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EDITOR'S NOTE

Welcome to this 2024 Online Issue of *The UST Law Journal*, where we continue our commitment to providing thoughtful and rigorous analysis of the most pressing legal questions of our time. In this edition, we explore a diverse range of topics that reflect the ever-evolving landscape of law, from emerging constitutional debates to the latest developments in judicial reform governance and international human rights.

As we publish this issue, our field is at a critical juncture. Legal practitioners, policymakers, and scholars are grappling with complex challenges—from the intersection of law and critical legal philosophies to the shifting dynamics of ethics, judicial reform, and economic implications in an increasingly globalized world. This journal aims to serve as a forum for cutting-edge research, fostering dialogue among those who seek to understand, shape, and respond to these challenges.

We are particularly excited to feature a series of articles that delve into topics of great contemporary relevance, such as strengthening Filipino's cultural heritage, the governance structure of the criminal justice system and judicial reforms, the evolving narrative on constitutional change, legal-philosophical norms of public morality, and the notion of justice. These contributions advance academic discourse and provide valuable insights for legal practitioners, academe, and jurists navigating the practical realities of law in today's fast-paced, interconnected society.

As always, we are grateful to our contributors for their expertise and dedication and to our Editorial Board for their tireless efforts in bringing this issue to fruition. Through their hard work and commitment, we can continue to produce a journal that meets the highest standards of scholarship and impact.

With its foundational commitment to encouraging broader discussions through diverse legal perspectives, this issue aims to foster deeper insights for the Philippine legal community. We hope this issue sparks thoughtful reflection and inspires new avenues for inquiry in the legal profession. Thank you for your continued readership and support.

Sincerely,

IRENE D. VALONES, DCL, DPA

Editor-in-Chief

December 5, 2024

JOHN RAWLS' CONCEPTION OF PROPERTY-OWNING DEMOCRACY: A JUSTIFICATION OF THE POLITICAL CONCEPTION OF JUSTICE AS *FAIRNESS*

By:

DR. PHILIP L. FUENTES¹

ABSTRACT

The pursuit of a viable notion of justice for a just and well-ordered society remains to be a human concern. This article explores the viability of John Rawls' political conception of justice as fairness towards society stability as it transcends the limitations while considering the strengths of the prevailing but contrasting alternatives of utilitarianism and intuitionism. Central to Rawls' political conception of justice as fairness is the idea of the original position, where individuals deliberate under a veil of ignorance to establish principles of justice for the society that prioritizes fairness and equity. His emphasis on everyone's inherent dignity and equality, rooted in their capacity for fair social cooperation and pursuit of the good life, significantly considers the principles of justice that prioritize basic liberties and regulate inequalities for the advantage of all. Such moral underpinnings of Rawls's political conception of justice as fairness align with Immanuel Kant's conception of persons and moral theory, thereby allowing him to justify shared institutions and distributions of benefits. This study, therefore, employs a critical analysis of Rawls' political conception of justice as fairness by examining key concepts like the original position and the veil of ignorance. As such, this article offers insights into fostering fairness and equity in social institutions by exploring its moral underpinnings and practical applications. The second part of the article is equally crucial as it justifies Rawls' political conception of justice as fairness. Rawls identifies the regime of a property-owning democracy as the just institution that can best realize the two principles of justice as fairness in its basic structure. Rawls' appropriation of the basic institution of the family provided him a framework for the main features of a well-ordered society and, as such, afforded him the possibility of justifying his conception of justice as realistically plausible.

Keywords: utilitarianism, intuitionism, social contract theory, Kantian constructivism, justice as fairness, liberty principle, difference principle, and property-owning democracy

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I.INTRODUCTION

The quest for the best possible notion of justice toward establishing a just and well-ordered society has always been a human concern. This endeavor is arduous, particularly as injustices often overshadow justice and peace. These injustices can breed despair, but they should ignite the struggle for justice instead, a struggle that we must persist in. Isolation is not the solution, as humans are inherently social beings who require communities to fulfill their nature, meet needs, and accomplish cultural objectives. Hence, society is indispensable for individuals to realize their nature and purpose in life.

To ensure their survival, according to the social contract theory, individuals must surrender some of their private liberties to the collective will of the community. This raises a crucial question: *How can society ensure the protection of private liberty and fundamental rights of individuals?* This underscores the fact that justice is fundamentally about the individual's relationship with society. Justice, then, should be based on beliefs about the individual's societal role to foster harmonious relations and social harmony. It must be acknowledged, however, that every human has an inviolable right to life and dignity. As such, conditions that uphold and safeguard these rights for all individuals are crucial for them to live with dignity. Any compromise on these principles for any group jeopardizes them for everyone.

Many scholars have put forth their ideas on the best notion of justice. One such scholar is John Rawls, a prominent contemporary political philosopher, who zeroes in on this topic in his work *A Theory of Justice*², in which he lays out principles of justice to govern all social institutions and future arrangements, arguing that laws and institutions must be changed or abolished if they are unjust since “[e]ach person possesses an inviolability founded on justice that even the welfare society as a whole cannot override.”³

In this article, I intend to critically analyze John Rawls' conception of justice, a topic of utmost relevance in contemporary democratic society. Understanding his philosophical framework is crucial for addressing key questions: *How does Rawls' conception of justice grapple with the inherent equality and value of every individual, and how does it navigate the challenges posed by societal inequalities and pluralism?* Moreover, *what types of institutions can*

² John Rawls, *A Theory of Justice*. Oxford: Clarendon Press rev. ed. 2001.

³ John Rawls, *A Theory of Justice*, 2001, p. 3.

Rawls' principles of justice be applied to? Interestingly, these questions are not just academic exercises but directly affect our societal structures and policies.

In addressing the abovementioned problems, I first intend to examine the motivations behind Rawls' moral and political views by identifying the inherent strengths and weaknesses of the two classical systems of Utilitarianism and Intuitionism. I then analyze Rawls' two principles of justice, including the principle of equal basic liberties and the difference principle, as possible alternatives to the classical systems of justice that would govern all social institutions and future arrangements and serve as the backbone of his philosophical framework. Connecting Rawls' contractarian foundation with his moral and political principles would elucidate his comprehensive conception of justice, which is understood as fairness. The examination of Rawls' views on individuals and their basic rights, particularly highlighting the Kantian nature of justice as fairness, and his solutions to the problems of inequality and pluralism is crucial in appropriating his project as it provides a philosophical foundation for his political conception of justice as fairness. In the second part, I will examine Rawls' proposed *locus* of justice as fairness, that is, the property-owning democracy as the institution that best realizes the two principles of justice in its basic structure.

II. JOHN RAWLS' CONCEPTION OF JUSTICE

Rawls' philosophical enterprise is marked by his fresh and innovative approach to the 'social contract' concept. Dissatisfied with the limitations of utilitarianism⁴ and intuitionism⁵, he frames a political conception of justice that stands as a compelling alternative, sidestepping their shortcomings while retaining their strengths. His critical examination of these prevailing doctrines leads him to construct a framework that acknowledges individuals as distinct and underscores social stability. He did this by adopting the social contract theory, which lays the basis for a political conception of justice, thereby striking a delicate balance between respect for individual dignity

⁴ Utilitarianism, a prevailing political and moral philosophy in Anglo-America from the late 19th to the early 20th century, coincided with a period marked by increasing discontent, violations of individual rights, and injustices. Rather than addressing these calls for justice, utilitarianism itself contributed to societal injustices by permitting the sacrifice of a few for the pleasures of the many. In essence, utilitarianism undermines individualism and the protection of individual rights, thus allowing the potential disregard of some individuals' rights in favor of the majority. See *John Rawls, A Theory of Justice*, 2001, p. 24.

⁵ Intuitionism emphasizes the importance of rightness over goodness. It places significant emphasis on moral individuals' inherent value and dignity, considering them as ends in themselves rather than mere means. Nonetheless, akin to utilitarianism, intuitionism also reveals shortcomings. There is a necessity for a sufficient method to ascertain the morality of actions, addressing the shortcomings of both intuitionism and utilitarianism. See *John Rawls, A Theory of Justice*, 2001, p. xviii.

and rights and fostering collective identity and solidarity. Indeed, his addressing the inadequacies of previous moral theories enables him to frame a political conception of justice that promotes individual liberty and ensures social stability.

