Indispensability of Justice

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Chapter 1

Introduction

Role of Judiciary in justice

The judiciary is the system of courts that interprets and applies the law in the name of the state. The judiciary also provides a mechanism for the resolution of disputes. Under the doctrine of the separation of powers, the judiciary generally does not make law or enforce law but rather interprets law and applies it to the facts of each case. This branch of government is often tasked with ensuring equal justice under law. It usually consists of a court of final appeal, together with lower courts. In many jurisdictions the judicial branch has the power to change laws through the process of judicial review. Courts with judicial review power may annul the laws and rules of the state when it finds them incompatible with a higher norm, such as primary legislation, the provisions of the constitution or international law. Judges constitute a critical force for interpretation and implementation of a constitution, thus *de facto* in common law countries creating the body of constitutional law.

During last decades the judiciary became active in economic issues related with economic rights established by constitution because "economics may provide insight into questions that bear on the proper legal interpretation". Since many a country with a transitional political and economic system continues treating its

constitution as an abstract legal document disengaged from the economic policy of the state, practice of judicial review of economic acts of executive and legislative branches began to grow. In the 1980s, the Supreme Court of India for almost a decade had been encouraging public interest litigation on behalf of the poor and oppressed by using a very broad interpretation of several articles of the Indian Constitution. Budget of the judiciary in many transitional and developing countries is almost completely controlled by the executive. The latter undermines the separation of powers, as it creates a critical financial dependence of the judiciary. The proper national wealth distribution including the government spending on the judiciary is subject of the constitutional economics. It is important to distinguish between the two methods of corruption of the judiciary: the state and the private. The term "judiciary" is also used to refer collectively to the personnel, such as judges, magistrates and other adjudicators, who form the core of a judiciary, as well as the staffs who keep the system running smoothly.

History

After the French Revolution, lawmakers stopped interpretation of law by judges, and the legislature was the only body permitted to interpret the law; this prohibition was later overturned by the Code Napoléon.

In civil law jurisdictions at present, judges interpret the law to about the same extent as in common law jurisdictions – though it

may be acknowledged in theory in a different manner than in the common law tradition which directly recognizes the limited power of judges to make law. For instance, in France, the *jurisprudence constante* of the Court of Cassation or the Council of State is equivalent in practice with case law. it is also one of the only branch's to have its own point of view on everything

Functions

In common or provinces, courts interpret law, including constitutions, statutes, and regulations. They also make law based upon prior case law in areas where the legislature has not made law. For instance, the tort of negligence is not derived from statute law in most common law jurisdictions. The term *common law* refers to this kind of law. In civil law jurisdictions, courts interpret the law, but are, at least in theory, prohibited from *creating* law, and thus, still in theory, do not issue rulings more general than the actual case to be judged. In practice, jurisprudence plays the same role as case law.

In socialist law, the primary responsibility for interpreting the law belongs to the legislature. This difference can be seen by comparing United States, France and the People's Republic of China:

In the United States court system, the Supreme Court is the final authority on the interpretation of the federal Constitution and all statutes and regulations created pursuant to it, as well as the constitutionality of the various state laws; in the US federal court

system, federal cases are tried in trial courts, known as the US district courts, followed by appellate courts and then the Supreme Court. State courts, which try 98% of litigation, may have different names and organization; trial courts may be called "courts of common plea", appellate courts "superior courts" or "commonwealth courts". The judicial system, whether state or federal, begins with a court of first instance, is appealed to an appellate court, and then ends at the court of last resort. In France, the final authority on the interpretation of the law is the Council of State for administrative cases, and the Court of Cassation for civil and criminal cases. In the People Republic of China, the final authority on the interpretation of the law is the National People's Congress. Other countries such as Argentina have mixed systems that include lower courts, appeals courts, a cassation court and a Supreme Court. In this system the Supreme Court is always the final authority but criminal cases have four stages, one more than civil law. on the court a total of nine judges sit on the court. This number has been changed several times. Also reminded that federal laws are consisted of the powers that the judicial branch has. This is always been some limits in Congress that the Judicial Branch has.

Role of the Judiciary

The judiciary's foremost role as the third branch of our government is to defend and uphold the United States Constitution and assure the rule of law prevails. Under that general duty and mandate, the everyday work of the judiciary

reflects to some extent the level of a court's or judge's jurisdiction. However, a pervasive element in the judiciary's role at every level is the protection of each person's Constitutional, human, civil and legal rights. The judiciary also has an essential role in protecting us from the wrong-doing of others, protecting the weak from the strong, the powerless from the powerful as well as protecting individuals from the unwarranted or unlawful exercise of power by the State. Moreover, the judiciary plays a crucial role in securing domestic tranquility by providing a structured institutionalized forum for the resolution of discord and dispute and the vindication of civil and criminal wrong-doing.

I believe the rule of law is essential in the creation, preservation and advancement of a civilized society. When judges responsively punish wrongs, protect rights and resolve discord by thoughtful, independent and unbiased application of our laws, our justice system secures the freedoms, tranquility and equality that foster a social environment wherein man's highest aspirations and evolution can be realized. Working to ensure our laws are applied to all in a fair, reasoned and understandable manner, judges can insill confidence that allegience to--and reliance on--the law and legal process is our best hope for achieving the fullest measure of human justice, social harmony and progress.

In the courtroom judges have a vital role in creating a forum where those finding themselves in the justice system recognize the Court provides the framework within which individuals will get protection, redress and resolution of disputes and conflicts

that can not be effectively and peacefully settled elsewhere. In the intense clamor of competing interests, a judge's role is to be a fair, firm and calm advocate--not for one side or the other--but for the law and justice. By listening patiently and carefully, following the law, and clearly articulating the basis of decisions, a judge can instill respect for and appreciation of the law. By assuring all who come before the court are treated with dignity, equality and an appreciation for human diversity, the judiciary can demonstrate that the protections and sanctions in the law exist for all of us.

Principles Of Independence Of Judiciary

Judicial independence is the idea that the judiciary needs to be kept away from the other branches of government. That is, courts should not be subject to improper influence from the other branches of government, or from private or partisan interests.

Different nations deal with the idea of judicial independence through different means of judicial selection, or choosing judges. One way to promote judicial independence is by granting life tenure or long tenure for judges, which ideally frees them to decide cases and make rulings according to the rule of law and judicial discretion, even if those decisions are politically unpopular or opposed by powerful interests. In some countries, the ability of the judiciary to check the legislature is enhanced by the power of judicial review. This power can be used, for example,

when the judiciary perceives that legislators are jeopardizing constitutional rights such as the rights of the accused.

Economic basis

Constitutional economics studies such issues as the proper national wealth distribution including the government spending on the judiciary, which in many transitional and developing countries is completely controlled by the executive. The latter undermines the principle of powers' "checks and balances", as it creates a critical financial dependence of the judiciary. It is important to distinguish between the two methods of corruption of the judiciary: the state and the private. The state corruption of the judiciary makes it almost impossible for any business to optimally facilitate the growth and development of national market economy.

Canada

Canada has a level of judicial independence entrenched in its Constitution, awarding superior court justices various guarantees to independence under sections 96 to 100 of the Constitution Act, 1867. These include rights to tenure and the right to a salary determined by the Parliament of Canada. In 1982 a measure of judicial independence was extended to inferior courts specializing in criminal law by section 11 of the Canadian Charter of Rights and Freedoms, although in the 1986 case *Valente v. The Queen* it was found these rights are limited. They do, however, involve tenure, financial security and some

administrative control. The year 1997 saw a major shift towards judicial independence, as the Supreme Court of Canada in the Provincial Judges Reference found an unwritten constitutional norm guaranteeing judicial independence to all judges, including civil law inferior court judges. The unwritten norm is said to be implied by the preamble to the Constitution Act, 1867. Consequently, judicial compensation committees such as the Judicial Compensation and Benefits Commission now recommend judicial salaries in Canada. There are two types of judicial independence: institutional independence and decisional independence. Institutional independence means the judicial branch is independent from the executive and legislative branches. Decisional independence is the idea that judges should be able to decide cases solely based on the law and facts, without letting the media, politics or other concerns sway their decisions, and without fearing penalty in their careers for their decisions.

Hong Kong

In Hong Kong, independence of the judiciary has been the tradition since the territory became a British crown colony in 1842. After the 1997 return of Hong Kong to the People's Republic of China independence of the judiciary, along with continuation of English common law, has been enshrined in the territory's constitutional document, the Basic Law.

United Kingdom

In the United Kingdom and its predecessor states, judicial independence emerged slowly in the United Kingdom. Under the Norman monarchy of the Kingdom of England, the king and his Curia Regis held judicial power. Later, however, more courts were created and a judicial profession grew. In the fifteenth century, the king's role in this feature of government thus became small. Nevertheless, kings could still influence courts and dismiss judges. The Stuart dynasty used this power frequently in order to overpower Parliament. After the Stuarts were removed in the Glorious Revolution of 1688, some advocated guarding against royal manipulation of the judiciary. King William III finally approved the Act of Settlement 1701, which established tenure for judges unless Parliament removed them.

Under the unwritten British Constitution, there are two important conventions which help to preserve judicial independence. The first is that Parliament does not comment on the cases which are before the court. The second is the principle of parliamentary privilege: That Members of Parliament are protected from prosecution in certain circumstances by the courts.

In modern times, the independence of the judiciary is guaranteed by the Constitutional Reform Act 2005, s.3. In order to try to promote the independence of the judiciary, the selection process is designed to minimize political interference. The process focuses on senior members of the judiciary rather than on

politicians. Part 2 of the Tribunals, Courts and Enforcement Act 2007 aims to increase diversity among the judiciary.

The pay of judges is determined by an independent pay review body. It will make recommendations to the government having taken evidence from a variety of sources. The government accepts these recommendations and will traditionally implement them fully. As long as judges hold their positions in "good order," they remain in post until they wish to retire or until they reach the mandatory retirement age of 70.

As of March 2008, the legal profession is self-regulating; it is responsible for implementing and enforcing its own professional standards and disciplining its own members. In this case, the bodies are the Bar Council and the Law Society. However, this self-regulation will come to an end when those bodies themselves come under the regulation of the Legal Standards Board, composed of non-lawyers, under the Legal Services Act 2007.

United States

Article III of the United States Constitution establishes the federal courts as part of the federal government.

The Constitution provides that federal judges, including judges of the Supreme Court of the United States, are appointed by the President "by and with the advice and consent of the Senate." Once appointed, federal judges:

...both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Federal judges vacate office only upon death, resignation, or impeachment and removal from office by Congress; only 13 federal judges have ever been impeached. The phrase "during good behavior" predates the Declaration of Independence. John Adams equated it with *quamdiu se bene gesserint* in a letter to the Boston Gazette published on 11 January 1773, a phrase that first appeared in section 3 of the Act of Settlement 1701 in England.

The President is free to appoint any person to the federal bench, yet typically he consults with the American Bar Association, whose Standing Committee on the Federal Judiciary rates each nominee "Well Qualified," "Qualified" or "Not Qualified." For instance, David Souter was appointed in the Supreme Court by President George H. W. Bush in 1990 but in Bush v. Gore case in 2000 vote with minority against President George W. Bush's legal position. It was specially mentioned in the book, written in Russian and bearing Souter's name in the title. Justice of the Constitutional Court of the Russian Federation Yury Danilov, reviewing the book in a Moscow English-language daily, made the following remark on Souter's position in Bush v. Gore case: "In a most critical and delicate situation, David Souter had maintained the independence of his position and in this respect had become a symbol of the independence of the judiciary."

State courts

State courts deal with independence of the judiciary in many ways, and several forms of judicial selection are used for both trial courts and appellate courts, varying between states and sometimes within states. In some states, judges are elected, while in others they are appointed by the governor or state legislature.

The 2000 case of *Bush v. Gore*, in which a majority of the Supreme Court, including some appointees of President George H. W. Bush, over-ruled challenges to the election of the George W. Bush then pending in the Florida Supreme Court, whose members had all been appointed by Democratic governors, is seen by many as reinforcing the need for judicial independence, both with regard to the Florida Supreme Court and the US Supreme Court. This case has focused increased attention on judicial outcomes as opposed to the traditional focus on judicial qualifications.

The Doctrine Of Judicial Review

Judicial review is the doctrine under which legislative and executive actions are subject to review by the judiciary. Specific courts with judicial review power must annul the acts of the state when it finds them incompatible with a higher authority. Judicial review is an example of the separation of powers in a modern governmental system. This principle is interpreted differently in different jurisdictions, which also have differing views on the

different hierarchy of governmental norms. As a result, the procedure and scope of judicial review differs from country to country and state to state.

General

Judicial review is one of the main characteristics of government in the United States and similar democracies. It can be understood in the context of two distinct—but parallel—legal systems and also by two distinct theories on democracy and how a government should be set up. First, two distinct legal systems, civil Law and common law, have different views about judicial review. Common-law judges are seen as sources of law, capable of creating new legal rules, and also capable of rejecting legal rules that are no longer valid. In the civil-law tradition judges are seen as those who apply the law, with no power to create legal rules.

Secondly, the idea of separation of powers is another theory about how a democratic society's government should be organized. In contrast to legislative supremacy, the idea of separation of powers was first introduced by French philosopher Charles de Secondat, Baron de Montesquieu; it was later institutionalized in the United States by the Supreme Court ruling in *Marbury v. Madison*. Separation of powers is based on the idea that no branch of government should be more powerful than any other; each branch of government should have a check on the powers of the other branches of government, thus creating a balance of power among all branches of government. The key to

this idea is checks and balances. In the United States, judicial review is considered a key check on the powers of the other two branches of government by the judiciary. Differences in organizing "democratic" societies led to different views regarding judicial review, with societies based on common law and those stressing a separation of powers being the most likely to utilize judicial review. Nevertheless, many countries whose legal systems are based on the idea of legislative supremacy have learned the possible dangers and limitations of entrusting power exclusively to the legislative branch of government. Many countries with civil-law systems have adopted a form of judicial review to stem the tyranny of the majority. Another reason why judicial review should be understood in the context of both the development of two distinct legal systems and the two theories of democracy is that some countries with common-law systems do not have judicial review of primary legislation. Though a common-law system is present in the United Kingdom, the country still has a strong attachment to the idea of legislative supremacy; consequently, the judicial body in the United Kingdom does not have the power to strike down primary legislation. However, since the United Kingdom became a member of the European Union there has been tension between the the UK's tendency toward legislative supremacy and the EU's legal system.

Judicial Review Of Administrative Acts

Most modern legal systems allow the courts to review administrative acts. In most systems, this also includes review of secondary legislation. Some countries have implemented a system

of administrative courts which are charged with resolving disputes between members of the public and the administration. In other countries, judicial review is carried out by regular civil courts although it may be delegated to specialized panels within these courts. The United States employs a mixed system in which some administrative decisions are reviewed by the United States district courts, some are reviewed directly by the United States courts of appeals and others are reviewed by specialized tribunals such as the United States Court of Appeals for Veterans Claims. It is quite common that before a request for judicial review of an administrative act is filed with a court, certain preliminary conditions must be fulfilled. In most countries, the courts apply special procedures in administrative cases.

Judicial Review Of Primary Legislation

There are three broad approaches to judicial review of the constitutionality of primary legislation—that is, laws passed directly by an elected legislature. Some countries do not permit a review of the validity of primary legislation. In the United Kingdom, statutes cannot be set aside under the doctrine of parliamentary sovereignty. Another example is the Netherlands, where the constitution expressly forbids the courts to rule on the question of constitutionality of primary legislation.

In the United States, federal and state courts are able to review and declare the "constitutionality", or agreement with the Constitution of legislation that is relevant to any case properly within their jurisdiction. In American legal language, "judicial

review" refers primarily to the adjudication of constitutionality of statutes, especially by the Supreme Court of the United States. This is commonly held to have been established in the case of *Marbury v. Madison,* which was argued before the Supreme Court in 1803. A number of other countries whose constitutions provide for a review of the compatibility of primary legislation with the constitution have established special constitutional courts with authority to deal with this issue. In these systems, other courts are not competent to question the constitutionality of primary legislation.

Brazil adopts a mixed model since courts at all levels, both federal and state, are empowered to review primary legislation and declare its constitutionality; as in Germany, there is a constitutional court in charge of reviewing the constitutionality of primary legislation. The difference is that in the first case, the decision about the laws adequacy to the Brazilian Constitution only binds the parties to the lawsuit; in the second, the Court's decision must be followed by judges and government officials at all levels.

Judiciary System In India

Supreme Court

The Supreme Court of India is the highest court of the land as established by Chapter of the Constitution of India. According to the Constitution of India, the role of the Supreme Court is that of a federal court, guardian of the Constitution and the highest

court of appeal. Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. Primarily, it is an appellate court which takes up appeals against judgments of the provincial High Courts. But it also takes writ petitions in cases of serious human rights violations or if a case involves a serious issue that needs immediate resolution.

Composition Of The Courts

The supreme court of India consist if a chief justice and, until parliament may by law prescribed a large number, not more than seven other judges. Thus parliament increase the number this number, by law. Originally the total numbers of judges were seven but in 1977 this was increased to 17 excluding the chief justice. In 1986 this number has been increased to 25 excluding the chief justice. Thus the total number of judges in the Supreme Court at present is 26 including the chief justice. The constitution does not provide for the minimum number of judges who will constitute a bench for hearing cases.

Qualification of the judges of the supreme court of India:-

The qualifications of the judges are as follows:- Under Art. 124(3) of the constitution talk about the qualifications of judges that are:

He should be a citizen of India.

He should have been at least five year a judge of a high court or of two or more such courts in succession; or he should have been for at least 10 years an advocate of high court or of two or more such court in succession.

He is in the opinion of the president a distinguished jurist.

Appointment Of Judges

The judges of the high court are appointed by the president. The chief justice of Supreme Court is appointed by the president with the consultation of such of judges of the supreme and high court as he deemed necessary for the purpose. But in appointment of the other judges the president shall always consult the chief justice of India. He may consult he may consult such other judges of the supremecourt and high court as he may deemed necessary. It should, however be noted that the power of the president to appoint judges is purely formal because in this matter he act on the advice of the council of ministers. There was a apprehension that executive may bring politics in the appointment of the judges. The Indian constitution therefore does not leave the appointment of judges on the discretion of the executive. The executive under this art. Is required to consult persons who are ex-hypothesis well qualified to give proper advice in matters of appointment of judges. Under Art. 124(2) the president, in appointment other judges of the supreme court is bound to consult chief justice of India but in appointment the chief justice of India he is not bound to

consult anyone. The word may used in art 124 makes clear that it is not mandatory on him to consult anyone.

