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### Description of Module

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Objectives	This entry focuses on an overview of the theories of justice as found in the works of John Rawls and Ronald Dworkin
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# Justice: John Rawls and Ronald Dworkin

## Introduction

There are diverse views and theories about justice which have been globally debated and discussed. Justice is usually viewed as a public virtue, defining relations among members in society; it has also been discussed as an individual virtue, meant to guide moral theory and ethical behavior. Most famously, Plato in his *Republic* treats justice as an overarching virtue of individuals and of societies. He talks of it as *dikaosoune*, implying that all matters of moral significance would fall under the rubric of justice. This view has come to dominate most western thought and justice is taken as a significant and in some cases the primary, political virtue in society. For instance, in the works of John Rawls, justice takes on primary significance as the political virtue that applies to the basic structure of society. The idea of justice in this tradition is usually defined in terms of rights, freedoms and liberties, a principle of neutrality, and it is mostly used to govern relations among citizens in the public sphere.

There are however other formulations of justice, especially in non-western thought. Confucius for instance understands justice as being comprised mainly of 'ren' – loving others. Here justice involves not just brotherhood amongst the people but also harmony between human and non-human lifeforms. A benevolent rule based on such a conception of justice would then create a social order described as *li*. *Li* originated as a structure for governance and legal processes. To this basic idea Confucius added a moral aspect and formed a holistic theory of justice. Other theories of justice include, for instance, the Arab conception formulated by Ibn Miskawayh – a Persian philosopher. Miskawayh formulated a theory of justice under the rubric of moral theology and understood it as the manner in which God chose to act. In contrast Avicenna, another Persian philosopher, bases his ethical theory of justice on determinism – the idea that everything is governed by the laws of pre-established harmony. He argues that all voluntary actions are viewed as contingent, minimal and as determined by God. Others, like M. K. Gandhi took the harm principle to be the central factor in deciding if an action were just: 'that action alone is just', Gandhi writes, 'which does not harm either party in dispute'<sup>1</sup>.

While these theories contribute to a rich global narrative on justice, the western traditions seem to draw largely from the Greek and modern European ideas of justice. In North America John Rawls seems to have made the most significant contemporary contribution to the theory of justice through his main ideas of justice as fairness and political liberalism. Ronald Dworkin critically responds to Rawls' theory and presents his own framework that started the tradition of luck egalitarianism. In this module I present, in broad brushstrokes, the views of Rawls and Dworkin.

## 2. John Rawls

### 2.1. Justice as Fairness

John Rawls' magnum opus *A Theory of Justice* (1971) [*TJ*] is considered to be one of the most influential works in twentieth century Anglo-American political philosophy. *TJ* marks a significant shift away from the 'old faith' of utilitarianism as a mainstream political ethic and suggests rather that the political sphere must be based on 'a doctrine of basic human rights, protecting specific basic liberties and interests of

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<sup>1</sup>*The Collected Works of Mahatma Gandhi*, Vol. 19, p. 233.

individuals<sup>2</sup>. Rawls proposes theories of justice as fairness and political liberalism that highlight the importance of individual autonomy and human rights as a means of addressing and governing the public sphere of a society. Justice as fairness is a political conception of justice that gives rise to universally applicable principles of justice — the principles of equal basic liberties and of equal opportunity accompanied by the difference principle, which together constitute and regulate the political sphere in a diverse society. Rawls states that the principles of justice are the products of reasonable and rational deliberations behind a veil of ignorance and can be universally applied to 'the basic structure of society and govern the assignment of rights and duties and regulate the distribution of social and economic advantages' (*TJ*, p. 53).

In *TJ* Rawls presents his framework of procedural justice, which claims that the principles of justice have universal applicability because they are the products of a fair procedure of construction. Rawls' 'purely hypothetical' (*TJ*, p. 104) procedure of construction — the Original Position [OP] — is considered to be fair because in justice as fairness, parties are placed behind a veil of ignorance that prohibits them from knowing each other's particularities such as life-goals, temperaments, psychological propensities, cultural, religious, and moral affiliations etc. In such a situation, when free, equal, and rational parties deliberate, Rawls argues that the principles of justice are unanimously agreed upon. The aim of bracketing out all knowledge of substantive commitments is to arrive at a set of unbiased principles that may be applied universally across groups and societies.

