead, workers would find their freedom through a radical economic

system that would once again unite the worker with his product. In this utopia, rather than living in a corrupting society, a new system would develop where workers would be more unselfish and less destructive, ending up as “the closing chapter of the prehistoric stage of human society.” (Marx, Karl. “*A Contribution to the Critique of Political Economy*.” See W.T.Jones, Frederick Sontag, Morton O. Beckner, Robert J. Fogelin, eds. *Approaches to Ethics*. 1977, p314.)

Marx wrote his manifesto before the development of sophisticated systems of data gathering and analysis, and therefore he was not able to verify his assertions about the feelings of workers and the actual practices of the capitalists. For this reason, he offers little hard evidence to support many of his statements. Not having the means to survey and evaluate the actual attitudes of real people, and not having Rawls's Original Position strategy as a mental tool to use in arriving at the principles of justice, Marx followed his own vision of society and advocated sweeping changes for the benefit of the people. As he puts it,

With the change of the economic foundation the entire immense superstructure is more or less rapidly transformed. In considering such transformations the distinction should always be made between the material transformation of the economic conditions of production, which can be determined with the precision of natural science, and the legal, political, religious aesthetic, or philosophic—in short, ideological—forms in which men become conscious of this conflict [between the *bourgeoisie* and the proletariat] and fight it out. (Marx, Karl. “*A Contribution to the Critique of Political Economy*,” p314.)

He accepted the need for a revolutionary change in the established governments and social structures, and the suppression of certain liberties, like the freedom to hold private property. “The essential condition for the existence, and for sway of the bourgeois class, is the accumulation of wealth in the hands of private individuals...” (Karl Marx and Friedrich Engels. *The Communist Manifesto*, p15.)

Freedom to engage in commercial ventures is denied: The “theory of the Communists may be summed up in the single sentence: Abolition of private property.” (Karl Marx and Friedrich Engels. *The Communist Manifesto*, p18.)

Oppressed people in many lands applauded the promises of Marxism and welcomed Marxist regimes as an alternative to imperialist subjugation and exploitation by self-seeking foreign businesses, aggressive neighbor countries, and domestic despots. Communists drew followers by proclaiming, “The end and aim of capitalist production, is to extract the greatest possible amount of surplus-value, and consequently to exploit labour-power to the greatest possible extent.” (Marx, Karl. *Capital: A Critical Analysis of Capitalist Production*. Vol. I. 1954. p313.) In many ways, the resulting arrangements were better. The changes in Cuba, for example, did seem to reduce the influence of foreign governments and businesses on the island, though in some respects the change was, in the opinion of some critics, a transfer from domination by one imperialist country to domination by another imperialist country.

The rise of the Marxist Soviet Union and “Communist China” in the early and mid-twentieth century was marked by what most observers saw as repression of opponents, serious problems in the distribution of agricultural products, bureaucratic control of scientific research, education, commerce and industry, the abolition of unofficial associations, and government control of print and broadcast media. Expressing “reactionary” views and the free exchange of ideas were not allowed.

The new governments were essentially oligarchies, and rules were made by bureaucrats and “commissars” who set goals, initiated public works, and enforced policies with little regard to the natural impulses of human beings and everyday market forces that guide progressive economies.

By removing the incentives that lead people to establish commercial businesses, and by suppressing the rights of ownership commonplace in “free” societies, Marxist removed key elements in successful wealth building and reduced the wealth of the socialist countries. This created a scarcity of goods and services to be distributed to the people. For outside observers in “free” countries, it seemed like, under communist socialism, life was less promising and liberties were sharply curtailed.

Since there was no freedom of expression in Marxist lands, those who spoke their minds and criticized the way things were run suffered a range of consequences from being ostracized from the workplace to spending the rest of their lives in Siberian prison camps doing slave labor. Others were made an example of in show trials and quickly executed. The “workers’ paradise” was generally devoid of human rights and basic liberties.

Utilitarianism, Libertarianism, Communitarianism, and Liberalism are all ways of managing countries. They are based on various forms of social contracts, and all allow for more or less liberty of thought, association, and choice; they all claim to revere the dignity of the individual and provide at least some form of benefit for all while ensuring that enough incentives are available to people to foster commerce and encourage individual or “community” enterprise and build the nation’s wealth.

Marxism and Socialism, on the other hand, when followed to the ‘ideal’ level of communism as practiced by anti-capitalistic regimes, produced many hardships for people and hindered personal and economic progress by repressing peoples’ natural tendencies and ignoring market dynamics.

The collapse of the Soviet Union and the gradual shift from a state-run economy to a more relaxed system allowing for personal property and wealth

building initiatives by individuals in China give ample evidence that Marxism is no longer regarded as a path to freedom and self fulfillment of individuals or of nations as a whole. Though the slogans of Marx are still heard, especially in universities and on the streets of capitalist countries, the largest and most powerful socialist states have largely set aside Marxism as a principle of justice.

Rawls's system of justice as fairness, which is his unique form of liberalism, is designed to avoid the difficulties socialist countries encountered, yet both Marx and Rawls share several values. Both agree that caring for the needs of the people, especially the less fortunate people, is very important. Both agree that stability is essential. Both want to take at least some of the liberties and wealth from the better off population to provide goods, services, and opportunities to the less well off. Both look upon all people as possessing dignity and value simply because they are human beings, though this is not one of Marxism's strengths, since any deviation from the party line might cost one his status as a free human being and the rights that go with it.

Where Rawls is not in agreement with Marx is in the way Marxism imposes the Marxist system on people. Historically, it has stripped too many liberties from the people. When it diminishes liberty by forbidding the ownership of property, it discourages upward mobility; by denying the well off of all their right ownership; by causing declines in commerce, it reduces the resources needed to support the welfare of the poorest and open up opportunities to those in lower social positions. It does not make the maximum benefits available to the least well off when it tries to give equal shares to everyone, and in practice, when the rulers are free from media scrutiny and academic criticism, they escape accountability for abuses they impose on others. In practice, the authority of officials goes unchallenged and the maximum benefits too

often go to the high ranking officials of the socialist state. People are without the freedom to gather together, express dissent, or make demands. They lack the guarantee of privacy and other essential rights.

Without the profits accruing from free enterprise, commercial banking, and world-wide trade, Marxist governments have had diminished their countries' wealth, and have had less financial resources to share with the populace, and life for many people has been difficult.

Had Marxist regimes observed Rawls's principle of Liberty, and his second principle, with its Maximin feature and Fair Opportunity, many errors would have been avoided and the fortunes of the Marxist nations and their people probably would have been better. On the grounds of equality, liberty, and the fair distribution of wealth, which are deeply valued by moral and reasonable people, Marxism, as practiced in the twentieth century, was burdened with self-imposed limitations and eventually failed economically. Had it been based on principles forged in Rawls's Original Position deliberations, resulting in a wise hypothetical contract, Marxism may have been more successful.

III.3. Libertarianism and Rawls's Theories of Justice

Libertarianism is a philosophy that views ownership of oneself at the highest value, and the freedom from government regulations and rules as a primary good. Regarding property, "In a free society, diverse persons control different resources, and new holdings arise out of the voluntary exchanges and actions of persons." (Nozick, Robert. *"Anarchy, State, and Utopia."* See Steven M. Cahn, ed. *Political Philosophy: The Essential Texts*. 2005, p496.) The right to hold property and do

whatever they wish with their persons or their property is absolute, until it threatens to limit others' liberties.

The concept of "holding property" is a primary issue with Nozick and the Libertarians. As Nozick puts it,

If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings.

1. A person who acquired a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquired a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
3. No one is entitled to a holding except by (repeated) applications of 1 and 2. (Nozick, Robert. *"Anarchy, State, and Utopia,"* p496.)

There is no mention of a government "holding" anything, or of a person receiving anything "free" from the government.

To the question, how does one acquire a right to something in the first place? Nozick and the Libertarians cite Locke's idea of ownership through personal labor invested in an object found in nature. Locke taught that if one applies labor to an unheld object, somehow his labor infuses the object with his ownership. Since the laborer owns the labor invested in the object, and the object and the labor are inseparable, the laborer owns the object. As Nozick mentions, "Locke views property rights in an unowned object as originating through someone's mixing his labor with it." (Nozick, Robert. *"Anarchy, State, and Utopia,"* p503.)

Locke and Nozick both hold that ownership depends on the history of the object. If the person who first owns it found it in nature, on unclaimed land, and invested work into it, it would be held legitimately. If he transferred it by gift or exchange to someone else, the receiver would own it. For Locke and Nozick, "People acquire goods justly from nature. They buy and sell them justly. When an injustice

occurs, they try to compensate for it.” (Bonevac, Daniel. *Today's Moral Issues: Classical and Contemporary Perspectives*. 2002, p418.)

Actually, Libertarians see the role of government as simply to protect individuals and the goods they hold from outside aggressors, and protect the people from fraud, violence, and crime within the country. Government would have no role to play in education, health care, and the matter of savings and pensions. It would assure that contracts are honored, and would regulate itself against expanding its own powers and interference in peoples' lives.

Government itself would not own or hold any goods except to perform its protective function, and people would hold or acquire goods in a simple manner:

The two principles of justice in holdings: The principle of justice in acquisition and the principle of justice in transfer. (p497)

The legitimate first “moves” are specified by the principle of justice in acquisition. Whatever arises from a just situation by just steps is itself just. The means of change specified by the principle of justice in transfer preserve justice. (p496) (Nozick, Robert. “*Anarchy, State, and Utopia*,” pp496-7.)

As a result of these beliefs, libertarians prefer to live by common law (a form of law based on what is commonly done without sanction of the government) and interpersonal agreements, rather than statutory law imposed by governments.

Libertarians hold that liberty means they should be allowed complete freedom to acquire and hold wealth by legitimate means. Where the government has no law forbidding something, the libertarians say it is a case of “negative liberty.” When laws allow people to do certain things, the libertarians says they have “positive liberty.”

Since wealth provides a person with more options in daily life, it extends liberty of the wealthy, and thus the less fortunate will never enjoy the degree of liberty enjoyed by the rich people living under any system of government. It is therefore

impossible to make liberty equal for everybody while allowing for differences in wealth.

Because government should not limit one's efforts to gain and hold money or property, it follows that any system that takes any of their money or property, even to build schools, pay teachers, and care for the sick or aged is unjust and illicit. Furthermore, if one works to earn money, and then his money is taken away to pay benefits to a less fortunate person, the wealthy person who worked hard and fairly to gain more liberty is forced to turn over to the government some of his gains, resulting in a form of involuntary servitude, or slavery, imposed by the government, for the sake of those who did not earn or hold enough to provide for themselves or their families.

These principles are the source of some of the criticisms that Robert Nozick (1938-2002) and others direct at Rawls, or any other liberal theorist who proposes distribution of "government" money, which is an illicit kind of money, or other goods and services, to the less well off. Nozick and his allies question the entire system that distributions entail, and thus they question the legitimacy of liberal governments.

They ask, are not the principles of Liberty and Difference in distribution opposed to one another? If one has more property or more benefits and services, does one not have more liberty? And if one has to be relieved of one's property or income to provide goods and services for the less advantaged in some kind of wealth distribution scheme, has one not surrendered some of one's liberty?

The two poles of criticism seem to say, "If we want to equalize liberty, must we not equalize wealth as well?" The other pole says, "If we are to maximize liberty for all, must we not remove all constraints on how one accumulates wealth, or how much wealth one may accumulate?"

By far the greatest challenge to Rawls's theory comes from Robert Nozick, who was a fellow professor with Rawls at Harvard. In his book, *Anarchy, State, and Utopia*, which was published in 1974, Nozick gave the libertarian answer to Rawls's *A Theory of Justice*, published three years earlier. Nozick was a top spokesmen and policy maker for the libertarians, and his main objections to Rawls are based on the libertarian's insistence on the ideal of maximum liberty for all. Carried to its logical extreme, it would create total anarchy, but as a disciplined philosophical system, it promises more freedom to everyone, ignoring Rawls's call for moderating liberty by limiting it with the qualifier, that liberty should be expanded until it begins to limit the liberty of others.

Nozick begins his attack on Rawls with taxonomy, distinguishing between two views of justice, the *end-state view*, and the *historical view*. (See Nozick, Robert. "Anarchy, State, and Utopia," pp495-499.) The *end-state view* takes a look at an existing system, such as an American-style free market with many elements of a welfare state, and makes a simple good-or-bad judgment of it, saying in effect, "This system is just," or "This system is very unjust."

The *historical view*, he explains, asks how things got the way they are, for example, "Where did these people get their money?" or "On what basis are resources allotted?" This sees the economy and the society as living, dynamic, and subject to change. He says,

In contrast to end-result [end-state] principles of justice, *historical principles* of justice hold that past circumstances or actions of people can create differential entitlements or different deserts to things. An injustice can be worked by moving from one distribution to another structurally identical one, for the second, in profile the same, may violate people's entitlements or deserts; it may not fit the actual history. (Nozick, Robert. "Anarchy, State, and Utopia," pp498-499.)

He subdivides the historical view of justice in two: *Unpatterned* and *Patterned*.

(See Nozick, Robert. "*Anarchy, State, and Utopia*," pp499-501.)

The *unpatterned* or "procedural" idea of justice views a society that has progressed due to the lawful building of wealth and power by people exercising their liberty and making the decisions and sacrifices necessary to follow proper procedures that produce wealth. This is the system Nozick likes. In this system, one builds wealth by following lawful procedures, without limit to how much wealth he can create, and without threat of the government seizing the wealth or a portion of it to distribute to others.

The *patterned* historical view of justice teaches that managing the distribution of wealth by following a principle like, "We will give the support of the nation (money) to each according to his . . ." and here various philosophers add *merit*, or *status*, or *need*, or some other characteristic or condition. Benefits would then sprinkle around in some kind of pattern, depending of the principle followed. This taking wealth from the wealthy and "redistributing" it on some statutory basis reflects the application of social philosophy or economic theory to affairs of the citizens, and uses some principle of distribution dictated by one's social or economic philosophy, politics, and so on. Nozick dislikes these "patterned theories" and he places Rawls's theory in this group. As he mentions,

Patterned Principles of distributive justice necessitate *redistributive* activities. The likelihood is small that any actual freely-arrived-at set of holdings fits a given pattern; and the likelihood is nil that it will continue to fit the pattern as people exchange and give. From the point of view of an entitlement theory, redistribution is a serious matter indeed, involving, as it does, the violation of people's rights. (An exception is those takings that fall under the principle of the rectification of injustices.) From other points of view, also, it is serious. (Nozick, Robert. "*Distributive Justice*." See Derek Matravers and Jon Pike, eds. *Debates in Contemporary Political Philosophy: An Anthology*. 2003, pp75-6.)

According to him, government simply has no right to create such limitations on the freedom of people to take care of themselves to whatever extent they wish, or are able to.

Regarding the concept of "entitlements," he says, "Things come into the world...already attached to people having entitlements over them," (Nozick. *"Anarchy, State, and Utopia,"* p501), but those who espouse the traditional historical entitlement conception treat objects as if they appeared from nowhere, out of nothing." (Nozick. *"Anarchy, State, and Utopia,"* p501.)

Creating a slogan in the tradition of Marx, Nozick parodies the view of those who advocate historical distributive justice this way:

From each according to what he chooses to do, to each according to what he makes for himself (perhaps with the contracted aid of others) and what others choose to do for him and choose to give him of what they've been given previously (under this maxim) and haven't yet expended or transferred. (Nozick. *"Anarchy, State, and Utopia,"* p501.)

He then says,

This, the discerning reader will have noticed, has its defects as a slogan. So as a summary and great simplification (and not as a maxim with any independent meaning) we have:

From each as they choose, to each as they are chosen. (Nozick. *"Anarchy, State, and Utopia,"* p501.)

Nozick dislikes patterned management by government because it violates the libertarians' two sacred values: Liberty from government meddling and the right to be master of one's own life. "To each according to his need" allows the government to decide what "need" means. Libertarians believe giving should be a voluntary matter, with an individual free to give or not give, and making the choice of what to give, how much to give, and to whom it is given. Nozick points out that,

The term "distributive justice" is not a neutral one...Into this process of distributing shares some error may have crept....we are not in the position

of children who have been given portions of pie by someone who now makes last minute adjustments to rectify careless cutting. There is no *central* distribution; no person or group entitled to control all the resources, jointly deciding how they are to be doled out. What each person gets, he gets from others who give to him in exchange for something, or as a gift. In a free society, diverse persons control different resources, and new holdings arise out of the voluntary exchanges and actions of persons. There is no more a distributing or distribution of shares than there is a distributing of mates in a society in which persons choose whom they shall marry. The total result is the product of many individual decisions which the different individuals involved are entitled to make. (Nozick. "*Anarchy, State, and Utopia*," pp495-6.)

Any scheme of distributive justice is artificial and contrary to the way people actually want to live, they believe. Nozick gives his famous "basketball story" (see Nozick. "*Anarchy, State, and Utopia*," p501) to illustrate how free people soon turn the "need" principle and attempts to establish "equality" into nonsense. It goes more or less like this: Let's suppose the government decides that every individual needs a least \$10,000 per year to live a decent life. Those who do not earn that much receive the balance from the government as a guaranteed minimum income. Now Nozick provides his basketball scenario where the distribution system breaks down and raises questions of liberty and freedom.

When everything has been distributed fairly, and everyone has at least \$10,000 per year, a famous basketball player, Wilt Chamberlain, arranges with his team to collect from every fan attending a home game a "gift" of \$0.25. When the season ends, a million people have dropped a quarter of a dollar into a special box at the entry to the gym, and thus Chamberlain is \$250,000 richer. Instead of receiving what he needs, he now has many times more than the standard \$10,000 he needs. This has thrown the whole "equality" system into chaos, but is it just? What's unjust about people freely giving twenty-five cents to their favorite player? Who is harmed by Chamberlain's sudden fortune? Under what form of justice is this called "wrong" or "unjust"?

Obviously, one major weakness of patterned wealth distribution is the ease with which it is manipulated or avoided by clever people, such as managers, economists, entrepreneurs, and speculators. No matter what pattern is "official," people will immediately disrupt it or corrupt it.

Furthermore, if the original distribution pattern, \$10,000 for everyone, is "just," and we call it "D₁," and the second pattern is named D₂, isn't D₂ also "just," though it is unequal? If people willingly, freely moved from D₁ to D₂, what if a D₃ and D₄ and D₅ emerge? If all the distribution systems are freely created by people exercising their liberty as managers or customers, does that not make *all* patterned distributions that develop legitimate? If they do, then, according to Nozick, the meaning of "justice" is ambiguous, and the whole system is meaningless. (See Nozick, Robert. "*Distributive Justice*," pp73-4.)

Nozick's next criticism of patterned distribution (and therefore of Rawls's philosophy) is that it is inconsistent with liberty, especially the broad liberty Rawls claims is a key part of his system. Enforcement of the redistribution of wealth limits people's basic right to own property and enjoy the fruits of their labor. Increasing taxes to provide higher benefits for *some* necessarily deprives the more fortunate of some of their liberty by abridging the better-off person's natural right to own and keep property. How is this justified? Besides being wrong because it lessens liberty, it is also bad for society as a whole, because it dampens initiative and lowers the incentive for high earnings.

This will eventually move the tax burden down to the middle income people. Manipulating the economy may make the *net* gain or loss zero temporarily, but if incentive is diminished, productivity and commerce can be expected to suffer, and

the country's total wealth will very likely be reduced. How does this provide more liberty for anyone?

Going a step further, Nozick explains that even under a radical, no-money system, people still need essential goods, and will doubtless receive them. Trade will develop between individuals, and sharp traders will turn a profit. Some will turn their extra pots and pans and furniture into machines to produce more goods, and thus small shops will emerge and people will find ways to trade without government money.

Thus, according to Libertarians, all patterns of wealth distribution presided over by governments will eventually fail.

Once patterns have broken down, they will have to be redesigned and once again enforced. Rawls would seem to have a hard time explaining how this can be done, except by lessening the liberty of the better-off.

Since Rawls makes liberty a top priority, more important than either opportunity or goods and services, it seems that his system involves internal contradictions, because the maximin distribution depends on a lessening of the wealth, and therefore the liberty, of the well-off.

While Nozick and the Libertarians are quite concerned that the government view their ownership of goods as legitimate and just, based on a history of ownership in which all people who owned things owned them legitimately, and transferred ownership of goods from others to themselves and vice versa legitimately, and thus what they now own is legitimately and justly held, and they have the liberty to enjoy their wealth.

On the contrary, Rawls is cautious in this respect, for he thinks that

Even though the initial stage may have been just, and subsequent social conditions may also have been just for some time, the accumulated results

of many separate and seemingly fair agreements entered into by individuals and associations are likely over an extended period to undermine the background conditions required for free and fair agreements. Very considerable wealth and property may accumulate in a few hands, and these concentrations are likely to undermine fair equality of opportunity, the fair value of the political liberties, and so on. The kind of limits and provisos that in Locke's view apply directly to the separate transactions of individuals and associations in the state of nature are not stringent enough to ensure that fair background conditions are maintained. (Rawls. *Justice as Fairness: A Restatement*, p53.)

This reflects the liberal aversion for monopolies, since small transactions worked out repeatedly and leading to a concentration of power in a small group of individuals can change the whole social system, empowering the owners with enough influence to actually skew the application of previously just principles to the advantage of the few with the most wealth.

Rawls answered Nozick's criticism of any distributive justice system that taxes the better-off citizen to obtain money that can then be distributed to the less well-off population as an attack on his liberty and a form of slavery by explaining that his "liberty" is not equally distributed to all, but is a device designed to allow people to exercise "basic liberties" such as freedom of speech and the right to run for office. Thus the Liberty principle does not apply to enforcement of the Difference or Fair Opportunity principles. He claims that moral, reasonable people will realize that some of the wealth of better-off people should support the government and the people as a whole, providing the necessary systems like roads, hospitals, schools, and security from internal and external threats. One threat his system avoids with the maximin system is instability arising from those who are less well-off and have no hope of a decent life and opportunities to advance.

