Nurdane ŞİMŞEK

M.A. Thesis in Philosophy

June - 2012

# THE INFLUENCE OF THE HUMAN RIGHTS TRADITION IN JOHN RAWLS'S FIRST PRINCIPLE OF JUSTICE

Thesis submitted to the

Institute of Social Sciences

in partial fulfillment of the requirements

for the degree of

Master of Arts

in

Philosophy

by

Nurdane ŞİMŞEK

Fatih University

June 2012

# APPROVAL PAGE

| | | |
|---|---|---|
| **Student** | **:** | Nurdane ŞİMŞEK |
| **Institute** | **:** | Institute of Social Sciences |
| **Department** | **:** | Philosophy |
| **Thesis Subject** | **:** | The Influence of the Human Rights Tradition in John Rawls's First Principle of Justice |
| **Thesis Date** | **:** | June 2012 |

I certify that this thesis satisfies all the requirements as a thesis for the degree of Master of Arts.

Assist. Prof. Dr. Şengül ÇELİK
**Head of Department**

This is to certify that I have read this thesis and that in my opinion it is fully adequate, in scope and quality, as a thesis for the degree of Master of Arts.

Prof. Dr. Manuel Andreas KNOLL
**Supervisor**

## Examining Committee Members

Prof. Dr. Manuel Andreas KNOLL …….

Assist. Prof. Dr. Mehmet GÜNENÇ …….

Assist. Prof. Dr. Rainer BRÖMER …….

It is approved that this thesis has been written in compliance with the formatting rules laid down by the Graduate Institute of Social Sciences.

Assist. Prof. Dr. Mehmet KARAKUYU
**Director**

# AUTHOR DECLARATIONS

1. The material included in this thesis has not been submitted wholly or in part for any academic award or qualification other than that for which it is now submitted.

2. The program of advanced study of which this thesis is part has consisted of:

i) Research Methods course during the undergraduate study

ii) Examination of several thesis guides of particular universities both in Turkey and abroad as well as a professional book on this subject.

Nurdane ŞİMŞEK

June, 2012

# ABSTRACT

**Nurdane ŞİMŞEK** **June 2012**

## THE INFLUENCE OF THE HUMAN RIGTHS TRADITION IN JOHN RAWLS'S FIRST PRINCIPLE OF JUSTICE

Justice has been one of the core concepts of philosophy within the history of thought. In turn, the concept of social justice, which is a kind of the distributive justice, has been a dominant issue within the contemporary political philosophy. Social justice requires a society in which the members of it are treated equally in the distribution of rights and goods. Moreover, "perhaps the most striking characteristic of modern discussions of social justice is the predominance of rights discourse. The requirements of social justice are most commonly expressed in terms of rights." (Jacobs, 1997: 51). Therefore, the concept of social justice is strongly associated with the concepts of equality and rights.

John Rawls, an American political philosopher in the liberal tradition, is considered as the most important political philosopher of the twentieth century by many scholars. His book A *Theory of Justice*, published in 1971, is widely recognized as the most influential book in contemporary political philosophy. His theory of justice, called "Justice as Fairness", is also known as an important example for social justice. In his theory, he claims that the basic institutions of society must be organized by two principles of justice: first, the principle of equal liberty, second, the difference principle connected to the principle of equality of fair opportunity. The first principle presents an attempt to assign and secure basic rights and duties: "Each person is to have equal right to the most extensive total system of equal basic liberties compatible with similar system of liberty for all." (Rawls, 2005: 302)

This study evaluates the influence of human rights tradition in John Rawls's first principle of justice namely in the principle of equal liberty. The phrase "human rights tradition" refers to the entire history of philosophical reflections on human rights from the ancient and medieval philosophers and from Locke, Mill and Kant until John Rawls.

**Key words:** Justice, John Rawls, Human Rights, Liberty

# KISA ÖZET

**Nurdane ŞİMŞEK** **Haziran 2012**

## JOHN RAWLS'UN BİRİNCİ ADALET PRENSİBİNDE İNSAN HAKLARI GELENEĞİNİN ETKİSİ

Adalet kavramı düşünce tarihi boyunca, felsefenin başlıca kavramlarından biri olagelmiştir. Diğer yandan, adalet dağılımı manasına gelen sosyal adalet kavramı, çağdaş siyaset felsefesi içerisinde hâkim bir yere sahiptir. Sosyal adalet, üyelerinin eşit hak ve mülkiyete sahip olması gerekliliği üzerine kurulu bir teoridir. Dahası, "sosyal adalet kavramı üzerine modern tartışmalarının en çarpıcı ortak özelliği ağırlıklı olarak haklar söylevi üzerine olmasıdır ve yine sosyal adaletin gerekliliği yaygın olarak haklar çerçevesinde ele alınır. (Jacobs, 1997: 51). Bu bağlamda, sosyal adalet eşitlik ve hak kavramlarıyla sıkı sıkıya ilintilidir.

Amerikan liberal gelenekten gelen John Rawls, yirmi birinci yüzyılın en önemli siyaset felsefecilerinden biri olarak kabul edilir. Adalet Teorisi üzerine 1971'de yazmış olduğu "A Theory of Justice" ismiyle yayınlanan kitabı, çağdaş siyaset felsefesinin en etkin eserlerinden biri olarak sayılmaktadır. Aynı zamanda, Rawls'un adalet teorisi "eşitlik" temelli olması dolayısıyla sosyal adalet teorisine de örnek teşkil etmektedir. Rawls'un adalet teorisine göre toplumun en temel kurumları iki temel prensip üzerine düzenlenmelidir. Bunların ilki, eşit özgürlük prensibi; ikincisi ise fırsat eşitliği prensibi ile yakından ilintili olan farklılık prensibidir. İlk prensip temel hak ve görevlerin tahsis edilmesi ve korunması amacı güder. Bu düşünceye göre: Herkes için eşit haklar ve en geniş anlamıyla eşit özgürlükler sağlayan bir sistem öngörür (Rawls, 2005:302)

Bu çalışma, John Rawls'un adalet teorisinin birinci prensibinin, diğer adıyla eşit özgürlükler prensibinin insan hakları geleneğine olan etkisini incelemeyi amaçlamaktadır. Bu bağlamda, insan hakları geleneği antik ve orta çağ filozofları yanı sıra Locke, Mill ve Kant'ı da kapsayarak gelen ve John Rawls'a kadar devam eden düşünce tarihi sürecini kapsamaktadır.

**Anahtar Kelimeler:** Adalet, John Rawls, İnsan Hakları, Özgürlük

# LIST OF CONTENTS

# ACKNOWLEDGEMENTS

It is a pleasure to thank to all people who made this thesis possible. Foremost, I would like to express my sincere gratitude to my advisor Prof. Dr. Manuel Andreas Knoll for the continuous support during my M.A study and research, for his patience, motivation, enthusiasm, and immense knowledge. His guidance helped me throughout my research and writing of this thesis.

Besides my advisor, I would like to thank my professors and colleagues: Assist. Prof. Dr. Şengül ÇELİK, Assist. Prof. Dr. Stephen Daniel SNYDER, Assist. Prof. Dr. Mehmet GÜNENÇ, Assist Prof. Dr. Rainer BRÖMER, Dr. David Donald BUTORAC, Vilntan CHRALOGLOU, Mediha ÖMÜR, İsmihan ÖZDEMİR, and Selvi ERTUĞRUL for their help, encouragement, insightful comments.

I wish to thank my friends Duygu TOPRAK, Seda YARDIMCI, Sevde Tuba OKÇU, and Deniz AKBEKİROĞLU for helping me get through the difficult times, and for all the emotional support. To Duygu TOPRAK I am also grateful for her help to my thesis.

Lastly, I wish to thank my family, Aynur ŞİMŞEK and Metin ŞİMŞEK, and my brothers for their support and patience.

# CHAPTER I

# INTRODUCTION

## 1.1. Background

Within the history of thought, justice has been one of the core concepts of philosophy. Many philosophers have attempted to give a systematic account of justice such as Plato, Aristotle, John Rawls, Michael Walzer because it plays such an important role within both the moral and political philosophy. Associated with the rise of the concept of social justice the human rights discourse has also came into prominence. Since the concepts of justice and human rights are the most significant key concepts of this study, a brief introduction to justice and human rights will be presented in this subchapter.

Aristotle, one of the towering figures of history of philosophy, examines the concept of justice in book five of his *Nicomachean Ethics*. In this book, he defines justice in two parts which are general justice and particular justice. General justice is a form of universal justice which is about being lawful and particular justice is about the divisible goods such as money, honor and or other resources which are subject to be divided among people. Particular justice itself also consists of two parts: rectificatory justice and distributive justice. Rectificatory or corrective justice seeks the way of solving the problems which occur as a result of voluntary or involuntary actions. For voluntary actions Aristotle gives some examples as follows "[…] selling, buying, lending at interest, pledging, lending without interest, depositing and letting". And he illustrates the involuntary actions as follows: "the involuntary ones are either secret – such as theft, adultery, poisoning, procuring, enticing away slaves, treacherous murder, and false witness[…]" Distributive justice, the other kind of particular justice, is mostly concerned with the distribution of political offices among

the members of a society according to their merit. (Aristotle, 2009: 82-86, 1129 a 31-1131 a 29)[1]

The concept of social justice, which is usually seen as a kind of distributive justice, has emerged mainly in the late twentieth century and has been a dominant issue within contemporary political philosophy. Social justice seeks the way to distribute "the good and bad things in life" among the members of a society. The goods and bads generally refer to income and wealth, jobs, educational opportunities, and so on. British writers like John Stuart Mill, Leslie Stephen, and Henry Sidgwick are the early advocates of social justice. However they do not mention social justice as a separate concept from the distributive concept. (Miller, 2003: 1-3)

With his famous book *A Theory of Justice* published in 1971, John Rawls, an American political philosopher in the liberal tradition, came to be considered one of the most influential names on social justice. Rawls calls the theory he introduces in his book "Justice as Fairness". He claims that the basic institutions of society must be organized by two principles of justice: the principle of equal liberty and the difference principle connected to the principle of equality of fair opportunity. The first principle states that: "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all." The second principle of Rawls's theory of justice requires that: "Social and economical inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to the offices and positions open to all under conditions of fair equality." (Rawls, 1971: 302). By giving priority to the first principle over the second principle Rawls emphasizes the importance of rights and equality in his theory of justice. Lesley A. Jacobs argues that "perhaps the most striking characteristic of modern discussions of social justice is the predominance of rights discourse. The requirements of social justice are most commonly expressed in terms of rights".

[1] See also (Aristotle, 1977: Book III)

(1997: 51). Therefore, the concept of social justice is strongly associated with the concepts of equality and rights.[2]

In recent times, the term human rights, which is one of the main emphases of social justice, has emerged as one of the most significant topics on the stage of world politics. We come across the concept of human rights in almost all areas such as politics, international relations, art, law, health and so on. Also both international and national non-governmental organizations draw attention to the importance of human rights and raise awareness about it by means of media, human rights reports, and conferences. It is commonly agreed that human rights are the rights that one has simply because one is a human being. Although it seems that there has been immense progress in regard to human rights, the real picture is not that optimistic. Unfortunately, although the *Universal Declaration of Human Rights* was signed by the members of the United Nations over fifty years ago, we still deal with human rights in the context of the violations of them such as discrimination, torture, censorship, violation of freedom of thought and conscience.

The British newspaper *Observer* announced the human rights report *Human Rights Index*, in 1998 for the fiftieth birthday of the Universal Declaration of Human Rights.[3] It evaluates 194 nation-states depending on their violation of human rights and grades them according to this evaluation. Extra-judicial killings, use of torture, denial of free speech, and political prisoners are the criteria which are used in this report. It is dryly introduced as "the World Cup that no country wants to win". Another report, prepared by the *Guardian* newspaper, uses different criteria and grading systems in order to rank the states.[4] The interesting point about these reports, although the ranking system accounts for them within their tabulations, all states violate human rights. (O'Byrne, 2003: 8)

[2] Cf. (Vlastos, 1984: 41)
[3] Cf. citations in (O'Byrne, 2003: 6-7)
[4] Cf. citations in (O'Byrne, 2003: 9)

Jack Donnelly, who is a contemporary writer on human rights, accounts the main features of human rights as follows:

> Human rights are *equal* rights: one either is or is not a human being, and therefore has the same human rights as everyone else (or none at all). They are also *inalienable* rights: one cannot stop being human, no matter how badly one behaves nor how barbarously one is treated. And they are *universal* rights, in the sense that today we consider all members of the species *Homo sapiens* "human beings," and thus holders of human rights. (Donnelly, 2003: 10)

All features mentioned above play an important role within the history of human rights. Every problem in the social sciences motivates us to search the theoretical part of it in order to get a better understanding about the problem. In order to understand the practical problems of human rights it is necessary to deal with the theoretical part of it. One of the main discussions about human rights is concerned with the history of it. It is argued that the starting point for the history of human rights is closely related with foundation of the United Nations in 1945. (Freeman, 2002: 14). This argument is weak considering the French Revolution (1789–1799) since one of its main emphases was individual rights. This can be seen most clearly by the famous *Declaration of the Rights of Man and Citizen* from 26 August 1789. Likewise John Locke (1632-1704) and John Stuart Mill (1806-1873) who made important contributions to the human rights tradition eliminate the above argument. Taking this under consideration, a more common view is that the concept of human rights has a much longer history than the former view claims. Moreover, the second view makes it possible to examine the philosophical and historical foundations and development of human rights. (Freeman, 2002: 14)