Historically, contractarianism has been used to explain or justify state authority, the formation of political communities, and the obligations of the governing and the governed. Appropriating Kantian Constructivism as the moral underpinning of his political conception of justice, Rawls was able to propose a viable alternative to intuitionism and utilitarianism that underscores objective ethical standards derived from reason. As such, he was able to argue for the existence of objective principles of justice that can be agreed upon by all rational individuals, regardless of their personal interests or circumstances. Moreover, drawing on Kantian constructivism, he ensured the possibility of a fair and just society where everyone is entitled to equitable treatment. This is because each person has an inherent inviolability rooted in justice, which the welfare of society cannot override, thereby positing justice as the primary virtue of all social institutions.⁶

However, some critics argue that Rawls' theory is too idealistic and does not consider the practical challenges of implementing such a society.⁷ They also question the feasibility of determining what is 'just' in a complex and diverse society. Despite these criticisms, Rawls' political conception of justice remains a considerable contribution to political and moral philosophy, as it highlights the importance of justice in societal structures and encourages a more equitable distribution of resources and opportunities.

Rawls' emphasis on upholding principles of justice in all aspects of society underscores the ethical imperative of justice in maintaining social stability. Formulating principles of justice that prioritize fairness and equity is not just rational but also an uncompromising and non-negotiable ideal guiding human actions. With these principles in mind, Rawls introduces his central political theory: *Justice as Fairness*.

A. The Ideas of Original Position and Veil of Ignorance

Rawls conceives 'justice as fairness' as a viable alternative to the problematic of political and moral conception of justice since it is the most reasonable in the basic structure of society as it considers the idea of 'social cooperation'⁸,

⁶ John Rawls, *A Theory of Justice*, 2001, p. 3.

⁷ Hart. "Rawls on Liberty and Its Priority." *John Rawls Critical Assessments of Leading Political Philosophers*, edited by Chandran Kukathas, vol. II. New York: Routledge 2003.

⁸ John Rawls, *A Theory of Justice*, 2001, p. 6.

which is the object of the mutual agreement by persons under fair conditions. Rawls envisions individuals deliberating with one another to ensure their agreement on basic principles will be rational, free, and fair. This is because the principles of justice that are objectively sound, he contends, are those that individuals would adopt in the initial situation, which he calls the “*original position*.” Interestingly, Rawls introduces the idea of *the original position* as a theoretical device, affording him the opportunity to investigate the principles the parties will each agree to advance their own individual well-being. More importantly, the parties in the original position are “rational”⁹ and “mutually disinterested.”¹⁰

Having these considerations, he notes two considerations. First, the parties, as *rational*, would not enter into agreements in which they know they cannot keep or can do so only with great difficulty. Second, the parties are *mutually disinterested*, meaning each has his life prospects wanting to be fulfilled. Hence, *the citizens in the original position are not egoists*¹¹. As such, the original position is the core¹² of the political conception of justice. Hence the name: *justice as fairness*.¹³

⁹ Rawls asserts that a rational individual possesses a consistent set of preferences among available choices. They prioritize these options based on how effectively they serve their objectives, opting for plans that fulfill more desires and have a higher likelihood of successful implementation. See John Rawls, “*A Theory of Justice*”, 2001, p. 124.

¹⁰ In the original position, the presumption of mutually disinterested rationality suggests that individuals strive to identify principles that maximize the advancement of their personal objectives. They aim to secure the greatest possible allocation of primary social goods for themselves, as this enhances their ability to pursue their own conception of the good, whatever it may entail. See John Rawls, *A Theory of Justice*, 2001, p.125.

¹¹ There is a prevalent misunderstanding regarding Rawls' theory of justice, which assumes that individuals in the original position are indifferent to each other's interests. Rawls corrects this misconception by asserting that the principles of justice, obligation, and natural duty mandate individuals to consider the rights and claims of others, thus dismissing the notion of complete disinterest among them. See John Rawls, *A Theory of Justice*, 2001, pp. 127-128.

¹² H.L.A. Hart, a critic of Rawls, succinctly characterizes the “Original Position” as the central concept of Rawls' political theory of justice. According to Hart, this concept asserts that principles of justice are not solely based on intuition nor derived from utilitarianism or other teleological theories aimed at maximizing some form of good. Instead, these principles are envisioned as free and rational individuals advancing their interests and agreeing to govern their societal structures and institutions. They would choose these principles from behind “a veil of ignorance,” termed “the original position.” See Hart. “*Rawls on Liberty and Its Priority*.” John Rawls Critical Assessments of Leading Political Political, edited by Chandran Kukathas, vol. II. New York: Routledge 2003, p. 36.

¹³ It is worth noting that Rawls places great importance on ‘fairness’ as fundamental to his idea of justice. Fairness denotes equitable treatment or reciprocity within established relationships, with mutual acceptance as the measure of fairness when applied to institutions or practices. The mutual recognition and acceptance of the fairness standard among those involved signify acknowledgment of each other's personhood. Moreover, justice pertains to the political and authoritative realms, while fairness, as its ethical foundation, is demonstrated through the voluntary and uncoerced process of agreeing on what is deemed fair. An institution or practice is considered just if it satisfies the fairness criterion and is legitimately established. See John W. Chapman, *Justice and Fairness*, John Rawls Critical Assessments of Leading Political Political, edited by Chandran Kukathas, vol. II. New York: Routledge 2003, p. 62. Therefore, it is crucial to understand that justice as fairness should not be viewed as an all-encompassing moral doctrine but rather as a political concept tailored to the framework of political and social institutions.

The idea of the original position proposed by Rawls requires that the decision-makers are unaware of their own circumstances and those of others, which is known as the 'veil of ignorance'. This veil of ignorance ensures that when people establish principles of justice, they do so without knowing their specific situations. As a result, the principles that emerge from behind the veil of ignorance are intended to be fair, as they are not biased toward or against individuals in particular circumstances. As such, Rawls introduced the veil of ignorance as a test for the fairness of principles of justice. Any principles not aligning with the veil of ignorance are considered unacceptable. He argues that certain principles would be ruled out if people's unique circumstances were known. Therefore, only information necessary to conceive principles of justice is considered in the original position. Hence, the idea of the original position serves two functions: it provides a framework for working out principles of justice and offers a standpoint from which to evaluate them. Indeed, the concepts of the original position and the veil of ignorance are fundamental in Rawls' political conception of justice as fairness.

We conjecture that the fairness of the circumstances under which agreement is reached transfers to the principles of justice agreed to; since the original position situates free and equal moral persons fairly with respect to one another, any conception of justice they adopt is likewise fair. Thus, the name: is justice as fairness. In order to ensure that the original position is fair between individuals regarded solely as free and equal moral persons, we require that, when adopting principles for the basic structure, the parties be deprived of certain information, that is, they are behind the veil of ignorance.¹⁴

The quote highlights the concept of 'justice as fairness', which should be noted that 'justice' and 'fairness' are not identical, but rather ensure that the principles of justice are established under fair conditions by individuals in an equitable situation. These principles should be applied equally to everyone, which classical utilitarianism failed to account for. The most rational principles of justice, he holds, are those that individuals would mutually agree upon under fair conditions, and his political conception of justice as fairness meets this requirement as it upholds a broadly liberal understanding of fundamental rights and freedoms while allowing for

¹⁴ John Rawls, *Lecture: Kantian Constructivism in Moral Theory*. The Journal of Philosophy Vol. 77, No. 9, September 1980, pp. 522-523. It is important to note that Rawls did not conclusively disregard the fact that the parties do possess knowledge of those factors which will not bias one's decision, for instance, social knowledge, scientific knowledge, knowledge identifying what human beings need to live. He writes: "the only particular facts which the parties know is that their society is subject to the circumstances of justice" See *Ibid.*, p.119. These circumstances of justice are what Rawls refers to the inherent historical and social conditions of every society.

wealth and income inequalities only if they benefit the least advantaged members of society.¹⁵

B. The Two Principles of Justice

Rawls framed his two principles of justice to establish a framework for parties to understand what constitutes a 'fair' principle. He achieved this by introducing the original position, a thought experiment or theoretical device designed to guide parties in identifying fair principles.

To safeguard the essential element of justice, that is, *fairness*, he espouses the intuitive idea that people are to be treated only as persons and never as things. In this case, he posits that justice is the first virtue of all social institutions. Thus, the principles of justice that must be formulated must be just and fair.

However, given the inherent conditions of every society, the parties tend to disagree about what constitutes good and how the benefits and burdens within the society will be distributed among its members. Rawls argues that these must be met head-on. And if society is to exist and endure despite such differences, the parties must work out a *consensus* about what constitutes the good. In effect, the parties must agree upon the rules that will govern them as a society and that these rules will be applied consistently. But the fact is that:

The growth of the welfare state has often been explained and defended as a progressive recognition that the government should provide certain benefits (positive rights) in order to prevent certain harms to citizens (negative rights). Yet its opponents claim that the welfare state violates the negative rights of other citizens (property owners, for example).¹⁶

Given such a dilemma, *How will the parties know what constitutes a 'fair' principle?* Rawls confronts this ordeal by bringing into play the original position through which the parties will ascertain the remedy to such a dilemma.