Rawls further contends that financing the necessary government goods and services can be done in a "civilized" and "non-disruptive way," by imposing reasonable taxes. This does not satisfy those who agree with Nozick, since to them,

tampering with liberty is strictly forbidden, and cannot be done in a “civilized” or “non-disruptive way.”

Nozick continues his attack on Rawls, asking, suppose we consider the time one works, and one's taxes. If a person works 40 hours a week, and earns \$400 dollars, if he is taxed \$40 to pay the rent for an indigent person (who may or may not be capable of earning his own money), is this not the equivalent of working four hours as a 'slave' in 'forced labor'? How can this be reconciled with 'maximin liberty' or the lexical priority of liberty over patterned distribution of wealth? As he puts it,

Whether it is done through taxation on wages or on wages over a certain amount, or through seizure of profits, or through there being a big *social pot* so that it's not clear what is coming from where and what's going where, patterned principles of distributive justice involve appropriating the actions of other persons. Seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a *part-owner* of you; it gives them a property right in you. Just as having such partial control and power of decision, by right, over an animal or inanimate object would be to have a property right in it. (Nozick, Robert. “*Distributive Justice*,” p78.)

Rawls admits that taxation may force one person to work for another, but rejects the suggestion that it amounts to slavery. His supporters also assert that by increasing the income of the least fortunate, you increase their liberty, and therefore there is no net decrease in liberty. It appears that asking “Which system, Nozick's or Rawls's, advances liberty the most,” would require some way of measuring liberty, which seems impossible to quantify. Some observers of the philosophical debate between Rawls and Nozick feel that Nozick has not demonstrated that Rawls is truly self-contradictory in his principles of Liberty and Difference. The fact is, Rawls

seems to hold a more moderate position, and well-functioning governments seem to be following many of the principles he laid down.

In the fourth chapter of this work, we will examine the concept that unfairness toward weaker nations fuels terrorism and instability, and unbridled exploitation of the earth by interests in liberal democracies will, if left unchecked, create a tragic legacy of ugliness and a much diminished quality of life for all living things. If governments allow people to carry the Libertarian ideals to their logical extreme, such unfairness and the instability it causes, and the degradation of the planet Earth, will only escalate. In this respect Rawls's theory is far superior to Libertarianism.

Rawls's theory of justice does not promise a utopia. More importantly, unlike rival theories like Utilitarianism, Marxism, Libertarianism, and Communitarianism, it does not blindly accept one or two simple principles that lead eventually of instability or economic disaster or despair and rule by force. His system, if it does anything, takes into account the basic human instincts, human values, the feelings of all parties, and provides principles that follow a middle-of-the-road path of moderation, allowing for adjustments to be made (he calls the resulting balanced situation reflective equilibrium) while assuring that the economy remains strong. His system allows people broad liberty to exercise their natural instinct to gather wealth and advance in society, as laid out in his Liberty principle and Fair Opportunity principles, and he makes allowance for those who cannot or will not care for themselves, preventing the creation of a permanent underclass living indecent, miserable lives that may eventually lead to protests, riots, and even terrorism.

It is no wonder that where conditions are stable and advanced enough, and scarcity is not driving people into a desperate struggle for survival, the world's more fortunate nations are moving more and more into line with the capitalistic system that

seems to flourish under the Liberty principle, and moderate social welfare systems which closely resemble the patterned redistribution system implicit in Rawls's theory, with its Maximin and Fair Opportunity principles.

It is obvious that any government policy will, in some way, limit people's liberty. Rawls admitted this. To help rectify the negatives implicit in governance, Rawls added the principle of *difference* to his theory of justice. It recognizes that differences exist in regard to people's access to money, privilege, education, and status. Such *differences* in circumstances are to be managed so that they work to the advantage of the worst-off rather than those better off. Rawls thus promotes equal treatment of all whenever possible, but when differences dictate differential treatment, he insists that the differential treatment work to the advantage of the most disadvantaged. Thus unequal application of laws or distribution of benefits is not justified unless it works in favor of the poorest individuals.

There have been many criticisms of Rawls on the basis of his hypothetical contract, but by insisting on his two key principles, and both aspects of his second principle, he managed to become perhaps the most influential political philosopher in the world before his death in 2002, and by introducing a whole new method of considering the general agreement that underlies all democratic governments, he ushered in a new era in political thought.

One problem all sides have to deal with is, What about merit? The libertarians would like to have extra consideration because they work hard, and bring more wealth to the society. They naturally feel they should enjoy the fruits of their labor for they have merited them. On the other hand, there are those who say that someone who is born intelligent and ambitious and is fortunate enough to have a good support system and education did not acquire this by his own efforts, and therefore has not

merited the circumstances he was born into, and the poor neighbor who either cannot or will not work hard in a task that is highly valued by the community should not be blamed for his lack of prosperity, and should not be treated like he is without merit.

For Rawls, receiving good and services should be a right, not contingent of the accidents of birth or other fortuitous factors. As Dudley Knowles (2001) explains, the issue of merit, until we can clearly distinguish the idle from the unemployable, such things as hard work and social advancement should be treated as distractions rather than key considerations in the distribution of wealth.

This discussion has not elaborated on the strengths of libertarianism and its attractiveness that cause many energetic and intelligent people to accept it as their own philosophy. There seem to be two very attractive points libertarians believe in. The first concerns people's rights and responsibilities, and the other is concerned with the government's rights and responsibilities. Libertarians would like to have as much freedom from interference as possible as they carry out their legitimate plans to become wealthy. Libertarians are usually intelligent and ambitious individuals, and are therefore likely to acquire wealth, and their leadership qualities inspire others to work hard. This leads them onward to financial success, and lifts the enterprises they are associated with as well. If given enough liberty, they feel they are very likely to succeed.

They are used to providing for themselves, and see the government's responsibility is simply to protect the country from invasion from outside its borders and violence, crime, and fraud inside the borders. This can necessitate formation of a military force and various police forces or law enforcement agencies.

Some external threats arise from fraud that leads to the arrival of cheap and dangerous goods from foreign factories, and the arrival of indigent illegal aliens they

assume are coming into a developed nation to get government money in the form of welfare payments and free clinics and medicine, free public schools, and even food stamps, living quarters, and cash or coupons for purchasing necessities.

Libertarians hold that the government should allow factories and investment firms and all other enterprises, as well as businessmen, to function freely without interference from official "watchdogs." Not only should business do as they please, but the government should not participate in educating people, caring for the sick, or providing for people who have not saved their money for their old age. Freedom from interference, for libertarians, includes freedom to make mistakes, abuse one's own body, or do anything else regarding oneself and one's property as long as it does not lesson others' liberties. These principles are appealing to persons who are independent minded, ambitious, and possess self control and reasonable health.

However, when it comes to putting the theory into practice, there are few communities that would allow it. Many citizens would feel left out because they are from modest or low income families, have various disabilities, or spend a lot of time caring for children, their elderly relatives, and people in the community.

They lack the funds for private education and medical care, and want laws protecting people and animals. Moreover, considering libertarianism in general, three questions arise that may make it less acceptable than Rawls's liberalism, or any of the other philosophies of justice.

The first is concerned with the ancient concept that one's rights are to be proportional to one's duties, and vice versa. The old expression for the responsibility better off people has toward the less fortunate is "*Noblesse oblige*," or, "Nobility has its obligations." What duties to his fellow man does a libertarian have? If libertarians are going to get rich and seem like they are enjoying their wealth without any feeling

of compassion for the poor, it is likely to bring instability. The French Revolution resulted from a situation like that.

As the wealth of the libertarians increases, and little is done to assist those in need, this series of events is easy to foresee: A growing number begin to resort to desperate measures simply to survive, and crime increases. Libertarians allow the government to fight crime, but it is easy to see how police forces will be overwhelmed if widespread looting and stealing of food increase. This will mean more and more resentment against the government and demands for liberal reforms. In a democracy, change would follow, and the libertarians' liberties would be reduced to provide tax money to care for the poor. People would demand free schooling and hospitals. Eventually the libertarian principles would be eroded through the democratic process.

The second question concerns the common good. In a complex modern economy, both parents can work, and children are not a constant burden because once they reach school age, both parents will be free to hold jobs or practice professions. The sick can go to hospitals or be placed in long-term care provided by the government, and aged parents can live in nursing homes, freeing the younger generation to work and energize commerce. It seems unlikely that people preoccupied with getting more and more money, like a libertarian exercising his or her total liberty, could find time to consider how government supported schools, hospitals, and nursing homes help provide a solid domestic base for commerce, freeing working-age adults of both sexes to work outside the home and create a prosperous middle class. Such an arrangement cannot be assured of developing unless government is there to build and sustain the schools, hospitals, and nursing

homes that allow working people to contribute to the overall economy. The common good seems to demand government intervention. How can libertarians deal with this?

The third question that libertarians have a hard time answering deals with the simple human sense of compassion. Is everyone equally free just because they are human beings? If libertarians want all to be equally free to take care of themselves in the quest for life, liberty, and property, what will be done about people who suffer from a character flaw like impulsive gambling or excessive spending, or a mental handicap like dyslexia, that prevents them from learning enough to make a decent living, or a physical handicap, like spinal bifida, which keeps them wheelchair bound from birth? Who is going to provide for these people when they are unable to provide for themselves? Can all the liberty imaginable set them up to care for themselves all through life, and when they are advanced in age? Would humane people let these people lie on a sidewalk, homeless and hungry? Shouldn't some agencies be there to make sure their living conditions are perpetually decent? Shouldn't the better-off who can afford to help them be obliged by law to support special education, modest old age pensions, and medical assistance for those who could not or would not provide for themselves?

Relying on charity may have provided some help in Europe in the middle ages, when religious orders staffed the hospitals, but today's world demands care be sustained and of a decent quality. In Asia, age-old traditions required that the younger generations remain close to home and work together to care for their elders. There was little opportunity for women to work outside the home, and close family ties were honored in regard to education, care for the ill, and life-long care for the elders. As Asia becomes more commercialized and careers open up for women, these venerable traditions are challenged by the lure of the glamour and money found in

cities. When the younger generations follow the promise of freedom held out by libertarians, who will be left to care for the elderly? Freedom should not mean a person is free to ignore a fellow human being in need. How can libertarians solve this problem?

Rawls's theory can perhaps give us an alternate way to deal with the difficulties inherent in libertarian philosophy. It is not useful to simply criticize everyone but Rawls. Looking at his theory from the stand point of the other philosophies helps one evaluate Rawls more objectively. Libertarians are not wrong when they hope to limit the reach of government into all the aspects of one's life and one's work. Left unchecked, some governments have eventually taken control of every detail of life in the name of "the common good" or "human compassion," and set up more and more "safety nets" for those irresponsible people who neglect to live reasonable lives. Somewhere between the ideal of total personal freedom and the "tyranny of the masses" we may, with help from John Rawls, find a fair and reasonable set of principles everyone can accept. It is not a matter of cosmic proportions, but could well be a matter of life and death for many on earth as history continues to unfold.

III.4. Communitarianism and Rawls's Theories of Justice

There is an enormous amount of criticism of Rawls and liberalism in general coming from communitarian philosophers today. Some come from people with long-standing grievances against the status quo in North America, represented by feminists and African Americans in the name of communitarianism. We treat this elsewhere under a separate heading, *Feminism and Racial Minorities' Criticism of Rawls*. What started as an amorphous and unfocused movement is beginning to come together as

an organized block of people within the philosophical community, however, and in the name of various interest groups, such as the fundamental evangelical Christians, advocates of world government, environmental activists, animal rights advocates, and so on, they are becoming a perceived threat to liberal North American-style democracies by pushing their common agendas forward through the power of small, well organized, highly motivated groups of individuals.

Asian governments have responded to what they see as the threat of liberal democratic ideals, especially having to do with the idea of individual freedoms and the glorification of self that often arrives in the form of Western entertainment, including books, movies, videos, music, and general life styles of the affluent and free spirited people that make headlines in world newspapers with their extravagant behavior and icon-breaking attitudes. The thinkers in a number of Asian countries are speaking out against the spread of Western ideas, not only because they consider it intellectual or cultural imperialism, but also because Rawls "Original Position" involves the theoretical idea of individuals making choices while out of touch with their own identities and the social context of their lives. This challenges Asia's venerable traditions of ethnic and family identity, and the hierarchical rank seniority, wisdom, and learning provide.

In Asia, "breaking the face" of the established hierarchy is considered a grave matter and the individual who dares to go counter to tradition becomes a social outcast. Individuals outside of their social context are viewed as meaningless, like words uttered outside of the context of a sentence.

The fact that Rawls trusts imaginary individuals who have no awareness of their own identity or the meaning and value of the group they represent to make decisions that they and all their associates will have to accept and live with in the

hypothetical contract is almost unthinkable in the eyes of many traditional Asian cultures.

Communitarians' skepticism regarding the high value Rawls places on individualism emerged shortly after the publication of *A Theory of Justice* (1971). Charles Taylor, Alistair MacIntyre and Michael Walzer, all liberals, were therefore hailed as "communitarians" although they regretted that label. Michael Sandel is another academic communitarian, but he is not a liberal.

Today's best known spokesman for communitarian thought is Amitai Etzioni, a renowned professor and former advisor to U.S. President Jimmy Carter. He and his followers have organizational town hall meetings, conventions, and express their views on their Web site, www.communitarian.net in the United States, but the Communitarian movement is widespread in Europe and is a way of life in much of Africa and Asia. It is a powerful force in groups strongly attached to their beliefs and very much opposed to what they see is excessive liberty in sexual practices, such as abortion, and homosexual unions, free-trade agreements, unregulated borders, the movement to "federate" sovereign nations and make them subject to control by the United Nations, changes in traditional church policies, and so on. Fundamentalist Evangelical Churches, Charter Schools, Faith-Based Initiatives at public expense, certain environmental organizations, anti-gun control organizations, Right to Life groups, and self-appointed armed militia groups guarding the U.S. border with Mexico to prevent illegal immigration are just some of a very wide variety of groups have formed and seek to promote the communitarian conviction that too much individual liberty is bad and conservatism in politics is superior to liberalism. Those unfamiliar with these groups include many U.S. citizens as well as most other people

in the world, but they are becoming a factor in political arena in North America and groups with more local communitarian concerns can be found globally.

Communitarians strongly disagree with Libertarians over the place unregulated markets should occupy in international affairs. Communitarians see markets as a key social institution, and reject the idea that an international “free market” system is a desirable pattern for human commerce.

Communitarians promote distinctive values. Community itself, and its traditions, rank high in their estimation. They like to gather in town meetings and forums and debate and discuss the relative significance of various values in their particular society. They hold that no universal value index can be drawn up because value is dependent on the social context in which people live.

The major themes of communitarian thought have generated three important inferences, and Frazer (2000: 21-23) provides us with this overview:

1. Communitarians take issue with the idea that the individual has his own direct relationship with the state and with society, a popular theme of contemporary legal and political thought in North American, the UK, and Europe.

2. Communitarians in the United States argue for decentralization and the preservation of states' rights and local autonomy. In other countries, communitarians promote decentralization and local power.

3. In general, communitarians criticize the liberal and Rawlsian elevation of the individual to a status higher than the status of the group context in which the individual lives and in which he finds his meaning. Their shared ideas include these:

- One can only be fully human in social relationships because identity is a socially constituted, subjective concept.
- There is great importance in interdependence.
- Morality is a social phenomenon.

- Human life is enriched by affective and particularistic human relationships.
- Human relationships are properly rooted in history, tradition, custom, and habit.
- Relationships are not wholly rational, contractual, and instrumental, but are colored by emotion.
- Human groupings presume some special relationships and bonds in which all cannot share.
- Family relations are not simple friendships because they supersede relationships with strangers, fellow parishioners, and fellow countryman.
- Politics is more than an instrumental or contractual arrangement; rather it is a social order, a sharing of a moral consensus, depending on a vision of the good life for the whole, the common good, the public good, and the commonwealth where people share common purposes and common goals.
- Human life is enmeshed in numerous relationships that give individuals' lives meaning and direction, assign roles to play, determine responsibilities duties, and obligations.

All these concepts may conflict with an individual's narrow assessments of his or her self-interest; in the event of such conflicts between individual's self-interest and the good of the community, the community may come first, because the community is a relevant unit of moral analysis to which one's individual interests may need to be sacrificed; an individual is a living part of a larger living social whole, hence the common metaphor referring to the 'body politic;' individual rights cannot be placed before the common good.

What are the weaknesses of Rawls's theory in regard to the Communitarians?

Criticism of Rawls's liberal democratic theory of justice by intellectuals and East Asian writers is becoming a substantial movement and is drawing its many and very diverse proponents together with Web sites and conferences that have more and more focus. These attacks and the agendas of many of the more radical

Communitarian groups are even perceived as a threat to the constitution of the United States.

MacIntyre, Sandel, Taylor and Walzer, mentioned above, attack Rawls as favoring "atomism," explaining that Rawls places the individual (the atom) in a higher status than the human social group (the whole) to which the individual belongs. For example, Alasdair MacIntyre, who objects to being considered a "communitarian,"¹ and is more an Aristotelian and Thomist than a socialist, rejects Liberalism in general:

Even if Marxist characterizations of advanced capitalism are inadequate, the Marxist understanding of liberalism as ideological, as a deceiving and self-deceiving mask for certain social interests, remain compelling. Liberalism in the name of freedom imposes kind of unacknowledged domination, and one which in the long run tends to dissolve traditional human ties and to impoverish social and cultural relationships. Liberalism, while imposing through state power regimes that declare everyone free to pursue whatever they take to be their own good, deprives most people of the possibility of understanding their lives as a quest for the discovery and achievement of the good, especially by the way in which it attempts to discredit those traditional forms of human community within which this project has to be embodied. (MacIntyre, A. "An Interview with Giovanna Borradori." See Kelvin Knight, ed. *The MacIntyre Reader*. 1998, p258.)

Sandel finds the deliberators in Rawls's Original Position "wholly without character, without moral depth" (Sandel, Michael. "*Liberalism and the Limits of Justice*." See Derek Matravers and Jon Pike, eds. *Debates in Contemporary Political Philosophy: An Anthology*. 2003, p155) due to the constraints of the Veil of Ignorance. To Sandel, one's concept of justice includes "obligations I voluntarily incur and the 'natural duties' I owe to human beings as such." (Sandel, Michael. "*Liberalism and the Limits of Justice*," p155.)

¹ "[S]everal commentators have mistakenly assimilated my views to those of contemporary communitarianism." (MacIntyre, A. "Politics, Philosophy and the Common Good." Kelvin Knight (ed). *The MacIntyre Reader*. USA: University of Notre Dame Press. 1998, p235.)

According to Taylor, too many Liberals are individualistic, or “atomistic,” as opposed to holists, and every political society “required some sacrifices and demands some disciplines from its members,” (Derek Matravers and Jon Pike, eds. *Debates in Contemporary Political Philosophy: An Anthology*. 2003, p138), and without such holistic values, perhaps individual liberals pursuing their own concept of the good will not make the sacrifices necessary to achieve the common good.

Though these and other critics do not seem to have produced a total manifesto that can rival *A Theory of Justice* as a stand-alone Grand Communitarian theory, they have served as prestigious critics of the undue individualism they think weakens Rawls's philosophy.

Rawls's vision of his theory as being a kind of milestone marking the starting point of a whole new view of justice irritated his academic critics, who considered it far from a universal system. Though Rawls saw it as perhaps “eternal” because it is free from the particulars of times and places, others see it as too abstract and impractical, since humans live in time and space, and each time and space is unique, and each decade seems to imprint all those living during that period with the characteristics unique to that historical time in that particular place. This means social groups of individuals living in the middle ages might have been illiterate serfs, tilling the soil, and their descendents in the current century might be professors or astronauts. Could or should any system of justice made in 1210 remain a relevant force in 2010?

They pointed out that concepts of justice vary widely around the world, and even within ethnic groups in a single society. In most of the world current conditions and historical realities make it impossible to use the Original Position tactic to arrive at the same principles *A Theory of Justice* describes in the United States in 1971.

A major debate continues to rage over the status of the individual in society. The typical Western icon of the “rugged individualist” or “self-made man” is irreconcilable with many cultures’ values. In Asia, one who sets out on an individualistic path may be seen as “breaking the face” of his elders and be considered an outcast rather than a hero.

Politics and economics require hard choices, where individual rights are considered of less importance than the common good. Indeed, in some cultures in Asia the idea of individual rights is incomprehensible. Matters of community welfare, for example, the rights of individuals to join labor unions, may be unpopular in a country that is desperately trying to use its large, low-cost labor pool as bait to lure foreign investors to speed the build up of the industrial base of the country. Free trade agreements usually depend on understandings about the amount of influence the member governments have over their work forces. Where workers number in the thousands of millions, too much individual freedom is seen as an intolerable invitation to chaos.

Rawls himself, in his later writings like *Political Liberalism*, (1993), *The Law of Peoples* (1999) and *Justice as Fairness: A Restatement* (2001), concedes that his theory is not applicable to all societies and depends on certain preconditions in order to work.

With reference to the Original Position, societies such as Thailand are not a good fit, for individuals, even imaginary ones, do not go into deliberations about principles, and rationalizing about how things might be done differently is not a familiar process. To apply Rawls’s principles, participants must value their own liberty more than they value their identity in their community. This is not acceptable in Thailand.

Many, or even most societies, reject the idea of elevating the individual to the status given under American law. Thus, it is understandable that even suggesting such a radical idea can be seen as an insulting and patronizing example of cultural imperialism and American ignorance.

What are the weaknesses of communitarianism?