A judge may only be removed from his office by an order of the president on ground of proved misbehavior or incapacity. The order of the president can only be passed after it has been addressed to both houses of parliament in the same session. The address must be supported by a majority of total membership of that house and also by the majority not less than 2/3 of the members of that house present or voting. The processor of the investigation and proof of the misbehavior or incapacity of a judge will be determined by the parliament by law. The security of the tenure of the Supreme Court judges has been ensured by this provision of the constitution.

Jurisdiction of Supreme Court

Article 129 states: Supreme Court to be a court of record.—The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. The Supreme Court has original, appellate and advisory jurisdiction as well.

Original jurisdiction

Article 131 states: Original jurisdiction of the Supreme Court.—Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

Between the Government of India and one or more States; or

Between the Government of India and any State or States on one side and one or more other States on the other; or

Between two or more States,

Appellate Jurisdiction

Article 132 states: Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases

Art. 132 (1) states 'An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.'

Art. 132 (3) states 'Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.'

Article133 states: Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.

Art. 133 (1) states 'An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A'.Certain preconditions are:

That the case involves a substantial question of law of general importance; and

That in the opinion of the High Court the said question needs to be decided by the Supreme Court.

Art. 133 (2) states 'Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.'

Art. 133 (3) states 'notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.'

Article 134 states: Appellate jurisdiction of Supreme Court in regard to criminal matters.

Art. 134 (1) states 'An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court.'

The High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

The High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

The High Court certifies under article 134A that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

Art. 134 (2) states 'Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.'

Article 136 states: Special leave to appeal by the Supreme Court.

Article 136 (1) states 'Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.'

Article 136 (2) states 'Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.'

Article 137 states: Review of judgments or orders by the Supreme Court.— Subject to the provisions of any law made by Parliament or any rules made under article 145, the made by it.

Article 139A states: Transfer of certain cases.—

Article 139A (1) states 'Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself:

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.'

Article 139A (2) states 'The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.'

Article 141 states: Law declared by Supreme Court to be binding on all courts.— 'The law declared by the Supreme Court shall be binding on all courts within the territory of India.'

Advisory Jurisdiction

Article 143 states: Power of President to consult Supreme Court. —

Article 143 (1) states 'If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.'

Article 143 (2) states 'The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.'

High Court

India's judicial system is made up of the Supreme Court of India at the apex of the hierarchy for the entire country and twenty-one High Courts at the top of the hierarchy in each State. These courts have jurisdiction over a state, a union territory or a group of states and union territories. Below the High Courts are a hierarchy of subordinate courts such as the civil courts, family courts, criminal courts and various other district courts. High Courts are instituted as constitutional courts under Chapter, and

Article 214 of the Indian Constitution. The High Courts are the principal civil courts of original jurisdiction in the state, and can try all offences including those punishable with death.

Jurisdiction of High Court

Article 226 states: Power of High Courts to issue certain writs. Article 226 (1) states 'Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.'

Article 226 (2) states 'The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.'

Article 226 (3) states 'Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

Furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

Giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favor such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.'

Article 226 (4) states 'The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.'

Writ jurisdiction

Habeas Corpus:- (Latin: You (shall) have the body) is a legal action, or writ, through which a person can seek relief from the unlawful detention of him or herself, or of another person. It protects the individual from harming him or herself, or from being harmed by the judicial system. The writ of habeas corpus has historically been an important instrument for the safeguarding of individual freedom against arbitrary state action.

Mandamus:- simply mandamus, means "we command" in Latin, is the name of one of the prerogative writs in the common law, and is "issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly". Mandamus is a judicial remedy which is in the form of an order from a superior court to any government, subordinate court, corporation or public authority to do or forbear from doing some specific act which that body is obliged under law to do or refrain from doing, as the case may be, and which is in the nature of public duty and in certain cases of a statutory duty. It cannot be issued to compel an authority to do something against statutory provision.

Quo Warranto:- quo warranto usually arises in a civil case as a plaintiff's claim (and thus a "cause of action" instead of a writ) that some governmental or corporate official was not validly elected to that office or is wrongfully exercising powers beyond those authorized by statute or by the corporation's charter.

Certiorari:- certiorary is a legal term in Roman, English, and American law referring to a type of writ seeking judicial review. Certiorari ("to be shown") is the present passive infinitive of Latin certiorari, ("to show, prove or ascertain"). A writ of certiorari currently means an order by a higher court directing a lower court, tribunal, or public authority to send the record in a given case for review.

Prohibition:- prohibition is an official legal document drafted and issued by a Supreme Court or superior court to a judge presiding

over a suit in an inferior court. The writ of prohibition mandates the inferior court to cease any action over the case because it may not fall within that inferior court's jurisdiction. The document is also issued at times when it is deemed that an inferior court is acting outside the normal rules and procedures in the examination of a case. In another instance, the document is issued at times when an inferior court is deemed headed towards defeating a legal right.

Prohibition and certiorari lie only against judicial and quasi-judicial bodies. They do not lie against public authority in an executive or administrative capacity or a legislative body.

Article 227 states: Power of superintendence over all courts by the High Court.— Article 227 (1) states 'Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.'

Article 227 (2) states 'Without prejudice to the generality of the foregoing provision, the High Court may—

Call for returns from such courts;

Make an issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

Prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

Article 227 (3) states 'The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

Article 227 (4) states 'Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.'

Lower Courts

States are divided into districts and within each a judge presides as a district judge over civil cases. A sessions judge presides over criminal cases. The judges are appointed by the governor in consultation with the state's high court. District courts are subordinate to the authority of their high court.

There is a hierarchy of judicial officials below the district level. Many officials are selected through competitive examination by the state's public service commission. Civil cases at the sub district level are filed in munsif courts. Lesser criminal cases are entrusted to the courts of subordinate magistrates functioning under the supervisory authority of a district magistrate. All magistrates are under the supervision of the high court. At the village level, disputes are frequently resolved by Panchayat or

Lok Adalat. The judicial system retains substantial legitimacy in the eyes of many Indians despite its politicization since the 1970s. In fact, as illustrated by the rise of social action litigation in the 1980s and 1990s, many Indians turn to the courts to redress grievances with other social and political institutions. It is frequently observed that Indians are highly litigious, which has contributed to a growing backlog of cases. Indeed, the Supreme Court was reported to have more than 150,000 cases pending in 1990, the high courts had some 2 million cases pending, and the lower courts had a substantially greater backlog. Research findings in the early 1990s show that the backlogs at levels below the Supreme Court are the result of delays in the litigation process and the large number of decisions that are appealed and not the result of an increase in the number of new cases filed. Coupled with public perceptions of politicization, the growing inability of the courts to resolve disputes expeditiously threatens to erode the remaining legitimacy of the judicial system.

Chapter 2

Theories of Punishment in Indian Judiciary System

Punishment

Does society have the right to punish? Is the infliction of punishment morally justifiable? These complex questions will be addressed in the following discussion of the rationale, justification, and nature of punishment. Rules about punishment, such as how much punishment can be inflicted and for what kinds of behavior, are of course contained in laws and regulations, so in this sense law justifies punishment. However, the moral justification for punishment is a separate issue from the legal justification because, although the law may provide for the infliction of punishment, society's moral justification for punishment still has to be established. In order to better understand the nature of punishment, it is first necessary to examine its conceptual basis, and then consider the various theories that have been developed to morally justify society's infliction of punishment. These theories are deterrence, retribution, just deserts, rehabilitation, incapacitation, and more recently, restorative justice. As well, it is important to appreciate that there are three perspectives about the issue of punishment: the philosophical, the sociological, and the criminological. Each

perspective represents a different and distinct way of looking at the issue of punishment.

We use the word *punishment* to describe anything we think is painful; for example, we refer to a "punishing work schedule" or a "punishing exercise program." We also talk of punishment in the context of parents or teachers disciplining children. However, in this discussion as suggested, consider punishment in a particular sense. Flew argues that punishment, in the sense of a sanction imposed for a criminal offense, consists of five elements:

- It must involve an unpleasantness to the victim.
- It must be for an offense, actual or supposed.
- It must be of an offender, actual or supposed.
- It must be the work of personal agencies; in other words, it must not be the natural consequence of an action.

It must be imposed by an authority or an institution against whose rules the offense has been committed. If this is not the case, then the act is not one of punishment but is simply a hostile act. Similarly, direct action by a person who has no special authority is not properly called punishment, and is more likely to be revenge or an act of hostility.

In addition to these five elements, Benn and Peters add that the unpleasantness should be an essential part of what is intended. The value of this definition of punishment resides in its presentation of punishment in terms of a system of rules, and that it distinguishes punishment from other kinds of

unpleasantness. Another definition of punishment proposed by Garland is “the legal process whereby violators of criminal law are condemned and sanctioned in accordance with specified legal categories and procedures”. This stage will not be concerned with punishment that takes place in schools, within families, or in other institutions, but instead will discuss forms of punishment that take place as the result of legal processes. It will examine the major arguments relating to punishment, illustrate the ways in which those arguments relate to justice and the justice system, and examine how that system would be affected should one argument prevail over another.

Theoretical Approaches To Punishment

Thinking about the issue of punishment gives rise to a number of questions, the most fundamental of which is, why should offenders be punished? This question might produce the following responses:

- They deserve to be punished.
- Punishment will stop them from committing further crimes.
- Punishment tells the victim that society disapproves of the harm that he or she has suffered.
- Punishment discourages others from doing the same thing.

- Punishment protects society from dangerous or dishonest people.
- Punishment allows an offender to make amends for the harm he or she has caused.
- Punishment ensures that people understand that laws are there to be obeyed.

Some of the possible answers to the question of why offenders should be punished may conflict with each other. This is because some answers are based on reasons having to do with preventing crime whereas others are concerned with punishment being deserved by an offender. When a court imposes a punishment on an offender, it often tries to balance the sorts of reasons for punishment noted earlier, but sometimes certain purposes of punishment dominate other purposes. Over time there have been shifts in penal theory, and therefore in the purpose of punishment due to a complex set of reasons including politics, public policy, and social movements. Consequently, in a cyclical process, an early focus on deterrence as the rationale for punishment gave way to a focus on reform and rehabilitation. This, in turn, has led to a return to punishment based on the notion of retribution and just deserts. The concept of punishment has been theorized by moral philosophers, social theorists, and criminologists, and these various approaches will be considered in this stage in order to provide a better basis for understanding the place of punishment within the criminal justice system and society in general. As Garland argues, punishment is a complex concept, and an approach to punishment that is limited to a reading of moral philosophy fails to represent the full dimension

and complexity of the subject. For moral philosophers, the "ought" of punishment is of great importance and leads to a set of questions including.

In contrast to the philosophical view of punishment, the sociological perspective is concerned with the "is" of punishment; that is, what punishment is actually intended for, and the nature of penal systems. The third perspective on punishment is offered by criminologists and policy makers, who focus on penalties for offenses and policy concerns relevant to the punishment of offenders. Some critics, such as Bean, argue that criminology has tended to ignore the moral and sociological implications of punishment in favor of the social and personal characteristics of offenders, as well as the nature of penal institutions and methods of social control. In the same vein, Nigel Walker points out that the practical ends of penal action, particularly with the aims of sentencing and the administration of prisons and probation, are concerns that pay little attention to the philosophy or sociology of punishment.

The Philosophical Approach

In the philosophical debate about punishment, two main types of theories of punishment dominate: utilitarian theory and retributive theory. These philosophical theories have in turn generated further theoretical discussions about punishment concerned with deterrence, retribution, incapacitation, rehabilitation, and more recently, restorative justice. Theories

that set the goal of punishment as the prevention of future crime are usually referred to as *utilitarian* because they are derived from utilitarian philosophy. Pastoriented theories are referred to as *retributivist* because they seek retribution from offenders for their crimes. The retributivist conception of punishment includes the notion that the purpose of punishment is to allocate moral blame to the offender for the crime and that his or her future conduct is not a proper concern for deciding punishment. Theories of deterrence, retribution, just deserts, rehabilitation, and incapacitation as well as the idea of restorative justice will be considered in this stage. Each of these theories tries to establish a basis for punishment as a response to the question "why punish?"

Deterrence

People are deterred from actions when they refrain from carrying them out because they have an aversion to the possible consequences of those actions. Walker suggests that although penologists believe that penalties do, in fact, deter, it is hard to determine whether the kind of penalty or its severity has any effect on whether a particular penalty is successful. Some question whether deterrence is morally acceptable. They argue that it is unacceptable because it is impossible to achieve, and if deterrent sentences are not successful, inflicting suffering in the name of deterrence is morally wrong. To utilitarian philosophers like Bentham, punishment can be justified only if the harm that it prevents is greater than the harm inflicted on the offender through punishing him or her. In this view, therefore, unless

punishment deters further crime, it simply adds to the totality of human suffering. In other words, utilitarians justify punishment by referring to its beneficial effects or consequences. In this sense, utilitarian theory is a consequentialist theory that considers only the good and bad consequences produced by an act as morally significant. Bentham is considered the main proponent of punishment as deterrence, and he expressed his early conception of the notion as follows:

Pain and pleasure are the great springs of human action. When a man perceives or supposes pain to be the consequence of an act he is acted on in such manner as tends with a certain force to withdraw him as it were from the commission of that act. If the apparent magnitude be greater than the magnitude of the pleasure expected he will be absolutely prevented from performing it.

Becarria took a similar position to Bentham, arguing that "the aim of punishment can only be to prevent the criminal committing new crimes against his countrymen and to keep others from doing likewise". Utilitarians understand punishment only as a means to an end, and not as an end in itself. They perceive punishment in terms of its ability to reduce crime and do not focus on the punishment that "ought" to be imposed on offenders. To utilitarians, a "right" punishment is one that is beneficial to the general welfare of all those affected by the criminal act. Critics of utilitarianism argue that because utilitarians see the aim of punishment as promoting public welfare and maximizing the happiness of all, this means that

utilitarians are willing to punish the innocent in order to achieve that objective. Those supporting the theory of punishment as deterrence distinguish between *individual deterrence* and *general deterrence.* Individual deterrence involves deterring someone who has already offended from reoffending; general deterrence involves dissuading *potential* offenders from offending at all by way of the punishment administered for a particular offense. Individual deterrence relies on offenders receiving a taste of the punishment they will receive if they reoffend, and can be seen operationally in the "short, sharp, shock punishments" such as boot camps, which are used as an alternative to imprisonment and are clearly aimed at subjecting offenders to a regime that will shock them out of any further criminal conduct. General deterrence takes the form of legislation imposing penalties for specific offenses in the belief that those penalties will deter or prevent persons from committing those offenses. An example of an attempt at general deterrence would be significantly increasing the penalties for driving under the influence in an effort to deter citizens from drunk driving.

Does Deterrence Work

Beyleveld after carrying out a comprehensive review of studies that have considered the deterrent effects of punishment concluded that,... there exists no scientific basis for expecting that a general deterrence policy, which does not involve an unacceptable interference with human rights, will do anything to control the crime rate. The sort of information needed to base a morally acceptable general policy is lacking. There is some

convincing evidence in some areas that some legal sanctions have exerted deterrent effects. These findings are not, however, generalizable beyond the conditions that were investigated. Given the present state of knowledge, implementing an official deterrence policy can be no more than a shot in the dark, or a political decision to pacify "public sentiment."

The empirical evidence suggests that, generally, punishment has no individual deterrent effect. Walker argues that evidence from research studies has established that capital punishment has no greater effect than life imprisonment. Nagin comments on the difficulty in distinguishing between individual deterrence and rehabilitation. In another overview of research on deterrence, Nagin identifies three sets of studies, which he refers to as interrupted time-series studies, ecological studies, and perceptual studies. The first set, time-series studies, explores the effect of specific policy initiatives such as police crackdowns on open-air drug markets. Nagin finds that such policy targeting has only a temporary effect, and is therefore not a successful deterrent. Ecological studies look for a negative association between crime rates and punishment levels that can be interpreted as having a deterrent effect. Nagin points out that a number of such studies have been able to isolate a deterrent effect. In perceptual studies, the data comes from surveys. Such surveys have found that selfreported criminality is lower among those who see sanctions, risks, and costs as higher. Nagin therefore concludes that, collectively, the operations of the criminal justice system exert a substantial deterrent effect. In discussing whether the threat of punishment has a deterrent

effect, Andenaes explains that two positions are usually debated. Bentham's position is that man is a rational being who chooses between courses of action having first calculated the risks of pain and pleasure. If, therefore, we regard the risk of punishment as sufficient to outweigh a likely gain, a potential criminal applying a rational approach will choose not to break the law. The alternative position considers this model unrealistic, arguing that people remain law-abiding, not because they fear the criminal law, but as a result of moral inhibitions and norms of conduct. Criminals, they argue, do not make rational choices but act out of emotional instability, through lack of self-control, or as a result of having acquired the values of a criminal subculture. Andenaes points out the dangers of generalization; that is, he suggests it is necessary to distinguish between various offenses such as murder or drunk driving. Offenses vary immensely in terms of an offender's motivation, and any realistic discussion of general deterrence ought to take into account the particular norms and circumstances of each particular type of offense. He also notes that the threat of punishment, although directed to all persons, affects individuals in different ways. For example, in his view, the law-abiding citizen does not need the threat of the law to remain law-abiding. On the other hand, the criminal group may well fear the law but still break it, and the potential criminal might have broken the law if it had not been for the threat of punishment. It follows that the threat of punishment seems relevant only to the potential criminal. In some cases, however, there is evidence that punishment has a deterrent effect on individuals. Andenaes refers to a study of department store shoplifting where amateur shoplifters were treated as thieves by

the store management and reacted by changing their attitudes and experiencing great emotional disturbance. This contrasts with the professional shoplifter who does not register any shock at getting caught and accepts jail as a normal hazard of the trade. Tullock after surveying the economic and sociological models of deterrence, concludes that multiple regression studies show empirically that increasing the frequency or severity of punishment does reduce the likelihood of a given crime being committed. However, Blumstein, Cohen, and Nagin contend that although the evidence does establish a negative association between crime rates and sanctions, this does not necessarily establish the general deterrent effect of sanctions. This is because, in their view, the negative association can be explained by lower sanctions being the effect, and not the cause, of higher crime rates. Overall there seems to be little agreement among researchers that punishment has a general deterrent effect.

How Much Punishment Must Be Imposed to Deter?

For the utilitarian who regards punishment as bad in itself, a particular punishment will be justified only if the suffering it inflicts is less than the harm caused by the criminal act that would have taken place had there been no punishment. If various forms of punishment would achieve the same result, a utilitarian will opt for the most lenient punishment that minimizes the potential suffering. It follows that if a sentence of capital punishment or the lesser punishment of a term of imprisonment are both equally effective in deterring murder, the utilitarian will choose the lesser punishment and regard capital punishment as

unjustified. However, utilitarian approaches can result in the infliction of excessive punishment. Ten gives the example of petty thefts being widespread in society with hundreds of cases occurring, frequently perpetrated by efficient thieves who are difficult to catch. The harm caused by each individual theft is minor, but the total harm, according to utilitarian approaches, is great and may, therefore, be greater than the harm caused by severely punishing one minor criminal. If a newly enacted law were to impose a punishment of 10 years imprisonment on a petty thief, and no less a penalty would have a deterrent effect, it is arguable that a utilitarian would have to accept what would be considered an excessive sentence for the one petty thief unlucky enough to be arrested and convicted.