The original position's significance, he holds, lies not in justifying governmental authority but in identifying the fundamental principles that should govern a society that promotes justice as fairness. In the original position, parties are placed behind a veil of ignorance, unaware of their

¹⁵ John Rawls, *Justice as Fairness: A Restatement*. U.S.A.: Harvard University Press, 2001, specifically, *The Editor's Foreword*.

¹⁶ Thompson, D.F. *Political Ethics and Public Office*. Cambridge, MA: Harvard University Press, 1990, p. 104.

future societal status. This ensures the utmost integrity and objectivity in their decisions. Rawls firmly believed that under these conditions, the parties would choose his two principles of justice over alternatives, such as utilitarian principles, to structure and govern society, thereby ensuring an unbiased approach. This approach guarantees an unbiased selection of the principles of justice that would govern the basic structure of society. The following are the two principles of justice that Rawls proposes:

(1) Each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties of others. (2) Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage and (b) attached to positions and offices open to all.¹⁷

This implies that the Rawlsian principles of justice are meant to govern the fundamental structure of society, including its political and economic arrangements, rather than dictate specific governmental actions or laws.

Within the theoretical framework posited by Rawls, the foundational precept, termed the Liberty Principle, serves as the cornerstone of his philosophical doctrine. The first principle requires that the basic structure provide each citizen with a fully adequate scheme of basic liberties – such as freedom of conscience, freedom of expression, and due process of law.¹⁸ However, these liberties can be restricted if they conflict with other basic liberties. “[T]hese liberties have a central range of application within which they can be limited and compromised only when they conflict with other basic liberties.”¹⁹ Given this situation, none of these liberties, whenever they clash with one another, is absolute. Rawls does not advocate absolute or complete liberty. The idea is to allow the parties in the society to have or to keep absolutely anything. The second principle pertains to regulating income and wealth distribution and organizing institutions that utilize differences in authority and responsibility.²⁰ While this distribution does not need to be completely equal, it should be to the advantage of all, ensuring that all individuals have access to positions of authority and responsibility, thus taking into account the interests of all. For example, within a societal structure characterized by pronounced income disparities, the Difference Principle would obligate governmental entities to enact redistributive policies aimed at wealth allocation and the facilitation of equitable

¹⁷ John Rawls, *A Theory of Justice*, 2001, p. 53; and *Justice as Fairness: A Restatement*, 2001, p. 42.

¹⁸ Scanlon clarifies the listing of basic liberties, saying: “The list is not categorical as it is offered by Rawls neither it is a precise enumeration of the class of basic liberties but indicative of what this class to include.” T.M. Scanlon. *Rawls' Theory of Justice. Understanding Rawls* ed. Norman Daniels. Oxford: Basil Blackwell and Mott LTD., 1975, p. 182.

¹⁹ John Rawls, *A Theory of Justice*, 2001, p. 54.

²⁰ John Rawls, *A Theory of Justice*, 2001, p. 54.

opportunities for every individual. Significantly, the integration of Rawls' principles encapsulates three fundamental tenets: liberty, equality, and the reward for contributions toward communal welfare. The Difference Principle sanctions inequalities exclusively under circumstances that are justifiably beneficial to every societal member, thereby ensuring a framework of fairness and equity.

It is worth noting that the two principles of justice are 'lexically ordered'²¹ so much so that in cases where the two principles diverge, the first principle must always take precedence over the second principle. This concept, known as 'The Priority of Liberty,' highlights the importance of not compromising the Principle of Liberty for economic and social gains. The key distinction between the two principles is the role they assign to the basic structure of society. The first principle ensures equal liberties and a just constitutional regime, while the second provides a framework for social and economic justice.

In elucidating upon his principles of justice, Rawls delineates their specificity yet situates them within a special case of a more general conception of justice, that is,

All social values – liberty and opportunity, income and wealth, and the social 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.²²

It means that the "injustice...is simply inequalities that are not to the benefit of all."²³ Hence, "the general conception of justice imposes no restrictions on what sort of inequalities are permissible; it only requires that everyone's position be improved."²⁴ To put it simply: Whereas "the first principle simply requires that certain sorts of rules, those defining basic liberties, apply to everyone equally and that they allow the most extensive liberty compatible with a like liberty for all,"²⁵ the second principle, nonetheless,

²¹ *Lexical* is Rawls' private version of the word *lexicographic*, which is a term of art meaning a way of ordering criterion such that the smallest discernible difference on the first-ranking criterion offsets any amount of difference on the second-ranking criterion, and so on. As the word suggests, the paradigm is the arrangement of words in a dictionary, where alphabetic position on the first letters of a word is decisive in ordering two words unless they begin with the same letter, in which the same decision process is applied to the words' second letters. See Brian Barry, "John Rawls and the Priority of Liberty", p. 55. Furthermore, the supposition of the ordering of the two principles is that "infringements of the basic liberties protected by the first principle cannot be justified, or compensated for, by greater social and economic advantages." See Brian Barry, "John Rawls and the Priority of Liberty", p. 53-54.

²² Brian Barry, "John Rawls and the Priority of Liberty", p. 54.

²³ Brian Barry, "John Rawls and the Priority of Liberty", p. 54

²⁴ Brian Barry, "John Rawls and the Priority of Liberty", p. 55.

²⁵ Brian Barry, "John Rawls and the Priority of Liberty", p. 56.

insists that “each person benefits from permissible inequalities in the basic structure.”²⁶

According to Rawls, the principles of justice emanate from the equitable and mutual terms of societal cooperation among rational, self-interested individuals operating under the veil of ignorance. This veil assures that principles are selected predicated on a collective moral ethos devoid of personal prejudices. A practice is considered fair when all participants feel that they are not being taken advantage of or pressured to accept unfair demands. This mutual recognition of fairness is essential to the concept of justice. When participants perceive the rules of the practice as fair and have no grievances, a prima facie duty arises for them to act in accordance with the practice. This duty, referred to as "fair play," implies that acting unfairly often involves exploiting loopholes or ambiguities in the rules or taking advantage of unforeseen circumstances rather than simply breaking specific rules. Rawls' political conception of justice emphasizes fairness as a fundamental element, ensuring that social cooperation and the allocation of benefits and burdens are just and equitable for all members of society.

Furthermore, the original position assumes that the parties are equal and free. This assumption is based on the parties' two capacities: their ability to respect fair terms of social cooperation - also known as the capacity for a sense of justice - and their ability to form a conception of the good, which resides in the ability to form, to revise and rationally pursue such a conception, that is, a conception of what we regard as a worthwhile human life. A conception of the good normally consists of a determinate scheme of final ends and aims, and of desires that certain persons and associations, as objects of attachments and loyalties, should flourish. Also included in such a conception is a view of our relation to the world – religious, philosophical or moral – by reference to which these ends and attachments are understood.²⁷ These two moral powers render persons “capable of being normal and fully cooperating members of society over a complete life.”²⁸

C. The Moral Sense of Justice as Fairness in the light of Kantian Constructivism

²⁶ Brian Barry, “John Rawls and the Priority of Liberty”, p. 57.

²⁷ John Rawls, *The Basic Liberties and Their Priorities*. The Tanner Lectures on Human Values, Delivered at The University of Michigan April 10, 1981, p. 16.

²⁸ John Rawls, *The Basic Liberties and Their Priorities*, p. 15.

The political conception of 'justice as fairness' within Rawls' theoretical framework transcends mere abstraction, establishing itself as a significant intellectual construct. It predicates the foundation of a society wherein all members can substantiate the legitimacy of shared institutions and the equitable distribution of benefits and burdens amongst one another. In a societal structure governed by the principle of 'justice as fairness', the allocation of resources is strategically designed to ensure that the least advantaged groups maintain a relatively satisfactory standard of living. This approach, deeply embedded in the ethos of granting each individual the right to equal concern and respect, constitutes the ethical cornerstone of Rawls' political philosophy, which resonates with Immanuel Kant's conceptualization of personhood, particularly within the realm of moral theory.²⁹ This resonance is not merely superficial but significantly shapes two pivotal elements of Rawls' framework, thereby highlighting the philosophical lineage and intellectual foundations embedded within his political conception of justice as fairness.³⁰ His interpretation of personhood directly reflects Kant's delineation of the person as a noumenal self—endowed with inherent rational and moral capacities. Through the lens of the original position, Rawls envisions individuals perceiving the world as noumenal selves. From this standpoint, individuals within the original position, embodying their roles as rational and equal entities of the intelligible realm, seek to adopt principles that best encapsulate their autonomy from the vicissitudes of nature and societal constructs. This alignment with Kantian principles is fundamental to his argument, advocating that adherence to principles established in the original position intrinsically benefits individuals as noumenal selves.