Communitarians do not seem to have one single iconic figure comparable to Rawls at the current time. Amitai Etzioni certainly had the credentials as a scholar and an organizer, but he lacks the wide appeal Rawls has enjoyed. Some Communitarians seem to be so entrenched in preserving and benefiting their own group that they resist cooperating when their government tries to enforce liberal values through public schooling, welfare reform laws, and limits on the political activities of non-for-profit tax exempt associations such as religious congregations and fraternal organizations, to mention a few possible examples. If these efforts fail, frustration can conceivably lead the groups to attempt a take-over at least a small, local segment the government by using various ways of getting their people to run for office or support candidates who will agree to accept the group's special demands.

Using social pressure, Communitarians tend to limit the freedom of some of their members, particularly the young or more non-conformist persons who express the determination to leave the group or act in ways the group opposes.

Others continually work to have the government support their groups with government money, or offer tax incentives for those private enterprises or individuals who donate money, goods, or services to their group. This threatens to become yet another case where special interests manage to tap the public treasury for their own benefit.

Communitarians are not a cohesive group because people who claim to be communitarians hold many beliefs on a vast and even contradictory array of subjects, and instances can be found where one communitarian endorses principles which are contradictory to another communitarian's principles. What they all have in common is the belief that people are products of a community which shares such deep values that everyone in the group is so intimately associated with their group that to act outside the culture of the group is virtually impossible. One who would accomplish a break and think for himself would become some kind of outcast. Then, if one did somehow act differently from the group or "community," it would still not be possible for the person to be totally free of the community influence and make unbiased and impartial decisions. Sooner or later, they believe, the individual will revert to his community type or identity, and behave once again as a true member of the community.

Slogans like "It takes a village to raise a child" reflect a communitarian attitude. The child, of course, would forever be a product of the village, and would retain this identity forever. This belief leads communitarians to reject Rawls's original position from its first concept to its last on the grounds that no member of their community could possibly act under a veil of ignorance strong enough to prevent him or her from knowing or feeling his or her real identity as a group member, and such a condition is basically impossible because people always act as members of or under the influence of their particular community group.

This blanket rejection of Rawls's original position seems unjustified. First, it ignores the power of the mind to imagine hypothetical situations where one's ethnicity or group identity can be forgotten temporarily in order to perform a kind of

thought experiment. Why ethnicity should prevent the normal functions of the human mind is not clear.

Second, it implies that in everything one does, some element of bias or partiality is bound to be evident. If this is true, how could a person be a part of a jury, a panel of investigators, an expert witness, a judge, or even a school teacher or a school bus driver? If we are incapable of setting aside our own feelings or impulses and making fair decisions, society as we understand it is impossible.

Also, if a certain percentage of members of a particular community have a marked propensity for antisocial behavior, do all its members show this propensity? If some are remarkably pious and kind, wouldn't that mean all must be pious and kind?

Third, under communitarian principles, the concepts of liberty and rights are very limited and seem not to have much meaning, because, if it is true that no one in the community is actually a free agent, then all are bound by the rules of the community, no matter what that entails. So how can they enjoy personal liberty or freedom?

Fourth and final: Communitarianism makes sweeping and seemingly indefensible generalizations. Logic requires more discipline than some communitarians practice. Nearly every generalization runs into an exception, and that brings into question the entire basis of the communitarian belief, which holds that "everyone" in a group will act or must act the same in a particular situation.

Final Assessment of John Rawls's Work:

A brief look back at Rawls's moderate policies confirms that they spring from his unique Original Position and result in his hypothetical contract which reveals principles that are observed in smooth-running, stable countries that have a good

economic system that encourages wealth building and protects the weakest and least fortunate. These countries are able to maintain a balance between liberty and a well-managed distribution of goods and services that moral and reasonable people accept in real life.

It seems that the closer a country is to the Rawls's pattern, the better life people in that country can live. If the communitarians have their way, it is hard to think of how they could provide moral and reasonable individuals, free of bias and impartial, who form a social contract or a hypothetical contract that would allow for liberty and be the ground where fair commercial practices could flourish. It is hard to see how peace could be maintained among a diversity of "communities" living within the borders of any country where a variety of beliefs and practices are allowed. So, in the case of Rawls versus the communitarians, as in the cases of Rawls versus the utilitarians, socialists, and libertarians, the moderate and reasonable principles he champions prove more productive, fairer, and more humane than the principles of his critics.

Finally, radical communitarians are seen as a threat to established constitutional systems, and therefore a threat to Rawls's home territory. A look at a few Communitarian and Anti-Communitarian Web sites is very informative, because they attempt to explain the philosophy and appeal for support, or they examine communitarian threats from around the world that seem like they favor condemning the United States to the rubbish heap of history. It is hard to believe how some of the sites continue to draw visitors, but they do.

However one should note that, just as it is wrong for some communitarians to reject all liberals and all liberal values, it is also wrong for liberals to condemn all communitarians and their values. The insistence of Rawls on "overlapping

consensus” assumes his followers have enough respect for those with other beliefs that all can coexist. The idea that individuals draw their meaning and identity from their personal communities seems perfectly valid when evaluated by liberals and those deliberators in his “Original Position” process. Though adherents of both views sometimes issue warning that the other side is about to bring ruin to everyone, these alarmist views are by no means held by everyone on either side.

What are the strengths of communitarianism?

There is much strength in Communitarianism. It is much richer in meaning and emotion than the abstract rational idea of a group of disembodied “individuals” described by Rawls in the Original Position, operating ignorant of the social group which has defined them and shaped their values and their sense of right and wrong.

Communitarianism looks at a human being in a social context which establishes his or her status, role, and value in relationship to others. It presents the person in a context which involves his or her rights (what one may do) and one's duties (what one should do) and the sanctions that apply if he or she fails to live up to his or her duty, and the rewards good behavior merits. This is how people really exist and manage to live meaningful lives.

Communitarians place people in their roles with relationships that provide emotional support, motivation, understanding, companionship, brotherhood, and other essentials for a full life. They provide common sense solutions to problems of choice, such as “Who should get the heart transplant?” and “Do you have the right to display art that is offensive to people in your community for the sake of your individual liberty?” or “Should a student newspaper be allowed to print an exposé that embarrasses a professor and his wife?”

On what issues do Rawls's theory and the Communitarians' agree?

There are many strengths in Rawls's theory that communitarians should listen to. Rawls acted like a gentleman when he responded to three feminist critics and expressed his understanding of the special needs of women, and he included a new section in his book, *The Law of Peoples* (1999) in which he specifically lists the family community as a major part of the social system. He cited his three critics in a lengthy footnote, and expressed his appreciation for their feedback to his earlier writings. He no doubt was moved by the plight of those who are most needy, for he places special emphasis on their welfare in his Difference principle. Communitarians, with their sense of the oneness of humankind and their appreciation of the special responsibilities family life places on women, fully support anything that improves family relationships, and cares for the indigent. Rawls, like communitarians in general, displays sympathetic concern for these two high-value communitarian issues. In seeking equal opportunity and mandating respect for people's liberty, Rawls is again in line with communitarian values, though he tends to speak about individuals instead of groups. Rawls understands that different "comprehensive systems" (like families, religious groups, and so on) present their own view of the world and their own version of moral values, and his concerns about securing an "overlapping consensus" about how people should exist and the necessity for tolerance to other "comprehensive systems" by all groups demonstrates that Rawls shares more than one or two communitarian values. His whole system is intended to establish peace, good order, and prosperity where an entire people can share common expectations and common benefits based on reason alone. This drive to create a peaceful and decent society free from rancor and the instability unfairness breeds would seem to merit at least some appreciation on the part of those communitarians

who are so anxious that their group gets the respect it merits, and enjoys the security of a well-ordered land.

Rawls's philosophy appeals to many liberal intellectuals who read and write philosophy books and appear on talk radio and on television, and thereby influence public opinion through the media; he inspires university professors of law and political science to create courses and write books and articles about his concept of justice as fairness. His followers educate those who advise lawmakers and other government figures about public policy, or become members of the government through free elections, recruitment, or appointment. Thus Rawls's ideas have become very influential in the government of the United States, and in dozens of countries where universities have used his books as textbooks and reference books. Society as a whole has profited from studying Rawls theories as governments and non-governmental agencies have experimented to find ways some of his ideas could be implemented.

III.5. Feminist Criticism of Rawls's Theory of Justice

Feminism is not a single theory; it has various types such as liberal feminists, radical feminists, Marxist feminists, religious feminists, and so on. Even though there are various forms, feminism is generally seen as the doctrine that seeks equality of women with men. This movement for political, social, and educational equality of women began during the Enlightenment with the development of liberalism expressed by Mary Wollstonecraft's *Vindication of the Rights of Women* (1792), Harriet Taylor's "Enfranchisement of Women" (1851), John Stuart Mill's *The Subjection of Women* (1861), and Helen Taylor's *The Claim of Englishwomen to the Suffrage Constitutionally Considered* (1867).

In the eighteenth century the movement grew in Europe and the United States, part of the general development of liberal humanism. In the Industrial Revolution, feminist issues included the cruel workshops that imposed heavy burdens, long hours, and low wages on women workers, and the issue of women's right to vote. Since then, equal access to employment at all levels, education, and issues dealing with child care, contraception, and abortion, "head of household" status, and freedom from and redress for sexual harassment in the workplace have become major rallying points for feminists. Ideas such as personhood, autonomy, rights, dignity, and self-respect are found repeatedly in both liberal literature and feminist writing.

In recent decades, feminists have criticized liberalism, and some have totally rejected it, even though feminism itself developed as an integral part of liberalism. For example, since Alison Jaggar's *Feminist Politics and Human Nature* (1983), some influential feminists have rejected liberalism in general and Rawls's form of liberalism in particular as a viable thought process for reaching an acceptable philosophy of justice. According to them, there are three problems found in liberalism and in Rawls's theory,

1. It is too individualistic, that is, it does not deal adequately with the importance of community and collective social entities, such as families, groups, and classes and unfairly subordinates their value to individual values.
2. Its ideal of equality is too abstract and formal, that is, it lacks the dimension of reality because it does not deal in the actual workings of political or social power and the complexity of real-life social situations.
3. It is too concerned with reasoning and mental processes and ignores the power of human emotions, especially those aroused in care giving and living a moral and political life. (See Nussbaum, Martha C. *Sex and Social Justice*. 1999, pp58-9.)

Both feminists and ethnic minority advocates fault current models of liberal distributive justice on the grounds that the concept of personhood, which allows one to become a moral agent and a free and equal person, must be grounded a systems

matrix. Personhood, moral values, and social skills lead to a sense of identity, and they are formed within a family and group context. Systems of distributive justice have so far failed to work out a system that protects the young family members, as well as the mothers and other females, adequately.

By ignoring the huge responsibility a woman bears in the conception, carrying, birthing, nurturing, and supporting children, and the unfair way men can avoid sharing the responsibilities of parenting and supporting a wife and a mother, and by passively accepting the unfairness of current family conditions, liberals like Rawls and Nozick and the various liberal utilitarians, are perpetuating an unfair system.

If, as feminists believe, this results from the fact that most moral and political philosophers are males, living lives far from the unfair realities everyday women live with, it will take an entirely new social contract drawn up by moral, reasonable men *and women*, to bring about justice that is truly fair.

One more criticism offered by feminists is, distributive schemes and equal opportunity strategies fail to address the different kinds of needs a man may have and a woman, wife, and mother may have. What goods and services to provide and in what timeframes to provide them, and in what measure remain unsolved puzzles that demand solutions so that women can truly benefit in a way that meets their special requirements.

Feminists have criticized Rawls's *A Theory of Justice* and other works for slighting the females of the population by lumping them into the general population, so that the distribution of benefits and freedoms is not adequate to meet their special needs. Women, they point out, bear more burdens due to their responsibilities for others, children, grandparents, and so on, than men do. The following is a brief look at some leading feminist thinkers who criticize Rawls's theory.

Susan Moller Okin (1946-2004) in her book, *Justice, Gender, and the Family* (1989), examines the way a welfare-based liberal system would support a gender-free society. Okin doubts that such an arrangement would be fair. She notes that Rawls failed to apply the original position strategy to family issues, and speculates on whether the original position could be used by most (male) liberal philosophers to deal with family structures and dynamics, since the male-dominated society we live in makes objective and gender-free thinking impossible. She claims that Rawls's principles of justice "would seem to require a radical rethinking not only of the division of labor within families but also of all the nonfamily institutions that assume it," and "the abolition of gender seems essential for the fulfillment of Rawls's criterion of political justice." (Okin, Susan Moller, *Justice, Gender, and the Family*. 1989, p104.)

According to Okin, Rawls writes from a male perspective that wrongly assumes that the institution of the U.S.-style nuclear 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, and then grow up to replicate those ideas as adults. If a theory of justice is to be complete, Okin asserts, it must include women and it must address the gender inequalities she believes are prevalent in modern-day families.

According to Karen Green in her article, *Rawls, Women and the Priority of Liberty*, (see Green, Karen, "Rawls, Women and the Priority of Liberty," pp135-145, quoted from Chandran Kukathas, ed. *John Rawls: Critical Assessments of Leading Political Philosophers*." Volume III. 2003), Rawls's assumption is that all the reasonable, moral people who meet in the Original Condition are actually men, because their concerns are those of traditional male-dominated liberalism. Nowhere is

the issue of the physical limitation of women, particularly in pre-technical societies, dealt with. Marriage, which is perhaps the primary concern of a majority of women, is not mentioned among the important institutions of society, and Rawls considers it a matter of private morality rather than a defining element in the structure of society. [Rawls expanded his treatment of family issues in *The Law of Peoples* in the same year he issued his second English edition of *A Theory of Justice*.]

Green sees this male orientation in the hypothetical contract, and agrees with other critics who insist there must be a general re-working of the Theory of Justice as Fairness to create a more equitable division of labor and responsibility with reference to women's child-rearing and household obligations, right of self-determination and sexual liberty.

Since the advent of birth control, the availability of abortions, and the general acceptance of small families and even childless families, and the greater educational and commercial opportunities available to women, the playing field on which men and women operate has been leveled substantially, yet from a feminist point of view, without fair representation in the deliberations leading to the hypothetical contract, there will forever be unfairness in the ultimate arrangement.

Going back to the founding texts of liberalism, Green finds that they are filled with patriarchy, not in government, but in the family lives of the authors. This same bias Green senses runs throughout Rawls's work. Feminist writings are filled with the conviction that,

The distinction between the public sphere, in which actions are to be governed by principles of justice appropriate for regulating the affairs of equal rational individuals and the private sphere, governed by love and relations of natural subordination and super ordination, is an intrinsic feature of liberal thought. If this is the case, then feminists need to go beyond liberalism. . . .(136)

Only a situation in which fathers accept that they have a prima facie duty to limit their liberty to pursue goals other than the care of their children, to exactly the same extent as their wives, would conform to thoroughly liberal principles of justice.

. . . Most high status positions in modern liberal societies . . . carry with them duties which can only be fulfilled by individuals who are [free from having to care for children.](143) (Green, Karen, "*Rawls, Women and the Priority of Liberty*," pp136, 143).

This would change if men would be compelled to take an equal share in child rearing. It is clear that issues like this must be resolved before the more demanding feminists are satisfied, and so far, no modern, liberal democracy seems ready accept a president or prime minister or other high official doing child care on duty time. It is hard to imagine a world where such matters will be controlled by public policy.

Nonetheless, Karen Green feels that liberalism, when finally "shorn of its public/private distinction [in family matters] which has heretofore hindered the application of liberal principles to the question of justice within the family, remains a sturdy foundation for thoroughgoing feminist action." (Green, Karen, "*Rawls, Women and the Priority of Liberty*," p145.)

Martha Nussbaum (1947--), in *Sex and Social Justice* (New York, Oxford University Press, 1999), celebrates the emergence of leading women writers in India and the Sudan, and the general world-wide advent of women as a political and intellectual force, and criticizes Rawls for not specifically dealing with feminist concerns in his 1971 book.

Alison Jaggar (1942--), an influential feminist philosopher, in her book, *Feminist Politics and Human Nature*, points to the very nature of liberal thought processes as a limiting factor in the original position as described by Rawls. Being unaware of who one is and even one's gender may be useful up to a point in providing objectivity and ruling out bias, but the experiences of a woman in a gender-biased

world where opportunity has always been linked to gender is ignored, and thus the imaginary agents in the deliberations leading to the hypothetical contract seem to be operating ignorant of real experiences that women live with. In other words, although they are imaginary, they are still men, rather than women.

Jaggar argues that “the liberal conception of human nature and of political philosophy cannot constitute the philosophical foundation for an adequate theory of women’s liberation.” (Jaggar, Alison. *Feminist Politics and Human Nature*.1983, repr.1988. pp47-8.) In general, Jaggar finds liberalism is too individualistic, and puts the individual superior to the context that s/he belongs to. Jaggar criticizes the liberal concept that,

Logically if not empirically, human individuals could exist outside a social context; their essential characteristics, their needs and interests, their capacities and desires, are given independently of their social context and are not created or even fundamentally altered by that context. (Jaggar, Alison. *Feminist Politics and Human Nature*, p29.)

Jaggar presses on to say that this liberal “metaphysical assumption” means that every “human individual has desires, interests, etc. that in principle can be fulfilled quite separately from the desire and interests of other people.” (Jaggar, Alison. *Feminist Politics and Human Nature*, p30.)

Furthermore, such an assumption amounts to “political solipsism, the assumption that human individuals are essentially self-sufficient entities.” (Jaggar, Alison. *Feminist Politics and Human Nature*, p40.) If this is true, then liberals see “community and cooperation. . . as phenomena whose existence and even possibility is puzzling. . . [or] impossible.” (Jaggar. *Feminist Politics and Human Nature*, p41.)

If viewed this way, liberalism is akin to *egoism* and *normative self-sufficiency*, according to Nussbaum. (See Nussbaum, Martha C. *Sex and Social Justice*, p59.) Psychological *egoism* is the belief that all human motivation is based on self-interest.

Such a belief would be foreign to cooperation and community. If such motivations are paramount in liberal thought, then liberalism is also close to the philosophy of *normative ethical egoism*, which holds that it is always best to promote the satisfaction of one's own desires. This seems hard to reconcile with the body of Rawlsian and even Utilitarian literature, for, as Nussbaum concludes, "[B]y Jagger's own account, [Utilitarian and Rawlsian thinkers] aim at satisfying *everyone's* interests, not just the interests of a single agent. This would seem to make them far from egoistic." (Nussbaum, Martha C. *Sex and Social Justice*, p59.)

In short, on their own part, some feminists carry on the work of modifying the distributive principles to make them responsive to the needs of women and to the fact that women spend less of their lifetimes in the market economy than men do, while others attempt to create a whole new system, or at least describe the prerequisites for such a system.

Because individual feminists represent a wide range of political philosophies, the solutions individual feminists propose vary greatly, and their individual assessment of gender related issues and the means by which they would assure better treatment of women vary widely as a result. Their one unifying theme is that, as women, they have experienced the way gender is treated by various governments, agencies, and social groups, and the effect traditional personal and cultural beliefs and practices impact the welfare and freedom of women.

Concern about distributive justice is most often found in the domain of the liberal democracies that have emerged in the last two centuries. It is within this setting that feminism has developed and found a voice. Feminist critiques and demands for change are best understood as outgrowths of the general movement toward more liberal forms of government.

The Subjugation of Women (1869) by John Stuart Mill is cited as perhaps the most powerful critique of the way young democracies were structuring themselves and dealing with the question of distribution of basic benefits. It was one of the first feminist publications and is still an influence on contemporary feminists.

Mill was adamant in declaring that women deserved political status equal to that of males. Both Rawls and Mill rejected privileges based on accidents of birth and stood up for women's equal rights in education and business. Their liberty should include the right to own property and the right to be head of a household. They should have the same freedom to participate in politics as men. Current feminists continue to argue for equal protection under the law. No government should prevent women from competing on equal terms with men in political matter, business, the professions, and education.

Compared to more aggressive feminists, the liberal feminist's position is rather conservative and even today few high achieving women are serving as models for the whole world.

It may be very dangerous for feminists to attack liberalism in general, because liberalism takes many forms and supports many theories which represent diverse ideas and standpoints. Early liberal works by Rousseau, Hume, Adam Smith, and others express several varieties of liberalism, and current liberalism spans the spectrum from libertarian ideas represented by Nozick to Rawls's theory of justice as fairness, which, Rawls admits owes much to Kant. While the feminists accurately point out the male bias that underlies much liberal thought, they seem to risk destroying their own roots when they attack liberalism itself. Male liberals should not dismiss or ignore the voices of feminism, because the basic demands of feminists are simply extensions of the principles liberalism has always stood for, such as equality

and liberty for all, men and women alike. Feminism is a child of liberalism, and liberalism must not ignore the needs of its child.

Although Rawls's theory is not accepted by everyone, it is impossible to ignore the conditions under which his book appeared, and the changes that have come about since then. Courses explaining Rawls's theory and articles and books discussing it abound. Basic changes in legal, political, and moral practices since 1971 often parallel Rawls's vision of justice. Though it is impossible to establish a direct causative link between this or that passage in *A Theory of Justice* and a particular piece of legislation or a specific policy change, it has to be more than simple coincidence that a world-wide shift toward liberty and fairness can be traced back to the time of its publication.

It has been said that Rawls neglects injustices suffered by individuals within the family. In "The Idea of Public Reason Revisited," found in his *The Law of Peoples*, 156-164, part 5, Rawls inserted "On the Family as Part of the Basic Structure," where he graciously accepts Susan Okin's criticisms, and addresses all his remarks to family issues, and in a lengthy footnote on page 157, he cites the publications of Okin, McClain, and Nussbaum, and says, "I have gained much from their writing."