Thus Rawls' main aim in *TJ* is to arrive at a political conception of justice that is able to keep at bay perfectionist regimes while at the same time highlighting and catering to individual rights and freedoms. Justice as fairness belongs to the family of liberal political conceptions of justice. It delivers a framework for the legitimate use of political power by prescribing limitations to the ways in which the basic structure of a society can and ought to operate. Rawls' conception of justice as fairness, discussed in *TJ*, aims to address the concerns of both equality and freedom in the political sphere of a society; it has become in some sense a foundational theory for political philosophy in North America.

## 2.2. Political Liberalism

*Political Liberalism* (1993) [*PL*] marks a conceptual shift away from *TJ* in that it concerns itself with a purely political conception of justice. In *PL* Rawls focuses on the intersection of stability and diversity, partly in response to critics who pointed out that *TJ* rests on a Kantian conception of the human subject and partly due to his own realization that his ideas of a well ordered society as formulated in *TJ* were 'unrealistic' and 'inconsistent with realizing its own principles under the best of foreseeable conditions' (*PL*, xvii). Rawls elaborates on how the principles of justice would function within a deeply diverse society. He rejects the role of comprehensive doctrines in the political sphere of a just society and states rather that one must embrace 'reasonable pluralism'. Rawls describes comprehensive doctrines as worldviews that are constitutive of or governed by principles that regulate all matters of human life, which would include cultural, religious, and other moral worldviews. Reasonable political doctrines on the other hand are views that are concerned only with the basic structure of society and involve 'no wider commitment to any other doctrine' (*PL*, 13).

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<sup>2</sup> Hart, H. L. A. (1979). 'Between Utility and Rights', *Columbia Law Review*, p. 846

Reasonable pluralism has two requirements: an overlapping consensus and an ideal of public reason. Overlapping consensus is Rawls's mechanism for arriving at stability in a well-ordered society. It takes the political conception of justice as the middle ground in cases of conflict between comprehensive doctrines. It requires of citizens who otherwise hold varied and sometimes incompatible views to agree on the basic principles of justice and on the framework of justice as fairness. Finally, Rawls posits the idea of public reason for governing the political values that determine the relationship between a government and its citizens and also amongst the citizens themselves. Broadly speaking, public reason may be understood as a stock of shared principles about justice that would include, for instance, the equality of citizens before the law, their right to a fair system of cooperation etc. It is crucial that public reason — values that are invoked during deliberation in the public sphere and the decisions that are arrived at — does not arise from any comprehensive doctrines.

Thus Rawls' idea of legitimacy and stability in the political sphere of a given society is based on reasonable pluralism. In *PL* Rawls' objective is to achieve stability in a diverse society, hence he presents the concept of reasonable pluralism which he describes as follows: the idea that citizens will endorse and accept only those kinds of religious, moral, and substantive views which uphold democratic values and toleration, in line with the basic liberties and civil freedoms outlined as part of the political conception of justice as fairness. *PL* may thus be viewed as Rawls' justification of the application of the theory of justice as fairness to the political sphere of a diverse society. The mechanisms of reasonable pluralism, overlapping consensus, and public reason ensure that the government and public sphere at large are neutral towards various conceptions of the good.

### **2.1. John Rawls – Impact and Criticism:**

John Rawls' oeuvre has given rise to many significant debates in contemporary political philosophy. Before his work, utilitarianism tended to be the default position in public ethics. After the publication of *TJ*, the debate between rights-based liberalism and utilitarianism has become a predominant one. Continuing this thread, Rawls also ignited the debate between egalitarian and libertarian liberals. The former, in line with Rawls, argued that the government should play an active role in securing a basic set of primary goods that allows citizens to exercise their freedoms and pursue their conceptions of the good. The libertarian liberals on the other hand support the view that the government ought to respect basic rights and liberties and the fruits of labour as guided by market forces. Finally, Rawls seems to have reinvigorated the debate on neutrality; namely the idea that the government ought to be neutral between varying conceptions of the good life. The claim that the right is prior to the good is a central one in Rawls' work and finds resonance also in the works of Thomas Nagel and Will Kymlicka.