Although Rawls departs from Kant's views in several aspects, it is important to note two important points of Rawls in a Kantian sense. First, the conception of a person employed by Rawls parallels Kant's notion of the person. Rawls assumes that the person as a noumenal self is to be a collective one. He suggests that:

"...we think of the original position as the point of view from which noumenal selves see the world. The parties qua noumenal selves...have a desire to express their nature as rational and equal members of the intelligible [i.e., noumenal] realm....They...must

²⁹ Immanuel Kant. *Groundwork to the Metaphysics of Morals*, trans. by H.J. Paton "The Moral Law." London: 1961, pp. 95-98. It is interesting to note that the title, *The Kantian Interpretation*, does not subsequently indicate an interpretation of the actual doctrine of Kant but of Rawls' justice as fairness, which "is based upon Kant's notion of autonomy." See *John Rawls, A Theory Justice*, p. 221.

³⁰ John Rawls, "Kantian Constructivism in Moral Theory". *Collected Papers*. ed. by Samuel Freeman. London: Harvard University Press, 2001, pp. 304-305.

decide which principles...most fully reveal their independence from natural contingencies and social accident.³¹

This is the deepest premise in Rawls's complex argument: *that living in accord with the principles agreed to in the original position is advantageous to the parties as noumenal selves.*

Additionally, Rawls acknowledges the inherent diversity and uniqueness of human conditions in his conceptual framework. Recognizing the distinct interests and responsibilities that emanate from human dignity and autonomy, he posits that a just and orderly society necessitates governance by principles that accommodate these natural limitations and human variances. Consequently, Rawls argues for 'justice as fairness' not merely as a theoretical construct but as an indispensable mechanism for the facilitation of human justice. This highlights the critical role of 'justice as fairness' in orchestrating a harmonious balance amongst the diverse interests of individuals within society.³²

Indeed, Rawls' political conception of 'justice as fairness' is designed to establish a society in which all institutions and fundamental structures are justifiable to every member, based on a foundation of respect for each person's equal worth and rational abilities. This concept is deeply rooted in Kantian moral philosophy, emphasizing the importance of treating individuals as ends in themselves and ensuring that the principles governing society reflect this fundamental respect for human dignity and rationality. Nevertheless, some critics contend that Rawls' theory of justice is overly idealistic and fails to adequately consider the complexities and trade-offs inherent in real-world politics and economics. Nevertheless, Rawls argues that justice as fairness is the theory that would best suite the conditions of human life since "its premises are the elementary facts about persons and their place in nature." Hence, Rawls strongly posits that "justice as fairness is a theory of human justice."³³

III.A PROPERTY-OWNING DEMOCRACY AS A JUST INSTITUTION: A JUSTIFICATION OF THE POLITICAL CONCEPTION OF JUSTICE AS FAIRNESS

³¹ John Rawls, "Kantian Constructivism in Moral Theory", p. 225.

³² John Rawls, "Kantian Constructivism in Moral Theory", p. 304.

³³ John Rawls, "Kantian Constructivism in Moral Theory", p. 226.

Rawls' conception of justice as fairness is predicated on the idea of 'reasonable pluralism,' which he defines as the acknowledgment that individuals in a modern democratic society adhere to diverse, comprehensive doctrines that shape their conceptions of the good. This notion is fundamental to comprehending Rawls' argument, as it serves as the groundwork for his approach to addressing society's diverse beliefs and values.

Acknowledging the diversity of circumstances, Rawls recognizes the impossibility of eliminating this diversity without resorting to oppressive state power, a scenario he vehemently opposes.³⁴ In response, Rawls presents an alternative political conception of justice that does not rely on coercion. His aim is to articulate a political conception of justice that emphasizes fair terms of cooperation, agreed upon by free and equal individuals over time across generations.

The practical goal of justice as fairness is to furnish a philosophical and moral underpinning for democratic institutions since they play a significant role in assigning basic rights and duties, regulating the distribution of benefits from social cooperation, and allocating the burdens necessary to sustain it, as outlined by the principles of justice. Rawls' framework outlines the type of just institutions that citizens would propose to realize the principles of justice within their basic structures, underscoring the power and responsibility of these institutions.

Rawls' political conception of justice as fairness and his vision of a just and well-ordered society hinges on 'fair terms of cooperation'. These terms, meant to be agreed upon by free and equal persons, ensure that justice is maintained without oppression and that democratic institutions are grounded in principles that all can reasonably endorse despite their diverse, comprehensive doctrines. Examples of these fair terms of cooperation include equal access to education, healthcare, and opportunities for social and economic advancement.

Considering the "practical aim of justice as fairness," "the function of the main political and social institutions," and "the essential features of a just and

³⁴ John Rawls, *Justice as Fairness: A Restatement*, p. 84. It is nice to note that Rawls sounds pessimistic in this quotation. It should be clarified that he expresses this sentiment to underscore the fact of an oppressive use of state power to impose its set of comprehensive doctrines. However, it can be gleaned from the succeeding discussion that even though such a fact of oppression is inherent in every democratic society, it does not mean that it cannot be avoided. It is in this context that Rawls proposes an alternative political conception of justice that would not require the fact of oppression. Therefore, Rawls is not pessimistic on this aspect, but rather, he is optimistic that a well-ordered democratic society is better off without such a fact.

well-ordered society,"³⁵ the question arises: What is the most ideal and practical well-ordered democratic regime that fits these considerations?

Evidently, in the initial phase, the involved parties will engage in a rational conversation regarding the type of government that the social contract should support to ensure justice in society. Rawls has outlined five categories of regimes as complete social systems, encompassing their respective political, economic, and social institutions. These regimes are (a) laissez-faire capitalism, (b) welfare-state capitalism, (c) state socialism with a command economy, (d) property-owning democracy, and (e) liberal (democratic) socialism.³⁶

To determine which of these regimes satisfies the two principles of justice and can function as the main political and social institution within a just and well-ordered society, Rawls outlines certain standards necessary for this assessment. Rawls underlines that:

Regarding any regime from generations naturally arise. One is the question of right: that is, whether its institutions are right and just. Another is the question of design: that is, whether a regime's institutions can be effectively designed to realize its declared aims and objectives. This implies a third question: whether citizens, in view of their likely interests and ends as shaped by the regime's basic structure, can be relied on to comply with just institutions and the rules that apply to them in their various offices and positions. The problem of corruption is an aspect of this. Finally, there is the question of competence: whether the tasks assigned to offices and positions would prove simply too difficult for those likely to hold them.³⁷

These standards suggest that citizens, as the ultimate decision-makers, would choose an institution that effectively promotes the aims and interests necessary for sustaining them—essentially, one that is just and efficient. However, Rawls clarifies that the theory primarily addresses the first question: rights and justice. Thus, the central inquiry becomes: "What regime and basic structure would be both right and just, and could it feasibly be maintained?"³⁸ When examining the "ideal institutional description,"³⁹

³⁵ Rawls notes that the fundamental characteristics of a just society can be summarized as follows: it ensures that its members enjoy basic liberties; it safeguards the political freedoms tied to democratic governance, such as the rights to vote, to associate, and to voice political opinions, while maintaining state accountability and responsiveness to its citizens; it fairly allocates the resources necessary for the exercise of civil and political liberties; and it fosters the overall well-being of the community.

³⁶ John Rawls, *Justice as Fairness: A Restatement*, p. 136.

³⁷ John Rawls, *Justice as Fairness: A Restatement*, p. 136.

³⁸ John Rawls, *Justice as Fairness: A Restatement*, p. 137.

³⁹ "By ideal institutional description of a regime," Rawls means, "the description of how it works when it is working well, that is, in accordance with its public aims and principles of design." John Rawls, *Justice as Fairness: A Restatement*, p. 137.

Rawls argues that citizens must choose between two systems - the property-owning democracy and liberal socialism - since the initial three systems fail to uphold the two principles of justice. While both property-owning democracy and liberal socialism seem to meet the criteria for satisfying the two principles of justice, Rawls suggests that citizens would prefer property-owning democracy over liberal socialism.⁴⁰

It is imperative to delineate the unique attributes of the property-owning democracy, positioning it as the quintessential embodiment of the political conception of justice namely, *Justice as Fairness*, within a society that aspires to be fair, just, and well-ordered. Rawls explains that "the background institutions of property-owning democracy function to distribute wealth and capital ownership widely, thereby preventing a small segment of society from monopolizing the economy and, indirectly, political life as well."⁴¹ Hence, property-owning democracy is a barrier against the concentration of economic power within a select few, making it a compelling choice.