It may be said, too, that he considers the American style nuclear family a kind of natural unit, ignoring the way laws and customs have imposed various burdens on households that deviate from the American mom-dad-kids family structure. Home arrangements in other countries, like France, grant people the right to form a household for the purposes of taxation and inheritance, even if they are not married partners, or not even sexual partners. For example a household may be formed by two or more siblings. Sexual relationships, involving same-sex or heterosexual couples are

accommodated by tax laws and other legislation. This makes it easy for living partners to exercise the right to make hospital visits to household members regardless of how the union is structured. Generally, traditional married couples are still given a priority in the area of adoption. Perhaps such arrangement, once promoted by enough advocates, can be adopted into Rawls's system, though they are not part of it currently.

In his *The Law of Peoples*, Rawls describes the causes of immigration problems, and names inequality and the subjugation of women as one of the causes. It gives him the chance to restate his position on the condition of women in a just society.

[P]opulation pressure [is found] in the home territory and among its complex of causes is the inequality and subjection of women. Once that inequality and subjection are overcome, and women are granted equal political participation with men and assured education, these problems can be resolved. Thus religious freedom and liberty of conscience, political freedom and constitutional liberties, and equal justice for women are fundamental aspects of sound social police for a realistic utopia. . . (Rawls, *The Law of Peoples*, 1999, p9).

With regard to a woman's reproductive freedom, especially regarding the question of abortion, he writes, in *Justice as Fairness: A Restatement*:

If we accept the idea of public reason we should try to identify political values that may indicate how this [abortion] question can be settled, or a settlement approached. I have in mind such values as the following: That public law show an appropriate respect for human life, that it properly regulate the institutions through which society reproduces itself over time, that it secure the full equality of women, and finally, that it conform to the requirements of public reason itself, which, for example, bar theological and other comprehensive doctrines from deciding the case. (Rawls. *Justice as Fairness: A Restatement*. 2001, p117.)

Though Rawls's views reflect the kind of life he lived, a comfortable life within the ivied walls of elite schools, as head of a nuclear family, he did indicate that he would favor giving a wife who provided years of household service to a working

husband claim to half of his income in case of divorce. It seems Rawls's was anything but hard hearted or biased against women; instead, his well-known shy nature may have shielded him from the harsh realities faced by women and ethnic, especially racial, minorities even in a liberal community.

Critic Annette Baier finds Rawls "patriarchal," yet reminds her readers that much of the philosophy and rhetoric used by feminists is just a rephrasing of the calls for freedom, equality, and human dignity voiced by many men in the long struggle for human progress. She seems to view the writings of Rawls and other "patriarchal" figures that fail to address women's issues, or who address them as afterthoughts, as notable historic artifacts and simply an early element of the steady evolution of progressive thought. She urges her readers not to be wholly ungrateful, for although the writings "were undoubtedly patriarchal...they also contained the seeds of the challenge, or antidote, to this patriarchal poison." (Annette Baier, *"The Need for More than Justice,"* see Barbara MacKinnon, ed. *Ethics Theory and Contemporary Issues*. 2001, p124.)

III.6. Ethnic Minority Criticism on Rawls's Theory

Rawls's theory of justice is criticized by members of race-based minority groups for not allowing the imaginary people in the original position enough self-knowledge to be able to defend themselves against bias in the form of racism or ethnic discrimination, nor introduce into the hypothetical contract remediation of injuries, losses, or emotional distress. One may assume by this they refer especially to members of their own minority group.

At the same time that they insist that "others" must be totally unbiased, which under Rawls's system means the others must be free from knowledge of their class so

they may produce a fair contract. These critics explain that members of their minority should somehow have a weakened veil of ignorance, so that they can recall enough of the hurts and unfairness they have experienced that they can set up things to their advantage. They must also know that when they return to reality, they will still be in the same minority group they were consciously promoting and defending while allegedly under their specially constructed veil of ignorance.

It is a fact of history that just as liberalism has opened doors and inspired the abolition of slavery, it has also imperiled the cultures of the people within the minority population, who inevitably see their young members assimilating the attitudes and culture of the larger society in the natural process of absorption. This process usually results in older, more traditional members of the minority being marginalized as years pass and more and more new ideas and values are adopted by each successive generation. Italian, Irish, Chinese and African American immigrants experienced this phenomenon, and eventually came into equilibrium with the larger society. Martin Luther King, Jr., comes to mind, for example.

Kevin M. Graham, in his *The Political Significance of Social Identity: A Critique of Rawls's Theory of Agency* (2000), claims that in some cases the African American culture is in danger of disappearing, and that would be an "irreplaceable loss" to certain people, because it is the only context in which some individuals can make life choices, because their self-image and self-esteem developed in the African American ethnic-racial culture, and outside of it, they lose much of their understanding of the world and of themselves.

Graham puts the burden of perpetuating a culture on the shoulders of all the members of society at large, urging that the government protect the precious heritage by means of, perhaps, setting aside special areas of the country as domains for the

members of the minority, and allowing them self-government similar to that enjoyed by Native American tribes. He says,

Examples of special protections that might be provided for members of threatened minority cultures include the right to some form of self-government, the provision of lands suitable to their distinctive forms of life, and bilingual education. Most of these special provisions would involve some restrictions on the rights and liberties of non-members of these groups and some redistribution of non-members' income and wealth. (Graham, Kevin M., "*The Political Significance of Social Identity: A Critique of Rawls's Theory of Agency*." See *Social Theory and Practice*, 2000).

While it is sad to see the old customs so dear to elder group members fade, it is not necessarily unjust in any way. Indeed, Graham seems to understand that some assimilate successfully and are happy having left the culture. It is a free choice. That others remain tied to the old ways is simply due their choice as well, and not the result of an unjust act.

Reading various critics like James Christman and Kevin M. Graham, one finds references to "remediation" and "affirmative action" and "preserving a culture from assimilation" and so forth. Graham agrees with feminists that the Rawls principles seem skewed toward the perpetuation of the American nuclear family model, and ignore the value and necessity of the particular culture in which children are raised and in which people find their personhood and self-respect. They do not seem to realize that some lifestyles appeal to a lot of people, including members of ethnic minorities, and assimilation and absorption are yearned for by many. The large annual influx of hundreds of thousands of both legal and illegal aliens into Rawls's America shows that something of value must be there.

Graham's insistence that "affording special protections to [a minority culture's] adherents" is called for seems in itself a violation of the public's liberty. Setting up a government within a government on a territory somewhere "suitable" seems like a far

fetches way of being fair to people who like to live a certain life style they identify as their culture. Caring for members of a disappearing culture seems to lie in the domain of social work, anthropology, and other applied social services, not a part of how justice should work.

In some minority critic's revisions of Rawls's work, communitarian ideas abound, and in some, like Graham's, instead of moral, reasonable, unbiased imaginary people meeting to deliberate objectively on what principles all could accept, there would also be some imaginary people who could not really be unbiased, and would be there to protect the values of their own racial group. This is, of course, incompatible with Rawls's Original Position.

It must be understood that *A Theory of Justice* is not a theory of retributive or remedial justice, but a theory of justice as fairness. Fairness means everyone has an equal chance to enjoy the benefits of belonging to a liberal, free society, in which people can improve themselves through natural and legal procedures, like taking advantage of free or low-cost educational systems, public libraries, public transportation, liberal policies that encourage single welfare women to attend special school programs, earn high school diplomas, and gain employment so they can move into a community college and even the university using government grants and loans; getting government help in borrowing money to pay for a house, and so forth.

It seems that those minority critics that complain that society is unfair are often guilty of misunderstanding the nature of Rawls's work, or seek to tailor it to serve their own purposes. If such tailoring is good for one group, what prevents other groups from demanding the same kind of "liberty?" What if White Supremacists feel their group is dying out. Should they too receive a territory where they can govern themselves?

The inherent fault with most of these critics seems to be that they want special considerations that they would probably deny to others. Thus the traditions of liberalism, enlightenment, egalitarianism, and freedom would seem to be at risk, for special exemptions on the basis of accidents of birth or social position were abandoned as unjust and inhumane, and to reinstate them for any reason seems to set a dangerous precedent.

In America, some African-American critics of Rawls seek special treatment in order to protect their culture and ethnic identity. They accept the benefits of basic liberalism and demand exceptions to the veil of ignorance rules so they can protect the interest of their sub-group. The imaginary contractors representing the ethnic minority can never forget their ethnicity and their loyalties to their group, and thus cannot actually do what is required by the Original Position. What's more, the critics demand their deliberators be given more transparent veils of ignorance than others get. Thus, while claiming to be critics of Rawls's theory, a number of these more radical communitarian spokespeople seem unwilling to follow the rules Rawls laid down, which have seemed so reasonable to others.

III.7. Summary

It seems fair to say that Rawls's theory of justice is currently the one against which all other theories of justice are measured. The researcher reviewed four competing models of justice, which offer merit, community values, need, and utility as the value each uses to determine whether this or that proposal is just or unjust.

In making utility its highest value, utilitarianism has abandoned the principle according to which free and equal people should all share liberty as equally as possible. The freedom to enjoy a good life becomes vulnerable to attack by those who demand certain actions, such as the seizure of property or the imperiling of lives to set

up chemical or nuclear waste dumps in populated areas, for example, if it is useful to do so. This kind of justice is obviously not fair, nor will it be acceptable to the people who suffer a loss of liberty. On its face, it is inferior to the principles Rawls's theory of justice generates.

Marxism, by eliminating the assumed right to own property and enjoy the benefits of commerce, has proven unresponsive to market forces and human aspirations, and for all its slogans and promises of a workers' paradise, it has generally produced massive reductions in benefits for all in the countries where it has been installed, generally by despotic revolutionary militants. Its assaults on human liberty, freedom of assembly, freedom of expression, and self-determination mark the way it has been applied as a clearly unwholesome system of justice.

Libertarianism is contrary to the humane traditions of democratic liberalism as seen in so many developed countries today. The tendency to avoid taxation for the common good and for the benefit of the less fortunate marks the libertarians as an atypical group of well-off people who reject the commonly accepted duty of assisting the weak and indigent, and feel little obligation to contribute to the societies which have supported their success. Running counter to the general flow of liberalism, while championing their own liberties, libertarians have little to offer by way of solutions to the problems that bother the vast majority of less well-off people. Such a system of justice seems biased in the favor of the substantially better off members of society. Their chief spokesperson, Robert Nozick, eventually wrote that he was no longer a hard-line libertarian, but some of his arguments are still used by critics to attack Rawls's theory.

Communitarian criticism attacks Rawls's theory in general because he places a single individual in a higher status than the community to which the individual

belongs. Thus, they believe, this weakens Rawls's theory by ignoring the social nature of man, and the fact that he draws his identity and value from his group. Moreover, communitarians include certain feminists and intellectuals who are concerned with the special interests of ethnic or racial minorities. These have criticized Rawls on two fronts: They claim that women or members of certain minority groups are unable or unwilling to enter into the Original Position because it requires that they become blind to their own special identity, because their group identity is so strong and elemental that they cannot and should not act in an unbiased or impartial way.

They also claim that Rawls's imaginary deliberators are actually thinly veiled members of the comfortable white male culture Rawls grew up in, and that unless women or minority groups are allowed to deliberate more or less free from the veil of ignorance, the dominant portion of the population will continue to treat them unfairly.

It is impossible to reconcile the ideals of a liberal democracy and Rawls's theory with the demands of critics who insist on special treatment based on accidents of birth, like gender or race, or based on membership in some special ethnic group.

Allowing some people more liberty due to their special characteristics seems unfair, even if past or current practices have been biased and unfair.

History is full of tragic examples of injustice, but to reject Rawls's new vision completely because it is not perfect is perhaps a great mistake.

Distributive justice should remain a system without favorites. It should not be recast as a system of retributive or corrective justice. Retributive and corrective justice have their own legitimate purposes and occupy their own philosophical domains.

Though John Rawls's proposals are not perfect, and have not been adopted fully anywhere on earth, they still seem much more reasonable and fair than any of the major competing systems that have been tried in recent history.



Chapter IV. Critical Evaluation of John Rawls's Theory of Justice as Fairness

IV.1. Limitations in Application of Rawls's Theory to Present World Problems

Professor Samuel Freeman, a former student who became a long-time friend and editor of John Rawls, tells us that

Rawls's lifelong interest in justice developed out of his early concern with the basically religious questions of why there is evil in the world and whether human existence is nonetheless redeemable. That concern, originating during World War II, while Rawls was first an undergraduate at Princeton and later a soldier in the Pacific, led him to inquire whether a just society is realistically possible. His life's work was aimed at discovering what justice requires of us, and then showing that it is within our human capacities to realize it. (Freeman, Samuel. *"John Rawls, Friend and Teacher."* See *The Chronicle Review: The Chronicle of Higher Education*, December 13, 2002, pB12.)

Rawls created his theory of justice in the secure comfort of Ivy League academia, in a land where the amount, quality, and availability of essential goods was greater than at any time or place in human history. His homeland is a liberal democracy. Most moral and reasonable people and most groups there voluntarily accepted and lived within a general set of liberal values and shared unspoken assumptions that, while never perfectly just, gave society enough cohesion that it could somehow survive political struggles that, from the assassination of President Kennedy in 1963 until the passing of sweeping civil right laws and the end of the U.S. presence in Vietnam in 1972, included multiple assassinations, massive and sometimes violent suppression of civil rights and anti-war demonstrations, riotous protests and counter-protests and even widespread arson and looting without falling into anarchy and civil war. His country was basically stable through it all, and his theory of justice was welcomed by many liberals like himself.

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On the other hand, according to criteria he set up himself, “outlaw” or “rogue” states that did not act responsibly toward their own people and were aggressive or untrustworthy in dealing with liberal democracies and “decent” peoples were not considered to be amenable to his theory of justice as fairness. The situation has not changed.

Places like present day Malawi, Rwanda, Zambia, Chad or Zimbabwe would not be fit for justice as fairness either, because they are “burdened states”¹, where famine, disease, and a breakdown in governance are indications that they lack the governmental structures, the human capital, and other necessary elements to become liberal democracies or “decent” peoples at this time.

Even some countries in Asia where the governments are not liberal democracies,² but are “decent,”³ may not seem to be good places to apply Rawls's theory of justice this time for several reasons.

The reasons are based on the indigenous cultures cherished by educated and cultured people in South East Asia, Africa, in some parts of Latin America, and in some lands that used to be inside the borders of the old Soviet Union. There, the liberal democratic

¹ Rawls defines burdened societies as those that “lack the political and cultural traditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered,” and notes that they need not be poor in resources or money in order to be “burdened.” TLOP III 15 p 106 1999,

² Liberal society is “a reasonably just constitutional democratic society.” (Rawls, *The Law of Peoples*, p 12).

³ Decent peoples are non-liberal societies with basic institutions that meet certain specified conditions of political right and justice and lead its people to honor a reasonable and just law for the Society of Peoples. (Rawls, *The Law of Peoples*, pp59-60.)

Decent society Rawls uses “to describe nonliberal societies whose basic institutions meet certain specified conditions of political right and justice (including the right of citizens to play a substantial role...in making political decisions) and lead their citizens to honor a reasonably just law for the Society of Peoples.” (p3). Furthermore, a decent society “is not aggressive and engages in wars only in self-defense. It has a common good idea of justice that assigns human rights to all its members; its basic structure includes a decent consultation hierarchy that protects these and other rights and ensures that all groups in society are decently represented by elected bodies in the system of consultation. Finally, there must be a sincere and not unreasonable belief on the part of judges and officials who administer the legal system that the law is indeed guided by a common good idea of justice. Laws supported merely by force or ground for rebellion and resistance. They are routine in a slave society, but cannot belong to a decent one.” (Rawls, *The Law of Peoples*, p88.)

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philosophy described by Rawls is deemed unsuitable for their circumstances. Their attitudes are often based on communitarian principles that place family and group affiliation ahead of the personal freedom so characteristic of liberal democracies. Emphasis on personal individuality is subordinate to community standards, and family values have always been primary. The peoples in many or even most countries do not readily accept the notion of individual rights the way North Americans and Europeans do. Making the individual's personal choice more important than family and community values seems almost incomprehensible in lands where arranged marriages, parent-directed career choices, and family-mandated educational options are the rule rather than the exception. Submitting to a set of principles that make individual liberty the keystone of jurisprudence is therefore unlikely to happen in the near future.

Another reason Rawls's theory is most unacceptable in many countries is based on history. Changing the ways ancient cultures currently operate would mean abandoning compromises worked out at great cost over thousands of years and hundreds of generations. Long-lived cultures that have given everyone life-long identities and determined the roles they would play do not easily adopt new liberal ideas.

The climate in many tropical and sub-tropical lands also may play a part in determining whether the indigenous people are temperamentally suited for liberal democracy and its emphasis on personal liberty. The physical realities of a warm, fertile land like Jamaica, Thailand or Vietnam are very different from the harsh conditions found in the colder climates, where an early freeze or late spring can mean famine and death to people. Philosophers have linked climate and manners, speculating that the dramatic seasonal changes lead encountered as one leaves the tropics and moves northward may

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contribute to the formation of brusque manners and the emphasis on individual responsibility that make northern peoples less sensitive to the more gentle manners of tropical peoples.

Even though northern people may show ingenuity and efficiency in getting things done quickly, northern people can also be perceived as lacking in manners and insensitive to others. When they are placed in mild climates, where life moves at a slower pace, they tend to be perceived as harsh, pushy, and disrespectful. Thus, not only is the concept of individuality shocking to some in warm or tropical climates, but the people from liberal democracies in the northern latitudes, where Rawls's most ardent admirers are generally located, are, in their everyday manners, poor ambassadors for *A Theory of Justice*. By association, they are assumed to be like the heroes seen in the action movies imported from liberal democracies. This adds another layer of difficulty to the process of applying Rawls's philosophy in places where life is slower and easier, and nearly everyone prefers comfortable traditions to the constant stresses common in liberal democracies.

In 1999, the same year he published his revised second edition of *A Theory of Justice*, Rawls published *The Law of Peoples*. In it, he said he "hopes to say how a world Society of liberal and decent Peoples might be possible." (Rawls, *The Law of Peoples*, p6.) He limited his scope, then to liberal democracies and decent nations, and specifically excluded rouge and outlaw nations, and those "burdened" nations like those listed above. Burdened nations are so lacking in cohesion and the systems that make for orderly government and provide conditions that make human life secure, like access to potable water, sufficient food, health care, education, and freedom from violence that there is virtually no one capable of making and fulfilling agreements with other nations, charities,

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or even the United Nations. Obviously much will have to be done before Rawls's theories can apply in burdened nations, or those under "rogue" or "outlaw" governments.

Rawls, in the three years before his death, described his vision of a reasonable and attainable utopia which could bring an end to the great political evils that have plagued humankind forever, such as war, religious persecution and religious oppression, denial of basic liberties, genocide, ethnic cleansing and mass murder, and so on. This is possible, he explains, if their cause, political injustice, is eliminated.

His proposed worldwide "realistic utopia" would spring from the establishment of a broader kind of Original Position and worldwide hypothetical contract, but that would assume the transformation of all or most governments into liberal democracies, and their Peoples' subsequent decision to join in the trans-national and cross-border Original Position deliberations that would have all parties surrender self-seeking and abandon their sense of identity using an unprecedented form of Rawls's "veil of ignorance." This "veil" would, in effect supersede all communitarian values and dissolve the sovereign governments that have their familiar outlines sketched out on all the political maps of the world. In effect, when the deliberations were finished, there would be no United States of America, no United Kingdom, no Japan, no Germany, no France, Russia, Italy, Canada, Spain, Portugal, Austria, Poland, Romania, Czech Republic, Brazil, Argentina, Paraguay, Ecuador, or Denmark, to mention only a handful of the countries that now qualify as liberal democracies or "decent" states.

In spite of the horrors and the threat of horrors that competition between rival nations has always presented to the world, it is hard to believe that such an agreement could ever be reached. The reasons are many, but obviously it would strip every well-

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developed liberal nation of its identity and its historical significance, nullify every carefully established alliance, and supersede all the constitutions of every free country in the world. The treasuries of the rich nations would be opened for sharing with destitute and deeply indebted nations. Nations not choosing to join could hold out for unreasonably generous treatment, and still betray the trust they are granted.

Communitarians insist that no one attains personhood except in an interpersonal matrix which establishes one's identity, determines one's values, shapes one's morals, and enriches one emotionally, financially, culturally and spiritually, and even gives one a language and literary heritage in which to find expression for his or her deepest thoughts. What would become of one's home culture in the wave of globalization and unification described in Rawls's *The Law of Peoples*?

These are some but not all the roadblocks between our current global arrangement of nations and Rawls's "reasonable utopia" which, he says, can establish lasting global peace and justice. Anyone reasonably familiar with the North American spirit of independence will realize that the strong anti-U.N. and anti-World Government opinions that one finds expressed on the Internet are characteristic of a huge number of American citizens. They would reject Rawls's reasonable utopia immediately and forever. Without participation by America, currently the dominant liberal democracy in the world, the chances of attaining a utopian world state are currently very small. While Rawls's vision is arguably the only way to rid the world of war, terrorism, starvation, and other miseries, it may have to wait until a war of unprecedented horror and planet-shaking dimensions occurs. Perhaps it would leave all survivors ready to meet and surrender their sovereignty to a new and just world government. However, because even well educated people resist change and

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attribute wars to a host of different causes, with myriad contributing factors, reaching a consensus that would support all or at least most of the peoples comprising Rawls's "reasonable utopia" seem to be very small.

The price of lasting universal peace, then, may be a universal war of unimaginable scope, turning even the most stubborn nationalists into desperate pacifists. That might be the only way the current patriotic allegiances to countries and past glories can be overcome.