Another important discussion in human rights is whether human rights have a foundation or not. Some philosophers like Aquinas, Hobbes, and Locke, use *natural law* as a basis for their conception of rights with different approaches. Natural law is founded in a system of law which is determined by nature; therefore, it is opposed to *positive law* which is a system of man-made law. The main characteristics of natural

law are its being pre-social and universal and it is commonly associated with the idea of God. Norberto Bobbio argues that "the doctrine of human rights originated from the philosophy of natural law, based on the theory of a state of nature where human rights are few and fundamental." (2005: 52). On the contrary, some philosophers like Jeremy Bentham (1832) and Karl Marx (1883) reject the idea of natural law. They argue that human rights are not grounded in natural law. They are the outcomes of the human decision making rather than abstract and pre-social norms. Natural law as a basis for human rights is commonly rejected with the example called the "desert island scenario". The main question of this example is: Do I need rights if I live alone? It basically claims that if someone lives alone on an island then she has no rights or duties. Rights and duties take to the stage when someone else comes to the island. (O'Byrne, 2003: 38)

Another issue concerning human rights, strongly connected to the natural law, is their universality. If the conception of human rights takes its basis from the idea of natural law, then it has a universal aspect. Another approach to the universality of rights is presented by Kant who argues that all people have inherited dignity for human rights. This universalist aspect of human rights is criticized by the relativists. Grace Y. Kao states that "the first charge against the universal validity of human rights falls under the umbrella term *cultural relativism*." (2010: 11) The relativist approach to human rights claims that every society should be treated according to its dynamics. This relativist approach to human rights is commonly supported by the idea that human rights are a Western concept so it mirrors a Western bias. (O'Byrne, 2003: 34, 37, 38). *The Cairo Declaration on Human Rights in Islam (CDHRI),* which was signed in Cairo in 1990 by the member states of the Organization of the Islamic Conference, is considered as a counter to the Universal Declaration of Human Rights. The Cairo Declaration takes its foundation from Islam.[5]

[5] See http://www.oic-oci.org/english/article/human.htm

As a response to the relativist approach, the neo-Kantian philosophers, Jürgen Habermas and John Rawls, re-construct the universal basis for human rights by distinguishing universality from the natural law. The main difference between Kant and these neo-Kantian philosophers (Habermas and Rawls) is that the latter claim that "universal truths exist in our actions" and admit the need for the foundation for these universals in our everyday actions. (O'Byrne, 2003: 39)

It is commonly argued that human rights are inalienable. At first sight, it seems that there is no problem with this assertion. The problem occurs, however, when two or more rights come into conflict. In this case, it is necessary to restrict rights according to their importance. The main question about the inalienability of rights is when and which rights will be restricted if the rights come into conflict with each other.

The concept of liberty, which is interchangeable with the concept of freedom[6], plays a crucial role within the field of political philosophy as it is directly related to many concepts like social justice, rights, and equality. It generally refers to the state of being free from restriction or control. It provides the right to act, believe, or express oneself in a fashion of one's own choosing. Therefore, the concept of liberty and rights are directly connected to each other.

In this sub-chapter, the key concepts of this study, e.g., particularly human rights, social justice, equality, liberty, and their relationship to each other have been discussed in order to provide a better understanding for the purpose of the present study.

## 1.2. Purpose of Study

The main purpose of this study is to evaluate the influence of the human rights tradition in John Rawls's first principle of justice namely in the principle of equal

[6] Cf. (Pitkin, 1988: 523-552)

liberty. Rawls is considered as the most influential name on social justice with his theory of justice which is called "Justice as Fairness".[7] In his theory, Rawls claims that the basic institutions of society must be organized by two principles of justice: the first principle is the principle of equal liberty and the second principle is the difference principle connected to the principle of equality of fair opportunity. The first principle presents an attempt to assign and secure basic rights and duties by saying this: "Each person is to have equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all". (Rawls, 2005: 302). The basic liberties guaranteed by the principle are "political liberty together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law." (Rawls, 1971: 61). These rights which are secured by the first principle of justice will be evaluated on whether or not his first principle of justice presents original aspects within the history of human rights. In other words, does Rawls have anything new and original to say about human rights or is he just restating the tradition?

In order to provide an introduction to the key concepts of this study, e.g., social justice, human rights, equality and liberty have been mentioned in the preceding subtitle *Background* (1.1). By "human rights tradition" is meant the entire history of philosophical reflections on human rights from the ancient and medieval philosophers and from Locke, Mill and Kant until John Rawls. The ideas of these philosophers on human rights will be explained in the second chapter, *The Human Rights Tradition*, in order to provide a historical background to evaluate whether Rawls's first principle of justice has original aspects or not within the history of human rights.

[7] The revised edition of A *Theory of Justice* was published by Harvard University Press in 1999. The revised edition of *A Theory of Justice* and *Justice as Fairness: A Restatement* are the definitive statements of Rawls's work. (Foreword from the original edition published in 2005)

In the third chapter, *Declarations of Human Rights*, some important human rights declarations, e.g., the American declarations of human rights, the French declaration of human rights from 1789, and the declaration of human rights of the UN assembly from 1948 will be discussed in order to get an idea about the human rights tradition in recent history.

The fourth chapter *The Central Thoughts of Rawls's Theory of Justice* presents general information about Rawls's theory of "Justice as Fairness". Although the aim of this thesis is to evaluate the influence of the human rights tradition in John Rawls's first principle of justice, a brief introduction of the second principle of justice and some important features of his theory will be given in this chapter in order to understand his ideas better. And the following chapter on *Equal liberty* presents more detailed information about the first principle of justice.

Finally, the sixth chapter, *A Final Analysis of the Rawls's First Principle of Justice*, examines and compares John Rawls's conception of human rights with the ideas which are developed in the preceding chapters in order to answer the initial question of this study, that is, to evaluate whether Rawls's first principle of justice has original aspects or not within the history of human rights. As has been already mentioned, human rights violations are a universal problem even in democratic and developed countries. Hopefully, this study can increase the awareness of Rawls's contribution to the human rights issue and thereby improving the real human rights situation.

In regard to information presented in the following chapters, this study argues that with his priority principle John Rawls introduces an innovative aspect in human rights discourse. Rawls describes the priority of liberty as follows: "By the priority of liberty I mean the precedence of the principle of equal liberty over the second principle of justice. The two principles are in lexical order, and therefore the claims of liberty are to be satisfied first. Until this is achieved no other principle comes into play." (Rawls, 2005: 244). By giving priority to the first principle, Rawls clearly states that basic rights like "political liberty together with freedom of speech and

assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law" cannot be sacrificed for the sake of the economical or social advantages. He emphasizes the significance of rights and equality in his theory of justice. In this respect, the priority of liberty presents a solution for the violations of human rights in all over the world. It should be noted that other philosophers also argue the importance of rights; therefore, it is difficult to argue that John Rawls has an innovative aspect of human rights tradition in regard to content of his first principle of theory of justice. Nonetheless, in this study, it will be argued that by introducing and emphasizing his principle of priority of liberty John Rawls presents an innovative formal aspect in human rights.

It should not be forgotten that John Rawls also points out human rights in his book called *Law of People* published in 1993 as a short article and expanded and joined with another essay, "The Idea of Public Reason Revisited" in 1999.[8] However, this book is not included in this thesis as mine is a study with a limited scope. The main focus of my thesis is central part of John Rawls's book *Theory of Justice*.

[8] See John Rawls, *The Law of People*, Cambridge, MA: Harvard University Press, 1999. See also Rex Martin and David A. Reidy (eds), *Rawls's Law of People*, MA: Blackwell Publishing, 2006.

# CHAPTER II
# THE HUMAN RIGHTS TRADITION

As was mentioned in the first chapter, the main purpose of this study is to evaluate Rawls's place in the human rights tradition and the question whether his first principle of justice has original aspects or not. Therefore, the human rights tradition plays a central role in this work as it provides us a background in order to evaluate Rawls's first principle of justice. In the first place, the concept of "human rights tradition" should be clarified since the concept of the history of the human rights is already a controversial issue. Some argue that the starting point for the history of human rights is closely related to the foundation of the United Nations in 1945. (Freeman, 2002: 14). Offhand, it seems a weak idea considering the French Revolution (1789–1799) where one of the main emphases was individual rights. And also the works of John Locke (d.1704) and John Stuart Mill (d.1873) who made important contributions to the human rights tradition eliminate the supposition that the history of human rights begins with the UN in 1945. On the other hand, a more common view is that the concept of human rights has a much longer history than the former view claims. If we compare these two views according to their approach to the history of human rights, it can be concluded that the second view enables us to explore the historical and philosophical foundations of the concept of human rights. (Freeman, 2002: 14) As this study is an attempt to give an answer to a philosophical question within a historical process, the second view will be followed in this study.

At this point, the scope of the study should be clarified since the second approach presents us a very comprehensive literature. Only some specific philosophical schools and philosophers are included in this study considering their contribution to the tradition of human rights. To briefly summarize: human rights tradition refers to the entire history of philosophical reflections on human rights from the ancient and medieval philosophers and from Locke, Mill and Kant until John Rawls.

## 2.1. Ancient and Medieval Roots of Human Rights

Every historical or conceptual inquiry in philosophy leads us to the Ancient Greek time as it is the starting point of philosophy at least in a systematic way. However, it is not easy to trace the concept of the human rights in the ancient times. Alasdair MacIntyre says that there is no word in any languages which completely corresponds to the concept of *right* before about 1400.[9] Therefore, he asks whether it is possible to talk about rights if people do not have any expression for them in their languages. (MacIntyre, 1981: 69) Although the concept of human rights may be considered a comparatively modern creation, we can still seek the roots of it considering the idea that the notion of rights was implicit in ancient times. (Freeman, 2002:15)

Benjamin Constant, a French politician and philosopher, compares the liberty of ancients with the liberty of moderns in his famous article, *The Liberty of Ancient Compared to the Liberty of Moderns*, which was given as a lecture in Paris in 1819. He explains the liberties of the ancients as follows:

> The liberty of ancients consisted in carrying out collectively but directly many parts of the over-all functions of government, coming together in the public square to discuss and make decisions about war and peace; to form alliances with foreign governments; to vote on new laws; to pronounce judgments; to examine the accounts, acts, and stewardship of the magistrates; to call the magistrates to appear in front of the assembled people; to accuse the magistrates and then condemn or acquit them. (quoted in Rosen, 1999: 122)

According to the above liberties, people in ancient times can be considered as the sovereign in their public affairs. But Benjamin Constant also adds that people in ancient times namely Sparta and Rome were not free in their private life compared to

[9] Cf. (Finnis, 1980: 206-210; Hart, 1982: 163)

people in modern times. All their actions were monitored and oppressed by the authority. (quoted in Rosen, 1999: 122-123). It can be concluded that people in ancient times are considered having rights as being part of a political community while they are considered as slaves in their private life. For example, in Sophocles' famous play *Antigone*, Antigone wants to bury her dead brother but she is forbidden doing this by the king because her brother is a rebel against the state. She objects to the king's decision and buries her brother. The important point in this play is that Antigone opposes the king's command because she thinks that she has a religious duty to her brother to bury him but not an individual right. (Freeman, 2002: 16)

Aristotle is considered as an example against the approach that there is no conception of rights in ancient times. One can argue that Aristotle's concept of *dikaion*, which we translate variously as *just* and *justice*, corresponds to the word *right*. This is also a main thesis that Fred Miller tries to prove in his book, "Nature, Justice, and Rights" (1985). In this context, Aristotle discusses some rights and says that the rights of citizen, e.g., rights of property and participation in public affairs, should be determined by constitutions. Laws should decide on compensation or punishments if these rights are violated by others. However, it should be noted although Aristotle talks about some rights, he does not have the notion of human rights considering the fact that for him people are unequal and some people are not free because they are slaves. (Freeman, 2002: 16). Aristotle conceives people as fundamentally unequal and even claims that there are slaves by nature who lack reason. Moreover, the rights which Aristotle mentions are limited to the political rights as Benjamin Constant outlined above.

Stoicism presents the concept "cosmopolite" which means "world citizen". Zeno of Citium, who is considered as the founder of the stoic school, explains his conception of cosmopolitism as follows: "A well-ordered admired republic is founded on the principle that human beings should not be separated within cities and nations under laws particular to themselves, because all humans are compatriots…, and because there is only one life and one order of things (cosmos)." (quoted in Ishay, 2004: 23). At this point we can see the origins of equality which play a central

role in the modern conception of human rights, by applying the term *compatriots* to all people. The stoic philosophers also set the stage for equality by developing the idea of the natural law. They say that all humans are subjected to the natural law. Another reason for equality is based on the idea that everyone has logos. They, however, do not talk about the natural rights or individual rights as such so it can be concluded that there is no explicit concept of individual rights for both Roman and Greek Stoics. (Freeman, 2002: 17)

Thomas Aquinas discusses the equality of people in front of God by using the term natural law. The starting point of his conception of natural law (*lex naturalis*) is the eternal law (*lex aeterna*) through which God governs and has instituted the world. The world created by God is well-ordered and reasonable. Through their reason human beings can understand the natural law which participates in the eternal law. (S. Th. I/II, qu. 91, a.1/2) Although Aquinas employs the concept of natural law in which there is the concept of equality, there is no actual reference to the human rights. (O'Byrne, 2003: 29)

As a conclusion, it can be noted that in ancient times it is difficult to talk about individual rights. Although they meet the idea of equality with the concept of natural law, they do not discuss the individual rights. The reason behind this approach is that people in ancient times are not considered as individuals. They are defined as a citizen in regard to a relationship with political authority. Thus, it is difficult to talk about a conception of human or individual rights if people are not considered as individuals.