Property-owning democracy avoids not by the redistribution of income to those with less at the end of each period, so to speak, but rather by ensuring the widespread ownership of productive assets and human capital (that is, education and trained skills) at the beginning of each period, all this against a background of fair equality of opportunity. The intent is not simply to assist those who lose out through accident or misfortune...but rather to put all citizens in a position to manage their own affairs on a footing of a suitable degree of social and economic equality.⁴²

The alignment of a property-owning democratic regime with the primary political aspect of the citizens' two chosen principles of justice, promoting both liberty and equality, further underscores its significance. Essentially, a property-owning democracy regime embodies these two principles of justice, defining the fair terms of social cooperation while working towards its specific objective. This demonstrates that property-owning democracy is not simply a concept but a practical system aiming to "embody in the fundamental institutions the concept of society as a just system of collaboration among citizens viewed as free and equal."⁴³ To accomplish this, Rawls contends that these institutions should initially allocate adequate productive resources to all citizens rather than just a privileged few,

⁴⁰ John Rawls, *Justice as Fairness: A Restatement*, p. 138. Rawls admits that "[B]oth a property-owning democracy and liberal socialist regimes set up a constitutional framework for democratic politics, guarantee the basic liberties with the fair value of the political liberties and fair equality of opportunity, and regulate economic and social inequalities by a principle of mutuality, if not by the difference principle." See John Rawls, *Justice as Fairness: A Restatement*, p. 138.

⁴¹ John Rawls, *Justice as Fairness: A Restatement*, p. 139.

⁴² John Rawls, *Justice as Fairness: A Restatement*, p. 139.

⁴³ John Rawls, *Justice as Fairness: A Restatement*, p. 140.

allowing them to fully engage in society on an equal basis. These resources include both human and material capital, such as knowledge, understanding of institutions, educated capabilities, and developed skills. Rawls emphasizes that only through this approach can the fundamental structure achieve genuine procedural justice over successive generations.⁴⁴

For Rawls, pure procedural justice is not just a theoretical construct but an indispensable tool to navigate the uncertainties of specific circumstances in pursuing justice as fairness. He further asserts that the social framework should be constructed so that the resulting distribution is fair regardless of the outcome. This underscores the urgency and importance of pure procedural justice in ensuring a fair and just society, regardless of the specific outcomes.⁴⁵

A. A Property-Owning Democracy as a Social Union

Rawls' exploration of the concept of the good within justice as fairness is not to be overlooked. This exploration, which forms the crucial elements of property-owning democracy, also aids in outlining how the foundational framework of the 'basic structure'⁴⁶ of such a regime aligns with the two principles of justice. Rawls promptly clarifies that "the right and the good complement each other," asserting that "any conception of justice, particularly a political one, requires both, and prioritizing right does not negate this fact."⁴⁷ He underscores this by stating that "just institutions and the political virtues could serve no purpose...unless those institutions and virtues not only permitted but also sustained a conception of the good...that citizens can affirm as worthy of their full allegiance....If it cannot do this, that conception will lack support and be unstable."⁴⁸ Thus, the notion of the good holds significance in justice as fairness because "the just draws the limit, the good shows the point."⁴⁹ Here, Rawls delineates six concepts of the good within his political theory of justice as fairness. These concepts include (1) the idea of goodness as rationality, (2) the notion of primary goods, (3) the recognition of permissible comprehensive conceptions of the good, (4) the concept of political virtues, (5) the comprehension of the good within a

⁴⁴ John Rawls, *Justice as Fairness: A Restatement*, p. 140.

⁴⁵ John Rawls, *A Theory of Justice*, p. 243.

⁴⁶ Rawls assumes that "the basic structure is regulated by a just constitution that secures the liberties of equal citizens...and the value of political liberty is maintained. The political process is conducted, as far as circumstances permit, as a just procedure for choosing between governments and for enacting just legislation...that there is fair (as opposed to formal) equality of opportunity." See John Rawls, *Justice as Fairness: A Restatement*, p. 243.

⁴⁷ John Rawls, *The Priority of Right and Ideas of the Good*, pp. 449-450.

⁴⁸ John Rawls, *Justice as Fairness: A Restatement*, pp.140-141.

⁴⁹ John Rawls, *Justice as Fairness: A Restatement*, p.141.

well-ordered (political) society, and (6) the notion of the good within such a society as a social union.⁵⁰ Each of these ideas requires specific elaboration.

First, Rawls underscores that "a sense of one's worth"⁵¹ is a pivotal good. He believes that "a person's good is determined by what is for him the most rational long-term plan of life given reasonably favorable circumstances."⁵² This means that it is only by successfully carrying out such a plan that man will be more or less happy since "the good is the satisfaction of rational desire"⁵³; henceforth, "goodness as rationality". The concept that posits goodness as synonymous with rationality forms a fundamental axiom within the framework of social and political organization. This principle serves as a foundational premise upon which various other conceptions of the good can be further delineated and explored, in the sense that, "one aim of the idea of goodness as rationality is to provide part of a framework for an account of primary goods," wherein another part of a framework may be completed when "combined with a political conception of citizens a free and equal."⁵⁴

Second, Rawls introduces the concept of primary goods within the framework of his political theory of justice. These goods represent the fundamental needs of individuals within a society of free and equal persons.⁵⁵ By understanding and addressing these needs, Rawls argues that the pursuit of justice can be effectively carried out within the framework of rationality and the political conception of free and equal citizens.

Third, Rawls' concept of permissible conceptions of the good has deep ethical implications, in the sense that, the idea of prioritizing rights suggests that only those conceptions of the good that align with the principles of justice are permissible. This emphasizes the moral duty of individuals and societies. It encourages the citizens to contemplate not only what is permissible but what is morally correct and how our decisions and actions contribute to a just and equitable society.⁵⁶

Fourth, his idea encompasses certain political virtues within "justice as fairness," such as civility, tolerance, reasonableness, and fairness. These virtues align with political liberalism, a philosophical tradition emphasizing individual rights, freedom, and equality.⁵⁷ They relate to both political

⁵⁰ John Rawls, *Justice as Fairness: A Restatement*, p. 142

⁵¹ John Rawls, *A Theory of Justice*, p. 79.

⁵² John Rawls, *A Theory of Justice*, p. 347.

⁵³ John Rawls, *A Theory of Justice*, p. 80.

⁵⁴ John Rawls, *The Priority of Right and Ideas of the Good*, *Collected Papers*, p. 452.

⁵⁵ John Rawls, *Justice as Fairness: A Restatement*, p. 141.

⁵⁶ John Rawls, *Justice as Fairness: A Restatement*, p. 141.

⁵⁷ John Rawls, *The Priority of Right and Ideas of the Good*, *Collected Papers*, p. 460.

virtues and principles of justice. While they characterize the ideal citizens of a democratic state, Rawls distinguishes them from virtues associated with comprehensive religious or philosophical doctrines.⁵⁸

Fifth, his idea of comprehension of the good within a well-ordered (political) society relates to the welfare of a well-organized political community governed by the twin principles of justice. In this society, individuals work towards common goals while upholding diverse, comprehensive beliefs, affirming a collective political understanding of justice. This shared dedication allows for the pursuit of political and social ideals, fostering genuine adherence to citizens' principles.⁵⁹

Sixth, his idea of social union underscores the paramount importance of collective objectives and shared institutional frameworks within a societal context since it highlights the inherent interconnectivity of individuals within the community by emphasizing their reciprocal dependence on communal assets. This, in turn, plays a crucial role in fostering a sense of social cohesion and stability.⁶⁰ As such, the alignment of the ideas of the good with the Rawlsian political conception of justice as fairness underscores their importance in delineating a just and equitable society.⁶¹

Considering these ideas as a backdrop, Rawls compares classical republicanism and civic humanism to clarify the concept of a property-owning democracy as a just establishment within a fair and equitable society. He argues that the political idea of justice as fairness aligns with classical republicanism, which portrays the just establishment as a property-owning democracy that does not rely on a comprehensive religious, philosophical, or moral doctrine.⁶² Rawls highlights classical republicanism as a perspective that emphasizes the importance of active citizen participation to safeguard democratic liberties and uphold a constitutional regime.⁶³ He suggests that without widespread citizen involvement in democratic politics, well-structured political institutions are at risk of being taken over by those seeking dominance for reasons of power, economic

⁵⁸ John Rawls, *Justice as Fairness: A Restatement*, p. 142.