As time goes on, John Rawls's theory of justice continues to be the subject of many comments, both positive and negative. On Tuesday, July 24, 2007, for example, David Lewis Schaefer contributed an op-ed piece entitled "Justice and Inequality: John Rawls's destructive legacy" that appeared in *The Wall Street Journal*, page 12.⁴ He faults Rawls's "difference principle" as straying away from traditional liberalism by not being grounded "in an empirical examination of human nature or political life" and finds Rawls "left his principles of justice at such an extreme level of generality that they pointed to no specific political conclusions." Instead, he claims that Rawls's contribution was "detrimental to freedom. He coined a doctrine of what he called 'excusable envy,' according to which it is rational to envy people whose superiority in wealth exceeds certain (unspecified) limits, and to act on that passion."

The worst aspect of Rawls's philosophy, according to Schaefer, is Rawls insistence that the priority of the right to liberty must give way to the need to restrict liberties in order to "ensure that the political process yields legislation that is 'fair' to the poor," which Schaefer sees as a threat to such sacred liberties as freedom of the press. In the hands of

⁴ Below the article is this note: "Mr. Schaefer is professor of political science at Holy Cross College and author of "Illiberal Justice: John Rawls vs. the American Political Tradition" (University of Missouri, 2007)".

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unscrupulous politicians, Rawls's theory is capable of being distorted in ways quite alien to the "liberal tradition" of American politics. Schaefer characterizes Rawls's later work as "increasingly deferential to the Marxist critique of liberalism," and calls his intellectual legacy for American politics "unfortunate."

Schaefer sees the rhetoric of the top Democratic presidential candidates who criticize the "unfairness" of the current U.S. economy as an outgrowth of Rawls's "difference" principle, and contrary to true American liberal principles.

What Schaefer does not mention is Rawls's insistence on the "just savings principle," which would criticize the Democrats' (and their opponents') tendency to increase the number of programs that require mandatory funding into the foreseeable future, which have been increasing at a substantial rate each year, and the irresponsible borrowing to cover deficits in order to fund the day-to-day operations of the U.S. government, creating an enormous burden for future generations, and devaluing the U.S. currency all over the world.

It may have been more satisfying if Rawls had been more specific about what he considered "fair" and "reasonable," and if he had provided more concrete examples of what would be acceptable and unacceptable, but the reason his work is so important and subject to so much analysis and is debated so incessantly is precisely because he suggested principles rather than programs, leaving details in the hands of those actually involved in the human drama and the political arena where principles are turned into policy and legislation. This suggests that much of the "weakness" and many of the "unfortunate" aspects of Rawls's theory are simply due to the theoretical nature of his lifework.

IV.2. The Strength of John Rawls's Theory of Justice as Fairness And Its Practical Application in Preventing Intergenerational Injustice

Rather than abandon our efforts to make gradual, procedural changes in the vain hope that Rawls's "realistic" utopia will develop in the next few decades or even in the next few centuries, this paper will look at three of the most accessible problems that touch upon the welfare of future generations and are rapidly becoming more and more serious threats to our own and the next few generations of humankind.

The three problems to be addressed now are all caused or strongly influenced by liberal democratic peoples and "decent" nations. These successful nations have the most to lose if they do not address these problems as soon as possible. Fortunately, since the leading liberal democracies are the worst contributors to the three problems, and people in them have the means to change their nations through the use of the ballot box, they have the means to solve or at least mitigate all three problems.

The three serious problems threatening to harm future generations of human beings are rapidly growing worse, and both justice and fairness demand that they not be allowed to continue. The first is instability, which includes war and terrorism. It will be referred to in the discussion of "Instability and the Problem of Terrorism."

Excessive public debt is the second problem, which will be called "The Burden of Debt." The third problem is the degradation of the environment which is leading to a possibly catastrophic collapse of large populations of the living beings of earth. Estimates are that about 25% of all the species currently alive will be extinct by the end of this century. This paper will refer to this third problem as "Abuse of the Earth."

All three are problems can be traced, in large part, to the conduct of liberal democracies and “decent” peoples and they must not become the defining legacy left to the world’s future population by the nations that are now unrivaled in prestige and power.

IV.2.1. Instability and the Problem of Terrorism

The world has now faced a dramatic change in terms of instability. For example, Knight Ridder/Tribune News Service, as early as August 22, 1998, described the problem of terrorism this way:

From the subways of Tokyo to the streets of Oklahoma City, terrorism is neither a new plague, nor confined to one corner of the world.

Bombs go off in Ireland and Argentina, religious extremists assassinate prime ministers in India and Israel, and mass graves are dug in central Africa and the Balkans.

Seeds of our current condition, however, were strewn with the creation of the state of Israel in 1948 and the removal of Palestinians from their homeland. Immediately, the cauldron of Middle Eastern terrorism began boiling, and a half-century of violence between Jews and Arabs has followed.

The United States, as ally to Israel, over the years would also become a target, especially in Lebanon in the 1980s. Americans remember the bitter photographs and headlines following the bloody 1983 truck bombings of first the U.S. Embassy and then a Marine barracks in Beirut; the tense, 17-day hijacking of TWA pilot John Testrake’s jet on its way to Rome from Athens, Greece, in 1985; the capture of hostages (one American was murdered, another not released for nearly seven years).

A whole new tactic was used to attack the United States on September 11, 2001, when four commercial passenger planes filled with fuel for long flights were hijacked and flown off course to strike and devastate targets in New York City and Washington, D.C. Though one plane was deliberately crashed into an open field by passengers fighting to abort the attack, three hijacked planes did find their targets and resulted in the death of

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more than 3,000 people. In turn, this led to invasions of Afghanistan and Iraq, with devastating results on populations in both countries in terms of killing and wounding of many thousand by invading forces and the quasi-civil wars that the invasions triggered. The immense cost to the governments involved in the reprisal attacks, both in money and lives, and ceaseless daily turmoil in both of the invaded lands and the governments of the United States, the United Kingdom, and their allies has led to changes in the Prime Minister in the U.K. and the loss of both the House of Representative and the Senate by the U.S. President's Republican Party.

The work of terrorists can be massively destabilizing, and in the United States the September 11, 2001 attack has created, over the past six years, controversial limitations in civil liberties, toughened immigration policies, and perhaps will lead to the end of the "all volunteer, professional military" and a resumption of conscription. Thus the terror attacks on America have caused a significant measure of instability in the U.S. and the world.

Budgets for social programs and foreign aid have been cut and deficit spending in the U.S. alone now forces the government to borrow in excess of one billion dollars a day. Borrowing has been increased to finance the ongoing struggle for control of Afghanistan and Iraq, where factional fighting seems to escalate every day. Real needs of "burdened" countries like Senegal, Somalia, Chad, Rwanda, and others where HIV/AIDS, starvation, drought, and massacres are killing or devastating the lives of millions are forgotten because the "war on terror" is the greatest concern of the United States and its allies at the current time.

Sadly, all this destabilization is seen as a triumph by the terrorists, and provides fuel for their propaganda.

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Rawls's former student, Thomas W. Pogge, blames the liberal democracies for many of the unjust conditions that cripple the poorest nations. France, Britain, Germany, Italy, the Netherlands and other European nations colonized many of these peoples, for various geopolitical and economic reasons. The people who colonized the area were largely unfamiliar with the native cultures, and since the break up of the old colonial system, the governments remain somewhat unsympathetic to their former colonies today. The natives' lives were lived in ways unlike lives in Europe. European policies imposed on the indigenous peoples often proved disastrous for natives. According to Pogge and others, Europeans continue to exploit the poor nations economically. They point to the existence of arrangements by which nations already burdened by drought, famine, civil war, genocide, and bankruptcy continue to suffer a loss of their most educated and productive citizens to the wealthy nations, and see their "privatized" industries such as refineries and electric power systems fall into the hands of foreign investors. Overwhelming debts, often run up by corrupt local administrations of the past, force curtailment of desperately needed social programs. Education and medical services cannot move forward while old debts are being paid. Debts owed to foreigners, particularly those in liberal democracies, consume much of the little money the poorest nations earn.

Injustice is a strong incentive for terrorism, and a government cannot remain in power when it cannot deal successfully with terrorism. Recent victories for the Democratic Party in the United States and the resignation Tony Blair as Prime Minister of the U.K indicate how two democracies are dealing with terrorism and the "war on terror" that followed the 9/11 attacks on Washington and New York: voters are rejecting the people who have let the "war on terror" get out of control.

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If the next massive attack on the U.S. or U.K. democracies succeeds in causing another change of government, it may set a dangerous new precedent because if a succession of governments are unsuccessful in suppressing the terrorists, failure can lead to frustration, anger, and general disruption of the way U.S. and U.K. people live, and a far more dangerous instability may set in as the people of the leading liberal democracies lose faith in their system of government and resort to desperate means to end their misery.

This can lead to the eventual collapse of the overlapping consensus that keeps liberal democracies in existence. Thus, when democratic processes fail to produce a government that can deal with terrorism, the terrorists have achieved their ultimate goal, the destruction of the “unjust and hypocritical ‘Great Satan’” (United States) that they blame for the poverty and disorder in the world. If terrorists win, it can mean the end of the world order as it exists today.

It is, of course, true that the prosperous nations of Europe, the U.K., and North America could outlaw predatory practices in foreign lands. They could arrange to have debts forgiven. They could easily provide enormous support for a number of suffering countries if they would only export \$1 billion a week to them, rather than go deeper into debt by over \$1 billion a day in a futile war. That is the amount of debt the U.S. is piling up every day to support its wars in Iraq and Afghanistan, and its global armed forces and other programs.

If, as Pogge and many other scholars and researchers point out, exploitation of poor nations and collusion with unjust regimes in “friendly” nations results in the success of those who mastermind terrorism worldwide, then it is time for the liberal democracies to call a halt to exploitative business and governmental practices.

What is terrorism, and what makes it problematic, and what motivates terrorists?

It is obvious that injustice and unfairness do contribute much of the fuel terrorist groups use in their propaganda, and there are many other problems that analysts as well as those sympathetic to the terrorists' cause feel should be looked and solved before one accepts the idea that simply killing and bombing more and more terrorists can bring global stability and peace.

First, we should define and describe terrorism. Is it warfare? Is it a propaganda device? Is it a political statement, a political tool, or an effective medium of communication? Who are the terrorists, and why are they willing to sacrifice their lives for their cause?

Terrorism is a political act. By it, a person or a group builds up power for the purpose of attaining certain goals, such as wealth and recognition, or forcing a hostile government to meet demands. In many cases, the terrorist leader uses the promise of glory and eternal bliss to inspire young men and women to become suicide bombers.

Terrorism forces an institution or government to submit to specific demands by creating an intolerable situation which the target government cannot accept. By grabbing attention and attaining notoriety, the organization behind an attack becomes attractive to some idealists who agree with its public policies, such as the dissolution of capitalism or the withdrawal of foreign forces from its territory. By staging bloody, random, and indiscriminate attacks on innocent people carrying out their daily routines, a population is put in a state of nervous tension, and society's normal functioning is crippled. After years of such chaos, the psychological impact upon a nation and its people can be so great that

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the nation is forced curtail civil liberties and thereby create animosity among both foreign and domestic groups.

Law makers and public officials may be targeted specifically in order to discourage the best and brightest from holding public office or assuming critical roles in government. In the troubled provinces of today's Thailand, school teachers are often targets of separatists because they teach a curriculum designed for the vast majority of Thais that share the national, Thai-speaking, Buddhist culture. The terrorists deliberately kill popular Thai teachers and administrators in order to cripple the acculturation of the largely Malay southern population.

A conventional war sets armies of uniformed, trained soldiers against one another on a field of battle. Success and failure are judged by territory captured, lives taken, and military assets neutralized or destroyed. There is a beginning and an end. Peace, however unsatisfactory or short-lived, is the outcome of war.

With terrorism, there are no large, uniformed armies, but rather dozens, even hundreds or thousands of small cells of fighters and sympathizers, gathering information, raising money, and carrying out actions under the command of one higher authority, sometimes supported by a government, or by special corporate or other interests operating secretly, or, most often, by an ideologue with charismatic leadership ability, surrounded by a trusted group of advisors and friends.

Terrorists justify their behavior by claiming that they are seeking just retribution for past injustices. Another justification for their behavior is that they represent people who have no other means of gaining the freedom and equality that are rightfully theirs as human beings.

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Terrorists take pains to state their case simply and clearly, and it is hard to disagree with their idealistic goals, and hard to deny historical injustices they point to, and the way two or more nations join together to impose their will on weaker peoples. What is regrettable is the wanton cruelty and brutality they show in their operations. For example 32 heavily armed Chechen rebels took 1200 hundred school children and teachers hostage September 1, 2004. With them were two female terrorists wrapped in explosive devices. After mining the school and the gym where the hostages were held, the terrorists maintained a reign of terror, refusing the hostages food and water, until one or both of the female hostage takers exploded, which led to the escape of several hostages and the storming of the building by Russian Special Forces. The ultimate death toll was 355, 150 unidentifiable, with 700 injured. The mastermind promised more attacks on May 9, the anniversary of Russia's defeat of Nazi German forces in 1945.

Because of the wide difference between the regular population of everyday people in different countries, and the radical, unscrupulous views and actions of the terrorists and their sympathizers, one whole population may condemn a terrorist action while another whole population celebrates it. In a great many countries, terrorists (known by titles such as "freedom fighters") are beloved heroes, willing to give up their lives for an important and just cause.

Acts which form the repertoire of the terrorists include murder of civilians, kidnapping, bombing, torture, and arson against civilians and civilian targets. Making civilians the targets of military-style violence has long been defined in both national and international laws as crimes. In conventional combat in a declared war, there are rules that forbid using humans as shields, torturing or maiming prisoners and hostages, and the use

of rape and sodomy as weapons of war. Aggression against peaceful territories or lands not involved in the war to cause the murder and mutilation of children is an especially abhorrent war crime, and is punishable by military courts or world tribunals. However, terrorism is not technically a conventional war, and thus it eludes the rules of war.

Prime Targets: Terrorist value the smashing of a cultural icon as a psychological act of terror aimed at causing maximum shock and a feeling of disorientation. A prime example is the attack and annihilation of New York's twin towers in the heart of the financial district on Wall Street. By their dramatic destruction of these twin landmarks, right across from the stock exchange and just above the cavernous vaults that hold the gold reserves belonging to many individuals, businesses, and nations, the 9/11 hijackers scored a great propaganda success and dealt Americans and the world a psychological shock that continues even today. The towers' debris showered down on this vital financial center for hours, seriously rattling the confidence of Americans and wealthy investors around the world.

Unlike the Japanese attack against Pearl Harbor that brought the United States into World War II, the 9/11 attack did not involve a large naval task force with dozens of skilled pilots flying fighter-bombers and torpedo planes to attack U.S. warships at anchor and aircraft on the ground. Instead, civilian hijackers with only basic flight instruction and armed only with box cutter knives flew large passenger jets full of fuel and passengers right into the central military headquarters in the U.S. capital city and directly into two monumental symbols of America's financial power, the twin World Trade Center towers in the heart of the world's business system in New York City's financial district.

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The death toll was approximately 3,000 persons, including passengers and crew, working people and would-be rescuers, and, of course the terrorists.

While major dramatic attacks occur every few years, none has ever matched September 11, 2001. Other large bombings included the bombing of the barracks of the multinational force, mostly U.S. Marines, in October, 1983 in Beirut, Lebanon, and the dramatic in-flight bombing of the Pan American flight 103 over Lockerbie, Scotland, in December, 1988, and the attack on the American warship U.S.S. Cole, moored in the port of Adenin, Yemen, October, 2000. Small, pinpointed, precisely targeted strikes have hit individual diplomats, government officials, military officers, and executives of multinational corporations. On February 26, 1993, terrorists exploded a van with 1,500 pounds of urea nitrate fertilizer in the basement of the World Trade Center. It killed six people and injured a thousand more. It took 11 hours to evacuate the 50,000 people, including visitors and employees, who were in the building when the bomb went off. The twin towers of the center, of course, were utterly destroyed in the suicide attacks of September 11, 2001.

The bombing of chosen symbolic buildings such as embassies, during times when they are not open for business, is carried out as a symbolic gesture to draw attention to "the struggle" between the terrorists and their foes. Many times terrorists plant bombs where groups of Australians, U.K. or American citizens, or Europeans vacation, as in a night club, restaurant, or crowded market, as in Bali in 2002 and 2005, or a religious funeral procession, as in current Bagdad, where mourners of a terror victim become new victims. Upscale stores and disco techs are targeted to hit the well-off, largely secular clientele that frequent such places, in order attack "decadent" party goers or rich consumers

spending “the people’s money” gained by what the terrorists assume are illicit means. This sort of attack strikes a blow to the local economy, dampens tourism, and drives home the often rigid moral code that finds drinking alcohol and dancing immoral and degenerate.

The most frequently attacked targets ever since 1968 are United States people and interests. The numbers of Americans throughout the world, their conspicuous dress and manners, their large symbolic cars and flags and restaurants are easy targets, and it is impossible for the U.S. or the host country to provide security at all times.

Since the U.S. has been the target of choice for terrorists, and its government and globe circling corporations can be linked to a number of unwelcome situations around the world, it seems like it would be the first to lead a systematic reform of its international practices. Time will tell if this comes about.

The Origin of the Word Terrorism: The word terrorism seems to have evolved from the *regime de la terreur* which gripped France during the French Revolution, when everyone connected with the royal court, and everyone sympathetic to it, was subject to the cruelest treatment and summary execution. From then on, “terror” was to be a word synonymous with the worst fate one can meet.

The word took on a political meaning when Russian revolutionaries used it to describe their violent struggle against the tsar’s rule. Since then, terrorism has developed in sophistication and effectiveness. Even as this was being written, Gerry Adams, leader of the political wing of Sinn Fein, the Irish Catholic party in Northern Ireland, has come to an agreement with the Loyalists, led by Rev. Ian Paisley, after negotiations that probably would not have come about without years and years of violent Irish terrorism against the Crown, or the government of the U.K. symbolized by Her Royal Highness, Queen

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Elizabeth II. For years, the Catholic people were continually scorned, oppressed and provoked by Loyalists, and the terrorist or para-military wing of Sinn Fein claimed responsibility for bombings in London and Northern Ireland, including once the bombing and arson of a bus transporting one of the British military's many marching bands. The atrocious thought of the bright and talented young musicians dying in their flaming double decker bus was but one of the decades-long series of carefully planned and highly effective attacks that led to the ultimate settlement between the Protestants' Democratic Unionist Party and the Catholics' party called Sinn Fein in the recently signed agreement to share power in the northernmost area of Ireland known as Northern Ireland.

Those that sympathize with the Catholics were quick to celebrate the great accomplishment, but it sprang from the historic fact that the U.K. had suffered so many losses and set-backs due to Irish terrorism that the Protestants of Northern Ireland and the U.K. authorities that supported them finally accepted that only by acquiescing to the demands of Sinn Fein could the nation of Northern Ireland move forward and find lasting peace.

The Laws of Nations with Respect to Terror Organizations: Nations are united in declaring themselves opposed to terrorist organizations, though there is little agreement in just what a terrorist organization is, and how it will be treated. Even nations like the U.S., the U.K., and Canada, with legal systems based on British Common Law, have their differences.

The United States Code defines terrorism as a crime, saying it is

violent acts or acts dangerous to human life that . . . appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by assassination or kidnapping.

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(United States Code, Title 18, Section 2331 (18 USC 2331).

Canada's Anti-terrorism Act (Bill C-36) designates "terrorist activity" as

an act or omission . . . that is committed in whole or in part for a political, religious or ideological purpose, objective or cause and in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the person, government or organization is inside or outside Canada

In the United Kingdom legislation titled Terrorist Act 2000 defines it as

the use or threat of action . . . designed to influence the government or to intimidate the public or a section of the public . . . for the purpose of advancing a political, religious or ideological cause."

Israeli law does not address terrorism specifically, but in the Prevention of Terrorism Ordinance No. 33, it defines a terrorist organization as "a body of persons resorting in its activities to acts of violence calculated to cause death or injury to a person or to threats of such acts of violence."

Terrorism is problematic in many ways, because it is a form of war that does not pit one country against another, with clearly marked boundaries and distinctive uniforms and tactics. Because terrorists are not a part of any army, police force, or other governmental agency, laws that apply to war cannot easily be applied to terrorists. For example, the detention of many alleged al-Queda members by the U.S. at Guantanamo Bay in Cuba has created a wide array of opinions, mostly critical of the U.S., for violating the Geneva Conventions and other international agreements. The conventions, however, apply to conventional wars. How one should treat a single individual who is engaged in the pursuit of a war that is more psychological than conventional war, and has no boundaries or treaties involved is something the legal system has never dealt with on this scale, and it

remains a grey area. The U.S. has not come up with any plan that is “legal” under past codes because the kind of non-governmental belligerents captured in the world-wide sweep for terrorists has never been encountered before on such a widespread stage and in such numbers.

An Undefined Kind of Criminal Activity: Defining terrorism in legal terms is difficult. As Laurie Calhoun and Haig Khatchadourian put it (See Laurie Calhoun, “*The Terrorist’s Tactic Message*,” and Haig Khatchadourian, “*The Morality of Terrorism*,” quoted from White, James E., ed. *Contemporary Moral Problems: War and Terrorism*. 2003), to define it as “killing or threatening to kill innocent lives” or some such language would make countries with military fighter planes and bombers, and the pilots who fly the planes, terrorists, because the deterrent effect of such equipment is its inherent ability to deal mortal blows to people, and there is the assumption that the owner nation would certainly use the planes to attack another country, with unavoidable “collateral damage” that would likely kill women, children, and other non-combatants.

Linking “terrorism” to the performance of “illegal acts” would mean that if a regime like the Third Reich in Nazi Germany passes laws legalizing murder, torture, and so forth, terrorists would be committing no crime in harming or killing people. Many other suggestions have been put forward, but none elicit immediate agreement even by those most concerned with defining terrorism as a specific crime.

Not only is it hard to define terrorism in legal language, it is also hard to link it to specific motives, like the overthrow of a government, extortion of money, or forcing changes in laws.