Despite gaining political momentum and worldwide popularity, Rawls' work has been and continues to be critically examined. Communitarian scholars such as Charles Taylor and Michael Walzer point out the limitations of Rawls' work for addressing contemporary forms of diversity. They argue that Rawlsian liberalism when adopted to address multicultural demands tends to 'liberalize cultures'. Thus *TJ* and *PL* are regarded as inadequate approaches to contemporary diversity. In a somewhat similar vein, Michael Sandel argues that the priority of the right over the good creates a moral vacuum that requires to be addressed (1982). In order to achieve the political goals of legitimacy and stability, Sandel argues that public moral engagement is a necessary condition. Feminist scholars such as Susan Okin, Carole Pateman



and Martha Nussbaum critique Rawls' idea of the Original Position and claim that the aspects of gender and family are inadequately addressed within its framework.

### 3. Ronald Dworkin

#### 3.1. Justice

Ronald Dworkin, one of the most significant political and legal philosophers in contemporary times, developed a comprehensive theory of liberal equality in the backdrop of the philosophy of law. This is especially clear in his early works such as *A Matter of Principle* (1985) and *Law's Empire* (1986). Later on, he developed a robust theory of justice taking Rawls' principle of equality as central to his own formulation. He explores the various aspects of this view in two famous journal articles that created much debate: 'What is Equality? Part 1: Equality of Welfare' (1981) and 'What is Equality? Part 2: Equality of Resources' (1981) and continued the conversation in his book *Sovereign Virtue: The Theory and Practice of Equality* (2000). In his most recent work *Justice for Hedgehogs* he focuses on the philosophical foundations of morality and attempts to tie theories of law, morality and justice into a larger explanatory narrative, under the rubric 'unity of value'.

Dworkin's main theory of 'resource egalitarianism', commonly known as luck egalitarianism, differs from Rawls' use and implications of the Difference Principle. Rawls formulated the Difference Principle in order to compensate for historical, economic, and other ingrained injustices in society. Rawls explicitly states though that the Difference Principle is not a 'redress principle' (*TJ*, p. 101). Dworkin views Rawls' conception as inadequate and presents a fuller understanding of equality that begins by taking into consideration the difference between 'ambitions' and 'endowments'. The former, Dworkin states, refers to the realm of choice and includes the products of the choices one makes. For example, ambitions include such things as the choice to vacation on an expensive cruise, or the choice to save money for retirement etc. Endowments on the other hand refer to all the things gained by luck or chance: genetic inheritance, being born into a certain socio-economic section of society or even a situation of bad luck like being affected by natural disasters etc. Endowments thus include all the things that result from natural lottery.

#### 3.2. Equality

In line with Rawls, Dworkin acknowledges that endowments are not always aligned with ambitions, i.e. natural endowments that create inequalities are not morally justifiable or evenly distributed in society. However, contra Rawls, he argues that the Difference Principle is inadequate for addressing these kinds of inequalities. Dworkin suggests instead the mechanisms of 'auctions' and 'insurance' be used to ensure that only factors within an individual's control play a part in the just distribution of goods and that the role of endowments in this process be limited or even eliminated. Dworkin presents a hypothetical situation in which people are shipwrecked on an 'empty island with diverse natural resources' (Dworkin 2011, p. 356). These people are then each given a limited and equal number of clamshells to trade for resources they'd like. Individuals are thus allowed to exercise their individual choice in 'auctioning' off goods. Given that individuals in a society do not function in a fantasy auction scenario, Dworkin calls for the need for regulating the market against monopolies or externalities, thereby securing freedom, justice,

and equality of opportunity. In addition to auctioning publicly available goods, individuals are also able to buy insurance as a means of equalizing natural endowments and safeguarding against inequalities caused by natural lottery. Finally, Dworkin institutes an envy test to check if a process of distribution has been fair and just. After the distribution has been completed, if no one individual is jealous of another's resources then the process of distribution may be deemed as just.