⁵⁹ John Rawls, *The Priority of Right and Ideas of the Good*, Collected Papers, p. 465-467.

⁶⁰ Wilhelm von Humboldt. *The Limits of State Action*, ed. J.W. Burrow. Cambridge, University Press, 1969, p. 16.

⁶¹ Rawls contends that "[I]t does not imply merely that society is necessary for human life, or that by living in a community men acquire needs and interests that prompt them to work together for mutual advantage in certain specific ways allowed for and encouraged by their institutions. Nor it is expressed by the truism that social life is a condition for our developing the ability to speak and think, and to take part in the common activities of society and culture." See John Rawls, *The Priority of Right and Ideas of the Good*, p. 457.

⁶² John Rawls, *The Priority of Right and Ideas of the Good*, p. 469.

⁶³ John Rawls, *Justice as Fairness: A Restatement*, p. 144.

interest, or ideological fervor.⁶⁴ Therefore, the preservation of democratic liberties depends on citizens possessing the political virtues necessary to support constitutional governance. In classical republicanism, citizens find fulfillment in political engagement, viewing it as a fundamental aspect of their overall well-being that contributes to the good of society. Rawls contends that a just and well-ordered establishment is achievable within a fair and equitable society where citizens actively engage in political life and uphold the essential virtues to sustain democratic governance.

B. A Property-Owning Democracy as a Constitutional Regime

A notable characteristic of a property-owning democracy is its classification as a 'constitutional regime'⁶⁵ rather than a procedural democracy. In essence, it differs from procedural democracy in that it lacks constitutional constraints on legislation, where anything approved by a majority or other plurality becomes law if the appropriate procedural rules, which are the specific steps and processes that must be followed to pass a law, are followed. Rawls highlights that while procedural democracy outlines democratic procedures, it imposes no limitations on the content of legislation, potentially permitting infringements on equal political rights or freedom of thought and speech.⁶⁶

Rawls contends that procedural democracy does not encompass a vital aspect of property-owning democracy due to its neglect of the "question of political sociology" and its failure to acknowledge the educational function inherent in a political conception of justice. Justice as fairness, he contends, contains fundamental ideas about individuals and society, and by overlooking this element, procedural democracy misses the opportunity to

⁶⁴ John Rawls, *The Priority of Right and Ideas of the Good*, pp. 468-469.

⁶⁵ Here, it is essential to outline the three vital requirements for a stable constitutional regime. Acknowledging the existence of pluralism, the first requirement is to establish and prioritize fundamental rights and liberties, ensuring a secure and unwavering foundation for social cooperation based on mutual respect. These objectives are achieved through the application of the two principles of justice. See John Rawls, *Justice as Fairness: A Restatement*, p.115. The second prerequisite for a stable constitutional system is that its political framework should articulate not only a shared but, if possible, a clear foundation of public reason—one that is demonstrably reliable on its own terms. As previously discussed, the requirement for publicity entails that the principles of political rights and justice are integral components of public reason. The underlying concept is that the two principles of justice establish a clearer and more dependable foundation for public reason than the principle of utility. See John Rawls, *Justice as Fairness: A Restatement*, p. 116. The stability of a constitutional regime relies on its basic institutions promoting the cooperative virtues essential to political life. These virtues include reasonableness, fairness, a spirit of compromise, and a willingness to meet others halfway. They underpin the ability, if not the desire, to cooperate with others on terms that are publicly accepted as fair, equal, and respectful. To cultivate these virtues, it is important to remove the most divisive issues from the political agenda, which otherwise undermine the basis of social cooperation. Additionally, by establishing a clear basis of free public reasoning, we can ensure greater certainty and secure the foundation of social cooperation. See John Rawls, *Justice as Fairness: A Restatement*, pp. 116-117.

⁶⁶ John Rawls, *Justice as Fairness: A Restatement*, p. 145.

influence societal values and norms. Rawls argues that a constitutional regime, unlike procedural democracy, aligns with the educational function of a political conception of justice. This is because a constitutional regime incorporates basic rights and liberties into the constitution and entrusts the judiciary with its interpretation. In conflicts pertaining to constitutional essentials, citizens are encouraged to articulate fundamental political values, invoking the principle of public forum or reason to legitimize agreements through mutual and fair consensus. Rawls suggests that a constitutional regime, which incorporates some form of judicial review, is more likely to realize principles of free public reasoning and deliberative democracy, ultimately leading to the realization of the common good within political society. When these principles are realized, citizens perceive them as integral components of their societal experience, accentuating the practical relevance of a constitutional regime.⁶⁷

C. The Idea of Fair Value of the Equal Political Liberties

Rawls' introduction of the concept of the fair value of equal political liberties is not just a theoretical response to criticisms from radical democrats and socialists against justice as fairness. It is a significant step towards addressing the nature of equal liberties in a modern democratic state and advocating for ensuring fair value for all basic liberties.⁶⁸ This is a discourse that demands our attention and engagement.

Addressing the first question, Rawls acknowledges that while all citizens possess the same basic liberties, the value of these liberties varies among individuals. He argues that recognizing equal liberties does not adequately address the objection that these rights are merely formal in practice. Consequently, Rawls proposes a 'special treatment' of political liberties. This treatment involves a *proviso* in the first principle of justice, stipulating that only political liberties are guaranteed their fair value.⁶⁹ This guarantee ensures that all citizens, regardless of their economic or social status, have an equal opportunity to participate in public life and influence election outcomes. Rawls further explains that this requirement is integral to the original position, which the parties consider during deliberation.⁷⁰ Though

⁶⁷ John Rawls, "Justice as Fairness: A Restatement", pp. 146-148.

⁶⁸ The following questions were raised by Norman Daniels. See his "Equal Liberty and Unequal Worth of Liberty," in *Reading Rawls*, ed. Norman Daniels. New York: Basic Books, 1975.

⁶⁹ John Rawls, *Justice as Fairness: A Restatement*, p. 149.

⁷⁰ He explains: "(i) This guarantee means that the worth of the political liberties to all citizens, whatever their economic or social position, must be sufficiently equal, in the sense that, all have a fair opportunity to hold public office and to affect the outcome of elections, and the like. This idea of fair opportunity parallels that of fair equality of opportunity in the second principle. (ii) When the principles of justice are adopted in the original position, it is understood that the first principle include this proviso and that the parties take this into account in their reasoning. The requirement of the fair value of the political liberties, as well as that use of primary goods, is part

Rawls admits the complexity of realizing this *proviso*, he believes that practicable institutional mechanisms can be devised and compatible with the broader range of basic liberties.⁷¹ Achieving this aim would enhance conditions for deliberative democracy, a goal shared by justice as fairness and civic republicanism, thereby reinforcing constitutional democracy.

Regarding the second question, Rawls labels it “the wide guarantee of fair value for all basic liberties.”⁷² He contends that the proposals put forth by his critics, referred to as the ‘wide guarantee,’ extend beyond the boundaries of equality within his political concept of justice. According to Rawls, these proposals surpass equal political freedoms and fair opportunities. He argues that such a wide guarantee is either irrational, unnecessary, or socially divisive. For example, if it involves the equal distribution of income and wealth, it is irrational as it overlooks social organization and efficiency needs. If it seeks to ensure a specific level of income and wealth for all, it becomes unnecessary, considering the difference principle. Furthermore, if it involves distribution based on interests central to citizens’ life plans, such as religious interests, it becomes socially divisive.⁷³

Indeed, Rawls’ concept of justice as fairness emphasizes the equal value of political liberties outlined in the Principle of Liberty and the first part of the Principle of Fair Equality of Opportunity. However, within the framework of the difference principle, which is integral to Rawls’s argument, the notion of fair value is dismissed. The difference principle asserts that social and economic inequalities are only justifiable if they benefit the least advantaged members of society. Rawls argues that the concept of fair value is not relevant within this context, considering his take on justice in the context of reasonable pluralism.

D. Reasonable Pluralism: A Mark of a Just Institution

Rawls builds upon the concept of the fair value of equal political liberties to define the nature of a property-owning democracy, a specific political framework that safeguards private property rights and promotes the well-being of the least advantaged. This development is a response to objections articulated by Nagel.⁷⁴ Nagel’s objection prompts Rawls to

of the meaning of the two principles of justice.” See John Rawls, *Justice as Fairness: A Restatement*, p. 149.

⁷¹ John Rawls, *Justice as Fairness: A Restatement*, p. 149.

⁷² John Rawls, *Justice as Fairness: A Restatement*, p. 151.