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Terrorism has been carried out in pursuit of widespread and sometimes unrealistic plans. In the late 1960's and early 1970's, students in New York and elsewhere were sure that setting off shrapnel bombs in Columbia University's dining hall and other vulnerable places would spark a revolution that would lead to a Marxist state. In the Columbia case, the bomb went off and killed some of the bomb makers in their factory, and turned the others into fugitives. In other cases, the radical students' violence cost them the support of the public and they eventually gave up the cause.

Well known European terrorist groups with Marxist-Leninist agenda such as the Baader-Meinhof Gang (later called the Red Army Faction) bombed popular night clubs and killed at least one American soldier to steal his ID card and gain admission into a base, where they placed a car bomb. It was ineffective.

In Italy, the Red Brigade captured and tried to brainwash a U.S. Army general to publicize their struggle for a Communist state. It eventually faded also.

Radical Islamic groups pursuing a universal Islamic theocracy under Islamic law continue to gain strength, with the elusive Osama bin Laden's al-Qaeda receiving most of the blame or credit for leading the movement on a global scale, and being behind a long series of deadly attacks on Americans, especially the attack of September 11, 2001 mentioned above.

In the Philippines, the radical Islamic movement is called Abu Sayyaf. In Algeria, it is The Armed Islamic Group.

Other groups not primarily united by religion include the Basque separatist movement in Spain and the Irish Nationalists' Sinn Fein, in Northern Ireland, discussed above. Even Canada has the Quebec independence movement that would separate Quebec

from the rest of Canada. It resorted to mailbox bombs and other small scale gestures in the past, but has not been heard from globally in a long time. The movement's growing popularity at the polls seems to have gained momentum as the terror attacks fade into the past.

After World War II, the British and French empires in Africa, Asia, and the Middle East dissolved under pressure from terrorists. Among other countries where the terrorists were successful in hastening recognition or independence were Israel, Cyprus, Kenya, and Algeria.

Governments do not acknowledge it, but terrorists frequently wrest concessions from them in short-term confrontations, such as winning the release of prisoners, and bringing about adjustments of long-standing situations where no other option has succeeded.

A great number of failures and a small number of large successes are traits of terrorist movements. Terrorist groups have usually dissolved or been crushed without winning any of their demands. The life span of most terror organizations is less than ten years. According to the Microsoft Encarta Encyclopedia, experts think that 90 percent of the groups last less than one year.

It's not how many they kill, it's how many they terrify: Many citizens experience fear and dread when terrorists are active. These emotions can lead individuals to refuse to mingle in crowds at movies, markets, and festivals. It can seriously damage tourism and deter travel out of or even within one's own country or even one's neighborhood. Commerce may be reduced dramatically by incidents like the bombing of four trains in

Madrid 11 March 2004 that killed 192 travelers, mostly commuters, or the bombings of market places that seem to occur in Iraq nearly every day.

Though pervasive fear does reduce participation in or attendance at sporting events and even family funerals, the figures that are provided by the U.S. Department of State show that, though Americans were the most frequently targeted group in the world in the 32 years from 1968 to 2000, only 2000 Americans lost their lives worldwide to terrorism. The number shot up, of course, with the September 11, 2001 attack, and subsequent violence in Iraq. But when one considers the number of fatalities caused by automobiles and other day-to-day events in the United States, it is clear that the actual odds of dying in a terrorist action are small. That is not what terrorism is all about. It aims to produce enough dread to cause changes in the way people act. If an attack moves even a handful of individuals to drop or change plans, the terrorists have been successful, for they are winning at least a little of what they want. They evaluate their actions not by numbers killed, but by the overall political and economic changes they bring about.

A political tool: Terrorism, like war, is a tool used in politics to get something a nation, community group, or other entity, even an individual, wants. It is often run by a Leader who has developed a special way of explaining the evils of the world. The Leader, usually a male, gathers followers who want to help him fix the problems of unfairness, cruelty, imperialism, arrogance, and corruption. If their motivation is religious, they may want to strike a blow at those of different religions, or non-believers. They may have been victimized, or they may be from a wealthy family, searching for answers they cannot find at home. The leader points out members of Religion R or citizens of Country C, and then makes that religion or country the culprit that is behind everything wrong in the world.

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Then the Leader gives examples in an effective way to prove to the followers that religion R or country C is actually to blame.

Typically, once the followers have their hate object clearly envisioned, the Leader honors them with some kind of “legitimate” mission, and a little ceremony that may be recorded on video, and hands the recruit a token of his esteem. He is their Commander in Chief or their Representative from God, and he assures his followers that they will receive a big reward (money, land, a house for their mother, eternal happiness after death, or some other value, or that their mother or siblings will be honored and supported financially taken care of in return for their faithful service). There is also the implied warning that, if they slip into doubt or run from their mission, they will dishonor their family and perhaps be silenced forever and viewed as traitors and a threat to the group. The recruits then go out and inflict pain, death, and damage on people. This gets the attention of the enemy and the communications media. The message is clear: either the enemy must yield, or suffer even worse consequences. Meanwhile, the Leader gets money from his sponsors, who may be admirers, family members, or even governments that want the sort of help his group can provide. With such a loyal following, and the acclaim of his friends, he captures more hearts and minds, is able to expand his operations, and he sees his terrorist enterprise grow stronger.

The difficulties of the Leader will be considerable, because agents and armies and even heads of state are after him, determined to capture or kill him, but as his problems grow, the Leader has a growing source of propaganda at his disposal to attract fresh recruits and bring in greater and greater donations to finance his group's exploits and his own welfare.

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This will change somewhat if his enemies remove the injustice or oppression that form the root cause of the problem. However, if the injustice that the Leader first points to is removed, the people will celebrate his great victory and continue to turn to him for more violence in order to set other things straight. If he does reach his goal, he will be a major historical figure, a hero to his followers and friends, and he can retire, or find his next cause to fight for. His informal "army" will remain ready for battle. The Leader, then, will continue and he will overthrow the government, or he will be captured or killed. Either way, he will remain a hero to his group.

How can Rawls's theory be the basis for a solution to Terrorism and War?

The basis of Rawls's concern for "The Problem of Justice Between Generations" is the *principle of just savings*, which states that a generation of people alive at a particular time is obliged to hand over to the next generation a decent social legacy, so that instead of deteriorating over time, things get better and better for the following generations. (Rawls. *A Theory of Justice: Revised Edition*, pp251-258.)

Following Rawls's lead, this writer will narrow the scope of inquiry so that it looks at three important problems facing the people living on earth today in the broader context of "Justice Between Generations," to which Rawls devotes section, § 44, of both editions of *A Theory of Justice*. Again, following his lead, we limit our study to those liberal democracies and "decent societies" that are amenable to his general principles. Then we will see if the principles he established can be a basis for a solution to the problem of Terrorism.

Rawls acknowledges that "the question of justice between generations. . . subjects any ethical theory to severe if not impossible tests," but his theory "would be incomplete

without some discussion of this important matter.” (Rawls. *A Theory of Justice: Revised Edition*. P251). He also adds,

We can now see that persons in different generations have duties and obligations to one another just as contemporaries do. The present generation cannot do as it pleases but is bound by the principles that would be chosen in the original position to define justice between persons at different moments of time. (Rawls. *A Theory of Justice: Revised Edition*, p258.)

He cautions that “the question is still open whether the social system as a whole,” the “competitive economy surrounded by the appropriate family of background institutions” must be “made to satisfy the two principles of justice,” liberty and difference, and this raises the question of “how far the present generation is bound to respect the claims of its successors.” (Rawls. *A Theory of Justice: Revised Edition*, p251.) At which level “the social minimum is to be set” (Rawls. *A Theory of Justice: Revised Edition*, p251), will naturally affect the sacrifices the current generation must make to ensure a decent amount of liberty and welfare for those to follow in, say, fifty or a hundred years.

Rawls defines “just savings” as not simply money in a nation’s treasury.

Each generation must not only preserve the gains of culture and civilization, and maintain intact those just institutions that have been established, but it must also put aside in each period of time a suitable amount of real capital accumulation. This saving may take various forms from net investment in machinery and other means of production to investment in learning and education. (Rawls. *A Theory of Justice: Revised Edition*, p252.)

Based on these strong and unequivocal statements from Rawls, one can ask how his two principles of justice, *liberty* and *difference*, and *the principle of just savings*, are related to the current problems of terrorism, debt, and abuse of the earth, and if Rawls’s principles, if applied effectively, can solve the current problems.

If the current generation (like all others) is required to “preserve the gains of culture and civilization,” which outlaw violence against innocent civilians, it is easy to see that every effort must be made to minimize terrorism. Passing along a tradition where terrorism is an everyday fact of life is not acceptable because terrorists have no respect for basic elements of culture and civilization, and have destroyed cultural and historical icons, like the fifth century Buddha statues destroyed by the Taliban in March 2001⁵, mosques, even the sacred “Golden Mosque,”⁶ the engines of commerce, such as the Twin Towers of the World Trade Center in New York, which housed five hundred businesses and 5,000 employees,⁷ and schools, such as the Beslan School involved in a massacre in Russia, September 1, 2004.⁸ Acts such as these defy the specific rules Rawls sets down in the paragraph quoted above.

Terrorism justifies itself by casting itself as the last resort of desperate people who are abused or oppressed by powerful parties who refuse to respond to legitimate appeals for help. Citing real or imagined injustices and a history of abuse and oppression by higher powers which have left the helpless victims in “grinding poverty” and without hope of a decent life, terrorists appeal for volunteers to come forward with donation of time and money, or even a pledge of “martyrdom” to effect social and political change.

⁵ See BBC News, Monday, 26 March, 2001, by W.L. Rathje. “Why the Taliban are destroying Buddhas.” *Discover Archaeology Magazine*. March 22, 2001. or see <http://www.usatoday.com/news/science/archaeology/2001-03-22-afghan-buddhas.htm>).

⁶ See CNN, posted Wednesday, February 22, 2006 at 5:57 p.m. EST (22:57 GMT) BAGHDAD, Iraq: Gunmen targeted 27 Baghdad mosques and killed three Sunni imams Wednesday in the wake of a bomb attack at one of the holiest Shiite sites. The wave of attacks followed an early morning bombing at the Al-Askariya “Golden Mosque” in Samarra. The strikes, involving small arms, rocket-propelled grenades and mortar rounds, all happened between 11 a.m. and 5 p.m., police said. Or see <http://www.cnn.com/2006/WORLD/meast/02/22/iraq.main/index.html>

⁷ See Special Report, Attack on America, (from Newspaper is called: The Guardian, London, or see <http://www.guardian.co.uk/wtccrash/>).

⁸ See Peter Baker and Susan B. Glasser. “Russia School Siege Ends in Carnage: Hundreds Die As Troops Battle Hostage Takers.” (From *Washington Post Foreign Service*, Posted Saturday, September 4, 2004; Page A01; or see <http://www.washingtonpost.com/wp-dyn/articles/A58381-2004Sep3.html>).

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Terrorism is unjust because terrorists falsely claim they are at liberty to reduce the liberty of innocent people in order to coerce society into granting rights or ending abuses. At the same time, the actual abuse and oppression a society imposes on certain groups is a violation of liberties as well, and must be remedied. Moving society at large in a liberal democracy or decent society to respect the just *liberties* of all would do much to reduce the motivation that drives terrorists to their reprehensible actions.

Governments consider instability the worst kind of problem they can have, and they know that terrorism is specifically designed to create instability. That is why governments must deal with terrorism before it produces serious instability and causes disintegration of the social order. Governments are quick to react to terrorism. However, governments that seem on the surface most successful in crushing terrorists may actually be provoking new generations of suicide bombers and creating a culture violence and mayhem that makes acts of great violence seem as natural and inevitable as wind and rain, where future generations will face cruelty and violence on an unprecedented scale, and where liberal democracy cannot endure.

The solution, then, is not simply to incarcerate or annihilate the terrorists and their leaders. Terrorism, as Thomas Pogge and others point out, is a result of injustice, and that can be traced directly back to misapplication of libertarian and utilitarian principles.

Rawls too, like Pogge, his former student and biographer, and other liberals, believes that terror springs from injustice. In the three years before his death, Rawls wrote:

. . .the great evils of human history—unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, not to mention genocide and mass murder—follow from political injustice, with its own cruelties and callousness. (Rawls. *The Law of Peoples*, pp 6-7.)

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Elimination of these evils depends on the elimination of their cause, political injustice. He goes further with his dream of a peaceful world, where just or at least decent social policies and just or at least social institutions are established. By believing that human beings, by virtue of their innate good nature, will grow up in an atmosphere of reasonable liberal political conceptions of justice, Rawls concludes that they

will affirm those institutions and act to make sure their social world endures. . . . I contend that this scenario is realistic—it could and may exist. I say it is also utopian and highly desirable because it joins reasonableness and justice with conditions enabling citizens to realize their fundamental interests. (Rawls. *The Law of Peoples*, p7.)

Pogge insists that “imposition of a skewed global order that aggravates international inequalities and makes it exceedingly hard for the weaker and poorer societies to secure a proportional share of global economic growth” (Pogge, Thomas W. (ed). *Global Justice*. 2001, p17) results in “severe global poverty” and is the “main moral issue” in the world today. (Pogge, Thomas W. *Global Justice*, p22.) He goes on to link it directly to terrorism and instability. Injustice and unfairness fuel terrorist rhetoric. They inspire the terrorists to give their lives to right the wrongs their people have suffered. Justice and fairness are the goods sought by the “martyrs.” Unfortunately, they have no court of justice to which to appeal, and take matters, literally, into their own hands.

To achieve stability for a constitutional regime, Rawls suggests in *Justice as Fairness: A Restatement* (2001), pp115-6 that there are three essential requirements:

The first requirement, given the fact of pluralism, is to fix, once and for all, the basic rights and liberties, and to assign them a special priority. Doing this takes these guarantees off the political agenda of political parties; it puts them beyond the calculus of social interests, thus securing clearly and firmly the terms of social cooperation on a footing of mutual respect. The two principles of justice achieve this....securing the basic liberties and affirming their priority more effectively does the

work of reconciliation among citizens and promises mutual recognition on a footing of equality. (p115)

The second requirement...is that its political conception should specify not only a shared but if possible a clear basis of public reason, and one that can publicly be seen to be sufficiently reliable in its own terms. Now, ... the publicity condition means that the principles of political right and justice are an essential part of public reason. The idea here, then, is that the two principles of justice specify a clearer and more reliable basis of public reason than the principle of utility.

The maxim that justice must not only be done, but be seen to be done, holds good not only in law but also in public reason.

The third requirement...is that its basic institutions should encourage the cooperative virtues of political life: the virtues of reasonableness and a sense of fairness, and of a spirit of compromise and a readiness to meet others halfway. (p116) (Rawls. *Justice as Fairness: A Restatement*, pp115-6).

Because Utilitarian laws often benefit "most" of the people (or perhaps "most" of the people who hold the reins of power), they open up the possibility of abuse and oppression, especially if there are not efficient and accessible channels for seeking relief.

Libertarian laws give too much liberty to those who, on principle, do not feel responsible for the welfare of others. Thus laws based on Libertarian principles are apt to inflict abuse and oppression on the less fortunate.

Thus, both Utilitarian and Libertarian principles lead to laws and arrangements that are liable to leave less fortunate people, as individuals, minority group members, or even large numbers of under-represented people, even a nation or continent, under an onerous burden of abuse and oppression, and thus fertile ground for terrorism.

Communitarians tend to downplay the importance of individuals and the ideals of individual rights, roles, and identity. They tend to mistrust liberal concepts that elevate the individual to a status loftier than the social fabric from which he or she arises.

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Communitarians, then, might actually encourage terrorism if they can form a large enough coalition to seize power, even in a small body politic like a school district or a city council. Their tendency to minimize individual rights could well lead to oppression of those outside their "community," which again can lead to frustrations so great that their victims eventually resort to terrorism.

The Marxist principle of caring for each according to need is certainly applicable in establishing a responsive and decent government, although the "from each according to his ability" principle would need to be interpreted in light of the results its more radical and narrow-minded applications have led to. Marxism's great appeal has been based on the presence of abusive and oppressive laws imposed by irresponsible and unresponsive regimes. If tempered by principles based on the enlightened liberty, opportunity and difference espoused by Rawls, it would seem that the highest ideals of Marxism might successfully be achieved.

Rawlsian principles, based on fairness and a concern for the welfare and opportunity for advancement for the least well-off, and the egalitarian concept of equal liberties for all, would inspire laws and policies that bring all groups to accept, on the basis of human reason alone, tolerance, openness, freedom from attack, and the preservation of culture and civilization. The future of the nations and the future of all individuals and societies are dependent of the principles of justice and the principle of just savings. Thus Rawlsian principles are not only applicable, but actually seem to be essential in eliminating the root cause of terrorism, which is injustice in the form of abuse, oppression, and irresponsibility on the part of unresponsive governments.

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Since the tenets of Libertarian philosophy require that governments allow people to act as they wish without governmental interference, it has been used to justify the abuse of the less fortunate. The selfishness justified or allowed by libertarian philosophy's insistence on *laissez-faire* governance has allowed capitalists from liberal democracies to develop unfair business practices and apply them globally. It is the responsibility of the peoples of industrialized, capitalist, liberal democracies to insist on fairness and government regulation of domestic and international financial arrangements. Exercising freedom of expression and freedom of information, philosophers can raise their voices through their enlightened publications and the use of mass electronic and cinematic technologies to inform and inspire people everywhere to insist on fairness. The economic exploitation of whole peoples and the degradation of our only planet earth enrages the terrorists and destabilizes the global peace are most often caused by wealthy people in liberal democracies. The solution to the excesses of utilitarianism and libertarianism must be countered by communitarians and environmentalists and humane economists inspired by Rawls's sense of fairness and compassion. The sword and bomb must be countered by philosophers and courageous political and cultural leaders who will write and speak against the kind of abuses the terrorists themselves cite as the cause of their fury.

Rawls said in *The Law of Peoples* (p50), there are important requirements for a liberal regime to achieve stability for the right reason such as:

- a). A certain fair equality of opportunity, especially in education and training. (Otherwise all parts of society cannot take part in the debates of public reason or contribute to social and economic policies.)
- b). A decent distribution of income and wealth meeting the third condition of liberalism: all citizens must be assured the all-purpose means necessary for them to take intelligent and effective advantage of their basic freedoms. (In the absence of this condition, those with wealth and income

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tend to dominate those with less and increasingly to control political power in their favor.)

c). Society as employer of last resort through general or local government, or other social and economic policies. (The lack of a sense of long-term security and of the opportunity for meaningful work and occupation is destructive not only of citizens' self-respect, but of their sense that they are members of society and not simply caught in it.)

d). Basic health care assured for all citizens.

e). Public financing of elections and ways of assuring the availability of public information on matters of policy. (A statement of the need for these arrangements merely hints at what is needed both to ensure that representatives and other officials are sufficiently independent of particular social and economic interests and to provide the knowledge and information upon which policies can be formed and intelligently assessed by citizens.) (Rawls. *The Law of Peoples*, p50.)

It would take a major reform of how liberal democracies and "decent" peoples educate their young in order to foster fairness to all, especially those worst off. It would insist that schools of communication arts, journalism, and the cinema emphasize community values, not to promote political, philosophical, sectarian, gender-based, or ethnic agendas, but to promote reasonable responsibility so that the media might self-regulate itself in content and style in order to encourage national and worldwide means of teaching moral and ethical justice based on reason and acceptable to all factions in a pluralistic nation and a segmented and turbulent world.

The legal profession must also get involved, and provide for dialogue between experts in international finance and international law on one hand, and environmental experts and sociologists on the other. Such discussions may prove highly valuable.

Schools should be tasked with inculcating the virtues of fairness, caring and sensitivity from the earliest age, and parents should be provided with reasonable counseling and guidance, based on human reason, in order to assist them in training their

children to be good and reasonable members of domestic society and the global family as well. Society shall educate the spirit of fairness in people.

we take the basic structure as the primary subject. This structure comprises social institutions within which human beings may develop their moral powers and become fully cooperating members of a society of free and equal citizens. And as a framework that preserves background justice over time from one generation to the next it realizes the idea (central to justice as fairness) of pure background procedural justice as an ideal social process...it also answers to the public role of educating citizens to a conception of themselves as free and equal; and, when properly regulated, it encourages in them attitudes of optimism and confidence in their future, and a sense of being treated fairly in view of the public principles which are seen as effectively regulating economic and social inequalities....(Rawls. *Justice as Fairness: A Restatement*, p57.)

The sooner these and other efforts start, the less injustice there will be in the world, and the less resentment and rage will develop. It is this rage against the unfairness of global arrangements that the leaders of various aggressive associations use to motivate their volunteers and send them out to cause civil chaos, strike terror into the hearts of the populace, and destabilize governments.

If we want to leave a stable world built on just and fair agreements between peoples and individuals, governments and businesses, we must create programs that promote fairness and punish those who create the suffering that leads to terrorism and instability.

A Third kind of original position: Rawls was no doubt troubled by the disputes within his nation and among the superpowers of the world when he wrote *A Theory of Justice* in 1971, and he revised it and touched on the possibility of forming a 'realistic utopia' free of wars and violence, in *The Law of Peoples*, 1999. He believed that systemic unfairness leads to discontent, and that leads eventually to large scale violence and instability. His student, Thomas W. Pogge, has made a career of documenting and trying to end international unfairness wherever it exists.

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It was to assure fairness that Rawls's crafted this third kind of social contract. It would be drawn up by moral agents under the veil of ignorance that assured a world-wide liberal distributive democracy where all were equal and even the worst off would have a "decent" life and opportunities to improve their lot.