Retribution

Retribution is the theory that punishment is justified because it is deserved. Systems of retribution for crime have long existed, with the best known being the *lex talionis* of Biblical times, calling for “an eye for an eye, a tooth for a tooth, and a life for a life”. Retributionists claim a moral link between punishment and guilt, and see punishment as a question of responsibility or accountability. Once society has decided upon a set of legal rules, the retributivist sees those rules as representing and reflecting the moral order. Society’s acceptance of legal rules means that the retributivist accepts the rules, whatever they may be; accepts that the rule makers are justified in their rule making; and claims that those who make the rules provide the moral climate under which others must live. Accordingly,

retributivists cannot question the legitimacy of rules. They argue that retribution operates on a consensus model of society where the community, acting through a legal system of rules, acts "rightly," and the criminal acts "wrongly". It follows that the retributivist position makes no allowance for social change or social conditions, looking instead only to crime. Raising the issue of the social causes of crime or questioning the effectiveness of punishment are irrelevant considerations to a retributivist. It has been suggested by van den Haag and Kleinig that in historical terms, the *lex talionis* did not operate as a demand for retribution. Instead, it set a limit on the nature of that retribution, and therefore prevented the imposition of excessive penalties in the course of acts of vengeance. Capital punishment may be the only form of punishment still supported by appeals to the *lex talionis.* The basic principle of *lex talionis* is that punishment should inflict the same on the offender as the offender has inflicted on his or her victim. It can, therefore, be seen as a crude formula because there are many crimes to which it cannot be applied. For instance, what punishment ought to be inflicted on a rapist under *lex talionis*? Should the state arrange for the rape of the offender as his due punishment? In addition, the *lex talionis* can be objected to because its formula to determine the correct punishment considers solely the harm caused by the crime and makes no allowance for the mental state of the offender or for any mitigating or aggravating circumstances associated with the crime. Thus, even though a person's death may have been brought about accidentally or negligently, the *lex talionis,* strictly applied, would still call for the imposition of the death penalty. A further objection is found in the view that in a

civilized society, certain forms of punishment are considered too cruel to be defended as valid and appropriate. For example, a sadistic murderer may horribly torture his or her victim, but society would condemn the imposition of that same form of punishment on the offender. It can also be said that although the death penalty may constitute a just punishment according to the rule of *lex talionis,* it should nevertheless be abolished as part of "the civilizing mission of modern states". Retributivists believe that wrongdoers deserve to be punished and that the punishment imposed should be in proportion to the wrongdoing the offender committed. In contrast to utilitarians, retributivists focus their line of reasoning on the offender's just desert and not on the beneficial consequences of punishment. Retributivists ask questions such as "Why do offenders deserve to be punished?" and "How are their just deserts to be calculated and translated into actual sentences?" A number of explanations have been suggested to justify retribution, including the notion that retribution is a payment of what is owed; that is, offenders who are punished are "paying their debt to society". Walker notes that this seems to confuse the "victim" with "society" because we generally do not perceive offenders as liable to pay compensation or make restitution to their victims; furthermore, if society is compensated for anything at all, it is for a breach of its peace. *Censure* is also an important component in retributivist thinking. For example, Andrew von Hirsch, the leading theorist on just deserts sentencing, writes:

... desert and punishment can rest on a much simpler idea, used in everyday discourse: the idea of censure... Punishment

connotes censure. Penalties should comport with the seriousness of crimes so that the reprobation on the offender through his penalty fairly reflects the blameworthiness of his conduct.

For von Hirsch, censure is simply holding someone accountable for his or her conduct and involves conveying the message to the perpetrator that he or she has willfully injured someone and faces the disapproval of society for that reason. On the part of the offender, an expression of concern or remorse is expected. As well, the censure expressed through criminal law has the role of providing third parties with reasons for not committing acts defined as criminal. In other words, censure can have a deterrent effect. Some theorists of desert argue that notions of censure cannot be adequately expressed verbally or symbolically, and that hard treatment is needed to properly express societal disapproval. The notion of the *expressive* or *communicative* character of punishment is closely associated with the idea of "punishment as censure." This conception recognizes punishment as comprising not merely harsh treatment, but also elements of condemnation, denunciation, and censure. Thus, for example, punishment in the form of a fine is quite different from the payment of a tax, although both involve payment to the state. In the same vein, imprisonment contrasts with other forms of detention such as quarantine or detention for psychiatric disorders. Imprisonment, it is argued, carries with it an expressive function of censure, whereas detention for reasons of quarantine or for mental disorder does not. Feinberg explains the expressive function of punishment in the following terms:

Punishment is a conventional device for the expression of attitudes of resentment and indignation, and of judgments of disapproval and reprobation, on the part either of the punishing authority himself or of those "in whose name" the punishment is inflicted. Punishment, in short, has a symbolic significance largely missing from other kinds of penalties.

Feinberg further argues that punishment expresses more than disapproval; it amounts to a symbolic method of hitting back at the criminal and of expressing "vindictive resentment." In similar fashion, H. Morris contends that punishment serves to teach offenders a moral lesson so that in the process of being punished and being made aware that a crime violated communal values, they will come to see what is good and choose it in the future. According to this account, the aim of punishment is to persuade and not to manipulate or coerce. However, as Morris himself points out, this approach does not account for the punishment of those who are already repentant, nor is it able to cope with those who understand the values of society but are indifferent or opposed to them. Over the last two decades, the notion of punishment as a *communicative practice* has developed. This notion asserts that punishment communicates to the criminal a response appropriate to the crime committed. Communication requires that the person to whom the communication is directed must be an active participant in the process and must receive and respond to the communication. Additionally, the communication should appeal to the person's rational understanding. The communication must be focused primarily on the offender being punished as a response to him or her, and

must be justified by his or her offense. The message communicated by punishment must focus on and be justified by the offender's past offense and must be appropriate to that offense. Duff argues that the message communicated should be the degree of censure or condemnation the crime deserves. In the context of criminal law, censure might be communicated in a formal conviction of guilt or through a system of harsh punishments such as imprisonment, fines, or community service. Duff argues that the aim of hard treatment is ideally to cause the offender to understand and repent the crime committed. It should attempt to direct his or her attention to the crime, and give him or her an understanding of crime as a "wrong." It should also cause the offender to accept the censure that punishment communicates as deserved. By undergoing hard punishment, the offender can become reconciled with the community and restored back into the community from which the offense caused him or her to be excluded. Philosophers such as Duff see the main benefit of punishment as *the effect on the offender.* They argue that punishment has the effect of restoring the offender to the community in the same way that penance restores a penitent to the communion of the church. Nozick sees retributive punishment as a *message* from those whose values are assumed to be correct and normative to someone whose act or omission has displayed incorrect and non-normative values. Walker explains that "man is a rulemaking animal," and that rules and notions of rules are acquired during childhood. *Rules,* in the form of transactions involving promises, establish codes of normative conduct including "penalizing rules" that specify action to be taken against those who infringe the rules. It follows that failing

to penalize an offender for infringing the rules would itself be an infringement of those rules; thus, an unpunished infringement would create two infringements. Another theory that attempts to justify punishment as a retributive act is that an offender should be viewed as a person who has taken an *unfair advantage* of others in society by committing a crime, and that imposing punishment restores fairness. Philosophers such as Herbert Morris, John Finnis, and Jeffrie Murphy subscribe to the *unfair advantage* theory. For example, Morris argues that the effect of criminal law is to confer benefits on society, because others are not permitted to interfere with areas of an individual's life since certain acts are proscribed and prohibited. In order to gain the benefits of noninterference, individuals must exercise selfrestraint and not engage in acts that infringe the protected areas of the lives of others. It follows that when a person violates the law but continues to enjoy its benefits, he or she takes an unfair advantage of others who follow the law. Punishment, it is argued, is therefore justified because it removes this unfair advantage and restores the balance of benefits and burdens disturbed by the criminal activity. The unfair advantage argument has been challenged by those who argue that it distorts the nature of crime itself. For example, the wrongfulness of rape does not merely consist of taking unfair advantage of those who obey the law. Also, it is difficult to show that offenders have in any real sense "willed" their own punishment. Additionally, although unfair advantage might constitute an ideal theory for the justification of punishment, the question arises about whether it can be applied to an actual society. In other words, do those who commit criminal acts actually take an unfair

advantage for themselves? Finally, some retributivists argue that punishment is morally justified because it gives *satisfaction.* James Fitzjames Stephen, an English Victorian judge, is often cited as an advocate of this theory. He expressed his view of punishment as follows:

I think it highly desirable that criminals should be hated, and that punishments inflicted upon them should be so contrived as to give expression to that hatred, and to justify it so far as the public provisions of means for expressing and gratifying a healthy, natural sentiment can justify and encourage it.

Is Retribution in Fact Revenge?

Retributive theories of punishment argue that punishment should be imposed for past crimes and that it should be appropriate to the nature of the crime committed; that is, the severity of the punishment should be commensurate with the seriousness of the crime. Sometimes, retributive punishment is confused with notions of revenge. Critics of retributionist theories of punishment argue that retribution is basically nothing more than vengeance. However, Nozick argues that there is a clear distinction between the two because "retribution is done for a wrong, while revenge may be done for an injury or harm or slight and need not be a wrong". He also points out that whereas retribution sets a limit for the amount of punishment according to the seriousness of the wrong, no limit need be set for revenge. In this sense, therefore, revenge is personal whereas the person dispensing retributive punishment may well have no personal tie

to the victim. As Nozick points out, “revenge involves a particular emotional tone, pleasure in the suffering of another”. A further distinction between the two is that retribution in the form of punishment is inflicted only on the offender, but revenge may be carried out on an innocent person, perhaps a relative of the perpetrator.

Just Deserts

Up until about 1970, criminologists generally thought of retribution as vengeance. During the 1970s, criminologists reconsidered the idea of retribution and advanced new formulations. By the 1980s, the new retributionist theory of just deserts had become influential. Importantly, the new thinking indicated that although there should continue to be treatment programs, a defendant would not ordinarily be incarcerated in order to receive treatment. Influential writings such as *Struggle for Justice* and *Doing Justice*, which were written in the aftermath of the riot at Attica Prison in 1971, elaborated on the new retributivism in philosophical and civil libertarian terms. This theory gained support as a reaction against the perceived unfairness of systems that favored treatment that had developed over the first half of the 20th century, especially the use of the indeterminate sentence. This form of sentence vested the power of determining the date of release to a parole board, and signifies the practice of individualized sentencing. The latter attempted to sentence according to the treatment needs of the offender, rather than the seriousness of the offense. One of the criticisms of indeterminate sentencing was the fact that the sentencing courts

had a wide discretion in choosing a sentence, and although they tended to adopt tariffs for classes of crime, individual judges could depart from them without providing reasons. Along with the just deserts movement, many states and federal sentencing authorities repealed indeterminate sentencing laws with the aim of reducing judicial discretion in sentencing and promoting consistency and certainty, as well as a set of standards that would help in the process of deciding the sentence. Among the retributivists, Kant argued that the aim of penalties must be to inflict desert, and that this was a "categorical imperative." By this he meant that inflicting what was deserved rendered all other considerations irrelevant. Just deserts proponents emphasize the notion that punishment should be proportionate; that is, there should be a scale of punishments with the most serious being reserved for the most serious offenses, and that penalties should be assessed according to the seriousness of the offense. This is often called *tariff sentencing*. In this method of punishing, the offender's potential to commit future offenses does not come into consideration, but his or her previous convictions are taken into account because most proponents of just deserts support reductions in sentence for first offenders. Desert theorists contend that punishment should convey blame for wrongdoing, and that blame is attached to offenders because they have done wrong. Consequently, the blameworthiness of the offender is reflected in the punishment imposed. Thus, advocates of desert focus on two dimensions only—the harm involved in the offense and the offender's culpability. Von Hirsch enlarges on these two main elements, stating that, in looking at the degree of harm, a broad notion of the quality of life is useful because

"invasions of different interests can be compared according to the extent to which they typically affect a person's standard of living". As to culpability, he suggests that the substantive criminal law, which already distinguishes intentional from reckless or negligent conduct, would be useful in sentencing law. Von Hirsch argues that a focus on the censuring aspect of punishment has coincided with a change in criminological thinking. Criminologists had previously regarded the blaming aspects of punishment as stigma that might create obstacles to the reintegration of the offender into the community and might also cause the offender to reinforce his or her own deviance, making him or her more likely to continue offending. Desert theorists now emphasize that responding to criminal acts with a process of blaming encourages the individual to recognize the wrongfulness of the action, to feel remorse, and to make efforts to refrain from such conduct in the future. In contrast, a deterrent punishment requires the individual to simply comply or face the consequences. The difference between the two approaches is that a moral judgment is required from the offender under just deserts that is not required under a purely deterrent punishment. During the 1980s, many states, as well as the Federal Sentencing Commission, introduced desert-based sentencing schemes. In considering questions of proportionality and seriousness, the issue arises as to how offenses are to be ranked in terms of their seriousness. Who is to determine the degrees of seriousness? In some jurisdictions, the judge's views determine the issue; other approaches include the use of sentencing commissions and legislating sentencing schedules. In California, the Determinant Sentencing Laws allow politicians

and others to raise the tariffs for offenses in response to public or media pressure in order to give effect to “get tough on crime” policies. Some critics argue that just deserts theory leads to harsher penalties, but von Hirsch contends that the theory itself does not call for harsher penalties, and that sentencing schemes relying specifically on just deserts theory tend not to be severe. He draws attention to sentencing guidelines in Minnesota and Oregon that provide for modest penalties by U.S. standards. The Minnesota Sentencing Guidelines provide a grid with a horizontal axis showing previous convictions and a vertical axis showing offense type. The sentencing judge is required to locate the appropriate cell on the grid for the offender being sentenced, where the severity of the offense and the number of previous convictions intersect. Each cell stipulates a presumptive prison term that represents the normal period of incarceration for a standard case of that offense. In addition to the presumptive sentence, there is a band indicating the range that should apply in the actual case. For example, in the case of an aggravated burglary, where the offender has three previous convictions, there is a presumptive term of 49 months and a range of 45 to 53 months. The actual sentence depends on aggravating and mitigating factors. According to Hudson, sentencing guidelines have had the effect of reinforcing relatively lenient punishments in states with that tradition, although states with a history of imposing severe punishments, such as New Mexico and Indiana, have produced severe schedules and guidelines. The fundamental difficulty with deserts theory is that it lacks any principle that determines a properly commensurate sentence. Deserts are determined by a scale of punishment that fixes the most severe

penalty. This might be imprisonment or death. It then determines ordinally proportionate penalties for lesser offenses. It follows that if imprisonment is the most severe penalty, then proportionality will provide shorter terms of imprisonment and noncustodial penalties for lesser offenses. If the term of imprisonment for severe offenses is moderate, then short sentences and penalties such as probation will soon be reached on the scale of seriousness. If the penalty for the most serious offenses is death, it follows that long terms of imprisonment will be proportionate penalties for less serious offenses. This is the situation that prevails in many states. Many argue that retribution based on just deserts fails to account for the problem of just deserts in an unjust world. Just deserts theory ignores social factors like poverty, disadvantage, and discrimination, and presumes equal opportunity for all. Tonry notes that most sentencing commissions in the United States will not allow judges to bring personal circumstances into account in their sentencing decisions, despite the fact that the average offender has a background that is likely to be either deeply disadvantaged or deprived. Zimring suggests that desert sentencing fails to take account of the fact that there are multiple discretions involved in the sentencing power. He points to the legislature that sets the range of sentences, the prosecutor who has the legal authority to select a charge, the judge as the sentencing authority, and the correctional authority, which is able to modify sentences after incarceration, as constituting a multiplicity of decisions and discretions that make the task of achieving just and proportionate sentences extremely problematic. Since prosecutors and legislators act under political influence and attempt to

implement policies that reflect public opinion, the sentencing process is not the monopoly of the trial judge, but is all too often an expression of varying perspectives based on periodic concerns about whether current philosophies reflect notions of being "tough on crime."

Is it possible to reconcile utilitarian and retributive theories of punishment? For utilitarians, desert is not seen as necessary to justify punishment nor as a reason for punishment because desert does not look to the consequences of punishment—it simply punishes. For the utilitarian, the only good reasons for punishment relate to the consequences of that punishment. The contrast between the two theories lies in the fact that for utilitarians, the aim of punishment is to control future action, whereas the retributivists see the aim in terms of desert. The strength of the utilitarian argument is that rules can be changed according to changes in society, but that no such change is built into theories of retribution. Can a retributivist ever be forgiving or merciful? During the sentencing process, offenders often say they are remorseful for their actions, and in this sense remorse represents regret and self-blame. Those charged with the task of determining the sentence are urged to accept statements of remorse as mitigating factors. The issue, therefore, is whether genuine remorse should lead a sentencer towards leniency. If the sentencer is a utilitarian, he or she will be concerned only about whether a remorseful offender will be less likely to reoffend. However, for the retributivist, the question is whether remorse should mitigate culpability. According to Walker, forgiveness has no degrees but may take the form of "interested" or

"disinterested" forgiveness, with the victim being interested and the sentencing authority disinterested. He suggests that whether from a utilitarian or retributivist viewpoint, the sentencing authority must choose the sentence that is most appropriate, and that a retributivist may take extenuating circumstances into account. He considers, however, that forgiveness, being an act of absolution, should not be considered an extenuating circumstance. Thus, according to Bean, "forgiveness is a moral sentiment where ill-will is no longer retained. It may occur before or after punishment but does not affect it". Mercy must be distinguished from forgiveness because granting mercy is an act, but forgiveness is an attitude of mind. Mercy may be prompted by expressions of remorse or by a statement that the victim has forgiven the offender. Walker argues that mercy is not equivalent to "reasoned leniency" and that mercy, in effect, suggests other considerations such as proportionality and any suffering experienced by the offender, and mitigation generally. Fundamentally, therefore, mercy is a synonym for various kinds of leniency and has no force or effect of its own.