⁷³ John Rawls, *Justice as Fairness: A Restatement*, p. 151.

⁷⁴ Thomas Nagel, “Rawls on Justice,” *Philosophical Review* 83 (April 1973): 226-229. He contends that political liberalism unfairly opposes a certain way of life while favoring others. His argument revolves around the notion that the original position is not impartial toward different ideas of what is good. He believes that the requisite suppression of information needed to achieve unanimity among the parties is not equally just. Additionally, he asserts that the well-ordered society proposed by justice as fairness displays a strong individualistic bias and lacks objectivity

further refine his argument about a just institution. Rawls contends that a just institution should not seek to advance any comprehensive view regarding constitutional essentials. Instead, it should strive to maintain 'neutrality' with respect to comprehensive views and their associated conceptions of the good. In this context, neutrality means that political liberalism remains impartial both in its procedures⁷⁵ and its aims⁷⁶. Rawls underscores that political virtues or ideals should not presuppose a specific comprehensive doctrine but should instead embody a partial conception of moral value that aligns with the priority of rights and can be integrated into the political conception of justice.⁷⁷

Given the fact of reasonable pluralism, Rawls' argument for justice as fairness is a testament to its fairness and inclusivity. It is neutral procedurally because the principles of justice *aim to be the focus of an overlapping consensus*,⁷⁸ thus addressing objections against political liberalism. However, neutrality in aims requires further specification to counter objections. Rawls suggests that neutrality entails canceling or compensating for policy effects to avoid favoring any conception, acknowledging that societal influences inevitably favor some doctrines over

in evaluating different conceptions of the good. See Thomas Nagel, "Rawls on Justice," pp. 226-229.

⁷⁵ By neutral in procedural, Rawls refers "to procedure that can be legitimated, or justified, which appeal to any moral values at all.... These are values that regulate fair procedures for adjudicating between conflicting claims." But Rawls argues that although "[J]ustice as fairness is not... procedurally neutral," in the sense that the "principles of justice are substantive and express far more than procedural values, and so do its political conceptions of person and society"; the idea of procedural neutrality may be applied to justice as fairness "in virtue of its being a political conception that aims to be the focus of an overlapping consensus. That is the view as a whole hopes to articulate a public basis of justification for the basic structure of a constitutional regime working from fundamental intuitive ideas implicit in the public political culture and abstracting from comprehensive religious, philosophical, and moral doctrines. It seeks common ground – or if one prefers, neutral ground – given the fact of pluralism. This common, or neutral, ground is the political conception itself as the focus of an overlapping consensus." See John Rawls, "The Priority of Right and Ideas of the Good", pp. 458-459.

⁷⁶ By neutrality in aims, Rawls means, "the aims of basic institutions and public policy with respect to comprehensive doctrines and their associated conceptions of the good." This means three things: "(1) that the state is to ensure equal opportunity to advance any permissible conception (This is already the amended meaning of neutrality of aim so as to allow the advancement of any permissible conception of the good in the context of the priority of right; otherwise, this first implication of neutrality in aims would not fit the bounds of political liberalism.); (2) that the state is not to do anything intended to favor or promote any particular comprehensive doctrine rather than another, or to give greater assistance to those who pursue it; (3) that the state is not to do anything that makes it more likely that individuals will accept any particular conception rather than another unless steps are taken to cancel, or to compensate for, the effects of policies that do this." See John Rawls, "The Priority of Right and Ideas of the Good", p. 459.

⁷⁷ John Rawls, *Justice as Fairness: A Restatement*, p. 142. Meanings here means "(1) that the ideas used are or could be, shared by citizens generally regarded as free and equal; and (2) that they do not presuppose any particular fully (or partially) comprehensive doctrine." See John Rawls, *Justice as Fairness: A Restatement*, p. 141.

⁷⁸ The idea of an overlapping consensus is the method used by Rawls to answer the objection against his two principles of justice as unstable, thereby alleging his political conception of justice as fairness as utopian.

others due to the impossibility of accommodating all ways of life. However, he contends that these exclusions are not arbitrary biases or injustices,⁷⁹ reinforcing his argument's fairness and inclusivity.

Hence, it is important to recognize reasonable pluralism as an inherent feature of society, although a just institution should not be antagonistic toward certain ways of life while favoring others. This preference is apparent within the framework of political liberalism, fair equality of opportunity, and the difference principle as part of justice as fairness. The difference principle, an essential element of Rawls' conception of justice as fairness, permits inequalities in income and wealth distribution only if they improve the situation of the least advantaged. Remarkably, these scenarios are permissible within a property-owning democracy, as they establish a mechanism for redistributing wealth to benefit the least advantaged members of society.

E. The Family as a Basic Institution

Rawls' definition of a just institution within a well-ordered democratic regime, a concept of immense relevance in the context of gender equality, is a property-owning democracy. This system aligns with and upholds the main political features of the two principles of justice chosen by citizens, emphasizing liberty and equality. It not only provides a framework for the realization of the principles of justice but also sets fair terms of social cooperation, making it a crucial tool in pursuing gender equality.

Rawls' theory, while influential, has not been without its critics. One such critique, led by Amy Baehr, argues that Rawls' framework fails to adequately address women's inequalities,⁸⁰ particularly regarding childcare and household duties. Baehr's critique is significant as it highlights the importance of considering gender perspectives in developing and critiquing political theories. She contends that the family's existing structure, as affirmed by Rawls, perpetuates injustice, particularly due to his dichotomy between the public and private spheres.⁸¹ Rawls, however, counters by stating that altering the family structure would lead to significant societal destabilization.

⁷⁹ John Rawls, *Justice as Fairness: A Restatement*, p. 141.

⁸⁰ Susan Moller Okin. "Justice, Gender and the Family." (New York: Basic Books, 1989) and "Justice and Gender," *Philosophy and Public Affairs* 16 (1987), pp.42-72.; Baehr, Amy. "Towards a New Feminist Liberalism: Okin, Rawls, and Habermas." *Hypatia* 11, Winter 1996: 49-66. <https://doi.org/10.1111/j.1527-2001.1996.tb00506.x>

⁸¹ Baehr, Amy R. "Toward a New Feminist Liberalism," p.52.

In his work *Justice as Fairness: A Restatement*, Rawls political conception of justice as fairness acknowledges the family as a crucial component of the fundamental structure of society. It plays a vital role in maintaining the orderly production and preservation of society and its culture over generations.⁸² Rawls emphasizes the importance of the family in effectively nurturing and educating children to uphold a just society. While Rawls argues that the principles of justice do not directly govern the internal affairs of the family, he asserts that they place essential limitations on the institution to protect the fundamental rights and freedoms of all its members. He contends that family members are also citizens of society, and as such, their freedoms must be respected. In response to feminist criticisms, Rawls maintains that the principles of justice, as he defines them, offer a framework for addressing gender inequalities within the family. As a foundational institution of society, Rawls argues that the family must adhere to these principles to ensure equality and fairness.⁸³ As such, Rawls rejects the dichotomy between the political and nonpolitical domains, asserting that each domain is governed by its distinct principles. He maintains that the principles of justice impose essential restrictions on all associations, including the family, to ensure equality and fairness.⁸⁴

In his pursuit of gender equality within a property-owning democracy, he proposes specific measures that include equalizing the burden of childcare or compensating for it, such as recognizing a wife's contribution to childcare as entitling her to an equal share in marital assets. Rawls argues that a property-owning democracy would not allow one spouse to leave the family with all their earnings, leaving the other spouse and children disadvantaged. These measures aim to address the unequal distribution of childcare responsibilities within the family, a key issue in achieving gender equality.⁸⁵

⁸² Rawls profoundly elaborates: "Recall that a political society is always regarded as a scheme of cooperation over time indefinitely; the idea of a future time when its affairs are to be wound up and society disbanded is foreign to our conception of society. Reproductive labor is socially necessary labor. Accepting this, essential to the role of the family is the arrangement in a reasonable and effective way of the raising and caring for children, ensuring their moral development and education into the wider culture. Citizens must have a sense of justice and the political virtues that support just political and social institutions. Moreover, the family must fulfill this role in appropriate numbers to maintain an enduring society....and does not run a foul of other political values." See John Rawls, *Justice as Fairness: A Restatement*, p. 162-163.

⁸³ John Rawls, *Justice as Fairness: A Restatement*, p. 162-163.