Underlying Dworkin's theory of justice are what he claims the two principles of human dignity: self-respect and authenticity. He understands self-respect as the recognition of an individual's goal of living well, i.e. it would be a mistake to not care about how one lives (*ibid.*, p. 205). Dworkin differentiates his idea of self-respect from the moral claim that all lives have an intrinsic worth and they ought to be preserved and guarded. Dworkin's idea of self-respect rather describes an attitude that all individuals must have towards themselves and their life's worth. Dworkin understands authenticity as the other side of self-respect. Authenticity involves striving for independence, living by one's own standards and not being guided by another's expectations or demands. It means: 'seeking a way to live that grips you as right for your circumstance' (*ibid.*, p. 209). The two principles of human dignity, Dworkin states, are necessary in order to live well. He further states that democracy is required as a basis for developing and maintaining the principles of dignity: 'only democracy can provide dignity' (*ibid.*, p. 379).

### 3.3. Ronald Dworkin – Impact and Criticism

Even though Dworkin's work relies on, but also departs from Rawls' theories, his own ideas of the principles of human dignity and theory of egalitarian justice have gained much traction in contemporary political, moral, and legal thought. Dworkin's expansive work on the American Constitution has been well received and defended by scholars such as Jeremy Waldron and H. L. A. Hart. Dworkin's views on resource egalitarianism have gained traction under the rubric of luck egalitarianism. Many scholars like Richard Arneson, Thomas Nagel and G. A. Cohen defend and develop Dworkin's theory further. Furthermore, Dworkin's ideas of self-respect as part of human dignity have led to interesting debates, as seen in the works of Jonathan Wolff and Richard Rorty. Human dignity has also formed the basis of many forms of philosophical justifications of human rights as seen in the works of Rhoda Howard, Jack Donnelly and Christian Bay.

Despite the extensive acceptance of Dworkin's work, his theories have also been critically discussed. Elizabeth Anderson criticizes Dworkin for emphasizing the aim of egalitarian justice as achieving an equal distribution of resources rather than egalitarian solidarity among members of society. Mark Fluerbaey criticizes Dworkin's egalitarian principles claiming that they are too severe on people's choices. Dworkin's scheme seems to place too much emphasis on personal responsibility, not leaving enough space for those who fare badly in their lives. Amartya Sen points to difficulties in Dworkin's conception of ethical responsibility by problematizing the principles of self-respect and authenticity. Sen problematizes Dworkin's use of the principle of responsibility by giving examples of cases where an individual is able to pursue a range of diverse lifestyles, but points to the incompleteness of their judgements that involves the rankings of various kinds of lifestyles to choose from. Sen also points to cases where individuals may prefer spontaneous lifestyles to carefully examined ones and asks if Dworkin's theory makes space for this diversity.

#### 4. Conclusion

Justice as a political and/or social value, much like other philosophical ideas, has been the subject of intensive debate for many centuries now. The central questions continue to be those of definition and scope: What is justice? What is the realm of justice? What principle ought to take priority in a conception of justice? Should a conception pertain purely to the political realm, or should it also include the realm of the social? Such questions are certainly central in the theories discussed above. Rawls and Dworkin are main figures in the Anglo-American debates and their work has been put to use in various theoretical and empirical frameworks. Their work has also been critically engaged in, which has led to many new theories and branches of political thought in liberalism, multiculturalism, legal theory, and constitutional studies, as well as in social, and political philosophy generally. Continuing the conversation on the concept of justice will help clarify ways in which new and complex situations of conflict and inter-subjectivity in society may be addressed. It also helps diversify the scope of the political realm and opens up avenues for relevant, newer political and social values.