Rehabilitation

Retribution and deterrence involve a process of thinking that proceeds from the crime to the punishment. However, rehabilitation is a more complex notion involving an examination of the offense and the criminal, and a concern for the criminal's social background and punishment. Further, those in favor of rehabilitation theories acknowledge the possibility of additional problems developing during the offender's sentence or treatment

that may be unconnected with the offense and which may require an offender to spend additional periods in treatment or confinement. Utilitarian theory argues that punishment should have reformative or rehabilitative effects on the offender. The offender is considered reformed because the result of punishment is a change in the offender's values so that he or she will refrain from committing further offenses, now believing such conduct to be wrong. This change can be distinguished from simply abstaining from criminal acts due to the fear of being caught and punished again; this amounts to deterrence, not reformation or rehabilitation by punishment. Proponents of rehabilitation in punishment argue that punishment should be tailored to fit the offender and his or her needs, rather than fitting the offense. Underpinning this notion is the view that offenders ought to be rehabilitated or reformed so they will not reoffend, and that society ought to provide treatment to an offender. Rehabilitationist theory regards crime as the symptom of a social disease and sees the aim of rehabilitation as curing that disease through treatment. In essence, the rehabilitative philosophy denies any connection between guilt and punishment. Bean outlines the strengths of the rehabilitation position as being its emphasis on the personal lives of offenders, its treatment of people as individuals, and its capacity to produce new thinking in an otherwise rigid penal system. He suggests its weaknesses include an unwarranted assumption that crime is related to disease and that social experts can diagnose that condition; treatment programs are open-ended and do not relate to the offense or to other defined criteria; and the fact that the offender, not being seen as fully responsible for his or her actions, is

capable of manipulating the treatment to serve his or her own interests. In addition, rehabilitation theory tends to see crime as predetermined by social circumstances rather than as a matter of choice by the offender. This, it is said, denies the agency of the offender and arguably treats an offender in a patronizing, infantilizing way. Indeterminate sentences gave effect to the rehabilitative perspective because terms of imprisonment were not fixed at trial, but rather the release decision was given to institutions and persons operating within the criminal justice system, including parole boards, probation officers, and social workers. The notion of rehabilitation enjoyed considerable political and public support in the first half of the 20th century, but modern rehabilitationists now argue that fixed rather than determinant sentences should be the context for rehabilitation. They argue that with indeterminate sentences, offenders become preoccupied with their likely release date, and this leads to their pretending to have made more progress in treatment than is really the case. The demise of rehabilitation as a theory of punishment began in the 1970s and was the result of a complex set of factors, one of which was a much quoted article by Martinson who argued that “nothing works”; that is, that no treatment program works very successfully in preventing reoffending, and that no program works better than any other. Martinson later attempted to rectify this pessimistic view of rehabilitation and treatment by acknowledging that some programs work, sometimes, for some types of offenders.1 Nevertheless, from that point on, policy makers and legislators abandoned rehabilitation as an objective of punishment. On the issue of indeterminate sentencing, the publication of *Criminal*

Sentences: Law without Order by Marvin Frankel, then a federal judge, which argued that judges exercised "almost wholly unchecked and sweeping authority" in sentencing, provided substantial support to the proponents of determinate sentencing. By the 1980s, the retributionist theory of just deserts had become the most influential theory of punishment. Nowadays, rehabilitationists contend that their rationale for punishment is the only one that combines crime reduction with respect for an offender's rights. According to this view, although capital punishment and long terms of imprisonment may deter and will certainly incapacitate, rehabilitation can be accomplished only if criminals re-enter society; consequently extreme punishments should be ruled out. Rotman for example, argues in favor of a "right's oriented rehabilitation," which accepts the offender's liability to receive punishment but claims a corresponding right on his or her part to "return to society with a better chance of being a useful citizen and staying out of prison." This perspective is often termed "state-obligated rehabilitation," and contends that if the state assumes the right to punish, it should ensure that no more harm is inflicted than was intended when the sentence was pronounced. That is, the intent of the prison sentence is deprivation of liberty and not loss of family ties or employability. Rotman, for one, argues that a failure to provide rehabilitation amounts to cruel and unusual punishment. Carlen and Matthews argue that states are entitled to punish offenders because offenders act out of choice. However, they suggest that the offenders' choices are often limited because of circumstances and social conditions like poverty and inequality, which might lead people into crime. Therefore, Hudson claims, the state

should recognize that it plays a part in causing crime and should recognize its role toward crime prevention by providing rehabilitation to assist the offender in not committing further crime. The offender, on his or her part, has a corresponding obligation to take part in rehabilitation programs offered by the state. In this view, rehabilitation may be seen as an alternative to punishment rather than as something to be achieved through the means of punishment. As Carlen contends, a purely punitive approach to sentencing does little to decrease crime and serves only to increase the prison population.

Incapacitation

Penal practice has always tried to estimate the risk that individual offenders might commit crimes in the future and has tried to shape penal controls to prevent such crimes from happening. Through the incapacitative approach, offenders are placed in custody, usually for long periods of time, to protect the public from the chance of future offending. In utilitarian theory, incapacitation is seen as a good consequence of punishment because, when serving his or her sentence, the offender is removed from society and is therefore unable to commit further offenses. This applies regardless of whether the offender is deterred, reformed, or rehabilitated through the punishment he or she is given. Incapacity may also be present in other forms of punishment such as parole, in the sense that although the offender is free from incarceration, he or she is placed under supervision, which may restrict his or her opportunity to commit crime. Some criminologists claim that certain offenders commit

crimes at very high rates, and that applying a policy of selective incapacitation aimed at these "career criminals" will assist with the aims of crime prevention. There are two basic objections to following a policy of incapacitation based on selecting offenders for this kind of punishment. The first is that predicting criminal dangerousness is problematic and will inevitably mean that a number of persons will suffer incapacitation who would not have committed further crimes if left free, because, given the inaccuracies of prediction, it is necessary to lock up or incapacitate large numbers of nondangerous offenders so we can ensure we incapacitate dangerous offenders. Second, there is the moral objection that it is wrong in principle to punish offenders based on a prediction of their future conduct; that is, they ought to be punished for what they have done and not for what they *might* do in the future. Morris argues that sentences intended to incapacitate an offender ought to be permitted only where there exists reliable information showing a high probability of future offending. Morris suggests that taking account of dangerousness in the future should be considered to be statements about an offender's present condition and not as a prediction of future conduct. Some of the problems inherent in incapacitative sentencing include the following:

- it works only if we lock up those who would have committed further offenses if they had been left free;
- if those we lock up are not immediately replaced by new recruits; or

- if the crimes committed after release are not so frequent or serious so as to negate the effects of the crimes prevented through incapacitative sentencing.

Ethical questions that arise from the sentencing rationale of incapacitation include:

- Is it ethical to punish persons for crimes not yet committed?
- Is it ethical to base punishment on inaccurate predictions?
- Is it ethical to punish a repeat offender for a past crime he or she committed and has already been punished for?

The notion of incapacitation is reflected in such punishment policies as three-strikes legislation, mandatory minimum sentences, and truth in sentencing.

Restorative Justice

Braithwaite argues that restorative justice has been "the dominant model of criminal justice throughout most of human history for all the world's peoples," and that it is grounded in traditions from ancient Greek, Arab, and Roman civilizations and in Hindu, Buddhist, and Confucian traditions. Braithwaite emphasizes that restorative justice means restoring victims as well as offenders and the community. In addition to restoring lost property or personal injury, restoration means bringing back a

sense of security. He points to the shame and disempowerment suffered by victims of crime. He observes that Western legal systems generally fail to incorporate victims' voices because the justice system often excludes their participation. Restoring harmony based on an acceptance that justice has been done is, in his view, inadequate. Essentially, restorative justice proponents emphasize the need to support both victims and offenders, and see social relationships as a rehabilitative vehicle aimed at providing formal and informal social support and control for offenders. Rather than separating out the offender as a subject for rehabilitation, restorative justice sees social support and social control of offenders as the means to rehabilitation. The origins of restorative justice in the United States lie in part in court orders for reparation taking the form of restitution and community service. Since the 1970s, restitution and community service have been employed as sentencing tools in criminal and juvenile courts, and during the 1980s an expansion occurred in victim–offender mediation programs resulting partly from interest in restitution and community service programs. Along with the increased interest in these alternative sanctions, attention to the interests of victims increased during the 1990s, focusing on repair and healing influenced by the "faith community" and feminists. Today, numerous programs can be brought under the rubric of restorative justice, but they often remain small-scale experiments and tend to be associated with community approaches to crime control. In considering the nature of a restorative justice approach to offenders, it is useful to note the three core principles suggested by Van Ness and Strong.

Justice requires the healing of victims, offenders, and communities injured by crime.

Victims, offenders, and communities should be permitted to actively involve themselves in the justice process in a timely and substantial manner.

Roles and responsibilities of the government should be rethought and in its promotion of justice, government should be responsible for preserving a just order and the community should be responsible for establishing peace.

Restorative justice may be considered unique in its emphasis on not just one component of the criminal justice system such as punishment, but as incorporating victims, offenders, and the community in its strategies and designs. In relation to offenders, Bazemore and Dooley state that there is a normative focus on harm and repair. Repair, in the context of restorative justice, implies a particular form of rehabilitation. However, Bazemore and Dooley concede that there is an absence of theory to explain how the operation of restorative justice is supposed to bring about a change in the offender. Some restorative justice proponents argue that repair in relation to offenders involves a focus on *restoring, strengthening, and building relationships between offenders, victims, and communities* and therefore intervention intended to prevent future crime must focus not only on the offender's obligation to repair harm done to victims and the community, but also on the need to repair broken relationships between the offender and the community, the victim

and the community, and the victim and the offender. Critics of restorative justice point to its too ready assumption that it will be possible to secure agreement between offenders, victims, and communities. Garland notes that one of the functions of punishment is to relieve the feelings of victims and communities where crimes are committed, and that restorative justice avoids the ceremonies and rituals of criminal law that recognize these emotions. In addition, it can be argued that a greater reliance on restorative justice and a consequent restriction on the operation and expression of criminal law might lead to a situation in which those victims processed through restorative justice might come to believe or feel that the harm they have suffered is of less importance than "real crime." Feminists, who have argued for severe sentencing for domestic violence, have adopted this argument. Criminalization and punishment show the limits of tolerance, and depenalizing through restorative justice processes tends to suggest that society has a different attitude towards certain kinds of behavior. Von Hirsch, in his investigation into the basis for restorative justice, contends that no clear principles have been formulated for restoring the harm done by offenders to community standards, and unlike victim restitution, which involves a task of mediation between the victim and the offender, there are no disputed claims involved in crime because, for example, a robber appropriates something that is clearly the property of the victim. Volpe has warned of the propensity of restorative justice to widen the net of social control.

Why Punish? The Sociological Approach

In sociological terms, punishment raises questions such as why particular punishments were used and why they are no longer used; why a punishment like capital punishment has been abandoned to a great extent in the West; and why imprisonment has become the major form of punishment for criminal activity. In social terms, research has concluded that punishments depend less on philosophical arguments and more on the currents and movements in social thinking and in climates of tolerance and intolerance. A focus on history and changes in social conditions has illuminated the relationship between punishment and society, which in turn has broadened the investigation of the notion of punishment into questions concerned with how order and authority are maintained in society. Garland summarizes social theory about punishment as: "that body of thought which explores the relations between punishment and society, its purpose being to understand punishment as a social phenomenon and thus trace its role in social life." Garland has argued that punishment is the product of social structure and cultural values. Thus, whom we choose to punish, how we punish, and when we punish are determined by the role we give to punishment in society. If we construe criminal punishment as a wrong for a wrong, then we must conclude that society is, in a sense, wronging the offender. We must therefore ask, "can the infliction of pain or a wrong upon an offender be

justified ethically?" To answer this question, one must first look at the purpose of criminal punishment and question the various rationales put forward for punishment, such as deterrence, incapacitation, rehabilitation, just deserts, retribution, and restorative justice. Sociological perspectives on punishment include the thinking of Durkheim, Weber, the Marxist tradition, and post-Marxist sociologies of punishment, particularly that propounded by Foucault. Sociologists expand the notion of punishment to "penality," which they explore in various societies at various times. Hudson defines penality as... the complex of ideas, institutions and relationships involved in the punishment of offenders.

Only a broad outline of the various perspectives on penality will be provided here. According to Durkheim, society has an objective reality apart from the individuals who comprise it, and he argues that people behave according to social rules that, together with customs and traditions, form a culture for a particular society. Durkheim took a functionalist approach; that is, he examined aspects of social life in terms of the functions they performed in society. He applied this approach to punishment by looking at the functions that punishment fulfills in maintaining social order. Durkheim identified beliefs and sentiments held by members of society, which he called the "conscience collective," and argued that crimes are those acts which violate that conscience collective and produce a punitive reaction. He developed two laws of penal evolution. The first is that punishment is more intense the less developed a society is and the more the central power within that society is of an

absolute nature. Thus, in industrial societies, collective sentiments are embodied in law rather than in religion, so crimes are seen as wrongs against individuals. He tried to demonstrate that penalties changed from ancient societies to his time, from aggravated penalties such as death with torture and mutilation to reduced forms of punishment. In his second law, he develops the notion of punishments having lesser intensity, arguing that imprisonment will become the main punishment replacing death and torture. Overall, Durkheim sees the function of punishment as promoting social solidarity through the affirmation of values, and argues that punishment's importance lies in its expression of outrage upon the commission of an offense. He believed punishment to be a "passionate reaction" to crime, and this expressive view of punishment can be seen in modern-day notions of censure in retributivism. His focus was not, therefore, on whether punishment was effective in controlling crime, but in its function as a means of maintaining social solidarity through expressions of outrage and through the affirmation of societal values. Among critics of Durkheim, Garland suggests that Durkheim's analysis of punishment is focused too strongly on punishment's expressive function, causing all other explanations to be discarded. Nevertheless, Garland points out that Durkheim's insight into the role of punishment—as one of expressing community outrage against criminal acts—does single out one aspect of punishment that seems to resonate in the context of today's debates about "getting tough on crime." In similar fashion, Mead in *The Psychology of Punitive Justice* contends that the indignation that members of society feel towards the criminal amounts to a cultural sublimation of the

instincts and hostilities that the individual has tamed in the interest of social cooperation with others. Weber's ideas on punishment are implied rather than made explicit in his notions about authority and power in modern society. Having identified three types of authority, the traditional, the charismatic, and the legal, Weber promoted legal authority—the process of making rules by those given the right to rule—as being the most appropriate form of rule for modern societies. For Weber, legal authority carries with it a duty to obey laws. He argued that systems of laws might be rational or irrational; in a rational system of criminal law, crimes would be defined and rules put forward for adjudicating those crimes. He favored formal rationality, which he termed "bureaucratic rationality," and saw this as an essential feature of a modern state. His notion of bureaucratic rationality appears in certain features of modern society, such as our processes for making judgments according to rules and the way in which office holders exercise authority. Developments such as a professional police force and a judiciary as well as due process can be traced to the bureaucratization of society. Marxist perspectives on punishment evolve out of Marx's concern for the place of capitalism and the relations between production and society. In his view, institutions like law are shaped to parallel the relations of production and the maintenance of the capitalist system. Marxist penologists have argued that punishment regulates the supply of labor; this view was put forward in 1939 by Rusche and Kirchheimer in *Punishment and Social Structure*. In discussing the history of punishment in Europe from the 13th century until the development of capitalism, the authors perceive the severity of

punishment as being tied directly to the value of labor. Thus, the severity of punishment, they argue, is relatively lenient when labor is scarce and its value high, whereas when labor is abundant, punishments become more intense. Another key aspect of their view is the principle of *less eligibility*. The argument is that the conditions the offender will experience in prison must be worse than anything he or she is likely to endure outside the prison in order to restrain the "reserve army of labor" from crime; that is, to serve as a deterrent to the lowest social classes. The idea of less eligibility encompasses matters like discipline, diet, accommodation, and general living conditions in prisons. Rusche argued that this principle limited penal reform because punishments and prison conditions could not be improved beyond a point that would bring the offender into line with the standard of life of the least advantaged nonoffender. This analysis has been criticized for its economic reductionism. Nevertheless, it has led to a series of studies that have tested the basic framework and found some correlation between punishment and the labor market in the United States over time. The important point is that the authors, together with other Marxists, have provided the insight that all punishment cannot be understood simply as a response to crime. In other words, when changes in the use of imprisonment and other punishments are examined in historical contexts, other factors appear to have influenced their development. Other Marxist theorists like Melossi and Pashuknis have asked why imprisonment persists, as opposed to other forms of punishment. One answer from Pashuknis is that there is a correspondence between the development of wage labor, which puts a price on time, and

paying for crime by "doing time." In this sense, Marxist theory concerning the relations of production is found mirrored in the punishment of imprisonment, and Marxists therefore argue that a crucial principle in society is the exchange of equivalence. Punishment, therefore, becomes an exchange transaction in which the offender pays his debt, an expression commonly used today both in that form and in the notion of "paying a debt to society". Marxist analysis of society generally has been heavily criticized by feminists for ignoring gender and for outmoded interpretative frameworks. In 1977, Michel Foucault published *Discipline and Punish: The Birth of the Prison,* revolutionizing the study of penality and punishment by presenting the notion of penality and highlighting *discipline* as the key element in modern forms of punishment. In his complex exploration of penality, Foucault follows an approach that examines the issue from the ground up through a detailed examination of penal practices. His central focus is the *exercise of power* in modern society and its linkages with knowledge to exercise power of and over the body. Describing first the effect and content of the public execution, Foucault shows how the infliction of pain on the body gave way to an exercise of power through the new practice of disciplining the individual through institutions such as the factory and the modern prison, and how this led to the development of a class of "delinquents." Foucault claims that disciplinary regulation is the fundamental principle of social control in modern society and is most fully realized in the form of the prison. Foucault emphasizes the role of punishment in producing the "right-thinking citizen"; that is, the trained and disciplined individual. Foucault draws on both Weber and Durkheim in his account of penality. However, he

adopts a much broader analytic framework that links punishment and penality and connects them directly to changes in society and to the exercise of power over the individual. Foucault's ideas have inspired many followers including David Garland who, in *Punishment and Modern Society* argues that a full understanding of punishment and penality should incorporate the theoretical insights of all the writers discussed in this section, together with those of Norbert Elias and his notion that the West has undergone a "civilizing process" that has sensitized society against harsh punishment. Importantly, Garland has drawn attention to the need to consider punishment not simply as the consequence of a criminal act, but as a "complex social institution" requiring us to think beyond simply crime control. Punishment, he argues, should be viewed as a social institution, and its social role and significance can be properly understood only through developing the insights of social theorists.