⁸⁴ John Rawls, *Justice as Fairness: A Restatement*, p. 166. This implies that even though the two principles of justice are not directly applied to the institution of the family, "they do impose essential constraints on the family as an institution and guarantee the basic rights and liberties and fair opportunities of all its members." See John Rawls, *Justice as Fairness: A Restatement*, p. 164. Here, Rawls exhorts that respect for the basic rights of every individual, whether they belong to a particular family, should always be accounted for. Hence, it does not follow that since a member of that family is the head, he would now disregard the basic rights of the rest. If that is the case, such action contradicts Rawls' principles of justice.

⁸⁵ Indeed, there is no such thing as exempted from the content and application of justice. The question is: *How does a property-owning democratic regime achieve and meet this aim?* Rawls would reply that a property-owning democracy must include arrangements to achieve or meet the full

Thus, Rawls' theory of justice, when clarified and extended in response to feminist critiques, provides a robust framework for achieving comprehensive equality. It offers a promising alternative for ensuring justice for all members of society, underscoring its potential to address and rectify gender inequalities within the institutional context of a democratic regime.

IV. CONCLUSION

Studying human nature for the pursuit of social stability is closely linked to the quest for justice and harmonious human relationships within society. Throughout history, philosophers have played a crucial role in these pursuits, contributing significantly to social, political, and moral endeavors. Their rigorous analysis of human nature and promotion of rational deliberation has been essential in fostering peace and guiding individuals toward a good life. The issues of justice, respect, and liberty are central to political philosophy. As such, political philosophy focuses on envisioning the good life by addressing the values and institutions that unite people. It also explores the moral and ethical foundations of political thought, which are rooted in ethics and prioritize humanity in politics.

Unfortunately, some ideologies prioritize the common good over individual rights and justice. Utilitarianism, a dominant philosophy in 20th-century Anglo-America, contributed to societal injustices by allowing the sacrifice of the few for the pleasure of the many. Intuitionism, while emphasizing the inviolability and dignity of the moral person, is also found inadequate in determining the morality of an action.

In addressing the demand for a justice theory that recognizes both individuality and the value of community, John Rawls' seminal work, "A Theory of Justice," proposes a contractarian-based theory that emphasizes ethical dimensions within a political conception of justice. Rawls critiques traditional utilitarianism for its reduction of justice to efficiency, lacking regard for moral relations among individuals. He introduces Kantian Constructivism to advocate for a society where fairness and equity are paramount, suggesting that justice, as an inherent virtue, should override societal welfare if the latter contradicts the principles of fairness. Rawls posits that an individual's inviolability founded on justice is

equality of women. Rawls writes: "If a basic, it not the main, cause of women's inequality is their greater share in the bearing, nurturing, and caring for children in the traditional division of labor within the family, steps need to be taken either to equalize their share or compensate them for it...a common proposal is that as a norm or guideline, the law should count a wife's work in raising children...as entitling her to an equal share in the income her husband earns during their marriage. Should there be a divorce, she should have an equal share in the increased value of the family's assets during that time." See John Rawls, *Justice as Fairness: A Restatement*, p. 167. This is also Okin's proposal in her work, *Justice, Gender, and the Family*, Chapters 7-8.

paramount, leading to his conception of justice as fairness. This concept underlines justice as the primary virtue within society's basic structure, advocating for social cooperation based on mutual agreement under fair conditions. Thus, Rawls' theory presents a philosophical foundation for justice that emphasizes fairness as non-negotiable, aiming to ensure equitable treatment for all within a stable society.

To account for social cooperation, Rawls proposes a scenario in which individuals deliberate under fair conditions to reach a rational, free, and fair agreement on basic principles of justice. By employing the original position as a theoretical device, Rawls aims to ascertain the principles that individuals would choose for their well-being without knowledge of their own or others' circumstances, a concept known as the veil of ignorance. This approach allows Rawls to evaluate the fairness of principles of justice. Principles selected from behind the veil of ignorance are deemed fair and should be equally applicable to all individuals. This aspect of justice as fairness cannot be addressed within the framework of classical utilitarianism.

The citizens situated in the original position behind the veil of ignorance are inclined to select Rawls' two principles of justice over alternatives like utilitarianism and libertarianism. These principles emphasize equal basic liberties and the arrangement of social and economic inequalities for the advantage of all while being tied to positions that are accessible to everyone. It's worth noting that these principles pertain to the fundamental framework of society rather than directly governing its internal institutions and associations, given the profound inequalities present in every society. This imposes constraints on Rawls' concept of justice, rendering it narrower in scope than comprehensive moral doctrines.

Rawls argues that justice should prioritize equal liberties over economic and social advantages. He distinguishes between the Liberty Principle, which safeguards equal liberties and establishes a just constitutional regime, and the Difference Principle, which allows permissible inequalities only if they benefit everyone and are open to all. Rawls' approach highlights the moral aspect of justice, emphasizing reciprocity and the interdependence of individual claims. This framework encompasses liberty, equality, and equitable rewards for contributions to the common advantaged.

The question of fairness arises when free individuals engage in joint activities and establish the rules that determine their shares in the benefits and burdens. Rawls addresses this critique by arguing that principles of justice stem from fair terms of social cooperation and mutual

acknowledgment. Participants are duty-bound to act fairly if they accept the rules as fair. Acting unfairly involves exploiting loopholes or special circumstances. The original position assumes equality and freedom based on the parties' capacity for a sense of justice and a conception of the good, enabling them to be fully cooperating members of society.

In response to critiques of Rawls' justice theory, he aims to justify the foundational principles of justice in the original position. He argues that rational representatives negotiate fair terms for future cooperation. Rawls provides two justifications for prioritizing basic liberties: the development of moral capacities and considerations related to an individual's conception of the good. This implies that basic liberties are crucial for advancing any conception of the good and for exercising moral capacities.

Rawls introduces the second principle of justice to address the issue of allocating resources under the principle of efficiency. He argues that this practice is ethically arbitrary and should only be allowed if it guarantees fairness. However, this does not mean efficiency and the difference principle are incompatible. Rawls believes his interpretation of democratic equality eliminates arbitrariness and aligns with the difference principle. He emphasizes that justice takes precedence over efficiency and institutions are just if they adhere to the principles of justice.

Rawls recognizes that the original position argument alone is insufficient to entirely justify the principles of justice. To address this, he introduces the method of Reflective Equilibrium, an intuitive and inductive approach. Furthermore, Rawls introduces the concept of public reason to further rationalize and defend why his two principles of justice should govern the basic structure of society. Through public reason, all citizens can publicly support constitutional essentials and questions of basic justice based on their own reasoning. This method of justification is crucial to Rawls' thinking, as it establishes a public standard of justification for resolving questions about the justice of society's basic institutions.

Rawls contends that a modern democratic system is best equipped to support his two principles of justice. This system acknowledges the realities of reasonable pluralism, limited availability of resources, and the need for social cooperation to ensure a decent standard of living. Rawls argues that a property-owning democracy is consistent with these principles by distributing wealth and capital, preventing a concentration of economic control in the hands of a few, and guaranteeing fundamental freedoms and fair equality of opportunity. According to Rawls, this form of democracy

promotes a just framework for collaboration among citizens who are free and equal.

Indeed, the political concept of justice is centered on the idea of society as a fair arrangement of social cooperation sustained over time, from one generation to the next. This concept is complemented by the notion of a well-ordered society, which represents a community designed not only to advance the well-being of its members but also to be effectively governed by a shared understanding of justice. A well-ordered society embodies three crucial elements: universal acceptance of the same principles of justice, widespread adherence to these principles by fundamental social institutions, and cultivation of a public sense of justice. This shared understanding of justice promotes civic solidarity, and individual pursuits are tempered, laying the groundwork for a harmonious human society.

In a democratic society, certain "historical and social conditions" are inherent, encompassing reasonable pluralism, moderate scarcity, and the need for social cooperation to ensure a decent standard of living for all members of society while acknowledging oppression. Rawls referred to these fundamental conditions as "the circumstances of justice" or "the inherent features of society." Rawls aimed to address the issue of oppression while considering the importance of social cooperation. Justice as fairness seeks to establish a solid philosophical and moral foundation for democratic institutions. It is the responsibility of the primary political and social institutions to define basic rights and responsibilities, regulate the distribution of benefits resulting from social cooperation, and allocate the necessary burdens to sustain it, in accordance with the principles of justice. Rawls advocated for a property-owning democracy as the recommended regime, as he believed it aligns with the core political aspect of the two principles of justice. He argued that this regime is the most suitable for realizing the objectives of these principles, particularly in terms of establishing fair terms for social cooperation. In summary, a regime structured around the principles of a Property-Owning Democracy is the most efficacious system to actualize Rawls' two principles of justice. As Rawls opines: "Everyone is presumed to act justly and to do his part in upholding just institutions."⁸⁶

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