## 2.2. John Locke's Ideas of Human Rights

In the development of the idea of human rights John Locke, a British philosopher of the seventeenth century, plays an important role. In his *Second Treatise of Government*, which was published in 1690, he tries not only to show how a legitimate political power originates and how it is constituted but also that an

absolute power is itself illegitimate. Locke says that political power can only be understood correctly if it is derived from its original, i.e., the state of nature. This state existed before humans established states through contracts. Locke's conception of the state of nature, in which people are free and equal, plays a crucial role in order to understand his conception of human rights (Locke, 1982: § 4, 3). According to him, in the state of nature there is a natural law from which the natural rights of the individual are derived:

> The state of nature has a law of nature to govern it, which obliges every one: And reason, which is this law, teaches all mankind, who will but consult it, that being all equal and independent; no one ought to harm another in his life, health, liberty, or possessions. For men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business, they are his property, whose workmanship they are, made to last during his, not one another's pleasure. (Locke, 1982: § 6, 4)

Locke's phrase that reason "is this law" should not be misunderstood in the sense that reason is the lawgiver. For him, the lawgiver is God. Thus he declares that the "the law of nature" is "the will of god, of which it is a declaration" (Locke, 1982: § 135, 83). This corresponds to the theological argument given in the quotation above. Because God as the sovereign of men has highest authority over them and because they are, as his creatures, his property, his "will" obliges them to preserve themselves and their fellow men. The "fundamental law of nature, man being to be preserved" also calls for "the preservation of the society, and (as far as will consist with the public good) of every person in it" (Locke, 1982: § 16, § 134; 11, 81). The natural law is natural because it exists as an unwritten law in human reason and can be understood with this natural capacity in the state of nature that precedes the existing states. Human reason does not depend on revelation in its understanding of the natural law. (Locke, 1982: § 11, § 25; 7, 17)[10]

[10] Cf. (Rawls: 2008: 109)

The main content of the natural law consists in the prescription that every man should be preserved as much as possible and that no one should be harmed in his liberty and his property. From there it can be derived that every individual has a natural right to life, liberty and property, a right that preceded any existing state. After a society or state is instituted and positive laws are given the law of nature and the natural rights do not become invalid: "The obligations of the law of nature, cease not in society, but only in many cases are drawn closer, and have by human laws known penalties annexed to them to enforce their observation. Thus the law of nature stands as an eternal rule to all men, legislators as well as others". (Locke, 1982: § 135: 83). The legislative power in an existing state has the task to create positive laws which make the natural law more concrete and help to enforce it. For Locke, the highest purpose of legislation and lastly the whole state is to secure the natural right to life, liberty and property.

John Locke is not only a forerunner of the general idea of civil and human rights but also of the principle of political representation and political liberties. According to him, the male citizens of a state have "a right to be distinctly represented" in the legislative body which he understands as the "supreme power in every commonwealth" (Locke, 1982: § 158, § 135; 97, 82). But for him this not only excludes women but also poor people who pay no taxes. Thus he speaks of the right to representation, "which no part of the people however incorporated can pretend to, but in proportion to the assistance, which it affords to the public" (Locke, 1982: § 158, 98).

How much Locke's thought influenced the leading politicians of the American Revolution can be seen in § 1 of the Virginia Declaration of Rights from 1776 which declares as follows:

> All men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity; namely the enjoyment of life and liberty, with the means of acquiring and possessing property, and

> pursuing and obtaining happiness and safety (quoted in Bonwick, 1995: 288).

The influence of Locke's ideas on the famous American declarations can be seen from two central phrases of the preamble of the Declaration of Independence from 1776 as follows:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just Powers from the consent of the governed" (quoted in Bonwick, 2005: 285).

John Locke is also very influential with his thoughts on tolerance. Most famous is *A Letter Concerning Toleration* which was published in 1689.[11] In his letter he pleads for an extensive toleration of the protestant sects which were manifold in England at his time. In his pleading he emphasizes the argument that England gains a lot of profit from these industrious traders and business people. His argument builds on the political theory he phrases in the *Second Treatise of Government*. For him the question is which competences the government possesses on the basis of the social contract. These competences are only related to the protection of life, liberty and estates, not to religious convictions. Because one cannot assume that anyone transfers the cure of his spiritual welfare to someone else, this is the matter of everyone's individual decision.

In his letter he not only pleads for an extensive toleration of the protestant sects, he also argues for the toleration of the religious convictions of Pagans, Jews and Muslims. Everyone should have the freedom of thought and as well of worship. A state religion should not exist. Locke insists on the separation of the church and the state. But Locke's pleading for toleration is severely limited by two exceptions.

[11] See John Locke. *A Letter Concerning Toleration*, J. Horton/S. Mendus (eds.), London/New York, 1991.

According to him, there should be no toleration for Catholics and for atheists. In his view atheists cannot be good citizens.

## 2.3. Mill's Ideas of Human Rights

The principles of human rights of the utilitarianist John Stewart Mill are expressed most clearly in his book *On Liberty* which was published in 1859. The main topics of his book are the civil and social liberties as well as the limits of society's power over the individual. Though Mill is in favor of a democratic government, inspired by Tocqueville's *Democracy in America*, he exposes several dangers of this form of government. He is especially concerned about the danger that the majority could oppress the minority which could be executed through the tyranny of opinion. Therefore it is not surprising that Mill mainly advocates for the modern freedom of opinion and speech. In his book he tries to defend these liberal liberties as well as other liberties:

> This then, is the appropriate region of human liberty. It comprises, first, the inward domain of consciousness; demanding liberty of conscience, in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment of all subjects, practical or speculative, scientific, moral, or theological. The liberty of expressing and publishing opinions […] being almost of as much importance as the liberty of thought itself, and resting in great part on the same reasons, is practically inseparable of it. (quoted in Stumpf, 2003: 386).

In *On Liberty*, Mill gives several arguments for the freedom of opinion and the freedom of the expression of it. First, if we silence an opinion and the opinion is true, we harm mankind by doing this and deprive mankind from knowledge. Second, if the silenced opinions are partially true, which is usually the case, we also cause damage as we cannot correct our errors or existing convictions. Third, whether an opinion is true or false, it needs to be scrutinized by discussing it. Forth, opinions that are not discussed will become dogmas and lose their livelihood and persuasive power. (Mill, 2002: 18-19).

For Mill it should be "imperative that human beings should be free to form opinions and to express their opinions without reserve". (quoted in Stumpf, 2003: 388). But Mill goes one step further and declares that individuals should also be free to act upon their opinions, to put them into practice or to carry them out in their lives. Thus he extends his call for liberty on the different and pluralist modes and forms of life. For him diversity is not an evil but a good. According to him,

> As it is useful that while mankind are imperfect there should be different opinions, so is it that there should be different experiments of living; that free scope should be given to varieties of character, short of injuries to others; and that the worth of different modes of life should be proven practically, when anyone thinks fit to try them. Where, not the person's own character, but the traditions of customs of other people are the rule of conduct, there is wanting one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress. (quoted in Stumpf, 2003: 388).

Thus, for Mill the "appropriate region of human liberty" comprises more than freedom of opinion and speech:

> Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow; without impediment from our fellow creatures, so long as what we do does not harm them even though they should think our conduct foolish, perverse or wrong. (quoted in Stumpf, 2003: 386)

With these ideas Mill anticipates postmodern friendliness towards the plurality of forms and modes of life. But he also anticipates Rawls's claim that individuals should be free to follow their own plans of life and that a society should tolerate the different conceptions of a good life and ensure that the individuals can carry them out. (Rawls, 2005: § 15, 60)

In *On Liberty* Mill not only advocates the mentioned three main forms of liberty. He also investigates the limits of the liberal liberties and the constraints a government can put on the liberties of the individuals. In this context he phrases what

nowadays is called Mill's "principle of liberty" or the "harm-principle". Thus he declares in the first chapter of *On Liberty*:

> "The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is that the sole end for which mankind are warranted, individually or collectively in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. […] The only part of the conduct of any one, for which he is amendable to society, is that which concerns others. In the part which merely concerns him, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign". (quoted in Stumpf, 2003: 385-386).

For Mill, the "appropriate region of human liberty" comprises even more than freedom of opinion and speech and the freedom of individuals to carry out their own plan of life. In reference to the latter liberty he declares: "Thirdly, from this liberty of each individual, follows the liberty, within the same limits, of combination among individuals; freedom to unite; for any purpose not involving harm to others: the persons combining being supposed to be of full age, and not forced or deceived" (quoted in Stumpf, 2003: 386).

## 2.4. Kant's Idea of Human Rights

O'Byrne argues that if it is considered that French Enlightenment thinkers constitute the groundwork of the political rights of man, then it should be noted that Immanuel Kant is the author who provides the basis for the modern conception of human rights as ethical practice. (2003: 31)

For Kant, people come together to constitute a society. But setting up a civil constitution (*pactum unionis civilis*) has a distinct nature among all the social contracts depending on the principle of its constitution. In all social contracts people have common an end, which is shared by all and which is a duty in itself in "external relationships". Among all external duties the right of man has the highest condition. And the concept of freedom is the source of the whole concept of external right. Kant adds that freedom has no connection with happiness since every man has a different conception of happiness depending on his empirical basis and gives the definition of right as follows: "Right is the restriction of each individual's freedom so that it harmonises with the freedom of everyone else". In order to protect this harmony we need the public right. Therefore, he presents a conception of right which is the condition of pure reason without any reference to the empirical ends. (Kant, 1996: 73)

For Kant, a civil state is established on *a priori* principles as follows: "(1) the *freedom* of every member of society as a *human being*, (2) the *equality* of each with all the other as a *subject*, (3) the *independence* of each member of a commonwealth as a *citizen*." And he clarifies that these principles are not the laws which take its source from the already established state. They can take its source from the laws in which state can alone be formed in compliance with pure rational principles of "external human rights". (Kant, 1996: 74)

# CHAPTER III

# DECLARATIONS OF HUMAN RIGHTS

The main purpose of this study is to evaluate Rawls's place in the human rights tradition and the question whether his first principle of justice has original aspects or not. Therefore, the entire history of philosophical reflections on human rights from the ancient and medieval philosophers and from Locke, Mill and Kant until John Rawls is discussed in the previous chapter to provide a background of knowledge of the human rights tradition. Since human rights declarations are also an important part of the history of human rights some significant human rights declarations, e.g., the American declarations of human rights, the French declaration of human rights from 1789, and the declaration of human rights of the UN assembly from 1948 will be presented in this chapter in order to get a better idea about the human rights tradition in recent history.

## 3.1. American Declarations of Human Rights

The Lockean principles of the rights to life, liberty and property had become effective as a part of the liberal ideology after the Glorious Revolution (Freeman: 2002: 22). Towards the end of the eighteenth century, the movements of claims for protections of rights have been started, requiring that everyone should be an equal citizen in a secular state. Meanwhile, in America, the concept of natural rights had become widespread and brought in action against the supposed tyrannical rule of the British government. Thus, seeking for religious liberty as well as the desire for political liberty had been legitimized in the eyes of the people. Regarding Freeman's argument, "although the influence of Lockean America is uncertain, the American Declaration of Independence certainly expressed Lockean ideas". (2002: 23). A month before the creation of the American Declaration of Independence, the Virginia Declaration of Rights, which includes specific liberties such as the freedom of the

press, the free exercise of religion, and the right not to be deprived of freedom except by due process of law, had been ratified.

The Declaration of Independence, without reference to God, had the most secular interpretation of natural rights. (Freeman, 2002: 23). On the other hand, the American version of natural rights excluded the rights of women. (Freeman, 2002: 24). Although a secular conception of natural rights appeared in the American Declaration, it was criticized for not providing a strong theoretical foundation and was undermined by the argument that a cross-cultural consensus could not be reached.

### 3.1.1. The Virginia Declaration of Rights from 1776

The Virginia Declaration of Rights is a document which consists of sixteen articles. It was adopted in 1776 by Fifth Virginia Convention at Williamsburg, Virginia. It influenced some human rights documents, including the United States Declaration of Independence (1776), the United States Bill of Rights (1789), and the French Revolution's Declaration of the Rights of Man and of the Citizen (1789). The Virginia Declaration of Rights, which advocates specific liberties like the freedom of the press, the free exercise of religion, and the right not to be deprived of freedom, reads as follows:

> A declaration of rights made by the representatives of the good people of Virginia, assembled in full and free convention which rights do pertain to them and their posterity, as the basis and foundation of government.
>
> **Section 1**
> That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

**Section 2**
That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants and at all times amenable to them.

**Section 3**
That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety and is most effectually secured against the danger of maladministration. And that, when any government shall be found inadequate or contrary to these purposes, a majority of the community has an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

**Section 4**
That no man, or set of men, is entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which, nor being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

**Section 5**
That the legislative and executive powers of the state should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part, of the former members, to be again eligible, or ineligible, as the laws shall direct.

**Section 6**
That elections of members to serve as representatives of the people, in assembly ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage and cannot be taxed or deprived of their property for public uses without their own consent or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assembled for the public good.

**Section 7**
That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights and ought not to be exercised.

**Section 8**
That in all capital or criminal prosecutions a man has a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land or the judgment of his peers.

**Section 9**
That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Section 10**
That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive and ought not to be granted.

**Section 11**
That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other and ought to be held sacred.

**Section 12**
That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

**Section 13**
That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

**Section 14**
That the people have a right to uniform government; and, therefore, that no government separate from or independent of the government of Virginia ought to be erected or established within the limits thereof.

**Section 15**
That no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue and by frequent recurrence to fundamental principles.