The morality of punishment rests upon theories of deterrence, retribution, just deserts, rehabilitation, incapacitation, and most recently, restorative justice. These theories attempt to justify society's imposition of punishment on offenders and try to provide an adequate ethical rationale for inflicting harm. Deterrence maintains that people are deterred from crime because they are concerned about the possible consequences of their actions. Utilitarian philosophers first put forward this justification for punishment. A number of studies have considered the effectiveness of deterrence as a theory, but there is no clear conclusion about whether deterrence works. Retribution theorists argue that punishment is justified because

it is deserved, and punishment therefore becomes a question of responsibility and accountability for acts that harm society. In retribution theory, the punishment imposed should be proportionate to the wrongdoing. Retribution is justified in a number of ways, including the notion that offenders are paying their debt to society, that they are being censured by society, and that punishment has an expressive character that ought to be communicated to an offender. The emergence of just deserts theory in the 1980s put an end to indeterminate sentencing and introduced sentencing guidelines and sentencing commissions as attempts were made to fix proportionate sentences. Just deserts theory lacks any principle that determines what amounts to a properly commensurate sentence, and it ignores social factors as well as the multiple decisions and discretions that go into the sentencing decision. Rehabilitation shows a concern for an offender's social background and regards crime as the outcome of a social disease that should be cured through treatment. In the past, indeterminate sentences supported rehabilitation programs because the release decision was given over to boards and not determined by the court. The idea that "nothing works" brought about the demise of rehabilitation, which had been the dominant rationale for punishment until the 1970s. It has now been displaced by just deserts and incapacitation. According to incapacitation theorists, placing offenders in custody for lengthy periods of time protects the public from the chance of future offending, but this means that offenders are being punished based on a prediction of what they might do in the future. It raises the question of whether it is ethical to punish persons for crimes they have yet to commit. Restorative justice is a newcomer

to the field of penal theory, and some suggest that it lacks theoretical support. However, its emphasis on community involvement in solutions to crime and emphasis on the victim have attracted a body of support, at least at the local level, where it has been employed to deal with delinquency and relatively minor offenses. The philosophical approach to punishment is concerned with the "ought" of punishment, whereas the sociological approach raises questions about the use and severity of particular punishments and the relationship among punishment, society, and social change. The criminological approach focuses on the fact of imprisonment and on penal policy making and crime control. Some suggest that no single approach adequately provides justification and rationale for punishment, and that a full explanation can be gained only by combining these various perspectives.

Chapter 3

Political Ideologies and Social Justice

Liberalism

Liberalism is a political philosophy that espouses liberty from control of the state. Different strains of liberalism emphasize personal, intellectual or economic liberty. Liberalism has been a driving force in political and social reform in developed countries. Indeed, in many modern nations, liberal precepts such as the rule of law and representative government are no longer subject to serious political debate.

Origins of Liberalism

Liberalism derives from the Latin word "liber," meaning free, and most early uses of the word tend to refer to ideas related to freedom. John Locke was an early English liberal, advocating for the freedom of Parliament to restrict the power of the king. Other liberals, such as Voltaire and Descartes, carried the banner for an intellectual movement that valued freedom of thought and systems of power that represented the interests of the governed.

Early American Liberalism

All of the founding fathers of the United States can be considered classical liberals to some degree. Their rebellion against the British crown was based on liberal principles; the government they created was largely a model of those principles. An obvious exception was the continuance of slavery, an anti-liberal institution that became a festering wound in the American social and political system. Most 19th century American liberals became fierce opponents of slavery.

Early European Liberalism

European liberalism developed along a different path than its American counterpart. Unlike the relatively laissez-faire U.S. government, European states wielded strong control over economic activity. In contrast to the Jacobin-syle pure democrats, who were seen my many liberals as overly radical, European liberalism developed a focus on economic freedom. Scottish economic theorist Adam Smith wrote the landmark economic liberal text, "Wealth of Nations." A Scottish publication, "The Economist," became a key publication in advocating European liberalism.

Modern American Liberalism

American liberalism remained defined by social and human rights value for most of its existence. There were liberals in both Republican and Democratic Parties for most of the 20th century.

Indeed, landmark liberal legislation like the 1965 Civil Rights Act passed with more Republican support than Democratic. By the century's end, however, the Republican Party strategically embraced social conservatism, and "liberalism" became synonymous with the left wing, in social as well as economic matters. Indeed, politicians labeled as liberal like Massachusetts's Senator Ted Kennedy were economically illiberal in the European sense. Today the term is primarily used as pejorative, with left wing politicians and activists preferring the label "progressive."

Modern European Liberalism

With the rise of the politically empowered labor movement and socialism, European liberalism became mostly divorced from the left wing. Freedom of trade was typically as in conflict with socialist aspirations, so liberals became representative of middle-class, business interests. In many countries, such as Great Britain, the Liberal Party held great sway at the beginning of the 20th century. However, they found themselves uncomfortably positioned in the middle of the growing polarized Labor and Conservative parties. With the downfall of European communism and moderation of labor forces, economically and socially liberal parties are enjoying something of a limited renaissance.

Basic Principles of Liberalism

Equity: equal treatment; equal worth; the end of favoritism and the worship of wealth and power; the same consideration given to

the needs of the weak and few as to the strong and many; an even hand in foreign policy and trade towards nations strategically important to us as well as those which are small and economically insignificant.

Justice: Where inequity exists, it is removed, and where wrongdoing is found, it is stopped and retribution is made, regardless of status or connections; nations engaged in murder, repression and genocide are held to account, even if they are allies or strategically important, and even if it means some sacrifice on our part.

Mercy: Punishment is a means to rehabilitation, not vengeance; help is given to those in need, and is a social debt we each owe to the community of our common humanity; empathy and refusal to judge others are the building blocks of socila interaction.

Humility: Recognizing that we don't always have to be the biggest, the best, the strongest, the wealthiest, the most favored by God; that we have obligations to the natural world; that we are interdependent with other animals, plants and nations, and that we survive because of them whether we are aware of it or not.

Intelligence: That a love of knowledge and curiosity about the world is what animates us as a race, and is to what we owe everything we are; that real education is a right as surely as life, liberty and the pursuit of happiness; and that a free market without free education is merely a bazaar for auctioning off wage slaves.

Merits and Demerits

Liberalism is defined in numerous ways, but the most broad and accepted definition of the term refers to the idea of individualism and the freedoms associated with being a rational and uninhibited human being. It is the fundamental belief that individuals have a right to pursue their own goals and embrace their liberty, as long as their pursuit of freedom does not harm others or impinge on their freedom. Liberalism has numerous advantages for the individual and the community.

Liberation of Individual Over the State

Liberalism, a term often used upon the founding of the country, divorced the relationship between the individual and the state. Whereas the prevailing concepts of the time held that an individual was property of the state, the founding fathers sought to utilize liberalism to give individuals their own rights that were independent of the state. The individuals were no longer properties of the state, but they were human beings who deserved their own inalienable rights. One of the great advantages of liberalism is that it liberates the individual from the state.

Promotion of Freedoms

Because liberalism upholds individual rights, one great advantage is its guarantee of certain freedoms. Freedom to vote, speak a person's mind, publish government criticisms, protest and own weapons are all associated with the rights of an

individual. Liberalism's main tenant is that individuals may do as they please as long as it does not harm others or affect their freedom, and these rights are the advantages of such a belief system.

Associations with Progress

The term liberalism is frequently borrowed by certain parties that emphasize their liberal aspects. For example, the Democratic Party in the United States often purports a liberal ideology. Proponents of the party may use the term to uphold certain individual rights, but it may also be used to connote progress. The term liberalism often implies progress because it seeks to constantly reevaluate the overbearing presences of the government, always trying to bring the power back to the individual. The advantage of liberalism is that it is forward-looking in this way, as it promotes future change instead of being stuck in tradition.

Respects Minorities

One of the great aspects of liberalism is its capacity to respect minorities and minority traditions. Liberalism promotes equal rights for all, whether they be Ku Klux Klan members, gay rights activists, Muslims or college students. Regardless of demographics or beliefs, liberalism holds that individuals deserve to practice their own beliefs as long as it does not limit the freedom of others. A lot of notions of democracy come from this

concept of liberalism, in which people are given certain rights to practice their viewpoints.

Demerits

In the United States of America and perhaps elsewhere, liberalism has become a dirty word. A pejorative used to describe hysterical politics and emotional feel good laws. This kind of label for liberals is grossly unfair and deceptive at best mostly because hysterical politics and feel good laws are found on both sides of the spectrum, but also because liberals are inevitable just as conservatives are. I am proudly and stubbornly conservative and I share very little connection with the right wing of this country, nor the so called conservative movement in this country, and certainly not the Republicans. It should go without saying that I don't feel any connection to the left wing, liberalism and certainly not the Democrats! When I declare myself as conservative in political conversations or debates people always seemed stunned assuming I am a liberal.

There is too much confusion as to what liberalism and conservatism is. This is mostly because of failures on the part of the right wing and so called conservative movement in this country. The so called conservatives in the United States have no real idea what they are conserving and will only refer to the Constitution when they believe it can stop their opponents who they call liberals for lack of a better term, when it is in fact the left wing they are opposing. Liberals, always behave like liberals regardless of how conservatives behave and whether aware of it

or not a liberal in the United States is necessarily taking a liberal view of the Constitution. The only reason to have a conservative movement in the United States is because liberals can take way to liberal of a view on the Constitution and conservatives must do what they can to slow down the inevitable march of liberalism. Conservatives stopped conserving the Constitution years ago and today if they're conserving anything at all it is the status quo which is ironically steeped in liberal social services and big government.

So, here we are today in the United States of America with a political landscape that is best described as castle built amongst modest homes, it's lawn littered with pink flamingos, clowns and funny little ceramic figures, the castle itself painted pink with purple polka dots. A landscape that is an eyesore to be sure. Left wing, right wing, liberal, conservative, Marxist, capitalist, Keynesian capitalist, neoconservative, socialist, independent, libertarian, civil libertarian, progressive...blah, blah, blah, blah. In truth there are neither disadvantages nor advantages to liberalism. If you are liberal then you are liberal and there is nothing, absolutely nothing wrong with that.

If you are liberal then take a liberal view of the constitution and do your best to understand why conservatives oppose you. The Greek audacious hero who was Icarus has become associated with the classic liberal artist. Daedalus, his father, the more conservative artisan and craftsman. It is the classic liberal artist who shakes this world to its very core and demands that we as humanity rise up and be more than who we are and it was Icarus

who soared, and soared and soared ever and ever higher up into the sky until the heat of the sun melted the wax that kept the feathers to his wings together and he plummeted down, down, down, to the depths of his own demise. Daedalus survived. If there is a disadvantage to liberalism it would be the proclivity towards hubris, and in this regard a conservative can be a liberals best friend. Liberals and conservatives have no reason to argue once it is understood what is being conserved and why a liberal view is being taken.

Liberals and conservatives are the two sides of the same coin of civilization. We use each other to instruct our own inherently limited viewpoints to better find the greater good. If it is not the greater good we are after, then what difference does it make who is liberal and who is conservative? What is gained by being a conservative hedonist or a liberal fundamentalist if the aim is not the greater good? To be liberal is to advocate progress and this progress is necessary in order to maintain our survival as a species. There is great responsibility that comes with being liberal, far easier to remain conservative and do what you can to remind your liberal friends of the great responsibility they endeavor to undertake. It is never enough to rely on good intentions, and if progress is what is mandated, it must be progress towards the greater good, and in terms of a country who believes they operate best when self governed the greater good must reflect that. Any thing less is nothing more than tyranny.

Socialism

Meaning

Socialism is an economic system in which the means of production are commonly owned and controlled cooperatively; or a political philosophy advocating such a system. As a form of social organization, socialism is based on co-operative social relations and self-management; relatively equal power-relations and the reduction or elimination of hierarchy in the management of economic and political affairs.

Socialist economies are based upon production for use and the direct allocation of economic inputs to satisfy economic demands and human needs; accounting is based on physical quantities of resources, some physical magnitude, or a direct measure of labour-time. Goods and services for consumption are distributed through markets, and distribution of income is based on the principle of individual merit/individual contribution.

As a political movement, socialism includes a diverse array of political philosophies, ranging from reformism to revolutionary socialism. Proponents of the *State socialist* form of socialism advocate for the nationalisation of the means of production, distribution and exchange as a strategy for implementing socialism; while social democrats advocate public control of capital within the framework of a market economy. Libertarian socialists and anarchists reject using the state to build socialism, arguing that socialism will, and must, either arise

spontaneously or be built from the bottom up utilizing the strategy of dual power. They promote direct worker-ownership of the means of production alternatively through independent syndicates, workplace democracies, or worker cooperatives.

Modern socialism originated from an 18th-century intellectual and working class political movement that criticised the effects of industrialisation and private property on society. Utopian socialists such as Robert Owen, tried to found self-sustaining communes by secession from a capitalist society. Henri de Saint Simon, who coined the term *socialisme*, advocated technocracy and industrial planning. Saint-Simon, Friedrich Engels and Karl Marx advocated the creation of a society that allows for the widespread application of modern technology to rationalise economic activity by eliminating the anarchy of capitalist production that results in instability and cyclical crises of overproduction.

Socialists inspired by the Soviet model of economic development, such as Marxist-Leninists, have advocated the creation of centrally planned economies directed by a single-party state that owns the means of production. Others, including Yugoslavian, Hungarian, East German and Chinese communist governments in the 1970s and 1980s, instituted various forms of market socialism, combining co-operative and state ownership models with the free market exchange and free price system.

Goals

The socialist perspective is generally based on a materialist outlook and an understanding that human behaviour is largely shaped by the social environment. In particular, scientific socialism holds that social mores, values, cultural traits and economic practices are social creations, and are not the property of an immutable natural law. The ultimate goal for Marxist socialists is the emancipation of labour from alienating work. Marxists argue that freeing the individual from the necessity of performing alienating work in order to receive goods would allow people to pursue their own interests and develop their own talents without being coerced into performing labour for others. For Marxists, the stage of economic development in which this is possible is contingent upon advances in the productive capabilities of society.

Socialists argue that socialism is about bringing human social organization up to the level of current technological capability to fully take advantage of modern technology. They argue that capitalism is either obsolete or approaching obsolescence as a viable system for producing and distributing wealth in an effective manner. Socialists generally argue that capitalism concentrates power and wealth within a small segment of society that controls the means of production and derives its wealth through a system of exploitation. This creates a stratified society based on unequal social relations that fails to provide equal opportunities for every individual to maximize their potential, and does not utilise available technology and resources to their

maximum potential in the interests of the public, and focuses on satisfying market-induced wants as opposed to human needs. Socialists argue that socialism would allow for wealth to be distributed based on how much one contributes to society, as opposed to how much capital one holds.

Socialists hold that capitalism is an illegitimate economic system, since it serves the interests of the wealthy and allows the exploitation of lower classes. As such, they wish to replace it completely or at least make substantial modifications to it, in order to create a more just society that would guarantee a certain basic standard of living. A primary goal of socialism is social equality and a distribution of wealth based on one's contribution to society, and an economic arrangement that would serve the interests of society as a whole.

Economics

As an economic system, socialism is structured upon production for use – the *direct allocation* of resources toward useful production. In some cases, financial calculation is replaced with calculation-in-natura – such as energy accounting or physical quantities. The output generated – goods and services for consumption – is distributed through markets.

This is contrasted with capitalism, where production is carried out for profit, and thus based upon *indirect allocation*. In an ideal capitalism based on perfect competition, competitive pressures compel business enterprises to respond to the needs of

consumers, so that the pursuit of profit approximates production for use through an indirect process.

Market socialism retains the process of capital accumulation, but subjects investment to social control, utilizing the market to allocate the factors of production. The profit generated by publicly owned firms would fund a social dividend, which would be used for public investment or public finance. Market socialist theories range from libertarian theories like mutualism, to theories based on Neoclassical economics like the Lange Model.

The ownership of the means of production can be based on direct ownership by the users of the productive property through worker cooperative; or commonly owned by all of society with management and control delegated to those who operate/use the means of production; or public ownership by a state apparatus. Public ownership may refer to the creation of state-owned enterprises, nationalisation or municipalisation. The fundamental feature of a socialist economy is that publicly owned, worker-run institutions produce goods and services in at least the *commanding heights* of the economy.

Management and control over the activities of enterprises is based on self-management and self-governance, with equal power-relations in the workplace to maximize occupational autonomy. A socialist form of organization would eliminate controlling hierarchies so that only a hierarchy based on technical knowledge in the workplace remains. Every member would have decision-making power in the firm and would be able

to participate in establishing its overall policy objectives. The policies/goals would be carried out by the technical specialists that form the coordinating hierarchy of the firm, who would establish plans or directives for the work community to accomplish these goals.

Planned economy

A planned economy combines public ownership of the means of production with centralised state planning. This model is usually associated with the centralised Soviet-style command economy. In a centrally planned economy, decisions regarding the quantity of goods and services to be produced are planned in advance by a planning agency. This type of economic system was often combined with a single-party political system, and is thus associated with the Communist states of the 20th century.

In the economy of the Soviet Union, state ownership of the means of production was combined with central planning, in relation to which goods and services were to be provided, how they were to be produced, the quantities, and the sale prices. Soviet economic planning was an alternative to allowing the market to determine prices for producer and consumer goods. The Soviet economy utilized material balance accounting in order to balance the supply of available inputs with output targets, although this never totally replaced financial accounting. Although the Soviet economy was nominally a *centrally-planned* economy, in practice the plan was formulated *on-the-go* as information was collected and relayed from enterprises to planning ministries.

Socialist economists and political theorists have criticised the notion that the Soviet-style planned economies were socialist economies. They argue that the Soviet economy was structured upon the accumulation of capital and the extraction of surplus value from the working class by the planning agency in order to reinvest this surplus in new production – or to distribute to managers and senior officials, indicating the Soviet Union were state capitalist economies. Other socialists have focused on the lack of self-management, the existence of financial calculation and a bureaucratic elite based on hierarchical and centralized powers of authority in the Soviet model, leading them to conclude that they were not socialist but either bureaucratic collectivism, state capitalism or deformed workers' states.

Self-managed economy

A self-managed, decentralized planned economy, is based upon autonomous self-regulating economic actors and a decentralized mechanism of allocation and decision-making. Historically, this manifested itself in proposals for worker-cooperatives and bottom-up planning through workplace democracy. A degree of self-management was practiced in the economic system of the Socialist Federal Republic of Yugoslavia, which contrasts to the centralized planning of enterprises in Soviet-style planned economies.

One such system is the cooperative economy, a largely free market economy in which workers manage the firms and democratically determine remuneration levels and labour

divisions. Productive resources would be legally owned by the cooperative and rented to the workers, who would enjoy usufruct rights.

Another form of decentralized planning is the use of cybernetics, or the use of computers to manage the allocation of economic inputs. The socialist-run government of Salvador Allende in Chile experimented with project cybersyn, a real-time information bridge between the government, state enterprises and consumers.

Another, more recent, variant is participatory economics, wherein the economy is planned by decentralised councils of workers and consumers. Workers would be remunerated solely according to effort and sacrifice, so that those engaged in dangerous, uncomfortable, and strenuous work would receive the highest incomes and could thereby work less.

A contemporary model for a self-managed, non-market socialism is Pat Devine's model of negotiated coordination. Negotiated coordination is based upon social ownership by those affected by the use of the assets involved, with decisions made by those at the most localized level of production.