In all, Rawls suggested three kinds of social contracts. First was the one proposed in 1971 that would bring imaginary individuals together to create a contract for a nation. Then in 1993 he suggested a contract worked out by representatives of various interest groups in a liberal democracy in *Political Liberalism*. His third was a contract formulated by various peoples leading to his "attainable utopia" with a world order that could assure a world of peace, liberty, and equality as found in *The Law of Peoples*, 1999.

In the new world described in *The Law of Peoples* there would be an agency responsible for assuring that the exercise of liberty is not used to foster unfair practices in a particular peoples' homeland and in other lands around the world. His student, Professor Thomas W. Pogge, details the way certain contracts, particularly international ones, currently involve arrangements that lead inevitably to permanent poverty, hunger, disease, warfare and instability in vulnerable areas of the earth. He can document how most of the economic power and know-how emerges from the liberal democracies, and how too often that know-how has been used to craft agreements that are unfair and even immoral. Under the third kind of social contract that Rawls called "an attainable utopia," experts with thorough and unbiased understanding of the negative effects of unfair and immoral arrangements could conceivably overturn such agreements and replace them with just and fair agreements that demand responsible behavior and fairness to all, including the weak.

Even the most loyal admirer of Rawls has to wonder if it will ever be possible to establish a system such as he describes, for he does not explain how peoples all over the world can be persuaded to give up their national identities and turn their backs on their cultures and histories in order to create his “reasonable utopia.” His writings seem to lack concrete structures that could enforce the findings and recommendations of “experts” in international fairness. As communitarian critics have pointed out, his dreams do not spell out plans that might work. It is up to those who admire his idealistic principles to reduce them to day-to-day realities.

IV.2.2. The Burden of Debt: Description of Potentially Catastrophic Situations Amenable to Application of Rawls's Theory For the Benefit of Generations Yet Unborn

Rawls raises the question of generational justice in *A Theory of Justice, Chapter III, “The Circumstances of Justice,”* (See Rawls, *A Theory of Justice: Revised Edition*. P109), where he puzzles with “whether the persons in the original position have obligations and duties to third parties, for example, to their immediate descendants.” (Rawls, *A Theory of Justice: Revised Edition*, p111.) He stipulates that, in consideration of generational justice, his deliberators must consider what they owe to all their possible descendants, or, ideally, they must be ignorant of whether they belong to past, present, or future generations, so they must even find principles which all preceding generations as well as the current and all following generations should have followed or will have to follow in order to be fair to all the others in the generation chain. By stipulating that the veil of ignorance prevents the agent from knowing in which generation he actually lives,

the whole chain of generations can be tied together and principles agreed to that suitably take into account the interest of each [generation]. . . If this is

right, we will have succeeded in deriving duties to other generations from reasonable conditions. (Rawls, *A Theory of Justice: Revised Edition*, p111.)

The next several pages of this study take up the problem of "just savings" in view of the debt current generations in the liberal democracies are piling up. Most of the world's leading economic powers, the G-8 nations, are liberal democracies, and most are borrowing money from their own citizens and from foreign nations, especially China.

This is a practice that is being imitated by other nations, not yet fully developed, and this widespread tendency to borrow is both good and bad, for when a developing country borrows to create a firm infrastructure for commerce and economic growth, it can assume its wealth will increase, and its institutions, if just, will be a great asset to following generations. On the other hand, if the nation has reached a full state of development and its budget is so badly managed that it has to borrow money simply to pay its bills, instead of passing along value to its next generation, it will pass on a burden of debt and eventually an aging and out-of-date infrastructure.

Rawls explains his just savings principle this way: Each generation owes something to the following generations.

This saving may take various forms from net investment in machinery and other means of production to investment in learning and education. (Rawls. *A Theory of Justice: Revised Edition*, p252.)

The principle of just savings holds between generations, while the difference principle holds within generations. Real saving is required only for reasons of justice: that is, to make possible the conditions needed to establish and to preserve a just basic structure over time. (Rawls. *Justice as Fairness: A Restatement*, p159.)

Here, Rawls is saying that just as his difference principle is essential in the current set-up of a society currently alive, the just savings principle is essential for the relationships between the current generation and subsequent generations. There must be

enough “investment” in sustaining the culture and civilization to establish and preserve a just basic society over time. This investment must include not only the preservation of culture and civilization, but also the capital in terms of institutions, machinery, and educational systems needed to support commerce and civilization in ensuing years.

The current situation where the leading liberal democracy and leading economic power, the United States of America, is borrowing over a billion dollars⁹ a day to support its infrastructure, its national defense, its guaranteed government pensions and medical services, while at the same time having to borrow to pay interest on past debts and to finance the mismanaged and seemingly futile war in Iraq and Afghanistan does not seem to satisfy the requirement for just savings, for instead of building capital, it is constantly borrowing simply to keep up with current expenses.

When will the amount owed to future generations be zero? Rawls suggests, “Once these conditions [making it possible to establish and to preserve a just basic structure over time] are reached, and just institutions established, net real savings may fall to zero.” (Rawls. *Justice as Fairness: A Restatement*, p159.) With the current state of affairs in the United States, the goal of leaving a decent, if not perfect, society for future generations seems remote if not impossible.

If this is true of the United States, what of other liberal democratic countries? Let us step away from the U.S. situation, which always gets the greatest attention because of the enormous size of the U.S. economy, and see what the World Bank Web site reported in March 2007. It showed that of the major powers called the G8 nations, only Russia was currently enjoying economic surpluses. However, another check on April 8 shows that

⁹ See U.S. Treasury Department Website: <http://www.treasurydirect.gov/NP/BPDLogin?application=np>

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Russia now has a foreign debt of over \$309 billion, and a total debt of \$354.3 billion. Most of the foreign debt was built up under the old Soviet Union, and is owed to France.

Now freed of Marxism, Russia is enjoying a surplus at this time, and has seen its wealth increase at an astounding rate in the past three years. However, though income exceeds spending, there are debts owed, and they showed a marked rise in the fourth quarter of 2006. Without its reserves of oil, coal, and natural gas, Russia would rapidly become a much less prosperous nation.

Japan is suffering due to the fact that its people save too much money personally, and that makes money scarce, limiting commercial activity. The country is in trouble because individuals save too much. The government is thinking of having banks charge the depositors for money left in the bank, in a kind of "reverse savings account" manner. If people spent more, the government reasons, there would be more sales taxes, and the government could pay off some of its debts.

Canadians are hearing critics call for a stop to their country's borrowing habits as their debt load increases.

Germany in March 2007 has to spend one euro of every five collected in taxes to pay for the German national debt.

In the U.K., the country is borrowing money to pay the interest on its national debt which stood at the end of March 2007 at £503.9 billion.

France is spending borrowed money very fast but figures are hard to find, even with Internet technology.

Italians have seen their country's credit rating lowered by major analysts. Italy's credit rating as a nation was recently lowered significantly for having too much debt.

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Sooner or later, the people who lent the money to the United States and some other liberal democracies may come back and demand to be paid back. The truth is, there is nothing in the U.S. Treasury at this time that was not borrowed! The same is true for other governments. So the great liberal democracies cannot pay back what they owe as things stand now. These celebrated liberal democracies, for all their current prosperity, have created a debt burden that is likely to plague the children who are born into them forty or fifty years from now, when the condition of the earth itself may make life difficult.

Some of the countries that are lending money to the liberal democracies, particularly the United States, have well developed nuclear weapons, or are in the process of obtaining them. One can expect that the people who loaned out the money will try intimidation. China, the leading lender, has a huge population, an enormous army, and a history of supporting anti-U.S. warfare in Korea and Vietnam. If China and her allies experience problems with the way the U.S. and European countries pay back their debts, they can not only use intimidation, but can exert pressure by boycotting U.S. and European Union goods, and the liberal democracies will see their incomes drop, and they will be forced into reneging on promises made to their own people in order to pay foreign governments. No one will get the money they are really due, because the money will have been seriously devaluated, and the victims of this situation will be the children, or grandchildren, of people alive today. A legacy of debt this large and growing is something no one has ever experienced, but the experience will no doubt be unpleasant. Peoples in the liberal democracies that owe money must begin to demand a legitimate and honest cutback in government spending. Unfortunately, to be elected, politicians often promise to give the people more benefits than they have already. So, for the foreseeable future, elections will

be won by the candidates who promise to distribute more and more goods and services. Meanwhile, the debt clock keeps ticking.

Effect of Debt on Extremely Poor Countries of the “Fourth World”

In dealing with debt, it is up to the opinion makers—philosophers, journalists, broadcasters, celebrities, religious leaders, and even politicians—to create a “background culture” that will demand fiscal responsibility and put an end to the double threat of escalating public debt and the rapidly rising demands for mandatory programs such as government retirement programs and government health care which have grown rapidly in recent years.

Those who have the power to write, speak, and communicate these facts must come together to enlist their fellow citizens in demanding a reform in the way their governments do business, or the as-yet-unborn children will spend their lives paying for all our excesses. That is a shameful legacy.

IV.2.3. Abuse of the Earth.

Decay of the Quality of Life for all Living Beings in Decades Yet to Come: Leaving a Livable and Loveable Home Planet for Future Generations Global Changes and the Technology that Causes Them

As human technologies developed, often hand-in-hand with scientific understandings, especially over the past three hundred years, the scope of human activity widened even as the total population figures of the human race began to climb upward, charting a gradual but exponentially driven curve. Unlike the steady, straight line path population numbers had generated in the past, the appearance of exponential population growth should make us aware that as our numbers increase more and more rapidly, the demands human beings put on our home planet are increasing more and more rapidly. At

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the same time, demands and expectations for commercial goods and services come from more and more people, many from populous nations like India and China. They expect to have more and more food, comfort, and ease. Their lifestyles will resemble that of the West, with air conditioning, tall buildings with lifts, and personal automobiles. Eventually we will see a more and more rapid deterioration of our planet. The human tendency for “having” consumer goods is taking root in huge populations that until now have not had the means to produce enough wealth to support consumerism. Now that India and China and their neighbors are beginning to see incomes and demands increasing at an unprecedented pace, the strain of growing populations and growing demands for goods and comfort (linked directly to the use of fossil fuel) are becoming serious problems.

The “advanced” people who regret the arrival of exponential population growth often welcome the exponential growth of communication and information technologies. At the same time, rapid developments in communications and transportation made possible much more effective governments and economic systems. This provided more and more abundant crops that could support larger and larger populations. In the last hundred years, we have seen a mushrooming of technology that has revolutionized the entire global system of human interaction, so that the issues that confront us today are so complex that no study, however vast, can touch on all the issues, however grave they may be.

The changes we are seeing on the surface of the planet earth are much greater than we once thought possible in our lifetime. Is the degrading of the atmosphere and water all the fault of man, or can the increase in the atmospheric temperature, the ocean temperature, the acidity of the oceans and the odd behaviors of the atmosphere and seas be attributed to periodic fluctuations in solar energy and perhaps even changes in the core of

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the earth itself? Can the sudden massive die-offs in certain populations of insects, among which are the bees, that pollinate most of man's food crops, the strange deformities in frogs, and the suicidal beaching of whales be linked to human behaviors?

Philosophers are not equipped to answer these questions, but no matter why the earth's weather and ice caps and oceans are acting in unusual ways, and animal and plant life are being threatened, the fact that the ever increasing numbers of human beings and the demands they are making on the earth with their various technologies are at least adding to the rate of weather and climate change that threaten not only a few isolated areas and a few insignificant varieties of plants and animals. Massive climate changes such as scientists all over the world have reported may well doom many species of living things, from microbes to redwood trees and even polar bears and penguins, to extinction by the end of this young century. Indeed, the living conditions of the future, for animals, plants, and even human, will probably be quite different from those we see today. Unfortunately, experts tell us that many quite lovely and many vitally necessary species will have disappeared forever. To realize the scope of this degradation takes dedication and research and lies beyond the scope of this study, but living and non-living beings are all linked together in wider and wider arrays. Degrading a part of the ecosystem can have profound and unanticipated effects on other parts.

Humans are strip mining minerals, cutting and burning forests, paving grasslands, spoiling wetlands and estuaries, damming rivers, dumping toxins into waterways, over fishing commercial and "sport" species, hunting and killing gorillas, whales, elephants, tigers, and other mammals, shrinking the habitats of birds, penguins in particular, polar bears, Asiatic lions, tigers, wolves, seals, and wild elephants. The rock-like corals are

dying as a result of acids in the sea, and even non-living features erected by humans, like buildings, bridges, and statuary, are decaying in acid rain caused by emissions from fuel-burning motor vehicles and electric power generators.

At least some of these losses are indisputably the direct result of man's use of fossil fuels, insecticides, herbicides, and earth movers, chain saws, automobiles, rifles, shotguns, explosives, and land mines. All these were once celebrated as great inventions that started out as wonderful helpers, but are now contributing to the decay of the beauty and sustainability of life on planet earth, wrecking complex living systems, and wrecking or terminating human lives.

In terms of threats to human health and the economies of nations all over the world, and the threats posed as nations begin to compete aggressively for water and food as well as fossil fuels, and the looming extinction of many species of animals and plants, some essential for human nourishment, rapid climate change has been described in the *UN Chronicle* as "The Greatest Threat to Global Security."¹⁰

Clearly, the current generation must take responsibility for the legacy that will be passed on to succeeding generations. Clearly too, when Rawls refers to the "just savings principle," he includes everything that will impact on the liberties and the welfare of future human beings.

Scientists warn us that in the foreseeable future the planet may be much degraded, with large areas invaded by migrations of unfriendly foreign peoples, the erosion of current coastlines and the flooding of ocean-front cities like Venice, Hong Kong, Boston, San Francisco, and New York and even the disappearance of whole nations like the tiny

¹⁰ Sir Emyr Jones Parry. "The Greatest Threat to Global Security: Climate Change Is Not Merely an Environmental Problem," pp20-21. (From *UN Chronicle*. Vol. XLIV, No.2. June 2007. All thirty articles in the issue address the same topic: Global Warming.)

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Tuvalu nation. Its capital island, Funafuti, is less than 600 meters wide at its widest point and less than two meters above sea level at its highest point. As ice caps melt and the ocean rises, what will happen to Tuvalu?¹¹

Heeding Rawls's own clear rules, this paper asks if and how Rawls's theory of justice can be applied in liberal democracies and "decent societies" as a means of solving critical problems that affect not only the people on earth today, but those to whom we will leave a planet and a world order which will strongly affect the lives they will lead fifty or one hundred years from now.

Rawls's theory of justice is, as documented above, linked directly to the question, What kind of earth will this generation leave for our descendants?

If we apply his expanded original positions even farther to include not only justice to current peoples, but backward and forward in time to consider how humans should have treated and should treat their home planet, we are able to name and evaluate a long list of things that we are ruining, killing, poisoning or consuming in ways that will leave people of the future a much depleted world to live in.

Fortunately, because the largest contributors to the problems we have been itemizing are the world's leading democracies, especially the United States, the UK, and the European Union, something can be done within the existing system of laws to assure these evils are dealt with effectively, so their negative impact on future generations will be lessened.

"A characteristic feature of justice as fairness as a political conception is that it takes the basic structure [of society] as its primary subject."(Rawls. *Justice as Fairness: A*

¹¹ See Apisai Ielemia (Prime Minister of Tuvalu). "A Threat to Our Human Rights: Tuvalu's Perspective on Climate Change." (From *UN Chronicle*. Vol. XLIV, No.2. June 2007, pp18-19.)

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Restatement, p52.) The *basic structure* of all the liberal democracies that contribute so much to the problems of unfairness between peoples, irresponsible debts, and the harm being done to earth, especially through climate change, makes it possible for the citizens of these nations to bring a halt to the abuse. They are living in liberal democracies, and the basic structure of such societies instills in those in it a special self-concept that “derives from its profound and pervasive influence on the persons who live under its institutions,” (Rawls. *Justice as Fairness: A Restatement*, p55), and can inspire them to respond to the demands for justice and fairness. They know they are individually responsible for voting and expressing their desires to their governments through their freedom of speech, assembly, and movement. Those who best understand these problems can and must take their understandings to the people, and inspire them to demand an end to the injustice, debt, and pollutions that their governments are currently fostering or tolerating.

Applying John Rawls's theory of justice as fairness is critical now as never before. Today, as always, “The principles of justice specify the form of background justice apart from all particular historical conditions. What counts in the workings of social institutions now, and a benchmark of the state of nature. . . .” (Rawls. *Justice as Fairness: A Restatement*, p54.) With the entire earth threatened by instability, irresponsible waste of money and resources, and abuse of the environment, humanity is at a balance point of history. Rawls states that “Society is an ongoing scheme of fair cooperation over time without any specified beginning or end relevant for political justice,” (Rawls. *Justice as Fairness: A Restatement*, p54), so there are real obligations incumbent upon us in the current time. Accordingly, if the current generation takes his principle of just savings

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seriously, and if those living in nations that are responsive to their people take action and demand reform, the promise of a better world, if not a utopia, is within reach.

Since Rawlsian justice as fairness “focuses first on the basic structure [of society] and on the regulations required to maintain background justice over time for all persons equally, whatever their generation or social position” (Rawls. *Justice as Fairness: A Restatement*, p54) it is clear that we are justified in urging one another to meet our challenges without waiting for a utopia to evolve.

Perhaps we, as leaders in the current generation, could arrange a real, not just hypothetical, assemblage of real, not imaginary, people who would come together to share their best ideas and insights so that realistic limits might be set, goals drawn up, and policies adopted that would result in a turn around of the rate at which we allow abuse and oppression, reckless debt, and environmental damage to continue. We could require that all our guest deliberators accept responsibility for their own particular “personal veil of ignorance,” promising to disregard what they know of their own identities and play the role of reasonable, unbiased, moral people endowed with certain exceptional professional and personal know-how and understandings, meeting at a crucial balance point in history, and that their personal “level of well-being (however specified) . . . plays no role.” (Rawls. *Justice as Fairness: A Restatement*, pp54-5.) Striving to forget personal agendas and setting their egos aside, they are expected to act magnanimously in order to formulate the best possible solutions for injustice, debt, and abuse of the planet.

Some liberal democracies are already making laws that limit strip mining, require restoration of a scared environment, promote the rehabilitation of forests and their populations, prohibit destruction or consumption of flora that support certain endangered

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species, and attempt to set limits on the amount of pollution we produce and how we dispose of waste. Nations must meet and be realistic about the good and bad effects of their mega-projects, such as dams and the clearing of land by burning forests. Even some of the extravagant new cities and buildings being planned may have to be scaled back and made more earth friendly.

Designs for new buildings must take into account the heating and cooling, lighting and lifts and the energy they require, the parking lots they will need, and the alternatives that might be better for the environment and the people who use the buildings.

Writers must be encouraged to write about respect for the earth, and the media programmers must make room for reason-based programming that will foster responsible energy use, respect for the living creatures that inhabit the earth, and the land forms that beautify the landscape and perform vital services as habitats, reservoirs, recreational areas, and, of course, sources of valued minerals like petroleum, copper, uranium, gold, and so on.

Governments and interest groups should give incentives for promulgating respect for the earth and for providing systems that foster sustainable development for the benefit of man and the other living being with which he shares the earth.

There should be agreements to actually repair damage done, to replant trees where forests were destroyed, and create alternatives to popular activities that deface the earth or demand the use of defoliants, insecticides, and internal combustion engines.

These are simple suggestions. Experts could offer many more. The philosophical truth is, much damage remains to be remediated, and much thought must be given to change the ethos of energy use and the care of the planet. Somehow the libertarians must

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become more responsive to nature's demands and learn to accept limits on the exploitation of the earth and its peoples; and the communitarians must accept a certain amount of "world government" in whatever guise it takes in order to insure that powerful nations live up to their responsibilities to the world at large, and they must accept their individual responsibility for acting responsibly. Marxists must learn to accept and even emphasize spiritual and symbolic belief systems that go beyond simple dialectical materialism, and they must be more insightful about the impulses that promote economic well being and abundance; utilitarians must learn to consider the whole planet's welfare instead of what is possibly good for only "most" of a certain population of people, and must be sensitive to the minorities rights and needs. All these adjustments also apply to liberal democracy as well, even to Rawls's own version of it, for it is the great liberal democracies that somehow produce the most wonderful art, culture, communications, and freedoms, while at the same time producing some of the world's greatest problems.

Any of the three kinds of Original Positions mentioned in this study might do well to have sociologists, legal scholars, scientists and mathematicians as consultants to the reasonable, rational, and moral lay persons who could contribute their special expertise to the formation of principles, for without them, it is hard to determine what kinds of things must be done about the way we treat the earth and its inhabitant in order to be just and fair to those who will follow us in years to come.

In short, if a lesson can be learned from this study, readers might say that certainly the principles of John Rawls are a great place to start when trying to learn how distributive justice should work. He has invented a wonderful system for thinking about new ways of assembling the principles that we can all live by.

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At the same time, most of the leading liberal democracies are having a very hard time living just lives, because their principles, while looking good in terms of individual rights, look bad in terms of the way they deal with the rest of the world. Critics of liberalism and democracy watch the democratic members of the G8 and the similar but smaller liberal democracies as they travel through the world “globalizing” the earth, and making deals that seem to maintain their own status and perpetuate the poverty and misery of many of the other states where life is short and filled with disease, hunger, oppression, and hopelessness. The practices of the “advanced” countries create many of the problems that now afflict the world, and which will probably grow much worse as succeeding generations inherit a depleted and unstable world, where not only rare species of owls and fish are at risk, but food crops and even domesticated animals will also be threatened.