**Section 16**
That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity toward each other.[12]

### 3.1.2 The Declaration of Independence from 1776

The Declaration of Independence is a statement was agreed on 4 July 1776 based on the ideas of Montesquieu, Locke, Rousseau and Paine. Jon E. Lewis says that "the Declaration of Independence was the foundation of free America." (2003: 333). The most important parts of declaration which mention "life, liberty and pursuit of happiness" read as follows:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.[13]

[12] See http://www.archives.gov/exhibits/charters/virginia_declaration_of_rights.html
[13] See http://www.archives.gov/exhibits/charters/declaration_transcript.html

### 3.1.3. American Bill of Rights 1791

The American Bill of Rights, influenced by Jefferson and drafted by James Madison, was agreed in 1791. The declaration which includes issues such as freedom of religion, speech, press, assembly, petition, right to bear arms, quartering of troops, search and seizure, grand jury, double jeopardy, self-incrimination, due process, criminal prosecutions, common law suits, excess bail or fines, non-enumerated rights, and rights reserved to states reads as follows:

> The following text is a transcription of the first ten amendments to the Constitution in their original form. These amendments were ratified December 15, 1791, and form what is known as the "Bill of Rights."
>
> **Amendment I**
> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
>
> **Amendment II**
> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.
>
> **Amendment III**
> No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.
>
> **Amendment IV**
> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
>
> **Amendment V**
> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to

be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Amendment VI**
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

**Amendment VII**
In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

**Amendment VIII**
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Amendment IX**
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**Amendment X**
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.[14]

## 3.2. The French Declaration of Human Rights from 1789

The Declaration of the Rights of Man and the Citizen was created after the 1789 revolution by the National Assembly of France, considering the new political foundations of the country. The French declaration emphasized the importance of the protection of the natural rights which consist of liberty, property, security and resistance to oppression. The expansion of the meaning of these rights were:

"equality before the law, freedom from arbitrary arrest, the presumption of innocence, freedom of expression and religion, the general freedom to do anything that did not harm others and the right to property". (Freeman: 2002:24). According to Freeman, compared to the American declaration, the French one had a more universal way of looking at rights. (Freeman: 2002:24). It is more egalitarian than the American declaration in the sense of the question of the rights of women and abolishing slavery. The French Declaration of Rights was the expression of the will of the people of France and it depended on the egalitarian ideology of the revolution despite the several types of inequalities that existed in the French society at the time. (Freeman: 2002: 26)

Through the end of the eighteenth century, the concept of natural rights lost its influence due to the violence that the French revolution created and to the oppositions of conservative and radical thinkers. (Freeman: 2002: 26). However, in the nineteenth century utilitarians had taken the concept of natural rights as a basis for their movement of social reform by linking the "science of the mind with aim of promoting happiness". (Freeman: 2002: 28). Declaration of the Rights of Man and of the Citizen reads as follows:

> The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the Social body, shall remind them continually of their rights and duties; in order that the acts of the legislative power, as well as those of the executive power, may be compared at any moment with the objects and purposes of all political institutions and may thus be more respected, and, lastly, in order that the grievances of the citizens, based hereafter upon simple and incontestable principles, shall tend to the maintenance of the constitution and redound to the happiness of all. Therefore the National Assembly recognizes and proclaims, in the presence and under the auspices of the Supreme Being, the following rights of man and of the citizen:

[14] See http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html

**Article 1**
Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.

**Article 2**
The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

**Article 3**
The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation.

**Article 4**
Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law.

**Article 5**
Law can only prohibit such actions as are hurtful to society. Nothing may be prevented which is not forbidden by law, and no one may be forced to do anything not provided for by law.

**Article 6**
Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation. It must be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents.

**Article 7**
No person shall be accused, arrested, or imprisoned except in the cases and according to the forms prescribed by law. Any one soliciting, transmitting, executing, or causing to be executed, any arbitrary order shall be punished. But any citizen summoned or arrested in virtue of the law shall submit without delay, as resistance constitutes an offense.

**Article 8**
The law shall provide for such punishments only as are strictly and obviously necessary, and
no one shall suffer punishment except it be legally inflicted in virtue of a law passed and promulgated before the commission of the offense.

**Article 9**
As all persons are held innocent until they shall have been declared guilty, if arrest shall be deemed indispensable, all harshness not essential to the securing of the prisoner's person shall be severely repressed by law.

**Article 10**
No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.

**Article 11**
The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.

**Article 12**
The security of the rights of man and of the citizen requires public military forces. These forces are, therefore, established for the good of all and not for the personal advantage of those to whom they shall be intrusted.

**Article 13**
A common contribution is essential for the maintenance of the public forces and for the cost of administration. This should be equitably distributed among all the citizens in proportion to their means.

**Article 14**
All the citizens have a right to decide, either personally or by their representatives, as
to the necessity of the public contribution; to grant this freely; to know to what uses it is put; and to fix the proportion, the mode of assessment and of collection and the duration of the taxes.

**Article 15**
Society has the right to require of every public agent an account of his administration.

**Article 16**
A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all.

**Article 17**
Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and

equitably indemnified.[15]

## 3.3. The Universal Declaration of Human Rights from 1948

The years between the French revolution and the Second World War were lost years for the concept of human rights until the Universal Declaration of Human Rights was adopted by UN in 1948. Then, the concept of human rights not only became widespread but also gained its influence in contemporary politics. (Freeman: 2002: 32). Human rights defenders gained intellectual legitimacy since the horror the Nazis created. (Morsink, 1999: XI). The General Assembly of the United Nations proclaimed the declaration in 1948 in order to prevent further human rights violations. (Morsink, 1999: 37). The Universal Declaration document has a common terminology with its precedents of the eighteenth century. To illustrate this, phrases like “inherent dignity” and “equal and inalienable rights” can be mentioned, which one taking place in the first recital of the 1948 Preamble and which originate from the Enlightenment way of thinking. (Morsink, 1999: 281).

Morsink mentions another language similarity as follows: “The American Declaration of Independence asserts that it is 'self-evident that all men are created equal' and 'endowed by their creator with certain unalienable rights’." The French declaration of 1789 uses the same kind of language, speaking of its rights as "natural, imprescriptible and inalienable." In fact, the first sentence of Article 1 of the Universal Declaration of the UN is a virtual rewrite of the first article of this French Declaration. The 1789 French sentence says that all "men are born, and always continue, free and equal in respect of their rights," while the 1948 United Nations sentence says that "all human beings are born free and equal in dignity and rights". (Morsink, 1999: 281). The word “born” in this phrase seems like an attribution to Rousseau's *Social Contract* which starts with the sentence "Men is born free, yet

[15] See http://www.hrcr.org/docs/frenchdec.htmln

everywhere he is in chains"**.** (Morsink, 1999: 290). As a result, one can assume that the grounds of the Universal Declaration of Human Rights depend on the virtue of the humanity itself or on being a human and not some other reason like acts of governments or social conventions. This foundation also originates from the Enlightenment view of natural rights. (Morsink, 1999: 281).

Despite the fact that the concept of natural rights in the eighteenth century was both universal and relatively secular, it was still founded on the grounds such as Nature and Reason was juxtaposed to the God. It must have had an effect that philosophers of the time like Paine, Locke, Rousseau, and Jefferson often appeal to God, Nature, or Reason as the source of value. Morsink asserts that "Thomas Jefferson and the other American founding fathers said that both "the laws of Nature and of Nature's God" entitled them to declare their country independent. When the French drew up their own more secular declaration, they, too, juxtaposed God and Nature". (Morsink, 1999: 282). On the other hand, the UN declaration refuses this idea of Enlightenment belief in the juxtaposition of God and natural rights, and establishes its grounds as a secular document. However, Morsink says that "this does not mean that the declaration is not grounded in enlightenment ways of thinking about morality. Three key enlightenment words occur in the first recital of the preamble and in article 1 only because the words inalienable, inherent and born still anchored the rights they were proclaiming in human nature". (Morsink, 1999: 283). The Universal Declaration of Human Rights reads as follows:

**PREAMBLE**

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

**Article 1**
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**Article 2**
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**Article 3**
Everyone has the right to life, liberty and security of person.

**Article 4**
No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

**Article 5**
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6**
Everyone has the right to recognition everywhere as a person before the law.

**Article 7**
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination

**Article 8**
Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9**
No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10**
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11**
(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Article 12**
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**Article 13**
(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

**Article 14**
**(**1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**Article 15**
(1) Everyone has the right to a nationality.
(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**Article 16**
(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
(2) Marriage shall be entered into only with the free and full consent of the intending spouses.
(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**Article 17**
(1) Everyone has the right to own property alone as well as in association with others.
(2) No one shall be arbitrarily deprived of his property.

**Article 18**
Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article 19**
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Article 20**
(1) Everyone has the right to freedom of peaceful assembly and association.
(2) No one may be compelled to belong to an association.

**Article 21**
(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
(2) Everyone has the right of equal access to public service in his country.
(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**Article 22**
Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**Article 23**
(1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
(2) Everyone, without any discrimination, has the right to equal pay for equal work.
(3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
(4) Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24**
Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25**
(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26**
(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
(3) Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27**
(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28**
Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 29**
(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**Article 30**
Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.[16]

# CHAPTER IV
# THE CENTRAL IDEAS OF RAWLS'S THEORY OF JUSTICE

The concept of justice has been one of the central issues of humanity throughout its history. Many philosophers from Plato to Rawls have attempted to give a systematic account of justice which is the corner stone of social and political philosophy. One of the earliest books on political philosophy, Plato's *Republic*, was a search on the answer to "what is justice" and "what is a just society". According to Plato, justice in a state is achieved when people perform their task in accordance with their natural skills, and everyone does his own job without interfering with others doing the same. Therefore, Plato formulates justice as follows: "doing one's own work" (Plato, 1991: Book 4, 433a–434c, 443b). The fundamental notion of his justice in the state is found in his concept of justice in the soul. If every part of the soul performs its specific task, the soul of the individual is just. Individual justice, which mirrors the political justice, is called as virtue ethics because it connects justice to an internal state of the person rather than to external results. (Slote, 2010)[17]

Aristotle is generally considered a virtue ethicist, but his account of justice as a virtue is less purely virtue ethical than Plato's account of justice. (Slote, 2010). For Aristotle, the man who obeys the law made by legislature is considered a just man. On the contrary, the law-breaker is considered to be an unjust man. (Aristotle, 1996, 1129b 11-14). It should be noted that there is no one kind of justice for Aristotle. He says:

[16] See http://www.un.org/en/documents/udhr/
[17] Cf. (Vlastos, 1981: 111-139)

> Particular justice on the other hand, and that which is just in the sense corresponding to it, is divided into two kinds. One kind is exercised in the distribution of honour, wealth, and the other divisible assets of the community, which may be allotted among its members in equal or unequal shares. The other kind is that which supplies a corrective principle in private transactions. This corrective justice again has two sub-divisions, corresponding to the two classes of private transactions, those which are voluntary and those which are involuntary. Examples of voluntary transactions are selling, buying, lending at interest, […]. Of involuntary transactions some are furtive, for instance, theft, adultery, poisoning, […]; others are violent, for instance, assault, imprisonment, murder, robbery with violence, […]" (Aristotle, 1996: 117–118, 1130 b 30–1131 a 9)

If we deal with the term justice as a distribution of some goods, as Aristotle mentions above, rather than as virtue, we come up the idea of the distribution of the goods as equal or unequal depending on some criteria. For Aristotle, the just distribution should be depending on desert. Therefore justice is a kind of proportion for him. (Aristotle, 1996: 118, 1131 a 23–29)

Although the discussions on justice started in early times, there is still not a settled agreement about the concept of justice because it is strongly connected to the social and political life. The difficulty of finding a settled concept of justice has increased in recent years with the introduction of the concept of social justice as a moral and political value. The concept of justice is associated with distribution of the wealth and income depending on criteria such as desert, merit, need or its own sake. (Barry, 1995: 149). As the distribution of wealth and income is a crucial issue for each individual, discussions on justice are still dominant in the field of the social and political philosophy. John Rawls, considered the most important political philosopher of the twentieth century by many scholars, published a book called "A Theory of Justice". The book, published in 1971, is widely recognized as the most influential book in contemporary political philosophy. (Avineri, 1992: 1). One reason why Rawls's book was very influential is that it sparked a wide range of responses.[18] Out of Michael Sandel's criticism of Rawls's theory of justice, published in 1982,

[18] The first major response, a very critical one from a libertarian perspective, was Robert Nozick's *Anarchy, State, and Utopia* from 1974.

evolved the debate between communitarianists and liberalists.[19] Another reason why Rawls's book is so influential is that "his theory dominates contemporary debates, not because everyone accepts it, but because alternative views are often presented as response to it." (Kymlicka, 2002: 10). Norman Barry, a British liberal, notes that "the publication of John Rawls's book provided, for perhaps the first time this century, a direct link between a fairly abstract, philosophical theory and particular policy recommendations in both the areas of rights and distributions." (Barry, 1995: 151).

Rawls calls the theory he introduces justice as fairness and indicates that it is a viable alternative to the utilitarian and intuitionist conceptions of justice which had been dominant in the philosophical tradition. (Rawls, 2005: 3). He claims that the basic institutions of society must be organized by two principles of justice: the first principle is the principle of equal liberty and the second principle is the difference principle connected to the principle of equality of fair opportunity. Although the aim of this thesis is to evaluate the influence of the human rights tradition in John Rawls's first principle of justice, a brief introduction to the second principle of justice and some important features of his theory will be given in this chapter in order to understand his ideas better.

## 4.1. Methods of Founding Principles of Justice

John Rawls emphasizes the importance of justice in a society in the very beginning of *A Theory of Justice* as follows:

> Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. (Rawls, 2005: 3-4)

[19] Sandel 1982; cf. the debate between communitarianists and liberalists (Avineri/de-Shalit 1992).

Rawls makes an analogy between the concept of justice and truth, which plays a central role for the system of thought, to explain the significance of justice in society as a virtue. He also states that all people have an "inviolability" based on justice which cannot be violated for the sake of the many. It was mentioned before that justice as fairness is presented as a viable alternative to the utilitarian and intuitionist conception of justices. It is clear that Rawls criticizes the utilitarian conception of justice in the phrase above. Freeman describes Rawls's position against utilitarianism as follows:

> Rawls contrasts 'liberalisms of freedom' with the 'liberalisms of happiness' found in classical liberalism. Classical liberalism originates largely with David Hume, Adam Smith, and the classical economists and developed in Britain together with utilitarianism. Classical liberalism primarily differs from high liberalism in placing greater emphasis upon economic rights of property, contract and trade, and the freedom of consumption. Whereas the high liberal tradition sees the freedom and independence of the person as the primary end of justice, classical liberalism sees them more as means that are instrumental to the primary end of individual happiness. (2008: 45)

For Rawls, although social cooperation offers a better life for everyone compared to a solitary life, it also gives rise to an "identity of interest" which can easily turn into "conflict of interests". Persons have the tendency to ask for more sharing of benefits arising from their collaborations. Rawls states that we need a set of principles which decide this division of the benefits and for a commitment on the proper distributive shares. Rawls says: "These are the principles of social justice: provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distributions of the benefits and burdens of social cooperation.'' (Rawls, 2005: 4)

For Rawls, although there is no agreement about what is just and unjust among the persons in a society, they each have a conception of justice which makes people think about a principle useful for assigning the basic rights and duties and for deciding on the appropriate distribution of the benefits and burdens of the social

cooperation. (Rawls, 2005: 5) Rawls says that we need a conception of justice and also it is worth having this concept for its own sake. (Rawls, 2005: 9) It should be noted that, for Rawls, a society is considered as a well-ordered society if it is shaped for the good of all and regulated by a public conception of justice. In other words, it is a society in which everyone agrees on the same principles of justice and the basic social institutions of the society fulfill these principles.