Michel Bauwens identifies the emergence of the open software movement and peer-to-peer production as a new, alternative mode of production to the capitalist economy and centrally-planned economy that is based on collaborative self-management, common ownership of resources, and the production of use-values through the free cooperation of producers who have access to distributed capital.

Anarchist communism is a theory of anarchism which advocates the abolition of the state, private property, and capitalism in favor of common ownership of the means of production, direct democracy and a horizontal network of voluntary associations and workers' councils with production and consumption based on the guiding principle: "from each according to his ability, to each according to his need".

De-centralized planning is associated with the political movements of social anarchism, anarcho-communism, Trotskyism, council communism, left communism and democratic socialism.

State-directed economy

A state-directed economy is a system where either the state or worker cooperatives own the means of production, but economic activity is directed to some degree by a government agency or planning ministry through coordinating mechanisms such as indicative planning and dirigisme. This differs from a centralised planned economy in that micro-economic decision making, such as quantity to be produced and output requirements, are left to managers and workers in the state and cooperative enterprises rather than being mandated by a comprehensive economic plan from a centralised planning board. However, the state will plan long-term strategic investment and seek to coordinate at least some aspects of production. It is possible for a state-directed economy to have elements of both a market and planned economy. For example, investment decisions may be semi-

planned by the state, but decisions regarding production may be determined by the market mechanism.

State-directed socialism can also refer to *technocratic socialism*; economic systems that rely on technocratic management over the means of production and economic policy.

In western Europe, particularly in the period after World War II, many socialist and social democratic parties in government implemented what became known as mixed economies, some of which included a degree of state-directed economic activity. In the biography of the 1945 UK Labour Party Prime Minister Clement Attlee, Francis Beckett states: "the government... wanted what would become known as a mixed economy". Beckett also states that "Everyone called the 1945 government 'socialist'." These governments nationalised major and economically vital industries while permitting a free market to continue in the rest. These were most often monopolistic or infrastructural industries like mail, railways, power and other utilities. In some instances a number of small, competing and often relatively poorly financed companies in the same sector were nationalised to form one government monopoly for the purpose of competent management, of economic rescue, or of competing on the world market.

Nationalisation in the UK was achieved through compulsory purchase of the industry. British Aerospace was a combination of major aircraft companies British Aircraft Corporation, Hawker Siddeley and others. British Shipbuilders was a combination of the major shipbuilding companies including Cammell Laird,

Govan Shipbuilders, Swan Hunter, and Yarrow Shipbuilders; the nationalisation of the coal mines in 1947 created a coal board charged with running the coal industry commercially so as to be able to meet the interest payable on the bonds which the former mine owners' shares had been converted into.

Market socialism

Market socialism consists of publicly owned or cooperatively owned enterprises operating in a market economy. It is a system that utilizes the market and monetary prices for the allocation and accounting of the means of production, thereby retaining the process of capital accumulation. The profit generated would be used to directly remunerate employees or finance public institutions. In state-oriented forms of market socialism, in which state enterprises attempt to maximise profit, the profits can be used to fund government programs and services through a social dividend, eliminating or greatly diminishing the need for various forms of taxation that exist in capitalist systems. Yugoslavia implemented a market socialist economy based on cooperatives and worker self-management.

The current economic system in China is formally titled Socialist market economy with Chinese characteristics. It combines a large state sector that comprises the 'commanding heights' of the economy, which are guaranteed their public ownership status by law, with a private sector mainly engaged in commodity production and light industry responsible from anywhere between 33% to over 70% of GDP generated in 2005. However by 2005

these market-oriented reforms, including privatization, virtually halted and were partially reversed. The current Chinese economy consists of 150 corporatized state enterprises that report directly to China's central government. By 2008, these state-owned corporations had become increasingly dynamic and generated large increases in revenue for the state, resulting in a state-sector led recovery during the 2009 financial crises while accounting for most of China's economic growth.

The Socialist Republic of Vietnam has adopted a similar model after the Doi Moi economic renovation, but slightly differs from the Chinese model in that the Vietnamese government retains firm control over the state sector and strategic industries, but allows for private-sector activity in commodity production.

However, the lack of self-management in economic enterprises and the increasing role of privatization suggests that these economies actually represent state capitalism instead of genuine market socialism.

Social theory

Marxist and non-Marxist social theorists agree that socialism developed in reaction to modern industrial capitalism, but disagree on the nature of their relationship. In this context, *socialism* has been used to refer to a political movement, a political philosophy and a hypothetical form of society these movements aim to achieve. As a result, in a political context socialism has come to refer to the strategy or policies promoted

by socialist organisations and socialist political parties; all of which have no connection to socialism as a socioeconomic system.

Marxism

In the most influential of all socialist theories, Karl Marx and Friedrich Engels believed the consciousness of those who earn a wage or salary would be molded by their "conditions" of "wage-slavery", leading to a tendency to seek their freedom or "emancipation" by throwing off the capitalist ownership of society. For Marx and Engels, conditions determine consciousness and ending the role of the capitalist class leads eventually to a classless society in which the state would wither away.

Marx wrote: "It is not the consciousness of that determines their existence, but their social existence that determines their consciousness."

The Marxist conception of socialism is that of a specific historical phase that will displace capitalism and precede communism. The major characteristics of socialism are that the proletariat will control the means of production through a workers' state erected by the workers in their interests. Economic activity would still be organised through the use of incentive systems and social classes would still exist, but to a lesser and diminishing extent than under capitalism. For orthodox Marxists, socialism is the lower stage of communism based on the principle of "from each

according to his ability, to each according to his contribution" while upper stage communism is based on the principle of "from each according to his ability, to each according to his need"; the upper stage becoming possible only after the socialist stage further develops economic efficiency and the automation of production has led to a superabundance of goods and services.

Marx argued that the material productive forces brought into existence by capitalism predicated a cooperative society since production had become a mass social, collective activity of the working class to create commodities but with private ownership. This conflict between collective effort in large factories and private ownership would bring about a conscious desire in the working class to establish collective ownership commensurate with the collective efforts their daily experience.

"At a certain stage of development, the material productive forces of society come into conflict with the existing relations of production or – this merely expresses the same thing in legal terms – with the property relations within the framework of which they have operated hitherto. Then begins an era of social revolution. The changes in the economic foundation lead sooner or later to the transformation of the whole immense superstructure." A socialist society based on democratric cooperation thus arises. Eventually the state, associated with all previous societies which are divided into classes for the purpose of suppressing the oppressed classes, withers away. By contrast, Émile Durkheim posits that socialism is rooted in the desire to bring the state closer to the realm of individual activity, in

countering the anomie of a capitalist society, considering that socialism "simply represented a system in which moral principles discovered by scientific sociology could be applied". Durkheim could be considered a modern social democrat for advocating social reforms, but rejecting the creation of a socialist society.

Che Guevara sought socialism based on the rural peasantry rather than the urban working class, attempting to inspire the peasants of Bolivia by his own example into a change of consciousness. Guevara said in 1965:

Socialism cannot exist without a change in consciousness resulting in a new fraternal attitude toward humanity, both at an individual level, within the societies where socialism is being built or has been built, and on a world scale, with regard to all peoples suffering from imperialist oppression.

In the middle of the 20th century, socialist intellectuals retained considerable influence in European philosophy. *Eros and Civilisation*, by Herbert Marcuse, explicitly attempted to merge Marxism with Freudianism. The social science of Marxist structuralism had a significant influence on the socialist New Left in the 1960s and the 1970s.

Utopian versus scientific

The distinction between "utopian" and "scientific socialism" was first explicitly made by Friedrich Engels in *Socialism: Utopian and Scientific*, which contrasted the "utopian pictures of ideal social conditions" of social reformers with the Marxian concept of

scientific socialism. Scientific socialism begins with the examination of social and economic phenomena—the empirical study of real processes in society and history.

For Marxists, the development of capitalism in western Europe provided a material basis for the possibility of bringing about socialism because, according to the *Communist Manifesto*, "What the bourgeoisie produces all is its own grave diggers", namely the working class, which must become conscious of the historical objectives set it by society. In *Capitalism, Socialism and Democracy*, Joseph Schumpeter, an Austrian economist, presents an alternative mechanism of how socialism will come about from a Weberian perspective: the increasing bureaucratisation of society that occurs under capitalism will eventually necessitate state-control to better coordinate economic activity.

Eduard Bernstein revised this theory to suggest that society is inevitably moving toward socialism, bringing in a mechanical and teleological element to Marxism and initiating the concept of evolutionary socialism. Thorstein Veblen saw socialism as an immediate stage in an ongoing evolutionary process in economics that would result from the natural decay of the system of business enterprise; in contrast to Marx, he did not believe it would be the result of political struggle or revolution by the working class and did not believe it to be the ultimate goal of humanity.

Utopian socialists establish a set of ideals or goals and present socialism as an alternative to capitalism, with subjectively better

attributes. Examples of this form of socialism include Robert Owen's New Harmony community.

Reform versus revolution

Reformists, such as classical social democrats, believe that a socialist system can be achieved by reforming capitalism. Socialism, in their view, can be reached through the existing political system by electing socialists to political office to implement economic reforms.

Revolutionaries, such as Marxists and Anarchists, believe such methods will fail because the state ultimately acts in the interests of capitalist business interests, and a socialist party will either be subsumed by the capitalist system or find itself unable to implement fundamental reforms. They believe that spontaneous revolution is the only means to establish a new socio-economic system. The task of socialist organizations or parties is to educate the masses to build socialist consciousness. They do not necessarily define revolution as a violent insurrection, but instead as a thorough and rapid change.

By contrast, Leninists and Trotskyists advocate the creation of a vanguard party, led by professional revolutionaries, to lead the working class in the conquest of the state. After taking power, Leninists seek to create a socialist state dominated by the revolutionary party, which they see as being essential for laying the foundations for a socialist economy. Revolutionary Syndicalists argue that revolutionary trade or industrial unions,

as opposed to the state or worker councils, are the only means to establish socialism.

Other theorists, such as Joseph Schumpeter, Thorstein Veblen and some of the Utopian socialists, believed that socialism would form naturally and spontaneously without, or with very limited, political action as the capitalist economic system decays into obsolescence.

Socialism from above or below

Socialism from above refers to the viewpoint that reforms or revolutions for socialism will come from, or be led by, higher status members of society who desire a more rational, efficient economic system. Claude Henri de Saint-Simon, and later evolutionary economist Thorstein Veblen, believed that socialism would be the result of innovative engineers, scientists and technicians who want to organise society and the economy in a rational fashion, instead of the working-class. Social democracy is often advocated by intellectuals and the middle-class, as well as the working class segments of the population. *Socialism from below* refers to the position that socialism can only come from, and be led by, popular solidarity and political action from the lower classes, such as the working class and lower-middle class. Proponents of socialism from below – such as syndicalists and orthodox Marxists.

Allocation of resources

Resource allocation is the subject of intense debate between market socialists and proponents of economic planning.

Many socialists advocate de-centralized participatory planning, where economic decision-making is based on self-management and self-governance and a democratic manner from the bottom-up without any directing central authority. Leon Trotsky held the view that central planners, regardless of their intellectual capacity, operated without the input and participation of the millions of people who participate in the economy and understand/respond to local economic conditions; such central planners would be unable to effectively coordinate all economic activity.

On the other hand, Leninists and some State socialists advocate directive planning where directives are passed down from higher planning authorities to enterprise managers, who in turn give orders to workers.

Equality of opportunity versus equality of outcome

Proponents of *equality of opportunity* advocate a society in which there are equal opportunities and life chances for all individuals to maximise their potentials and attain positions in society. This would be made possible by equal access to the necessities of life. This position is held by technocratic socialists, Marxists and social democrats. *Equality of outcome* refers to a state where

everyone receives equal amounts of rewards and an equal level of power in decision-making, with the belief that all roles in society are necessary and therefore none should be rewarded more than others. This view is shared by some communal utopian socialists and anarcho-communists.

Politics

The major socialist political movements are described below. Independent socialist theorists, utopian socialist authors, and academic supporters of socialism may not be represented in these movements. Some political groups have called themselves socialist while holding views that some consider antithetical to socialism. The term *socialist* has also been used by some politicians on the political right as an epithet against certain individuals who do not consider themselves to be socialists, and against policies that are not considered socialist by their proponents.

Anarchism

Anarchism features the belief that the state cannot be used to establish a socialist economy and proposes a political alternative based on federated decentralized autonomous communities. It includes proponents of both individualist anarchism and social anarchism. Mutualists advocate free-market socialism, collectivist anarchists workers cooperatives and salaries based on the amount of time contributed to production, anarcho-communists advocate a direct transition from capitalism to

libertarian communism and anarcho-syndicalists worker's direct action and the General strike.

Democratic socialism

Modern democratic socialism is a broad political movement that seeks to propagate the ideals of socialism within the context of a democratic system. Many democratic socialists support social democracy as a road to reform of the current system, but others support more revolutionary tactics to establish socialist goals. Conversely, modern social democracy emphasises a program of gradual legislative reform of capitalism in order to make it more equitable and humane, while the theoretical end goal of building a socialist society is either completely forgotten or redefined in a pro-capitalist way. The two movements are widely similar both in terminology and in ideology, although there are a few key differences.

Democratic socialism generally refers to any political movement that seeks to establish an economy based on economic democracy by and for the working class. Democratic socialists oppose democratic centralism and the revolutionary vanguard party of Leninism. Democratic socialism is difficult to define, and groups of scholars have radically different definitions for the term. Some definitions simply refer to all forms of socialism that follow an electoral, reformist or evolutionary path to socialism, rather than a revolutionary one.

Leninism

Leninism promotes the creation of a vanguard party, led by professional revolutionaries, to lead the working class in the conquest of the state. They believe that socialism will not arise spontaneously through the natural decay of capitalism, and that workers by themselves are unable to organize and develop socialist consciousness, therefore requiring the leadership of a revolutionary vanguard. After taking power, Leninists seek to create a socialist state in which the working class would be in power, which they see as being essential for laying the foundations for a transitional withering of the state towards communism. The mode of industrial organization championed by Leninists and Marxism-Leninism is the capitalist model of scientific management inspired by Fredrick Taylor. Leninism branched into Marxism-Leninism, Trotskyism, Stalinism and Maoism.

Libertarian socialism

Libertarian socialism is a non-hierarchical, non-bureaucratic, stateless society without private property in the means of production. Libertarian socialists oppose all coercive forms of social organization, promote free association in place of government, and oppose the coercive social relations of capitalism, such as wage labor. They oppose hierarchical leadership structures, such as vanguard parties, and are opposed to using the state to create socialism. Currents within libertarian socialism include Marxist tendencies such as left communism,

council communism and autonomism, as well as non-Marxist movements like anarchism.

Social democracy

Traditional social democrats advocated the creation of socialism through political reforms by operating within the existing political system of capitalism. The social democratic movement sought to elect socialists to political office to implement reforms. The modern social democratic movement has abandoned the goal of achieving a socialist economy, and instead advocates for social reforms to improve capitalism, such as a welfare state and unemployment benefits. It is best demonstrated by the economic format which has been used in Sweden, Denmark, Norway, and Finland in the past few decades. This approach been called the Nordic model.

Syndicalism

Syndicalism is a political movement that operates through industrial trade unions and rejects state socialism. Syndicalists advocate a socialist economy based on federated unions or syndicates of workers who own and manage the means of production.

History

The term socialism is attributed to Pierre Leroux, and to Marie Roch Louis Reybaud; and in Britain to Robert Owen in 1827,

father of the cooperative movement. Socialist models and ideas espousing common or public ownership have existed since antiquity. Mazdak, a Persian communal proto-socialist, instituted communal possessions and advocated the public good. And it has been claimed, though controversially, that there were elements of socialist thought in the politics of classical Greek philosophers Plato and Aristotle.

The first advocates of socialism favoured social levelling in order to create a meritocratic or technocratic society based upon individual talent. Count Henri de Saint-Simon is regarded as the first individual to coin the term *socialism*. Saint-Simon was fascinated by the enormous potential of science and technology and advocated a socialist society that would eliminate the disorderly aspects of capitalism and would be based upon equal opportunities. He advocated the creation of a society in which each person was ranked according to his or her capacities and rewarded according to his or her work. The key focus of Simon's socialism was on administrative efficiency and industrialism, and a belief that science was the key to progress.

This was accompanied by a desire to implement a rationally organised economy based on planning and geared towards large-scale scientific and material progress, and thus embodied a desire for a more directed or planned economy. Other early socialist thinkers, such as Thomas Hodgkin and Charles Hall, based their ideas on David Ricardo's economic theories. They reasoned that the equilibrium value of commodities approximated to prices charged by the producer when those commodities were

in elastic supply, and that these producer prices corresponded to the embodied labour – the cost of the labour that was required to produce the commodities. The Ricardian socialists viewed profit, interest and rent as deductions from this exchange-value.

West European social critics, including Robert Owen, Charles Fourier, Pierre-Joseph Proudhon, Louis Blanc, Charles Hall and Saint-Simon, were the first modern socialists who criticised the excessive poverty and inequality of the Industrial Revolution. They advocated reform, with some such as Robert Owen advocating the transformation of society to small communities without private property. Robert Owen's contribution to modern socialism was his understanding that actions and characteristics of individuals were largely determined by the social environment they were raised in and exposed to. On the other hand Charles Fourier advocated phalansteres which were communities that respected individual desires, affinities and creativity and saw that work has to be made enjoyable for people. The ideas of Owen and Fourier were tried in practice in numerous intentional communities around Europe and the American continent in the mid-19th century.

Linguistically, the contemporary connotation of the words *socialism* and *communism* accorded with the adherents' and opponents' cultural attitude towards religion. In Christian Europe, of the two, communism was believed the atheist way of life. In Protestant England, the word *communism* was too culturally and aurally close to the Roman Catholic *communion rite*, hence English atheists denoted themselves socialists.

Friedrich Engels argued that in 1848, at the time when the *Communist Manifesto* was published, "socialism was respectable on the continent, while communism was not." The Owenites in England and the Fourierists in France were considered "respectable" socialists, while working-class movements that "proclaimed the necessity of total social change" denoted themselves communists. This latter branch of socialism produced the communist work of Étienne Cabet in France and Wilhelm Weitling in Germany.

First International and Second International

The International Workingmen's Association also known as the First International, was founded in London in 1864. The IWA held a preliminary conference in 1865, and had its first congress at Geneva in 1866. Due to the wide variety of philosophies present in the First International, there was conflict from the start. The first objections to Marx's came from the Mutualists who opposed communism and statism. However, shortly after Mikhail Bakunin and his followers joined in 1868, the First International became polarised into two camps, with Marx and Bakunin as their respective figureheads The clearest differences between the groups emerged over their proposed strategies for achieving their visions of socialism. The First International became the first major international forum for the promulgation of socialist ideas.