Of special importance is the fact that various businesses and other interests based in the G-8 group economic powers are among those guilty of oppressive dealings with lesser powers, while at the same time the governments of most of the G-8 countries are accruing debts which can be viewed as irresponsible, making the governments or the peoples of several of the G-8 nations guilty of being unfair and unjust to generations yet unborn who will be forced to pay off the rapidly expanding current debts by accepting currency owed them at a much reduced value, and very likely having to exist in a land where low paying jobs are the norm, and the debt-strapped nation will not be able to borrow money to support its military, foreign affairs, schools, and other vital parts of its infrastructure. Luc Van Liedekerke, in *“Discounting the Future: John Rawls and Derek Parfit’s Critique of*

the Discount Rate,”¹² points out that Rawls found using the “golden rule” of economics and reducing everything to a matter of crudely calculated “cost-benefits” analysis it a mistake, and

We may find that to achieve justice between generations,...modifications in the principle of utility are required. Certainly introducing time preference may be an improvement in such cases; but I believe that its being involved in this way is an indication that we have started from an incorrect conception. (Rawls. *A Theory of Justice*, 1971, p297.)

Philosophers and scholars have a special opportunity at this moment to move from speculation into concrete actions which will change the future. We must insist on truth in political campaigns. We must insist of responsibility on the part of business people, and we must make our own lives examples of how fairness can be a quality of a liberal democracy.

As philosophers, we can warn decision makers when their practices reflect the most negative aspects of utilitarianism and libertarianism, which must accept responsibility for many of the problems that threaten the well being of poor countries, currently “wealthy” countries (most of which are deeply indebted to other counties), and even the planet we must all live on. This is a time when we must work to right the wrongs liberal democracies have ignored or even fostered. We must insist that doing what is best for some never again dooms the weaker members of the human family to a life of hopeless poverty and anarchy. We must insist that governments develop the best possible systems for budgeting time, money and natural resources so that mounting debts may somehow be reduced before they are passed on to future generations. Systems must be set up to curb the irresponsible

¹² See Van Liedekerke, Luc. “Discounting the Future: John Rawls and Derek Parfit’s Critique of the Discount Rate.” *Ethical Perspectives: Journal of the European Ethics Network*, Vol. 11, No. 1. Date:2004. p.72.

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consumption of fuels and the growing degradation of air and water in spite of the objections from those who hold that somehow they have a natural right to freedom so broad that they must be allowed to deface and pollute the planet and doom living systems to inevitable extinction.

Thinkers and writers must somehow succeed in curbing those who lack sensitivity not only to their current fellow humans, but to those of the future, who someday may grow to despise the “do nothing” leaders of twentieth and twenty-first centuries philosophy for allowing their ancestors to ravage perfectly beautiful beaches, wetlands, lakes, forests, mountainsides, grasslands, and coral reefs, and so pollute the world with heavy metals, radioactive waste, and insoluble plastics that many still-pristine areas will in fifty years or so be ugly and uninhabitable waste lands ruined by unregulated and irresponsible businesses that used radical utilitarianism or libertarianism as an excuse to exploit the home planet's resources past the point of no return and condemned all future generations to lives in a universal landfill.

Terrorism, fueled by unfair business practices, will grow increasingly bold and effective, bringing one government after another to its knees, unless we effect the reforms needed now to establish the kind of justice that will be able to stop exploitation of workers and the confiscation of people's fields and farmlands, the devastation of their fishing grounds, and the ruin of their family businesses by the heedless spread of mass marketing superstores conceived in Europe or North America and introduced like a Trojan Horse into systems where they create havoc and ruin stable social groups, leaving the survivors' lives devoid of hope and meaning. The longer the liberal states allow atrocious business practices and excessively individualistic “freedoms” to wreck the lives and cultures of

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people, the worse will be the price future generations will have to pay for what was left undone as the twenty-first century dawned¹³.



¹³ For further information about debt, see www.fpif.org.

Chapter V. Conclusion and Recommendations

John Rawls's theory of justice as fairness has caught the attention of the world since he published his book, *A Theory of Justice* (1971). His experiences in World War Two included viewing the aftermath of the Hiroshima atomic bomb firsthand. When his book came out, the world was harshly criticizing the United States for pursuing the war in Vietnam, and his country's recent bitter experiences included the traumatic assassinations of President Kennedy (1963), his brother, Senator Robert Kennedy, who was a candidate running for the presidency (1968), and the Nobel-Peace-Prize-winning civil rights leader, Martin Luther King (1968). Riots disrupted political conventions, bombings killed school children and police, the military shot thirteen university students (1970), and other acts of violence brought a sense of urgency to the academic world, which welcomed his book as a new way of looking at what justice and a stable, decent society might be.

Like many others, Rawls looked at his country and tried to find principles it could use to secure peace within its borders, where frequent reports of race riots and brutal, violent suppression of lawful protest were making observers think the world's premiere democracy was descending into chaos and even revolution, even as it waged a long, bloody, and ultimately futile war far from its own shores.

Rawls's method was, like those of the originators of the modern social contract theory like Thomas Hobbes (1651) and Jean-Jacques Rousseau (1762), an attempt to create a reasonable way to justify the relationship between the government and those it governed. But where earlier thinkers were most concerned about the way the people upheld the government, with the option of overthrowing it if it proved unacceptable,

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Rawls was interested in how the government could provide people with the broadest liberty while encouraging enterprise and commerce, and providing goods, services, and opportunity to the neediest people. He did not want to turn government into a monopoly that would own all and distribute everything to people who, as Marx described them, were selfish and destructive, corrupted by society, and alienated from themselves, their work, and the human race in general. Rawls wanted to create a mental strategy that could discover principles of government all moral and reasonable people could accept as “fair” or good, and would guide the government to support the people by following principles worked out by their representatives, imaginary contract-makers operating under Rawls’s “veil of ignorance” in what he called the “Original Position.”

This was his great and unrivaled contribution to political philosophy. The creation and popularizing of what he called the Original Position gave philosophers and legal scholars a brand-new way of thinking about justice and about government. A mental process involving the imagination and abstract thinking, it took imaginary moral and reasonable people, had them operate under the famous “veil of ignorance,” with only a “thin theory of the good” to guide them, and set them to the task of coming up with principles that would seem fair and be acceptable to everyone, in order to allow the widest possible liberty to everyone and manage the nation’s public wealth in such a way that all, even the least well-off, would be assured of a decent life, and allowed people to advance in status and wealth, and the most successful to become wealthy and enjoy a great deal of liberty.

His imaginary individuals eventually came to realize that the hypothetical contract they would agree to as the basic principles of a just government would govern their lives once they had consented to its terms and principles. It would be the new social contract.

The veil of ignorance was Rawls's means of preventing bias and assuring impartiality. Under it, the contractors could not know anything about themselves. The hypothetical contract would control the distribution of liberties and public goods and services, access to wealth and opportunity to advance, and would afford "maximum benefits for those with minimum resources." Once the contract was in force, the contractors would return to their regular lives (imaginary though they were) and they would have to live in the kind of system they had created without the chance to escape or void the contract. To assure a decent life, at worst, or a good life, or an excellent life, at best, the contractors had to agree to assure that even the least well-off would live decently and would have a fair opportunity to advance in status and wealth.

Thinking very abstractly, then, Rawls saw his imaginary people arrive at a contract that worked for the benefit of all. His imaginary people provided for his publication two basic principles that they all agreed on: the Liberty principle, and the two-layered Difference principle. They have been described in detail above, so in these concluding remarks, let us look at only the outcomes of applying Rawls's principles.

His principles allow everyone the freedom to enjoy their natural rights such as ownership of property, freedom of speech, expression, association, and freedom from government interference in their private affairs, with liberty as broad as possible, limited only by not being allowed to detract from the liberty of others. This fits well with the way real-life moral and reasonable people, enlightened by philosophy and a liberal

education, fair-minded and moderate, see things. His ideas, drawn from the hypothetical contract, provide the kinds of security and stability needed to keep a society united and cooperative.

As for the distribution of the wealth the government garners from taxes, his Difference principle assures the most protection to the least fortunate individuals, along with a Fair Opportunity to move up in the society. Rawls does not attempt to determine who “merits” care or government services. He does not ask “Does this person deserve our help?” He does not distinguish between the employable and the unemployable. Those distinctions are not for the political philosopher, but for the experts in sociology, psychology, and social work. His Maximin principle and the way he distributes government goods and services is based on the amount of goods and services one might need to live a decent existence. Whereas Marx considers “need” and Nozick demands “merit,” Rawls tries to work around all extremes and arrive at practical, humane solutions to problems and the puzzle of who should get what.

Like Marx, Rawls did not base his theory on empirical facts. It did, however, have to pass the test of being acceptable to his imaginary, moral, reasonable, and unbiased contractors. True, the people did not really exist, but just like the square roots of negative numbers, they were imaginary but highly useful in his mental exercise.

To appreciate Rawls, it might be wise to ask, What if Marx, or Nozick, or Mill had been trained by Rawls in the use of the Original Position? Had Marx, for example, consulted other people, even imaginary ones, and given them the use of the special veil, and time to really mull things over, would his imaginary people have ever thought everyone with wealth was evil, and all those working for them were destructive and

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selfish, and miserably alienated for everyone else? Would they have proposed a system that, when closely scrutinized, was very likely to leave them victimized by bureaucratic party loyalists and robbed of their rights and property in order to produce benefits for “most of the people,” as Utilitarians propose, or “for everyone according to his need,” as Marx proposed?

If Mill had used the Rawlsian system, and even if the people he consulted were imaginary, would he have ever felt that anything “useful” was right, as long as many would benefit by it? It would seem inconsistent with Mill’s whole concept of fairness to all.

Go further, and ask, if Nozick could really step outside of his own position and be a participant in the original position deliberations, would he take a chance on waking up as one of the least well off, to find that it was government policy that no one could be taxed to provide him with medical care or housing or a meal because it was against libertarian principles?

What about communitarians? If called to stand trial on false charges, how would they feel if every person in his entire nation was going to follow the customs of the social group they sprang from, which was unsympathetic or hostile to his group? Who would he turn to for financial advice if he were to discover that he belongs to a despised minority group? Who could he trust?

Once one begins to study Rawls, particularly his moderation and reasonableness, and his ability to abstract from all the accidentals and get right down to the very basic questions of right and wrong, it is apparent that his principles of justice as fairness are superior to less well thought-out systems.

Chapter V. Conclusion and Recommendations

In rejecting Marxism, in scorning utilitarianism, in pointing out the flaws in libertarian logic and the disastrous results its misapplication can produce, and steering a course that was drawn up by people, as hypothetical as they may have been, who could actually operate without communitarian bias or ingrained self-serving, John Rawls, a self-proclaimed liberal moderate philosopher, has inspired many all over the world with his fresh and illuminating theory of justice as fairness.

Rawls's theory, like any good theory, can be applied over a wide range of situations. Though it is not a panacea or magic formula, it would probably be wise if governments and non-governmental organizations, and everyone in general, would think of how *A Theory of Justice* can be applied to solve the world's current problems. In the lines cited on pages 181 and 182, he informed us of a huge, often ignored segment of justice we can call generational fairness. When we view the following three issues as critical problems of generational fairness, they come into focus and coalesce into an area of philosophy which demands immediate attention from everyone in the world. Generational fairness affects, first, the most immediate and well-publicized threats of wars and terrorism; second, it demands an end to the silent, but potentially catastrophic, build-up of public and private debt; and third, and perhaps the most life-threatening, is the uncontrolled consumption and waste of natural resources and the resulting deterioration of earth as a life-sustaining planet. All three, if seen as issues of generational fairness and the justice we owe to future populations, may touch minds and hearts which as yet have not given adequate attention to the problem.

“Previous generations have saved or they have not; there is nothing the parties can now do to affect that.” (Rawls, *A Theory of Justice*, p 140.) He continues, “The present

generation cannot do as it pleases but is bound by the principles [of] justice between persons at different moments of time.” (Rawls, *A Theory of Justice: Revised Edition*, p258.)

If, as a result of this study, the issue generational fairness receives even a small portion of the interest it deserves, the effort will be worthwhile and perhaps others will take up the issue and it can become a catalyst for the kind of global discussion it urgently deserves. Current policies do not seem to provide even a hint of the enormous and even catastrophic results blindness to this principle will produce in the lives and fortunes of children born even two or three generations from now.

Generational Fairness: The Key Problems that Will Plague the Children of Tomorrow

Three aspects of current government policies and practices are of grave concern:

A. Terrorism: An attempt to manipulate the government by terrorizing the general populace through a series of more or less random mass killings, for example, using bombs to destroy trains or markets, and selective targets, like school teachers or executives of governments and foreign businesses.

B. The excessive dependence of governments and individuals on borrowed money, which will ultimately bankrupt a government and create massive disruptions in lives and governments.

C. The unrestrained consumption and waste of energy and other resources which reduces the viability of Earth as a life-sustaining environment. It is very dangerous when people have a tendency to see earth and its populations (other human beings, animals, natural resources...) as things for them to consume, control, or exploit. By reducing mankind and his handiwork to materialistic and utilitarian values, and planet Earth to a

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mere source of things to buy, sell, or use in international struggles for power and prestige, our generation is creating a terrorized population, an economic house of cards faced with impending bankruptcy, and a habitat diminished of beauty and balance facing massive extinction of species ranging from whales, sharks, and tuna to pollinating species like bees that are essential to maintaining the terrestrial food chain upon which humanity depends.

Terrorism, when viewed as the result of inequalities and unfairness, can be addressed and diminished by applying fair and just access to basic needs and respecting the liberties of all until they encroach on the liberties of others. Unfairness feeds terrorism.

Basic economic common sense tells us borrowing money as a means of paying for one's living expenses is not to be encouraged. Creating comfort and convenience for one generation is not fair if it leaves the following generations an existence of discomfort and inconvenience. Fairness to ourselves includes fairness to our descendants.

Devastating habitats and fouling the air and water of earth by seemingly "tiny" abuses is not only possible, but it is an established fact, quickly escalating and seemingly out of control; handing down a much depleted and defaced planet to following generations of living beings, animals, plants, and even humans, also seems unfair and unjust. Applied in a timely manner, Rawls's theories can do much to right the wrongs that seem to be multiplying.

Reckless borrowing can be viewed as a utilitarian problem, providing benefits for the current generation while leaving a catastrophic burden of debt for succeeding generations of individuals and entire populations. Applying Rawls's principle of

Difference would seem to provide possible solutions to this problem, and his Liberty principle and just saving principle seem to address the need for respect for the liberties and welfare of future people.

Rawls's theory of justice as fairness can be extended to principles of justice concerning the preservation of the natural beauty which people enjoy today. Problems affecting the whole world's population, such as, the problem of the global warming and other natural disasters, like floods, droughts, forest-fires and so on may well fall under the general rules which seek to distribute aid and support to nations suffering from calamities they cannot prevent.

Many so-called natural disasters are exacerbated by human negligence or corruption, as when dams collapse or flood control levees fail due to faulty construction. These can bring financial ruin or death to the victims. Sensitive wetlands, mineral-rich farmlands, and natural areas like tropical rain forests that provide habitat for people and spawning zones for living things are continuously eyed by unscrupulous developers as places they can make a great deal of money. Some kind of global ethic must be developed that would establish principles that will protect people and their livelihoods, and the living systems themselves, on these and other vital segments of the earth. Fundamental understanding of how nature works must be a very high priority in scientific research. Means must be found to educate the masses of people both rich and poor about how physical and biological systems work. Responsible leaders must arise and, like the heroes of civil rights and independence, these new heroes must excite everyone with a desire to leave a decent dwelling place for future generations of humans and animals and plants alike.

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They must teach everyone how to use of the resources of the planet in a responsible manner and safeguard it from degradation. Perhaps by cross-border, regional and world-wide agreements that parallel Rawls's approach to justice and fairness, we may leave a worthy legacy to coming generations. It is up to philosophers and opinion makers to arouse the public to accept responsibility husbanding the planet, and demand that governments and non-governmental agencies, churches, and other groups exert compelling pressure to stop the abuses that are harming the planet and robbing future peoples of so many of the riches that we enjoy now, but which our generation and prior generations have done so much to destroy.

Rawls accepts the fact that people act out of self-interest, but his hypothetical contract uses that as part of its dynamics, preventing the contractor from making risky, biased decisions about the way the government will work when the contract is finalized and they wake up to their own personal identity.

He clearly states that according to the just saving principle it is the duty of the current generation to invest money and resources for the use of future generations. We have mentioned three key issues of generational justice that need attention. We have also suggested that now is the time for people to unite to work out ways of managing global resources, and set up sound plans to lesson the impact of both natural and man-made natural disasters. Rawls asks us to be fair and just in national and global issues. There is little doubt that, were he mapping out his theory today, he would urge us to expand justice as fairness to everyone in the world, and to nature itself, if only for our own self-interest and as the legacy we pass on to later generations.

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The heedless and ever-expanding consumption of earth's resources and the consequent deterioration of habitats and extinction of species of plants and animals needed as nourishment for humans and other species threaten the quality and even the viability of future generations of humans. If Rawls's theory would be applied, the view of materialistic philosophers that see humans only as consumers and producers, and Earth as mere accidental object which we must consume might be discarded and fairness based on human dignity might be celebrated. Earth may be seen in a different light if it is seen as part of a great system of resources and habitats, worthy in itself of respect and in need of its own liberty from exploitation. As Gandhi said, "the Earth is enough for human need, but never enough for human greed."

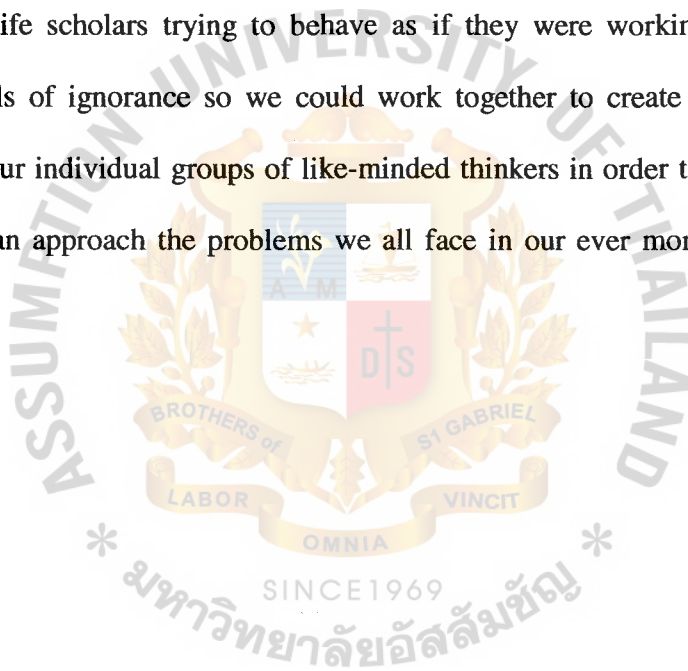
Recommendations for further study:

It is apparent that the scope of this dissertation can only be exploratory, and it can only explore a very few points, and cannot develop all the ideas it touches upon thoroughly enough to actually offer concrete plans of action which might possibly help solve even one of the three major problems we mentioned.

Having sketched out how Rawls's heuristic device works, and the conclusions his methods lead to, and the similarities and differences we found when comparing Rawls's work with Utilitarianism, Marxism, Communitarianism, and Libertarianism, we can recommend that Rawls be studied in depth by his critics so that when new criticisms emerge the authors will be well versed in everything positive that Rawls has to offer, and they may see him as an ally, a pilgrim on the same path they are on, walking toward the elusive goal of a world more just, more peaceful, more loving and more fair.

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This researcher has learned, after first accepting Rawls enthusiastically without reservations, and then having given serious thought to concerns expressed by a number of his critics that support competing theories, that all the rival theories have powerful strands of truth and offer unique insights, and the best approach to solving the three world problems of instability, degradation of the planet, and dangerous amounts of collective debt would be to enlist the help of sincere and open minded proponents of each of the rival systems in an attempt to find common ground for building a new hypothetical contract between real-life scholars trying to behave as if they were working behind their own individual veils of ignorance so we could work together to create a series of writings addressed to our individual groups of like-minded thinkers in order to form a community of care that can approach the problems we all face in our ever more soiled nest, planet Earth.



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BIOGRAPHY

Ms. Mao Sim was born on September 24, 1979 in Kratie Province, Cambodia. She is the fourth child in her family of seven children. Her father, Lot Chann, and her mother, Tei Yann, are retirees, and now are living in Cambodia.

Her early fruitful academic life in the governmental village school called Long Veak School, Kampong Chhnang province, Cambodia, from grade one to grade five began in 1987 and lasted until 1992. From 1992 to 1995, she studied at Oudong Primary School, Kampong Spei Province, Cambodia, from grade six to grade nine. From 1995 to 1998, she studied at Oudong High School, Kampong Spei Province, Cambodia, from grade ten to grade twelve.

From 1998 to 2002, she studied at Royal University of Phnom Penh, Cambodia, majoring in Philosophy. Later, from 2002 to 2003, she was trained as a High School Teacher in the Faculty of Pedagogy, Phnom Penh, Cambodia. Finally, from 2003 to 2007, she entered the Assumption University of Thailand Graduate School of Philosophy and Religion, receiving a full scholarship for her Master's of Arts degree in philosophy from New Humanity Organization in cooperation with the Royal University of Phnom Penh, Cambodia, and graduated *summa cum laude* on January 18, 2006, having authored a thesis titled *Martin Luther King, Jr.'s Philosophy of Equality through Nonviolence: A Critical Study*. She immediately entered the Ph.D. program at Assumption University, again majoring in Philosophy. Her major interest is the philosophy of justice as fairness as conceived by John Rawls in his *A Theory of Justice*, 1971. Her dissertation is titled *John Rawls on Justice as Fairness: A Critical Study* (2007).

She has written two scholarly papers: "Building and Sustaining Peace through Friendship," published in the proceeding of the 9th Socio-Cultural Research Congress on Cambodia, Royal University of Phnom Penh, Cambodia, Nov. 2006; and "A Compromise between Rawlsian and Communitarian Ethics," written in August 2007 and expected to be published by Chulalongkorn University, Bangkok, on the recommendation of Asst. Prof. Dr. Warayuth Sriwarakuel, Dean of Graduate School of Philosophy and Religion, Assumption University of Thailand.