Many different kinds of things can be the subject of justice such as laws, decisions, and attitudes. The subject of the Rawls's theory is the basic structure of society since it deals with social justice.

> For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements. (Rawls, 2005: 7)

The expression "institution" commonly refers to "organized collective agents such as Harvard University or the World Bank" but Rawls uses the term "social institution" in different sense. By using the term "social institution" he refers to "practices and rules that structure relationships and interactions among agents". (Pogge, 2007; 28). For Rawls, the legal protection of freedom of thought and liberty, competitive markets, private property in the means of production, and the monogamous family are examples of these institutions. The basic structure of society, major institutions, is the primary subject of justice because it plays a central role in each individual's life by assigning the basic rights and duties. Rawls says that he will not deal with the justice of social practices, law of nations and international relations. His theory will deal with a society which is isolated from other societies. (Rawls, 2005: 8)

For Rawls, a rational man cannot accept a utility principle for the basic structure of society. No one wants to lose his or her interest for the sake of the total sum of advantages. The persons in the initial situation choose two different

principles. (Rawls, 2005: 14). The first principle insures equality for the basic rights and duties and the second principle compensates the social and economical inequalities for the least advantaged persons in the society. Rawls adds that although intuitionism as a basis for a just society is not necessarily irrational, the role of it is limited in the theory of justice. (Rawls, 2005: 41)

## 4.2. Contract Theory

Rawls says that his main purpose is to "present a conception of justice which generalizes and carries to higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant." (Rawls, 2005: 11). As mentioned before, persons in a social cooperation need a set of principles for two reasons. The first reason is that they want to decide on basic rights and duties and, secondly, they want to determine the division of social advantages from cooperation. In order to reach a fair agreement on principles of justice Rawls uses contractualism as a method for his theory. He also adds that although justice as fairness uses contract theory as a method, it should not be considered as a complete contract theory as justice as fairness presents principles only for justice not for all virtues. (Rawls, 2005: 17)

Social contract theory is a method that shows what structure of rules, principles or institutions would be chosen by individuals to further their interests in a specified situation. (Barry, 1995: 174). Rawls wants to reach a fair agreement on the principle of justice because he thinks that human beings are equal as moral persons. They are equal because they have a conception of the good and also they are capable of sense of justice. (Rawls, 2005: 19). Rawls calls the initial situation as the original position which corresponds to the state of nature in the tradition of social contract theory. It provides equality and impartiality by introducing the concept of the "veil of ignorance". So Rawls claims that free and rational persons who are involved in this social cooperation accept an initial situation in order to make a fair decision on the principles of justice. Behind the veil of ignorance people are supposed to decide on

the principles of justice without knowing their places in society. Rawls assumes that if people knew their particular interests in a society, their conception of justice would be biased. Therefore, people should have no information about their natural assets, intelligence, strength, sex, race nor their conception of good and their special psychological propensities in the original position in order to reach a fair agreement on the principles of justice. (Rawls, 2005: 12). To put it briefly: the agreement which would be reached in the original position is supposed to be fair to protect the rights and equality among people in society.

Rawls says that there are other interpretations of the initial situation in the tradition of contract theory; however, he claims that the original position is the most favored interpretation of them. (Rawls, 2005: 121). Rawls's theory of justice is comprised of two parts, like other contractualist traditions. The first is a description of the initial situation, which Rawls calls as original position, and the way of choosing principles of justice. The second part is formed by principles of justice on which people agreed. (Rawls, 2005: 15). As the original position plays a central role in justice as fairness, it will be explained in a more detailed way and then other important parts of the theory of justice will be discussed throughout this chapter.

As mentioned above, the parties in the original position are situated behind a veil of ignorance in order to reach a fair agreement on the principles of justice. Thus they are assumed not to know their places in society. More specifically they do not know their social status, abilities, intelligence, sex, race, and the like. Also they do not know their conception of the good and the specific situation of their society like its social and economical situation, level of civilization, and culture. For Rawls, these limitations in the initial situation have crucial importance because without them to reach an agreement on principles of justice would be very complicated. (Rawls, 2005: 140). But the notion of the original position and the restrictions that come with it raise some difficulties in understanding the theory.

It should be noted that the original position is not an actual historical situation. It is a purely hypothetical situation. (Rawls, 2005:120) As it is a

hypothetical situation one might have difficulties grasping the process of the original position. Therefore, Rawls indicates that "it is not gathering of all actual or possible persons […] In any case, it is important that the original position be interpreted so that one can at any time adopt its perspective." (Rawls, 2005: 138)

As the original position provides an information deficit by introducing the concept of the veil of ignorance for individuals regarding their particular interest in society, parties in the original position are supposed to be mutually disinterested. (Rawls, 2005: 13). Considering human nature one might ask how it is possible to be mutually disinterested. Rawls says that the parties want to further their primary goods but they are not interested in taking one another's interests because they do not know their particular position in society. This situation prevents people from agreeing on a principle which is unfavorable for others as they do not know how they will be affected by this principle. Moreover the persons in the original position are not considered to be envious because envy has the possibility to make one's life worse off. Removing envy from the persons in the original position may seem unrealistic but we should keep in mind that Rawls does not describe the people in the real word. He deals with a hypothetical person, who does not have information about the actual world or life, in order to insure impartiality between the parties. Therefore, Wolff argues that the authors who criticize Rawls because he removes envy from people's perspective do not have a valuable criticism of the theory. (Wolff, 2006: 157)

It should be noted here that Rawls refers to the heads of the families by using the term parties. (Rawls, 2005: 146) Rawls uses this term to solve the generation problem. The problem is whether the individuals in the original position have responsibility for their immediate descendants or not. He says that parties, in the sense of the heads of the families, in the original position have someone to take care of in the next generation. In the same way, someone in the next generation has someone to care about in the second generation. The goodwill of the parties lasts at least two generations; therefore, justice between generations is tied together. (Rawls, 2005: 128-129)

The persons in the original position are supposed to further their interests as much as possible. But considering the restrictions in the original position one might ask how it is possible to decide on the most favored conception of justice. Rawls says that although persons in the original position do not know their particular situations, they have a conception of the good, that is, they would want to have more primary goods than less. (Rawls, 2005: 142) Rights and liberties, opportunities and powers, income and wealth, and one's own worth are examples of the primary goods which are distributed by the basic structure of society. (Rawls, 2005: 92). Rawls claims that this information is enough for them to know how to decide on the favored conception of justice. (Rawls, 2005: 142-143)

## 4.3. Coherence Theory

The second method, which Rawls uses in his theory, can be called the coherence theory and it exists in connection with the notion of the reflective equilibrium. It plays a central role in Rawls's methodology. (Barry, 1995: 174). Rawls says that "the concept of the original position […] is that of the most philosophically favored interpretation of the initial choice situation for the purpose of a theory of justice." (Rawls, 2005: 18). It provides impartiality for parties to choose the principles of justice. A particular description of the original situation is also supported by Rawls's concept of the reflective equilibrium. It requires a process which allows us to see whether the principles that we decide on in the original position correspond to our "considered judgments" of justice or not. If the principles of justice and the considered judgments match each other, then there is no problem. But if they do not match, then we have two ways to solve the problem. We can either adjust the description of the initial situation or our intuitive convictions. Rawls states that we should find a state which both our considered judgments and principles coincide. He calls this balance a "reflective equilibrium" and describes it as follows "It is an equilibrium because at last our principles and judgments coincide; and it is reflective since we know to what principles our judgments conform and the premises of their

derivation." (Rawls, 2005: 20). With "the premises of their derivation" Rawls means the conditions that describe and interpret the initial situation. This shows that the term "reflective equilibrium" brings together coherence and contract theory. Rawls adds that this equilibrium is not necessarily a stable situation because our considered judgments have the possibility to change in time. So we can revise our judgments when a change occurs in our considered judgments. (Rawls, 2005: 20)

It should be noted that one might ask why we have to conform the principles of justice, which are chosen by free and rational persons, to our considered judgments. Rawls says that the principles of justice, which are decided on in the original position, are not necessary truths. The grounding of a conception of justice is an issue of the collective support of the different considerations, not of self-evident premises. (Rawls, 2005: 21)

## 4.4. The Two Principle of Justice

Rawls says that "the theory of justice may be divided into two main parts: (1) an interpretation of the initial situation and a formulation of the various principles available for choice there, and (2) an argument establishing which of these principles would in fact be adopted." (Rawls, 2005: 54). So far, the first part of the theory, mentioned above, has been given. In this subchapter the two principles of justice and the reasons why they are chosen among the various available principles will be developed. The two principles of justice change step by step throughout the book. The first version of formulation is as follows:

> "First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty of others.
>
> Second: social and economical inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to the positions and offices open to all." (Rawls, 2005: 60)

The subject of Rawls's theory of justice is the basic structure of the society. Therefore, the two principles of justice, mentioned above, apply to the basic structure of society. But it is clear that in particular these two principles apply to two more or less separate parts of the basic structure of society. The first principle is supposed to assign and secure equal liberties like political liberty, together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold personal property; and freedom from arbitrary arrest. Freeman argues that "the first principle in *Theory* is a part of Rawls's liberal ideal of free self-governing persons who develop their human capacities, and shape and pursue ways of life that are intrinsically rewarding. This is the ideal of the person that underlies the 'liberalism of freedom' of the high liberal tradition." (Freeman, 2008: 45). As the aim of this thesis is to evaluate the influence of the human rights tradition in Rawls's first principle of justice, the first principle plays a central role in this study. So it will be discussed in detail in the next chapter of the present study.

The second principle, which has two subparts, is connected with the allocation of income, wealth and alternative positions in society. The first part requires that social and economical inequalities must be to everyone's advantage. The latter part indicates that positions and offices must be open to all. In Rawls's theory equality plays a central role; therefore, the two principles of justice are ordered serially with the first principle prior to the second one. Rawls describes the priority of equality as follows: "By the priority of liberty I mean the precedence of the principle of equality over the second principle of justice. The two principles are in lexical order, and therefore the claims of liberty are to be satisfied first. Until this is achieved no other principle comes into play." (Rawls, 2005: 42-43). This means that equal liberty cannot be sacrificed for the sake of the total sum of the advantages. (Rawls, 2005: 61). Rawls expresses the more general conception of justice, which the two principles of justice depend on, as follows: "All social values −liberty and opportunity, income and wealth, and the bases of self-respect− are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage." (Rawls, 2005: 62)

The phrases “everyone’s advantage” and “equally open to all” in the second principle are ambiguous. So Rawls says that there are four possible interpretations of them, like the “system of natural liberty”, “liberal equality”, “democratic equality” and “natural aristocracy”, which are shown in a schema as follows:

| | “Everyone’s advantage” | |
|---|---|---|
| “Equally open” | Principle of efficiency | Difference principle |
| Equality as careers open to talents | System of Natural Liberty | Natural Aristocracy |
| Equality as equality of fair opportunity | Liberal Equality | Democratic Equality |

The third interpretation of the two principles, in other words natural aristocracy, is not discussed in detail because there is no effort to compensate social contingencies in this interpretation. Also it should be noted that in all interpretations, the first principle of equal liberty is considered as satisfied and the economy is considered as a free market system. The first interpretation of the two principles is called a system of natural liberty. In this interpretation, the first part of the second principle, which requires that social and economical inequalities should be to everyone’s advantage, corresponds to the principle of efficiency which is also called the Pareto optimality by economists. It means that “a configuration is efficient whenever it is impossible to change it so as to make some persons better off without at the same time making other persons worse off.” (Rawls, 2005: 67). When we apply the efficiency principle to the basic structure of society we can say that an assignment of rights and duties is efficient if there is no way to change them to advance the prospect of a representative man without lowering the prospect of another representative man. Rawls indicates that the principle of efficiency cannot be considered to be a conception of justice alone. The principle of efficiency does not say whether a distribution of goods is just by itself so it needs a principle of justice to

choose a particular efficient distribution among others. (Rawls, 2005: 69) In the system of natural liberty, the second part of the second principle, which requires that positions and offices should be open to all, corresponds to the phrase "careers open to talents" in the chart. That means that all have right to access to all positions with respect to their talents. Although it seems to be a fair opportunity, the system of natural liberty focuses on talent which is mainly influenced by social contingencies. Therefore, for Rawls the system of natural liberty cannot be chosen as a principle of justice since it does prevent the inequality among people. (Rawls, 2005: 72)

The second interpretation of the two principles, which is called the liberal interpretation, adds the requirement of "fair equality of opportunity" to solve the problems which come with the conception of "careers open to talents". It means that the second interpretation tries to decrease the effect of social contingencies on distributive shares. For example, education, whether private or public, should not depend on one's class position. Rawls says that when we compare the liberal interpretation with the system of natural liberty the former one is preferable. However, he adds that the liberal interpretation still has some problems. Although it mitigates the influence of natural fortune in order to apply to all positions by introducing the principle of fair equality of opportunity, it does not say anything about the prevention of distribution of wealth and income by the outcome of the natural lottery. (Rawls, 2005: 74). So we will continue to seek an interpretation which solves these problems at the same time.