As the ideas of Marx and Engels took on flesh, particularly in central Europe, socialists sought to unite in an international organisation. In 1889, on the centennial of the French Revolution

of 1789, the Second International was founded, with 384 delegates from 20 countries representing about 300 labour and socialist organizations. It was termed the "Socialist International" and Engels was elected honorary president at the third congress in 1893. Anarchists were ejected and not allowed in mainly because of the pressure from marxists.

Revolutions of 1917–1936

By 1917, the patriotism of World War I changed into political radicalism in most of Europe, the United States, and Australia. In February 1917, revolution exploded in Russia. Workers, soldiers and peasants established soviets, the monarchy fell, and a provisional government convoked pending the election of a constituent assembly.

In April of that year, Vladimir Lenin arrived in Russia from Switzerland, calling for "All power to the soviets." In October, his party, the Bolsheviks, won support of most soviets at the second All-Russian Congress of Soviets, while he and Leon Trotsky simultaneously led the October Revolution. As a matter of political pragmatism, Lenin reversed Marx's order of economics over politics, allowing for a political revolution led by a vanguard party of professional revolutionaries rather than a spontaneous establishment of socialist institutions led by a spontaneous uprising of the working class as predicted by Karl Marx. On 25 January 1918, at the Petrograd Soviet, Lenin declared "Long live the world socialist revolution!" He proposed an immediate armistice on all fronts, and transferred the land of the landed

proprietors, the crown and the monasteries to the peasant committees without compensation.

On 26 January 1918, the day after assuming executive power, Lenin wrote *Draft Regulations on Workers' Control*, which granted workers control of businesses with more than five workers and office employees, and access to all books, documents and stocks, and whose decisions were to be "binding upon the owners of the enterprises". Governing through the elected soviets, and in alliance with the peasant-based Left Socialist-Revolutionaries, the Bolshevik government began nationalising banks, industry, and disavowed the national debts of the deposed Romanov royal régime. It sued for peace, withdrawing from World War I, and convoked a Constituent Assembly in which the peasant Socialist-Revolutionary Party won a majority.

The Constituent Assembly elected Socialist-Revolutionary leader Victor Chernov President of a Russian republic, but rejected the Bolshevik proposal that it endorse the Soviet decrees on land, peace and workers' control, and acknowledge the power of the Soviets of Workers', Soldiers' and Peasants' Deputies. The next day, the Bolsheviks declared that the assembly was elected on outdated party lists, and the All-Russian Central Executive Committee of the Soviets dissolved it.

The Bolshevik Russian Revolution of January 1918 engendered Communist parties worldwide, and their concomitant revolutions of 1917-23. Few Communists doubted that the Russian success of socialism depended upon successful, working-class socialist

revolutions in developed capitalist countries. In 1919, Lenin and Trotsky organised the world's Communist parties into a new international association of workers – the Communist International, also called the Third International.

By 1920, the Red Army, under its commander Trotsky, had largely defeated the royalist White Armies. In 1921, War Communism was ended and, under the New Economic Policy, private ownership was allowed for small and medium peasant enterprises. While industry remained largely state-controlled, Lenin acknowledged that the NEP was a necessary capitalist measure for a country unripe for socialism. Profiteering returned in the form of "NEP men" and rich peasants gained power in the countryside.

In 1922, the fourth congress of the Communist International took up the policy of the United Front, urging Communists to work with rank and file Social Democrats while remaining critical of their leaders, who they criticised for betraying the working class by supporting the war efforts of their respective capitalist classes. For their part, the social democrats pointed to the dislocation caused by revolution, and later, the growing authoritarianism of the Communist Parties. When the Communist Party of Great Britain applied to affiliate to the Labour Party in 1920 it was turned down.

In 1923, on seeing the Soviet State's growing coercive power, the dying Lenin said Russia had reverted to "a bourgeois tsarist machine... barely varnished with socialism." After Lenin's death

in January 1924, the Communist Party of the Soviet Union – then increasingly under the control of Joseph Stalin – rejected the theory that socialism could not be built solely in the Soviet Union, in favour of the concept of *Socialism in One Country*. Despite the marginalised Left Opposition's demand for the restoration of Soviet democracy, Stalin developed a bureaucratic, authoritarian government, that was condemned by democratic socialists, anarchists and Trotskyists for undermining the initial socialist ideals of the Bolshevik Russian Revolution.

The Russian Revolution of October 1917 brought about the definitive ideological division between Communists as denoted with a capital "C" on the one hand and other communist and socialist trends such as anarcho-communists and social democrats, on the other. The Left Opposition in the Soviet Union gave rise to Trotskyism which was to remain isolated and insignificant for another fifty years, except in Sri Lanka where Trotskyism gained the majority and the pro-Moscow wing was expelled from the Communist Party.

After World War II

In 1951, British Health Minister Aneurin Bevan expressed the view that, "It is probably true that Western Europe would have gone socialist after the war if Soviet behaviour had not given it too grim a visage. Soviet Communism and Socialism are not yet sufficiently distinguished in many minds." In 1951, the Socialist International was re-founded by the European social democratic parties. It declared: "Communism has split the International

Labour Movement and has set back the realisation of Socialism in many countries for decades... Communism falsely claims a share in the Socialist tradition. In fact it has distorted that tradition beyond recognition. It has built up a rigid theology which is incompatible with the critical spirit of Marxism."

In the postwar years, socialism became increasingly influential throughout the so-called Third World. Countries in Africa, Asia, and Latin America frequently nationalised industries held by foreign owners. The Soviet Union had become a superpower through its adoption of a planned economy, albeit at enormous human cost. This achievement seemed hugely impressive from the outside, and convinced many nationalists in the former colonies, not necessarily communists or even socialists, of the virtues of state planning and state-guided models of social development. This was later to have important consequences in countries like China, India and Egypt, which tried to import some aspects of the Soviet model.

Social democrats in power

The Australian Labor Party, the first social democratic labour party in the world, was formed in 1891. In 1904, Australians elected the first Labor Party prime minister in the world: Chris Watson. In 1945, the British Labour Party, led by Clement Attlee, was elected to office based upon a radical socialist programme. Social Democratic parties dominated post-war politics in countries such as France, Italy, Czechoslovakia, Belgium and Norway. In Sweden, the Social Democratic Party held power from

1936 to 1976, 1982 to 1991, and 1994 to 2006. At one point, France claimed to be the world's most state-controlled capitalist country. The nationalised public utilities included Charbonnages de France, Electricité de France, Gaz de France, Air France, Banque de France, and Régie Nationale des Usines Renault. Post-World War II social democratic governments introduced social reform and wealth redistribution via state welfare and taxation.

United Kingdom

In the UK, the Labour Party was influenced by the British social reformer William Beveridge, who had identified five "Giant Evils" afflicting the working class of the pre-war period: "want", disease, "ignorance", "squalor" and "idleness". Unemployment benefits, national insurance and state pensions were introduced by the 1945 Labour government. Aneurin Bevan, who had introduced the Labour Party's National Health Service in 1948, criticised the Attlee government for not progressing further, demanding economic planning and criticising the implementation of nationalisation for not empowering the workers with democratic control of operations.

The UK Labour Government nationalised major public utilities such as mines, gas, coal, electricity, rail, iron, steel, and the Bank of England. British Petroleum, privatised in 1987, was officially nationalised in 1951, and there was further government intervention during the 1974–79 Labour Government Anthony Crosland said that in 1956, 25 per cent of British industry was nationalised, and that public employees, including those in

nationalised industries, constituted a similar percentage of the country's total employed population. The Labour government, however, did not seek to end capitalism, and the "government had not the smallest intention of bringing in the 'common ownership of the means of production, distribution, and exchange'", Labour re-nationalised steel after the Conservatives denationalised it, and nationalised car production. In 1977, major aircraft companies and shipbuilding were nationalised.

The National Health Service provided taxpayer-funded health care to everyone, free at the point of service. Working-class housing was provided in council housing estates, and university education became available via a school grant system. Ellen Wilkinson, Minister for Education, introduced taxpayer-funded milk in schools, saying, in a 1946 Labour Party conference: "Free milk will be provided in Hoxton and Shoreditch, in Eton and Harrow. What more social equality can you have than that?" Clement Attlee's biographer argued that this policy "contributed enormously to the defeat of childhood illnesses resulting from bad diet. Generations of poor children grew up stronger and healthier, because of this one, small, and inexpensive act of generosity, by the Attlee government".

The "Nordic model"

The Nordic model refers to the economic and social models of the Nordic countries. This particular adaptation of the mixed market economy is characterised by more generous welfare states, which are aimed specifically at enhancing individual autonomy,

ensuring the universal provision of basic human rights and stabilising the economy. It is distinguished from other welfare states with similar goals by its emphasis on maximising labour force participation, promoting gender equality, egalitarian and extensive benefit levels, large magnitude of redistribution, and liberal use of expansionary fiscal policy. This has included high degrees of labour union membership. In 2008, labour union density was 67.5% in Finland, 67.6% in Denmark, and 68.3% in Sweden. In comparison, union membership was 11.9% in the United States and 7.7% in France. The Nordic Model however is not a single model with specific components or rules; each of the Nordic countries has its own economic and social models, sometimes with large differences from its neighbours.

Social democrats adopt free market policies

Many social democratic parties, particularly after the Cold war, adopted neoliberal-based market policies that include privatization, liberalization, deregulation and financialization; resulting in the abandonment of pursuing the development of moderate socialism in favor of market liberalism. Despite the name, these pro-capitalist policies are radically different from the many non-capitalist free-market socialist theories that have existed throughout history.

In 1959, the German Social Democratic Party adopted the Godesberg Program, rejecting class struggle and Marxism. In 1980, with the rise of conservative neoliberal politicians such as Ronald Reagan in the U.S., Margaret Thatcher in Britain and

Brian Mulroney, in Canada, the Western, welfare state was attacked from within. Monetarists and neoliberalism attacked social welfare systems as impediments to private entrepreneurship at public expense.

In the 1980s and 1990s, western European socialists were pressured to reconcile their socialist economic programmes with a free-market-based communal European economy. In the UK, the Labour Party leader Neil Kinnock made a passionate and public attack against the party's Militant Tendency at a Labour Party conference, and repudiated the demands of the defeated striking miners after the 1984–1985 strike against pit closures. In 1989, at Stockholm, the 18th Congress of the Socialist International adopted a new *Declaration of Principles*, saying:

Democratic socialism is an international movement for freedom, social justice, and solidarity. Its goal is to achieve a peaceful world where these basic values can be enhanced and where each individual can live a meaningful life with the full development of his or her personality and talents, and with the guarantee of human and civil rights in a democratic framework of society.

In the 1990s, released from the Left's pressure, the British Labour Party, under Tony Blair, posited policies based upon the free market economy to deliver public services via private contractors. In 1995, the Labour Party re-defined its stance on socialism by re-wording clause IV of its constitution, effectively rejecting socialism by removing any and all references to public, direct worker or municipal ownership of the means of production.

In 1995, the British Labour Party revised its political aims: "The Labour Party is a democratic socialist party. It believes that, by the strength of our common endeavour we achieve more than we achieve alone, so as to create, for each of us, the means to realise our true potential, and, for all of us, a community in which power, wealth, and opportunity are in the hands of the many, not the few."

The objectives of the Party of European Socialists, the European Parliament's socialist bloc, are now "to pursue international aims in respect of the principles on which the European Union is based, namely principles of freedom, equality, solidarity, democracy, respect of Human Rights and Fundamental Freedoms, and respect for the Rule of Law." As a result, today, the rallying cry of the French Revolution – "Egalité, Liberté, Fraternité" – which overthrew absolutism and ushered industrialization into French society, are promoted as essential socialist values.

Chapter 4

Role of Indian Constitutional in Indispensability of Justice

Constitution of India

Constitution of India is considered to be the supreme law of land as it lays down the framework of fundamental political principles, establishing the structure, procedures, powers and duties of the government and mentions the fundamental rights, directive principles and duties of citizens. It is the longest written constitution of any sovereign nation and a total of 117,369 words in the English language. However, besides the English version, there is also an official Hindi translation available. The Indian constitution declares India as a `Sovereign, Socialist Democratic, and Republic` with a parliamentary system of government.

Formation of Constitution of India

The Constitution of India was adopted by the Constituent Assembly of India on 26th November 1949 and it came into force on 26th January 1950. Dr. BR Ambedkar was the Chairman of the Drafting Committee. India became independent from the colonial rule of the British Empire and a need for a competent government arose. However, during the prominence of the British Raj, the Government of India Act 1935 was passed, which was the

last Constitution of India during the British rule. The act laid down principles stating and granting autonomy to the Indian provinces. The Government of India Act also provided for establishment of an Indian Federation and the Provincial assemblies include more elected Indian representatives, who in turn could lead majorities and form governments. However, Governors retained discretionary powers regarding summoning of legislatures, giving assents to bills and administering certain special regions. This present constitution of India is modelled on the basis of the Government of India Act.

Constituent Assembly of India

After the Second World War came to an end, a new government came to power in the United Kingdom. A new British government announced its Indian Policy in 1946, at the initiative of British Prime Minister Clement Attlee. A cabinet mission was formulated to discuss and finalize plans for the transfer of power from the British Raj to Indian leadership and providing India with independence. The main aim of the Cabinet mission was to discuss the framework of the Constitution of India and lay down the procedure to be followed by the drafting body. The Constitution was drafted by the Constituent Assembly and it was elected by the elected members of the provincial assemblies. Sachidanand Sinha was chosen as the first president of the Constituent Assembly and later Rajendra Prasad was elected president of the Constituent Assembly. The Constituent Assembly of India consisted of the prominent figures of the nation

including Jawaharlal Nehru, Chakravarti Rajagopalachari, Rajendra Prasad, Sardar Vallabhbhai Patel, Maulana Abul Kalam Azad as well as Shyama Prasad Mukherjee. The assembly also comprised of members from the Anglo-Indian community, scheduled classes, Parsi community and the Gorkha Community. Women members were also represented the constituent assembly and Sarojini Naidu was a well-known women member.

Drafting Committee of Indian Constitution

The Constituent Assembly met on August 14, 1947 and various decisions were taken in the committee. The concept of Indian Flag was taken in the assembly meeting. A flag with three colours, Saffron, White and Green with the Ashoka Chakra was selected. Furthermore, the National Emblem of India was decided and it has been taken from the Lion Capital at Sarnath of Ashoka. The Indian Government adapted it on 26th January 1950 when the country became a republic. The Indian constitution was prepared by Dr.Babasaheb Ambedkar In addition to that it was decided to form a drafting committee with Dr. B. R. Ambedkar as the Chairman along with six other members. A Draft Constitution was prepared by the Drafting Committee of Indian Constitution and submitted to the Assembly on November 4, 1947. The assembly finally took over a period of 2 years, 11 months and 18 days before adopting the Constitution.

Structure of Indian Constitution

The structure of the Constitution of India comprise of the preamble, twenty-two parts containing three hundred and ninety five articles, twelve schedules of Indian Constitution, ninety-four amendments of Indian Constitution, and five appendices. The Constitution distributes its legislative powers between Parliament and State legislatures. The residuary powers invest in the Parliament and the centrally administered territories are called Union Territories. The Constitution provides for a Parliamentary form of government which is federal in structure with certain unitary features. The constitutional head of the Executive of the Union is the President. Since the enactment of the constitution has supported for a steady concentration of power to the central government, especially to Prime Minister`s Office or the. In Article 79 of the Constitution of India it is laid down that the council of the Parliament of the Union will consist of the President and two Houses as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). In Article 74(1), it is stated that the Constitution provides that there shall be a Council of Ministers with the Prime Minister as its head to aid and advise the President. The real executive power is thus vested in the Council of Ministers with the Prime Minister as its head.

Salient Features of Indian Constitution

Salient features of Indian constitution reveal its unique formulation. The constitution of India was complied on the acquisition of Independence and there are a number of features which are typical to a document of political declaration of a newly independent state. The various features of the Indian constitution are briefly discussed below.

Lengthiest Constitution : The Indian Constitution is the lengthiest one comprising of 395 Articles divided into 22 parts and 9 Schedules. It is a detailed document in which the functions of the Legislative, Executive and Judicial organs both at the Centre and in the States have been elaborately prescribed.

Secular State : A salient feature of the Constitution was its emphasis on secularism. People are not discriminated on the basis of religion. All citizens enjoy freedom of worship and possess equal civil and political rights irrespective of their religious beliefs. The State does not have a religion of its own.

Fundamental Rights : The Constitution provides a number of fundamental rights which are noted under six categories. They are right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights for minorities and the right to seek constitutional remedies. The

Supreme Court and High Courts are empowered to safeguard these fundamental rights.

Directive Principles of State Policy : The Constitution enumerates several Directive Principles of State Policy which are intended to be implemented by the Centre and State Governments in due course. They are aimed at the promotion of the material and moral well-being of the people and to transform India into a Welfare State. The Directive Principles cannot be enforced by the law courts. They are only some guidelines issued to the future governments.

Federal in Form and Unitary in Essence: Another salient feature of the Indian Constitution is that it has provided a system of government which is federal in form but unitary in essence and spirit. It has three essential requisites of a federation, a written and rigid constitution, distribution of powers between the Centre and the States, and a Supreme Court. But in essence, the Indian Constitution is unitary in character. The Union Government exercises almost unquestioned control over the States in legislative, financial and administrative spheres. This control becomes tighter in times of emergencies.

Parliamentary Form of Government : The Constitution provides a Parliamentary form of Government in the Centre as well as in the States. The Indian President and the State Governor are mere Constitutional heads. The Cabinet exercises the executive powers and is responsible to the concerned legislature. The Cabinet can

be removed from office by a vote of no-confidence in the legislature even before its term of office is over.

Judicial Review : Another significant feature of the Indian Constitution is the provision for Judicial Review. This means that the Supreme Court of India is empowered to declare a law passed by the Indian Parliament as null and void if it is inconsistent with the Fundamental Rights. In the case of the Acts passed by the State Legislatures, this power is vested with the concerned High Courts.

Rigid as well as Flexible: The Indian Constitution is rigid in some respects and flexible in other respects.

Independent Judiciary: The Constitution has made the judiciary independent of the executive. The President of India appoints the judges of the Supreme Court and High Courts after consulting the Chief Justice of India. The judges are free from the executive control. Their tenure is guaranteed and their salaries are fixed by the Constitution.

Fundamental Duties : Another salient feature of the Indian Constitution is the incorporation of the Fundamental duties of citizens. The 42nd amendment of 1976 added Article 51-A to the Constitution requiring all citizens to fulfil 10 duties. Failure to perform these duties does not carry any penalty, yet the citizens are expected to follow them.

Adult Franchise : Adult suffrage is an important feature of the Constitution. All the adults who attained 21 years of age became

eligible to exercise their franchise. Thereby, nearly 50 per cent of the population was enrolled as voters.