The third interpretation, which is also called natural aristocracy, is put aside because there is no attempt to solve the problems of social contingencies. The last interpretation of the two principles, which is called democratic equality, corresponds to the principle of fair equality of opportunity and the difference principle. As we can remember, the principle of equality of opportunity seeks to mitigate the effect of social contingencies on access to positions. The difference principle, which is the most innovative part of Rawls's theory, introduces a particular situation for social and economical inequalities in order to solve the problem of the efficiency principle. Rawls explains this principle as follows: "According to the difference principle, it is

justifiable only if the difference in expectation is to the advantage of the representative man who is worse off." (Rawls, 2005: 78) Rawls says that it clear that the democratic interpretation is the best interpretation among the interpretations of the two principles. (Rawls, 2005: 75) So the second principle is formed as follows: "Social and economical inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity." (Rawls, 2005: 83) It should be noted that Rawls is by most interpreters considered as a liberal, but it is clear that he finds the liberty principle defective as he thinks that the democratic interpretation is the best one among the four possibilities.

Rawls's theory requires that all primary goods should be distributed equally unless an unequal distribution would be to everyone's benefit because it prevents forging the basic liberties for economic and social benefits. One might ask why someone should choose these principles. Rawls says that it is obvious that everyone accepts the first principle which requires equal liberty for all. He also adds that it is plausible to accept inequalities if these inequalities are for everyone's advantage. In order to give a heuristic argument for choosing principles of justice Rawls uses the maximin rule. Rawls explains that rule as follows: "The maximin rule tells us to rank alternatives by their worst possible outcomes: we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the other." (Rawls, 2005: 155). People in the original position are not considered as enemies since they do not know their particular situations in society but they would adopt the maximin rule against possible contingencies. So the two principles of justice have two advantages. The first one is that persons in the original position defend their basic liberties and the second reason is that they insure themselves against the possible bad situations.

As mentioned before Rawls's theory requires that all primary goods should be distributed equally unless an unequal distribution would be to everyone's benefit because it prevents forging the basic liberties for economic and social benefits. Therefore, the last version of the principles of justice reads as follows:

First Principle: Each person is to have equal right to the most extensive total system of equal basic liberties compatible with similar system of liberty for all.

Second Principle: Social and Economical inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings, and (b) attached to the offices and positions open to all under conditions of fair equality. (Rawls, 2005: 302)

# CHAPTER V
# EQUAL LIBERTY

## 5.1. The Concept of Liberty

As we can remember, the theoretical part of justice as fairness, e.g., contract theory, original position, coherence theory, principles of justice was examined in the previous chapter. Since the aim of this thesis is to evaluate the influence of the human rights tradition in Rawls's first principle of justice, the first principle will be discussed in detail. This chapter, *Equal Liberty*, which is also the title of a chapter in *Theory of Justice,* is about the practical part of justice as fairness in other words it is about how the two principles should be applied to institutions. As mentioned before in the preceding chapter, the two principles of justice apply to the two parts of the basic structure of society. Rawls describes how these principles should be applied to the institutions as follows:

> The first principle of equal liberty is the primary standard for the constitutional convention. Its main requirements are that the fundamental liberties of the person and liberty of conscience and freedom of thought be protected and that the political process as a whole be a just procedure. Thus the constitution establishes a secure common status of equal citizenship and realizes political justice. The second principle comes into play at the stage of the legislature. It dictates that social and economical policies be aimed at maximizing the long-term expectations of the least advantaged under condition of fair equality of opportunity, subject to the equal liberties maintained. (Rawls, 2005: 199)

Rawls talks about "the four-stage sequence" which starts with the original position and continues with the application of the two principles of justice to institutions. The original position in which people agree on the principles of justice is considered as the first stage. When persons in the original position agreed on

principles of justice, they are to be determined by the constitutional convention which is the second stage. It should be noted here that the veil of ignorance is not totally removed at this stage. However, as they agreed on a conception of justice, they are no longer unaware of circumstances of justice. That means that they are informed about the general facts about society namely its natural circumstances and resources, its level of economic advancement and political culture, and so on. But they still do not know their particular place within the society. The third stage is the legislative stage which "the justice of laws and policies" is evaluated. Rawls says that "by moving back and forth between the stages of the constitutional convention and the legislature, the best constitution is found." (Rawls, 2005: 198). The last stage is concerned with the "application of rules to particular cases by judges and administration, and the following of rules by citizens generally." Rawls says that the restrictions on knowledge reduce stage by stage to prevent bias, distortion, discrimination while applying the two principles of justice to the institutions. At the last stage, there is no need for the veil of ignorance; therefore; all the restrictions of the veil of ignorance are removed. (Rawls, 2005: 199-200)

Rawls avoids giving a definition of the concept of liberty depending on the conflict of the relative values of many liberties. Rather, he accounts the basic liberties as follows: liberty of conscience and freedom of thought, liberty of the person, and equal political rights. Although Rawls does not want to develop a definition of liberty, he gives a general description of liberty which reads as follows:

> This or that person (or persons) is free (or not free) from this or that constraint (or set of constraints) to do (or not to do) so and so… For the most part I shall discuss liberty in connection with constitutional and legal restrictions. In these cases liberty is a certain system public rules defining rights and duties… Moreover, just as there are various kinds of agents who may be free –persons, associations, and states- so there are many kinds of conditions that constrains them and innumerable sorts of things that they are or are not free to do. (Rawls, 2005: 202)

Freeman says that Rawls's first principle makes a reference to "basic liberties" not to "liberty" and explains this in detail as follows:

> He (Rawls) appeals to the commonly accepted idea that certain rights and liberties are more important or "basic" than others. […] Accordingly Rawls construes the liberal emphasis on protection of "liberty" primarily in terms of certain "basic liberties," and not the protection of just any sort of freedom or "liberty as such." There is nothing original here; the idea certain rights and liberties are more "fundamental than others and warrant special protection has long been recognized in American constitutional law. Moreover, J.S Mill's Principle of Liberty is also designed to protect largely the same range of basic liberties found in Rawls's first principle. What is original in Rawls's liberalism is his answer to the question, "How are we to decide which liberties are basic or fundamental, and which are not, and how are we to decide conflicts between the basic liberties?" (2008:45-46)

Rawls says that if the liberty of conscience is agreed by law, then people are considered as having the liberty of conscience which means that people have the right to follow their religious, moral, and philosophical pursuits. Therefore, no one can be inhibited with legal restrictions or other people. For Rawls, the basic liberties should be considered as one whole system. However the problematic issue for the concept of liberty is that very likely one liberty can conflict with another. Here is the point where restrictions come into existence. For Rawls, these restrictions depend on the content of the concept of equal liberty and priority of principles. So if a restriction is needed, then these liberties which are included in the first principle can be restricted only for the sake of liberty itself. (Rawls, 2005: 203-204). Rawls also mentions that equal liberty can only be refused in order to prevent the bigger injustice, in other words a bigger loss of freedom. (Rawls, 2005: 214)

Rawls makes a distinction between liberty and the worth of liberty as follows: "liberty is represented by the complete system of the liberties of equal citizenship, while the worth of liberty to persons and groups is proportional to their capacity to advance their end within the framework the system defines." He basically says that although people have basic rights, their worth of liberty can change depending on the possessions they have such as authority and wealth. The aim of the two principles of

justice is to diminish this difference by maximizing the worth of liberty to the lowest part of the society. (Rawls, 2005: 204)

Rawls says that all attempts to define the concept of liberty remain abstract and they do not permit us to make a systematic classification of liberties. So he discusses in detail about the basic liberties, e.g., liberty of conscience and freedom of thought, liberty of the person, and equal political rights to make the content of these liberties clear.

## 5.2. Equal Liberty of Conscience

Persons in the original position are not allowed to know about themselves including their moral, religious or philosophical interests nor do they know what the requirements and obligations of them are. They are not even aware of whether their religious or moral views are within the majority or minority of society. They have to choose principles which protect their liberty of their religious, moral, and philosophical pursuits. Therefore, persons in the original position have to be careful while they decide on principles to secure their basic liberties. They may put themselves and their immediate descendant in a difficult situation with their decisions. For example, they may find themselves within the minority of society which is repressed by the majority of society when the veil of ignorance is removed. Therefore, Rawls claims that "equal liberty of conscience is the only principle that the persons in the original position can acknowledge". (Rawls, 2005: 207)

However, religious groups might object to the equal liberty by arguing that it can restrict their claim on one another. Due to the nature of religions, many religious people believe that the absolute truth is the way which they follow. So they may want to force others to believe in their religion or moral views. For Rawls, we cannot expect others to accept our religious, moral or philosophical interests as it would be against equal liberty which is secured by the first principle of justice. As

can be remembered, the connection between generations while deciding on principles of justice was noted in the preceding chapter *The Central Thoughts of Rawls's Theory of Justice*. Parties, namely heads of the families, in the original position have someone to take care of in the next generation. In the same way someone in the next generation has someone to care of in the second generation. The goodwill of the parties would last at least two generations; therefore, justice between generations is tied together. Rawls says that this connection between generations supports the equal liberty provided by the first principle because parties in the original position want primary goods, e.g., liberty of conscience both for themselves and their immediate descendents. (Rawls, 2005: 209)

Rawls states that there are also some other approaches which support freedom. He talks about Mill who is one of the most important thinkers on liberty. Rawls explains Mill's choice criteria of value as follows: "one activity is better than another if it is preferred by those who are capable of both and who have experienced each of them under circumstances of liberty." For Rawls, Mill presents three bases for this criterion. Firstly, one must improve men's capacities and powers because until men's abilities and powers are not activated, they will not want to practice the valuable activities. Secondly, the institutions of liberty should give the opportunity to people to exercise their liberties. Lastly, history shows that people choose to live under free institutions. Rawls says that although Mill gives strong arguments for most of the liberties, he does not provide an equal liberty for all due to his utilitarian approach. Rawls claims that if there is no reference to equal liberty for all, the attempt to improve men's liberty may end up with the restrictions of some liberties. (Rawls, 2005: 210-211)

## 5.3. Toleration

As mentioned before, equal liberty of conscience is considered to be the only principle that persons in the original position can agree on. It shows that justice as fairness gives a high importance to the freedom of religion, freedom of morality,

freedom of thought, and freedom of practice. However the problematic issue for these liberties is that very likely one liberty can conflict with another. Here is the point where restrictions come into existence. In this subchapter, Rawls's criteria for restrictions of these liberties will be discussed.

Rawls states that as a result of his social contact theory, the limitation of liberty in the original position is only acceptable by reference to the "common interest in public order and security". It is the principle which people agreed on in the original position in order to prevent disruption which can easily damage the liberty for all. In order to make the first criterion clear, Rawls presents a second criterion which is called the "common knowledge and understanding of the world" which takes its basis from evidence, reasoning, ordinary observation, and modes of thought. Rawls says that from the perspective of the principles of justice, the state consists of the association of equal citizens and he explains the responsibilities and limitations of the state as follows:

> […] given the principle of state, the state must be understood as the association consisting of equal citizens. It does not concern itself with philosophical and religious doctrine but regulates individual's pursuit of their moral and spiritual interests in accordance with principles to which they themselves would agree in an initial situation of equality. By exercising its powers in this way the government acts as the citizens' agent and satisfies the demands of their public conception of justice. Therefore the notion of the omnicompetent laicist state is also denied, since from the principles of justice it allows that government has neither the right nor the duty to do what it or a majority […] wants to do in questions of morals and religion. Its duty is limited to underwriting the conditions of equal moral and religious liberty. (Rawls, 2005: 212)

As noted, the liberty principle can be restricted only for the sake of liberty itself. Rawls says that this phrase alone was interpreted in a way for intolerance in past ages and in order to make it clear he gives an example. He says that Aquinas defends the death penalty for heretics because they do not have faith which is the life of the soul. He thinks that their propensity to corruption is bigger than the forgers so they deserve the death penalty more than the forgers. Rawls says that this early example

of intolerance is a dogma so it cannot be accepted by everyone. (Rawls, 2005: 213). Here, Rawls refers to the criteria which were mentioned above. In order to limit the liberties for the sake of liberty itself, there should be reference to the "common knowledge and understanding of the world".

When we deal with toleration in the context of the toleration of the intolerant within the concept of justice, we are faced with several questions. Rawls accounts these questions as follows: "First, there is the question whether an intolerant sect has any title to complain if it is not tolerated; second, under what conditions tolerant sects have a right not to tolerate those which are intolerant; and last, when they have the right not to tolerate them, for what ends it should be exercised." For the first question, Rawls says that intolerant sects do not have the right to criticize when they are not tolerated. One from this intolerant sect may say that she follows the path which her religion requires. As a reply to this, Rawls says that from the perspective of justice as fairness no religion can be favored or suppressed; therefore, no religion can have authority over others as it is against equal liberty which is protected by the first principle of justice. (Rawls, 2005: 217)

Passing by the first problem, Rawls deals with the second question that asks in which situations tolerant sects have the right to not tolerate the intolerant sects. Rawls says that tolerant sects have the right to not tolerate the intolerant sects if they think that this is needed for the security of tolerant sects and the institutions of liberty. Lastly, Rawls addresses the third question which is about the practice of intolerance. Rawls says that intolerant sects can be forced to respect the liberties of others which are reached in the original position. However, Rawls emphasizes that we cannot repress the intolerant sects. He says that we should adhere to the duty of justice even if others are liable to the injustice.

Rawls also claims that when we are faced with intolerant people in a well-ordered society, we should follow the rules of institutions. The liberties which are given to intolerant sects may convince them to believe in freedom over time. However, the crucial question is how tolerant people should behave to intolerant

sects which are growing fast and resistant to not respecting equal liberty. Rawls says that this question brings a practical dilemma which cannot be answered within the scope of philosophy alone because the answer also depends on the circumstances. However, he notes that the limitation of the liberty of intolerant sects is supposed to be for the security of just institutions not for the sake of maximizing of the liberties. Here, Rawls opposes the utilitarian conception of justice. Rawls summarizes the answers which are given for the question mentioned above as follows: "The conclusion, then, is that while an intolerant sect does not itself have title to complain of intolerance, its freedom should be restricted only when the tolerant sincerely and with reason believe that their own security and that of institutions of liberty are in danger." (Rawls, 2005: 218, 219, 220).

## 5.4. Political Liberty

Political liberty is one of the main liberties of Rawls's first principle of justice. Rawls states that he refers to the principle of equal participation when he discusses political liberty in the context of equal liberty. It means that all citizens who agreed on a constitution have the equal right to participate in the political process. Justice as fairness tries to constitute a basis for equality among people in the original position. Rawls says that the principle of participation is the area in which the equality is moved from the initial situation to the constitution. (Rawls, 2005: 221) Rawls describes the political liberty and the process of it as follows:

> All sane adults, with certain generally recognized exception, have rights to take part in political affairs, and the precept one elector one is voted is honored as far as possible. Elections are fair and free, and regularly held. […] There are firm constitutional protections for certain liberties, particularly freedom of speech, and assembly, and liberty to form political associations. The principle of loyal opposition is recognized, the clash of political beliefs, and of the interests and attitudes that are likely to influence them, are accepted as a normal condition of human life…Without the conception of loyal opposition, and an attachment to constitutional rules which express and protect it, the

> politics of democracy cannot be properly conducted or long endure. (Rawls, 2005: 223)

Rawls says that in order to clarify the concept of the principle of participation in the context of equal liberty three important aspects of it should be explained of like “its meaning”, “its extent”, and “the measures that enhance its worth”. Firstly, the meaning of the principle of participation, namely the “precept of one elector one vote” refers to the influence of the votes. This means that every vote has the same influence considering the consequence of the elections. However, Rawls says that some general precautions for security are needed in order to achieve this point like to safeguard to prohibit gerrymandering. (Rawls, 2005: 223)

The other meaning of participation is that “all citizens are to have an equal access, at least in the formal sense, to the public office.” (Rawls, 2005: 223). However, in order to take part in political parties or positions some restrictions like age, residency, and so on are required. Rawls states that these restrictions do not imply any discrimination among people. They are commonly recognized by all for the public interest. (Rawls, 2005: 224)

The second point of the principle of participation is its extent. Although Rawls says that the meaning of extent is not certain he describes it as follows:

> […] the most extensive political liberty is established by a constitution that uses the procedure of so-called bare majority rule (the procedure in which a minority can neither override nor check a majority) for all significant political decisions unimpeded by any constitutional constrains. Whenever the constitution limits the scope and authority of majorities, either by requiring a greater plurality for certain types of measures, or by a bill of rights restricting the power of the legislature, and the like, equal political liberty is less extensive. (Rawls, 2005: 224)

The final point of the principle of participation is its value. It requires that the constitution should provide conditions to improve the value of equal rights of participation for everyone. The first principle of justice presents an equal liberty,

namely liberty of conscience and freedom of thought, liberty of the person, and equal political rights for all. For Rawls these liberties are not only essential for the first principle of justice. He says that "as Mill argued, they are necessary if political affairs are to be conducted in a rational fashion." The institutions of liberty should give the opportunity to all people to exercise their liberties. (Rawls, 2005: 225)

Rawls says that historically one of the main problems of constitutional government was not being able to provide a basis in order to improve the value of political freedom. For him, in order to provide an equal basis for the value of participation for all some adjusting measures should be taken like permitting the private ownership of the means of production and allotting the property and wealth widely. Moreover, the tax arrangements should be arranged in order to make political parties independent from economic situations. In other words, political parties should be autonomous. (Rawls, 2005: 226)

As mentioned above, for Rawls, the extent of the principle of participation depends on the limitation of the majority "by the mechanism of constitutionalism" like the bill of rights and the separation of powers. In this context, the question is how to decide on the restrictions of these mechanisms consistent with the two principles of justice. For Rawls, the fundamental criterion for the restrictions on the extent of the principle of participation is that restrictions should be applied equally to all. Classical liberalists say that political liberties have less importance than the liberty of conscience and freedom of the person. However, Rawls states that people should not be coerced to make a decision between different liberties. He says that it is possible to decide on a "constitutional procedure" when the different liberties come into conflict with political liberties without giving up other liberties. Some argue that majority rule may nullify the "strong feelings of a minority". Rawls argues that strong feelings are not subject of the justice and says that "everything depends on the probable justice of the outcome. If the various sectors of society have reasonable confidence in one another and share a common conception of justice, the rule by bare majorities may succeed fairly well." An inequality in political liberty

like in other inequalities should be arranged according to the benefit of the disadvantaged people. (Rawls, 2005: 231)

Rawls says that the violation of the "precept one person one vote" is the clearest invasion of political liberty. Rawls talks about John Stuart Mill as an example against equal political participation. Mill thinks that people who are more intelligent than others should have right to extra votes in order to give direction to politics since they are more knowledgeable than others. He also adds that both sides should take advantage from this voting regulation. However, Rawls states that getting advantage over the lower part is not Mill's first intention. Rawls says that "the grounds for self-government are not solely instrumental." Firstly it has good affect on the moral quality of civic life and civic friendship. Furthermore, the person who involved in self-government improves their self-esteem. (Rawls, 2005: 234)

## 5.5. Priority Problem

Rawls says that intuitionism does not give a systematic account of justice since it does not depend on reason. Although he states that there is no problem depending on intuitions to some degree, he also indicates that we should mitigate the immediate appeal to our "considered judgments". It should be noted here, Rawls cannot oppose intuition completely since he uses coherence theory as a method in his theory of justice. As can be remembered, his coherence theory requires a process to see whether the principles, which persons agreed on in the original position, correspond to our "considered judgments" of justice or not. For Rawls, the role of intuition within a conception of justice should be limited because it does not present a standard criterion for assigning the weights, in other words primary goods which are considered as one of the major parts of the conception of justice. Contrary to the intuitionist approach, classical utilitarianism develops a conception of justice which adopts the principle of utility as the only criterion in order to "assign the weights in society". For Rawls, one of the most important appeals of classical utilitarianism is the way that it meets the priority problem, not depending on intuition. (Rawls, 2005:

40-41). Although utilitarianism presents a standard criterion for assigning the weights and avoids depending on intuition, it is criticized because the utility principle ignores the minority for the sake total sum of the advantages.

One might ask why the principle of equality is necessary. In *Justice as Fairness* the principles of justice are chosen in the original position under the veil of ignorance. For Rawls, persons who agreed on the principles of justice in the original position, also accept the priority of these principles. After fixing the priority of the principles of justice for assigning weights in society he also introduces the first priority rule which is also called the priority of liberty. Rawls describes the priority of liberty as follows: "By the priority of liberty I mean the precedence of the principle of equal liberty over the second principle of justice. The two principles are in lexical order, and therefore the claims of liberty are to be satisfied first. Until this is achieved no other principle comes into play." (Rawls, 2005: 244). In other words, the equality principle has an absolute weight over the difference principle; therefore, the difference principle cannot make an appearance until the principle of equal liberty is fulfilled. (Rawls, 2005: 42-43).

By giving priority to the first principle Rawls clearly says that basic rights like political liberty together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law cannot be sacrificed for the sake of the economic or social advantages. Therefore, people's basic rights who are within the minority are protected against the majority by the priority of liberty. Rawls also adds that the ordering, which is mentioned above, corresponds to our considered judgments.

The priority of the liberty principle over the difference principle is not the only priority in Rawls's theory of justice. Rawls introduces the second priority rule which is called the priority of justice over efficiency and welfare. Therefore, the principles of justice are ranked as follows:

**First Principle**
Each person is to have equal right to the most extensive total system of equal basic liberties compatible with similar system of liberty for all.

**Second Principle**
Social and Economical inequalities are to be arranged so that they are both:
(a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
(b) attached to offices and positions open to all under conditions of fair equality of opportunity.

**First Priority Rule (The Priority of Liberty)**
The principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty.
There are two cases:
(a) a less extensive liberty must strengthen the total system of liberty shared by all;
(b) a less than equal liberty must be acceptable to those with the lesser liberty.

**Second Priority Rule (The Priority of Justice over Efficiency and Welfare)**
The second principle of justice is lexically prior to the principle of efficiency and that of maximizing the sum of advantages; and fair opportunity is prior to the difference principle. There are two cases:
(a) an inequality of opportunity must enhance the opportunities of those with the lesser opportunity;
(b) an excessive rate of saving must on balance mitigate the burden of those bearing this hardship. (Rawls, 2005: 302-303)

Rawls says that if the people in the original position practice the basic liberties which are guaranteed by the first priority rule, they would not accept a lesser liberty for the economic advantages. He argues that "as the conditions of civilization improve, the marginal significance for our good of further economic and social advantages diminishes relative to the interest of liberty, which becomes stronger as the condition for the exercise of the equal freedoms are more fully realized." (Rawls, 2005: 542). Liberty takes an increasingly central role in a society where there are increasing improvements. Thus it seems irrational to accept a lesser liberty for social or economic benefits by people in the original position. In addition, Rawls opposes the idea that every man will continue to seek a relatively greater proportion from the

distribution of wealth with result that society would give priority to the importance of "raising productivity and improving economic efficiency" and undermining the priority of equal liberty. Rawls claims that as envy and jealousy are removed from people in the original position, they also want the best for other people as they wish for themselves. Therefore, Rawls says that "the desire for a higher relative place in the distribution of material means should be sufficiently weak that the priority of liberty is not affected". (Rawls, 2005: 544).

However this does not mean that people are not interested with matters of status. For Rawls, self-respect is considered one of the most important of primary goods. Therefore, people are concerned with the matters of status in regard to self-respect. Rawls says that there are essentially two aspects of self-respect: "First of all […] it includes a person's sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one's ability, so far as it is within one's power, to fulfill one's intentions." Rawls indicates that the basis of self-respect is not related to one's income but the distribution of basic rights and liberties. Therefore, accepting the liberties and rights as equal ensures a similar and secure status to all. And no one wants to lose her self-respect, which is guaranteed by the equal liberty principle, by accepting lesser equality for the political and economical life. (Rawls, 2005: 544-545)

The priority principle in Rawls's theory of justice can be considered as the notion which distinguishes him from other thinkers or human rights declarations. For example, Isaiah Berlin, one of the most important names in the thought on liberty, does not put emphasis on the priority of liberty. Berlin argues that we should consider the particular cases instead of always giving priority to the basic liberties. (See Jacob, 1997: 76)[20] As has been explained, the two principles of justice should be ordered according to the serial order. In other words, the liberties which are

[20] Cf. Issiah Berlin, *Concepts and Categories*. New York, Oxford University Press, 1980, pp. 97-102.

guaranteed by the first principle cannot be sacrificed for the sake of the total sum of the advantages. (Rawls, 2005: 61). This is one of the main dangers Rawls sees in accordance with some other scholars connected to utilitarianism.

Thomas W. Pogge, who is the author of *Realizing Rawls*, criticizes the priority of liberty as follows:

> It would seem quite possible that the establishment or strengthening of some basic liberty for all participants or for some group(s) can worsen the worst social position. One can readily imagine or cite from history situations in which major economic reforms toward the eradication of malnutrition, illiteracy, and homelessness and a fairer distribution of income and wealth generally are impeded or blocked by the more affluent […] through their concerted use of media and the political process as guaranteed by basic rights and liberties. Even apart from this consideration, it is quite conceivable that the establishment and strengthening and then the maintenance and effective protection of basic liberties can divert political efforts and social resources from the task of reducing social and economic deprivations. (1989:135)

Another criticism against Rawls's priority of liberty is that it focuses only on certain basic liberties. (Hart, 1983: 223-247; Scanlon, 1975: 186-189). For example, some controversial issues like sexual freedom, homosexual marriages and abortion are not included in the basic liberties. Another criticism is that although Rawls gives priority to liberty, he does not notice the importance of the conditions necessary for the exercise of the liberty. There is a distinction between having a liberty and actually have the power to exercise that liberty. In this case, if a person does not have the power to exercise the liberty that is entitled to him, this liberty would be worthless to him; in this case, Rawls's arguments seem to ignore the worth of liberty. (Jacobs, 1997:78)

# CHAPTER VI

# CONCLUSION:
# A FINAL ANALYSIS OF THE RAWLS'S FIRST PRINCIPLE OF JUSTICE

As it is mentioned earlier, the main objective of this study is to evaluate the effect of the human rights tradition in John Rawls's first principle of justice in order to see whether his first principle has made an original contribution or not to the history of human rights. To this end, the historical and conceptual background of human rights has been explained in the preceding chapters. In the second chapter, the history of philosophical reflections on human rights from the ancient and medieval philosophers and from Locke, Mill and Kant until John Rawls were discussed. Selected human rights declarations were presented in the third chapter. The central thoughts of Rawls's theory of justice and his first principle of justice are explained in the fourth and fifth chapters. This final chapter, "*A Final Analysis of the Rawls's First Principle of Justice*", is the conclusion of this study. Throughout this chapter the similarities and differences between Rawls's first principle and the human rights tradition will be discussed.

Firstly, as mentioned in the second chapter, the French politician and philosopher Benjamin Constant writes on the liberty of the ancient people in his famous article *The Liberty of the Ancient Compared to the Liberty of the Moderns*, which was given as a lecture in Paris in 1819. In this article, he explains the liberties of the people of ancient times consisted of the following: "[to] discuss and make decisions about war and peace; to form alliances with foreign governments; to vote

on new laws; to pronounce judgments; to examine the accounts, acts, and stewardship of the magistrates; to call the magistrates to appear in front of the assembled people; to accuse the magistrates and then condemn or acquit them." (quoted in Rosen, 1999: 122). According to the liberties which are mentioned above, people in ancient time can be considered sovereign in their public affairs. Constant also adds that people in ancient times, especially in Sparta and Rome, are not considered as free individuals in their private life compared to the people of modern times. All their actions are monitored and checked by the authority. Therefore, following Constant, people in ancient times are considered to have rights as part of a political community, while they are considered slaves in their private life. Likewise Aristotle discussed about the rights of participation in public affairs. According to him, laws should decide on compensation or punishments if these rights are violated by others. (Freeman, 2002: 16)

For Rawls, the basic liberties guaranteed by the first principle are "political liberty together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law". (Rawls, 1971: 61). In the chapter which is titled *Equal Liberty*, Rawls discusses political liberty and says that he refers to the principle of equal participation when he talks about political liberty in the context of equal liberty. (Rawls, 2005: 221). Therefore, although Rawls and the ancients both give importance to political participation, there is a clear difference between them. Rawls calls for equal participation in the political life of all adult citizens while ancients only allow the participation of some people in public affairs. For example, Aristotle, known for his criticisms of democracy, writes in the *Politics* that participation in political life requires some criteria, i.e., being a man, having virtue, and property. (Aristotle, 1977: Book VII). Moreover, the rights of the ancient people, which Benjamin Constant mentions above, are limited to political rights while Rawls advocates for other individual rights, e.g., liberty of conscious and freedom of thought, liberty of the person as well as equal political rights.

Stoicism introduces the concept "cosmopolite" which means "world citizen". Zeno of Citium, who is accepted as the founding father of the stoic school, explains his conception of cosmopolitism as follows: "A well-ordered admired republic is founded on the principle that human beings should not be separated within cities and nations under laws particular to themselves, because all humans are compatriots…, and because there is only one life and one order of things (cosmos)" (Translated by Ishay, 2004: 23). Here, we can already see the trace of equality which takes a central role in the modern conception of human rights by referring the term *compatriots* to all human beings. The stoic philosophers also set the stage for equality in their discussion of the natural law. They say that all humans are subject to natural law. Another reason the stoics give for equality is based on the idea that everyone has a logos. (Freeman, 2002: 17). Equality is also one of the core concepts of Rawls's conception of human rights. However, Rawls does not take natural law as a basis for his conception of human rights. He argues that human beings are equal as moral persons. They are equal because they have a conception of the good and are capable of a sense of justice. (Rawls, 2005: 19)

Thomas Aquinas also mentions the equality of the people in front of God, using the term "natural law". For him, the world has been created by God and is well-ordered and reasonable. Through their reason, human beings can understand the natural law which participates to the eternal law. (S. Th. I/II, qu. 91, a.1/2). However, for Rawls, the foundation of rights does not concern God or any other divine sources. Rather, it is given by rational and free people who decide on the first principle in the original position.

As has been mentioned earlier, John Locke, British philosopher of the seventeenth century, plays an important role in the development of the idea of human rights. For Locke, the conception of human rights is derived from the natural law, and God is the source of the natural law. (Locke, 1982: § 6, 4). According to Locke, the highest goal of legislation, and ultimately the whole state is to secure the natural right to life, liberty and property. These are the rights which Rawls also emphasis in the first principle. However, although Rawls mentions the right to property in his

account of basic rights (1971: 61), he does not explicitly discuss the right to property in the chapter *Equal Liberty*, where he explains these liberties in detail. If we compare this with Locke, we see that for him the right to property plays a very important role. Some contemporary political philosophers like Robert Nozick follow this tradition and line of thought. (Nozick, 1974). Today, this attitude is called "libertarianism". Opposed to this, there is another tradition referred to as "liberalism", which starting from Locke –or according to some scholars already from Hobbes– leads to "the left-wing welfarism defended by Rawls". (Wolff, 1991: 1).

Another point that should be made clear is that Locke is a forerunner of the principle of political representation and of political liberties. For him, the male citizens of a state have "a right to be distinctly represented" in the legislative body which he understands as the "supreme power in every commonwealth" (Locke, 1982: § 158, § 135; 97, 82). However, he excludes women and poor people who pay no taxes. (Locke, 1982: § 158, 98). As mentioned above, Rawls also talks about political participation; however, he advocates equal participation in political life to all.

John Locke's writings on tolerance have also been influential. *A Letter Concerning Toleration*, published in 1689, in his letter, he pleads for an extensive toleration of the protestant sects, which were manifold in England at his time, as well as for the toleration of the religious convictions of Pagans, Jews and Moslems. Everyone should have the freedom of thought and as well of worship. A state religion should not exist. Locke insists on the separation of the church and the state. But Locke's pleading for toleration is severely limited by two exceptions. For him, there should be no toleration for Catholics and for atheists. Rawls also emphasizes that the concept of a "confessional state", which is a state that officially practices a particular religion, is not acceptable. He says that no religion and the requirements of this religion can be supported or repressed by the state. (Rawls, 2005: 212). Moreover, Rawls`s conception of toleration is not limited according to religion or philosophical views like Locke's conception of toleration. Rawls explains his limitation for toleration as follows: "The conclusion, then, is that while an intolerant

sect does not itself have title to complain of intolerance, its freedom should be restricted only when the tolerant sincerely and with reason believe that their own security and that of institutions of liberty are in danger." (Rawls, 2005: 220)

John Stewart Mill expresses his ideas of human rights most clearly in his book *On Liberty* which was published in 1859. The main topics of his book are the civil and social liberties as well as the limits of society's power over the individual. He is especially concerned about the danger that the majority could oppress the minority which could be executed through the tyranny of opinion. Therefore it is not surprising that Mill mainly advocates for the modern freedom of opinion and speech. In this context, Rawls and Mill are parallel to each other since Rawls also tries to protect minorities by introducing *A Theory of Justice* which is present as an alternative to the utilitarian perspective of justice. Moreover, the rights which Mill emphases are the rights that Rawls wants to see guaranteed by his first principle of justice.

Another important point is that Mill gives a purely rational basis for the human rights compared to philosophers, e.g., Aquinas and Locke who take natural law as theological ground for their conception of human rights. For example, in *On Liberty*, Mill gives some arguments for the freedom of opinion and the freedom of the expression of opinion. First, he says that if we silence an opinion and the opinion is true we harm mankind and deprive mankind from knowledge by doing this. Second, if the silenced opinions are partially true, which is usually the case, we also cause damage as we cannot correct our errors or existing convictions. Third, whether an opinion is true or false it needs to be scrutinized by discussing it. Forth, opinions that are not discussed will become dogmas and lose their livelihood and persuasive power. (Mill, 2002: 18-19). Therefore, also Mill and Rawls are parallel about taking the basis of human rights from rationality. Rawls re-constructs the universal basis for human rights by distinguishing the universality from the natural law. The main difference between Kant and Rawls is that the latter one claims that "universal truths exist in our actions" and admits the need to the foundation for these universals in our everyday actions. (O'Byrne, 2003: 39)

In regard to information presented above, this study argues that with his priority principle John Rawls introduces an innovative aspect in human rights discourse. Rawls describes the priority of liberty as follows: “By the priority of liberty I mean the precedence of the principle of equal liberty over the second principle of justice. The two principles are in lexical order, and therefore the claims of liberty are to be satisfied first. Until this is achieved no other principle comes into play.” (Rawls, 2005: 244). By giving priority to the first principle, Rawls clearly states that basic rights like “political liberty together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law” cannot be sacrificed for the sake of the economical or social advantages. He emphasizes the significance of rights and equality in his theory of justice. In this respect, the priority of liberty presents a solution for the violations of human rights in all over the world. It should be noted that other philosophers also argue the importance of rights; therefore, it is difficult to argue that John Rawls has an innovative aspect of human rights tradition in regard to content of his first principle of theory of justice. However, this thesis has shown that by introducing and emphasizing his principle of priority of liberty John Rawls presents an innovative formal aspect in human rights.

# BIBLIOGRAPHY


Aquinas, St. Thomas (1981), *The Summa Theologica*, translated by Fathers of the English Dominican Province, Westminster, MD: Christian Classics.

Aristotle (1977), *Politics*, translated by Harris Rackham, Cambridge, MA: Harvard University Press.

_____ (1996), *The Nicomachean Ethics*, translated by Roger Crisp, New York: Cambridge University Press.

Avineviri, Shlomo and Avner de Shalit (eds.) (1992), *Communitarianism and Individualism*, New York: Oxford University Press.

Barry, Norman P. (1995), *Modern Political Theory*, London: Macmillan Press.

Berlin, Isaiah (1980), *Concepts and Categories*, New York: Oxford University Press.

Bobbio, Norberto (2005), *The Age of Rights*, translated by Allen Cameron, Cambridge, UK : Polity Press.

Bonwick, Colin (1995), *The American Revolution*, second edition, Houndmills: The Macmillan Press.

Donnelly, Jack (2003), *Universal Human Rights: In Theory and Practice*, New York: Cornell University Press.

Finnis, John (1980), *Natural Law and Natural Rights*, Oxford: Oxford University Press.

Freeman, Michael (2002), *Human Rights: An Interdisciplinary Approach*, Malden, MA: Blackwell Publishing.

Freeman, Samuel (2007), *Rawls*, New York: Routledge.

Hart, H. L. A. (1982), *Essays on Bentham*, Oxford: Oxford University Press.

_____ (1983), *Essays on Jurisprudence and Philosophy*, Oxford: Oxford University Press.

Hayden, Patrick (2001), *The Philosophy of Human Rights*, St. Paul, MN: Paragon House.

Ishay, Micheline R. (2004), *The History of Human Rights: from Ancient Times to the Globalization Era*, London: University Of California Press.

Jacobs, Lesley A. (1997), *An Introduction to Modern Political Philosophy: the Democratic vision of Politics*, New Jersey: Prentice Hall.

Kant, Immanuel (1993), *The Metaphysics of Morals*, translated by Mary Gregor, Cambridge: Cambridge University Press.

_____ (1996), *Political Writings*, translated by H. B. Nisbet, Cambridge: Cambridge University Press.

Kao, Grace Y. (2010), *Grounding Human Rights in a Pluralist World*, Washington DC: Georgetown University Press.

Kymlicka, Will (2002), *Contemporary Political Philosophy: An Introduction*, New York: Oxford University Press.

Lewis, John E. (2003), *A Documentary History of Human Rights: A record of the Events, Documents and Speeches that Shaped Our World*, New York: Carroll & Graf Publishers.

Locke, John (1991), *A Letter Concerning Toleration*, J. Horton/S. Mendus (eds.), London/New York: Routledge.

MacIntyre, Alasdair (1981), *After Virtue: a Study in Moral Theory*, Notre Dame, Indiana: University of Notre Dame Press.

Martin, Rex and Reidy, David A. (eds) (2006), *Rawls's Law of People: A Realistic Utopia?*, Malden, MA: Blackwell Publishing.

Mill, John Stuart (2002), *The Basic Writings of John Stuart Mill*, Introduced by J.B. Schneewind and notes and commentary by E. Miller, New York: Modern Library.

Miller, Fred D., Jr. (1985), *Nature, Justice, and Rights in Aristotle's Politics*, Oxford: Oxford University Press.

Montuori, Mario (1983), *John Locke on Toleration and the Unity of God*, Amsterdam.

Morsink, Johannes (1999), *The Universal Declaration of Human Rights: Origins, Drafting, Intent*, Philadelphia: University of Pennsylvania Press.

Nozick, Robert (1974), *Anarchy, State, and Utopia*, Oxford: Basil Blackwell.

O'Byrne, Darren (2003), *Human Rights: An Introduction*, Harlow, England: Pearson Education.

Pitkin, Hanna Fenichel (1988), "Are freedom and Liberty Twins?". *Political Theory*, Vol: 16, No. 4 (Nov): 523-552.

Plato (1991), *The Republic*, translated with notes and an interpretive essay by Allan Bloom, New York: Basic Books.

Pogge, Thomas Winfried Menko (1989), *Realizing Rawls*, New York: Cornell University Press.

_____ (2007), *John Rawls: His Life and Theory of Justice*, translated by Michelle Kosch, New York: Oxford University Press.

Rawls, John (1999), *A Theory of Justice*, revised edition, Cambridge, MA: Harvard University Press.

_____ (1999), *The Law of People*, Cambridge, MA: Harvard University Press.

_____ (2001), *Justice as Fairness: A Restatement*, Erin Kelly (eds), Cambridge, Mass: Belknap Press of Harvard University Press.

_____ (2005), *A Theory of Justice*, original edition, Cambridge, MA: Harvard University Press.

_____ (2008), *Lectures on the History of Political Philosophy*, Samuel Freeman (eds.), Cambridge, MA: Belknap Press of Harvard University Press.

Rosen, Micheal and Wolff Jonathon (eds) (1999), *Political Thought*, New York: Oxford University Press.

Sandel, Michael J. (1982), *Liberalism and the Limits of Justice*, New York: Cambridge University Press.

Scanlon, T. (1975), "Rawls's Theory of justice", *Reading Rawls*, Norman Daniels (eds.), Palo Alto, CA, Stanford University Press.

Stumpf, Samuel Enoch and Fieser, James (2003), *Philosophy: History and Problems*, New York: McGraw-Hill.

Vlastos, Gregory (1981) (eds.), “Justice and Happiness in the Republic”, *Platonic Studies*, New Jersey: Princeton University Press, pp. 111-139.

_____ (1984), “Justice and Equality”, *Theories of Rights*, Jeremy Waldron (eds.), New York: Oxford University Press.

Wolff, Jonathan (2006), *An Introduction to Political Philosophy*, New York: Oxford University Press.

**Online Resources**

American Bill of Rights 1791; http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html

Declaration of the Rights of Man and of the Citizen; http://www.hrcr.org/docs/frenchdec.htmln

Slote, Michael (2010), "Justice as a Virtue", *The Stanford Encyclopedia of Philosophy*, E. N. Zalta (eds.), (03.05.12): http://plato.stanford.edu/archives/fall2010/entries/justice-virtue/

The Cairo Declaration http://www.oic-oci.org/english/article/human.htm

The Declaration of Independence from 1776; http://www.archives.gov/exhibits/charters/declaration_transcript.html

The Universal Declaration of Human Rights; http://www.un.org/en/documents/udhr/

The Virginia Declaration of Rights from 1776; http://www.archives.gov/exhibits/charters/virginia_declaration_of_rights.html