Bicameral Legislature : Bicameral Legislature was constituted at the Centre as well as in some of the States. The members of the Lower House are directly elected by the people on the basis of the adult franchise. The life of the lower House is 5 years unless it is dissolved earlier. The members of the Upper House are indirectly elected for a period of 6 years. The Upper House is a permanent body, one third of its members retiring every two years.

Preamble of the Indian Constitution

The Constitution of India opens with the Preamble which is like the preface of the constitution. The Preamble is not a part of the Constitution of India as it is not enforceable in a court of law. Nevertheless, the Preamble is useful as an interpretive tool. It is an integral part of the constitution and describes the basic structure of the Constitution of India. The Preamble of Indian Constitution puts forth:

"We, The People of India, Having Solemnly Resolved To Constitute India Into A Sovereign, Socialist, Secular, Democratic Republic and to secure to all its citizens:

- Justice, social, economic and political;

- Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;

In Our Constituent Assembly This Twenty-Sixth Day of November, 1949, Do Hereby Adopt, Enact and Give To Ourselves This Constitution"

However, the original draft of the constitution had only the words `Sovereign Democratic Republic` in the first line. The words `Socialist and Secular` were inserted by the 42nd amendment and the words `Unity of the Nation` were changed to `Unity and Integrity of the Nation. `

Fundamental Rights and Duties

Fundamental Rights

Fundamental Rights are provided to the citizens by the Constitution of India. The Fundamental Rights and Duties are among the vital sections of the Constitution and prescribe the fundamental obligations of the state to its citizens and the duties of the citizens to the state. These are the essential elements of the constitution and they were developed by the Constituent Assembly of India between 1947 and 1949. Part III of the Constitution of India describes the Fundamental Rights offered to

the country`s citizens. Fundamental Rights are essential human rights that can are offered to every citizen irrespective of caste, race, creed, place of birth, religion or gender. Fundamental Rights are subjected to specific restrictions and enforceable by courts. These are equal to freedoms and these rights are essential for personal good and the society at large.

Fundamental Rights are preserved as they guarantee civil liberties to all the citizens of the country for a calm and pleasant life. These are individual rights and comprise freedom of speech and expression, freedom to practice religion, equality before law, freedom of association and peaceful assembly and the right to constitutional remedies for the safeguard of civil rights by means of writs such as habeas corpus. The concept of providing the fundamental rights to the citizens has been taken from the England`s Bill of Rights; United States Bill of Rights and also France`s Declaration of the Rights of Man. Anyone who is violating the fundamental rights will face punishments in the court of law.

The Constitution of India guarantees six Fundamental Rights to the citizens. Right to Equality is the foremost right guaranteed to the citizens of India. It is provided in Articles 14, 15, 16, 17 and 18 of the constitution. This right is regarded as the principal foundation of all other rights and liberties. The Right to Equality guarantees Equality before law as per which citizens shall be equally protected by the laws of the country. Article 15 of the constitution states that there will be social equality and equal accessibility to public areas and no person shall be discriminated

on the basis of caste, religion and language. Equality in matters of public employment is provided in Article 16 of the constitution of India that defines that all citizens can apply for government. Article 17 puts forth abolition of untouchability. The practice of untouchability is an offense and anyone found doing so is punishable by law. Abolition of titles is another right to equality described by the Article 18 of the constitution. It forbids the state from conferring any titles to the citizens of India.

Among the Fundamental Rights, Right to freedom is included in the articles 19, 20, 21 and 22. Right to freedom includes Freedom of speech and expression, Freedom to assemble peacefully without arms, Freedom to form associations or unions and Freedom to move freely throughout the territory of India. Furthermore, Right to freedom also states that citizens have the Freedom to reside and settle in any part of the territory of India and also have the Freedom to practice any profession or to carry on any occupation, trade or business. However, subject to reasonable restrictions by the State in the interest of the general public. Certain safeguards are envisaged to protect the citizens from exploitation and coercion.

Right against exploitation is another essential among the Fundamental Rights. This right is given in the Articles 23 and 24. It provides for two provisions such as abolition of trafficking in human beings and forced labour. The right also lays down abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines. Right to freedom of religion is included under articles 25, 26, 27 and 28. It provides

religious freedom to all citizens of India and sustains the principle of secularism in India. The Constitution provides that all religions are equal before the state and no religion shall be given preference over the other. Citizens are free to preach, practice and propagate any religion of their choice.

Fundamental Rights also provided Cultural and educational rights to its citizens and it is covered in Articles 29 and 30. According to this right ant community which has a language and a script of its own has the right to conserve and develop them. No citizen can be discriminated against for admission in State aided institutions. All minorities, religious or linguistic, can set up their own educational institutions in order to preserve and develop their own culture. Right to constitutional remedies is also provided in the constitution. This right authorises the citizens to move a court of law in case of any denial of the fundamental rights. The courts can issue various kinds of writs and these writs such as habeas corpus, mandamus, prohibition, quo warranto and certiorari. These writs help preserving and safeguarding the fundamental rights of the citizens of India.

Another prominent among the Fundamental Rights was the Right to property. Right to property in order to guarantee to all citizens the right to acquire hold and dispose off property. However, the 44th amendment act of 1978 removed the right to property from the list of Fundamental Rights. Article 300-A, was added to the Constitution which provided that `no person shall be deprived of his property save by authority of law`.

Fundamental rights are the freedoms that are given to the country`s citizens. They help in protecting as well as preventing gross violations of human rights. They give emphasis to fundamental unity of the country by guaranteeing the access and use of the same facilities, irrespective of caste, colour, creed and religion to all citizens. The fundamental rights were provided primarily to protect individuals from any arbitrary state actions, but some rights are enforceable against individuals. Only through a constitutional amendment, the Fundamental Rights can be altered. In addition to that during national and state emergency, the Fundamental Rights remain suspended.

Fundamental Duties

Fundamental Duties of India are guaranteed by the Constitution of India in Part IV. These fundamental duties are identified as the moral obligations that actually help in upholding the spirit of nationalism as well as to support the harmony of the nation. These duties are designed concerning the individuals and the nation. However, these fundamental duties are not legally enforceable. Furthermore, the citizens are morally obligated by the constitution to perform these duties. These Fundamental Duties were added by the 42nd Amendment Act in 1976. Article 51-A of the constitution provides ten Fundamental Duties of the citizen. These duties can be classified accordingly as relating to the environment, duties towards the state and the nation and also towards self. However, the fundamental duties are non-justiciable, and the main purpose of incorporating is to encourage the sense of patriotism among the country`s citizens.

The international instruments such as the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights include reference of such fundamental duties. These Fundamental Duties are such commitments that expand to the citizens as well as the state at large. According to the Fundamental Duties all the citizens should respect the national symbols as well as the constitution of the country. The fundamental duties of the land also intend to uphold the right of equality of all individuals, defend the environment and the public property, to build up scientific temper, to disown violence, to struggle towards excellence and to offer compulsory education. In addition, the 11th Fundamental Duty of the country was added in the year 2002 by the 86th constitutional amendment. It states that `every citizen who is a parent or guardian, to offer opportunities for education to his child or, as the case may be, ward between the age of six and 14 years`.

Fundamental Duties of India are as follows -

- To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- To cherish and follow the noble ideals which inspired our national struggle for freedom;
- To uphold and protect the sovereignty, unity and integrity of India;
- To defend the country and render national service when called upon to do so;

- To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- To value and preserve the rich heritage of our composite culture;
- To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- To develop the scientific temper, humanism and the spirit of inquiry and reform;
- To safeguard public property and to abjure violence;
- To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.

Chapter 5

Political Parties and Human Rights of Social Justice

Political party

A political party is a political organization that typically seeks to influence government policy, usually by nominating their own candidates and trying to seat them in political office. Parties participate in electoral campaigns, educational outreach or protest actions. Parties often espouse an expressed ideology or vision bolstered by a written platform with specific goals, forming a coalition among disparate interests.

Regulation of political parties

The freedom to form, declare membership in, or campaign for candidates from a political party is considered a measurement of a state's adherence to liberal democracy as a political value. Regulation of parties may run from a crackdown on or repression of all opposition parties, a norm for authoritarian governments, to the repression of certain parties which hold or promote views which run counter to the general ideology of the state's incumbents. Furthermore, in the case of far-right, far-left and regionalist parties in the national parliaments of much of the European Union, mainstream political parties may form an

informal cordon sanitaire which applies a policy of non-cooperation towards those "Outsider Parties" present in the legislature which are viewed as 'anti-system' or otherwise unacceptable for government. *Cordon Sanitaires*, however, have been increasingly abandoned over the past two decades in multi-party democracies as the pressure to construct broad coalitions in order to win elections - along with the increased willingness of outsider parties themselves to participate in government - has led to many such parties entering electoral and government coalitions.

Starting in the second half of the 20th century modern democracies have introduced rules for the flow of funds thru party coffers, e.g. the Canada Election Act 1974, the PPRA in the U.K. or the FECA in the U.S.. Such political finance regimes stipulate a variety of regulations for the transparency of fundraising and expenditure, limit or ban specific kinds of activity and provide public subsidies for party activity, including campaigning.

Voting systems

The type of electoral system is a major factor in determining the type of party political system. In countries with first past the post voting systems there is an increased likelihood for the establishment of a two party system. Countries that have a proportional representation voting system, as exists throughout Europe, or to a greater extent preferential voting systems, such

as in Australia or Ireland, three or more parties are often elected to public office.

Partisan style

Partisan style varies from government to government, depending on how many parties there are, and how much influence each individual party has.

Nonpartisan

In a nonpartisan system, no official political parties exist, sometimes reflecting legal restrictions on political parties. In nonpartisan elections, each candidate is eligible for office on his or her own merits. In nonpartisan legislatures, there are no typically formal party alignments within the legislature. The administration of George Washington and the first few sessions of the United States Congress were nonpartisan. Washington also warned against political parties during his Farewell Address. In the United States, the unicameral legislature of Nebraska is nonpartisan. In Canada, the territorial legislatures of the Northwest Territories and Nunavut are nonpartisan. In New Zealand, Tokelau has a nonpartisan parliament. Many city and county governments are nonpartisan. Nonpartisan elections and modes of governance are common outside of state institutions. Unless there are legal prohibitions against political parties, factions within nonpartisan systems often evolve into political parties.

Single dominant party

In single-party systems, one political party is legally allowed to hold effective power. Although minor parties may sometimes be allowed, they are legally required to accept the leadership of the dominant party. This party may not always be identical to the government, although sometimes positions within the party may in fact be more important than positions within the government. China is an example; others can be found in Fascist states, such as Nazi Germany between 1934 and 1945. The single-party system is thus usually equated with dictatorships and tyranny.

In dominant-party systems, opposition parties are allowed, and there may be even a deeply established democratic tradition, but other parties are widely considered to have no real chance of gaining power. Sometimes, political, social and economic circumstances, and public opinion are the reason for others parties' failure. Sometimes, typically in countries with less of an established democratic tradition, it is possible the dominant party will remain in power by using patronage and sometimes by voting fraud. In the latter case, the definition between Dominant and single-party system becomes rather blurred. Examples of dominant party systems include the People's Action Party in Singapore, the African National Congress in South Africa and the Democratic Party of Socialists of Montenegro in Montenegro. One party dominant systems also existed in Mexico with the Institutional Revolutionary Party until the 1990s, in the southern United States with the Democratic Party from the late 19th century until the 1970s, in Indonesia with the *Golongan Karya*

from the early 1970s until 1998, and in Japan with the Liberal Democratic Party until 2009.

Two political parties

Two-party systems are states such as Jamaica, and Ghana in which there are two political parties dominant to such an extent that electoral success under the banner of any other party is almost impossible. One right wing coalition party and one left wing coalition party is the most common ideological breakdown in such a system but in two-party states political parties are traditionally catch all parties which are ideologically broad and inclusive.

The United States is widely considered a two-party system. Since the birth of the republic a conservative and liberal party have usually been the status quo within American politics, with some exception. Third parties often receive little support and are not often the victors in many races. Despite this, there have been several examples of third parties siphoning votes from major parties that were expected to win.

The United Kingdom is widely considered a two-party state, as historically power has alternated between two dominant parties. However, the 2010 General Election resulted in a coalition government led by the Conservative Party and including the Liberal Democrats. There are also numerous other parties that hold a number of seats in Parliament. A plurality voting system

usually leads to a two-party system, a relationship described by Maurice Duverger and known as Duverger's Law.

Multiple political parties

Multi-party systems are systems in which more than two parties are represented and elected to public office.

Australia, Canada, Pakistan, India, Republic of Ireland, United Kingdom and Norway are examples of countries with two strong parties and additional smaller parties that have also obtained representation. The smaller or "third" parties may form a part of a coalition government together with one of the larger parties or act independently from the other dominant parties.

More commonly, in cases where there are three or more parties, no one party is likely to gain power alone, and parties work with each other to form coalition governments. This has been an emerging trend in the politics of the Republic of Ireland since the 1980s and is almost always the case in Germany on national and state level, and in most constituencies at the communal level. Furthermore since the forming of the Republic of Iceland there has never been a government not led by a coalition. Political change is often easier with a coalition government than in one-party or two-party dominant systems.

Party funding

Political parties are funded by contributions from party members, individuals and organizations which share their political ideas or who stand to benefit from their activities or governmental public funding. Political parties and factions, especially those in government, are lobbied vigorously by organizations, businesses and special interest groups such as trades unions. Money and gifts to a party, or its members, may be offered as incentives.

In the United Kingdom, it has been alleged that peerages have been awarded to contributors to party funds, the benefactors becoming members of the Upper House of Parliament and thus being in a position to participate in the legislative process. Famously, Lloyd George was found to have been selling peerages and to prevent such corruption in the future, Parliament passed the Honours (Prevention of Abuses) Act 1925 into law. Thus the outright sale of peerages and similar honours became a criminal act, however some benefactors are alleged to have attempted to circumvent this by cloaking their contributions as loans, giving rise to the 'Cash for Peerages' scandal. Such activities have given rise to demands that the scale of donations should be capped. As the costs of electioneering escalate, so the demands made on party funds increase. In the UK some politicians are advocating that parties should be funded by the state; a proposition that promises to give rise to interesting debate.

In many other democracies such subsidies for party activity have been introduced decades ago. Germany, Sweden, Israel, Canaada,

Austria and Spain are cases in point. More recently among others France, Japan, Mexico, the Netherlands and Poland have followed suit.

Along with the increased scrutiny of donations there has been a long term contraction in party memberships in most western democracies which itself places more strains on funding. For example in the United Kingdom and Australia membership of the two main parties in 2006 is less than an 1/8 of what it was in 1950, despite significant increases in population over that period. In Ireland, elected representatives of the Sinn Féin party take only the average industrial wage from their salary as a representative, while the rest goes into the party budget. Similarly elected representatives of the Socialist Party take only the average industrial wage out of their entire earnings. However, "rent-seeking" continues to be a feature of many political parties around the world.

Public financing for parties and candidates during elections has several permutations and is increasingly common. There are two broad categories of funding, direct, which entails a montetary transfer to a party, and indirect, which includes broadcast time on state media, use of the mail service or supplies. According to the Comparative Data from the ACE Electoral Knowledge Network, out of a sample of over 180 nations, 25% of nations provide no direct or indirect public funding, 58% provide direct public funding and 60% of nations provide indirect public funding. Some countries provide both direct and indirect public funding to political parties. Funding may be equal for all parties

or depend on the results of previous campaigns or the number of candidates participating in an election. Frequently parties rely on a mix of private and public funding and are required to disclose their finances to the Electoral Management Body.

Funding can also be provided by foreign aid. International donors provide financing to political parties in developing countries as a means to promote democracy and good governance. Support can be purely financial or otherwise frequently is provided as capacity development activities including the development of party manifestos, party constitutions and campaigning skills. Developing links between ideologically linked parties is another common feature of international support for a party. Sometimes this can be perceived as directly supporting the political aims of political party, such as the support of the US government to the Georgian party behind the Rose Revolution. Other donors work on a more neutral basis, where multiple donors provide grants in countries accessible by all parties for various aims defined by the recipients. There have been calls by leading development think-tanks, such as the Overseas Development Institute, to increase support to political parties as part of developing the capacity to deal with the demands of donors to improve governance.

Colors and emblems for parties

Generally speaking, over the world, political parties associate themselves with colors, primarily for identification, especially for voter recognition during elections. Conservative parties generally use blue or black. Pink sometimes signifies moderate socialist.

Yellow is often used for libertarianism or classical liberalism. Red usually signifies leftist, communist or socialist parties except in Uruguay where the "Partido Colorado" (red party) is a (politically) conservative party. In this case, the use of the color red comes from the origins of the party. Similarly the Republican Party in America is generally designated by the colour red. Green is the color for green parties, Islamist parties and Irish republican parties. Orange is sometimes a color of nationalism, such as in the Netherlands, in Israel with the Orange Camp or with Ulster Loyalists in Northern Ireland; it is also a color of reform such as in Ukraine. In the past, Purple was considered the color of royalty (like white), but today it is sometimes used for feminist parties. White also is associated with nationalism. "Purple Party" is also used as an academic hypothetical of an undefined party, as a centralist party in the United States and as a highly idealistic "peace and love" party —in a similar vein to a Green Party, perhaps. Black is generally associated with fascist parties, going back to Benito Mussolini's blackshirts, but also with Anarchism. Similarly, brown is often associated with Nazism, going back to the Nazi Party's brown-uniformed storm troopers.

Color associations are useful for mnemonics when voter illiteracy is significant. Another case where they are used is when it is not desirable to make rigorous links to parties, particularly when coalitions and alliances are formed between political parties and other organizations, for example: Red Tory, "Purple" (Red-Blue) alliances, Red-green alliances, Blue-green alliances, Traffic light coalitions, Pan-green coalitions, and Pan-blue coalitions.

Political color schemes in the United States diverge from international norms. Since 2000, red has become associated with the right-wing Republican Party and blue with the left-wing Democratic Party. However, unlike political color schemes of other countries, the parties did not choose those colors; they were used in news coverage of 2000 election results and ensuing legal battle and caught on in popular usage. Prior to the 2000 election the media typically alternated which color represented which party each presidential election cycle. The color scheme happened to get inordinate attention that year, so the cycle was stopped lest it cause confusion the following election.

The emblem of socialist parties is often a red rose held in a fist. Communist parties often use a hammer to represent the worker, a sickle to represent the farmer, or both a hammer and a sickle to refer to both at the same time.

The emblem of Nazism, the swastika or *"hakenkreuz"*, has been adopted as a near-universal symbol for almost any organized hate group, even though it dates from more ancient times.

Symbols can be very important when the overall electorate is illiterate. In the Kenyan constitutional referendum, 2005, supporters of the constitution used the banana as their symbol, while the "no" used an orange.

International organizations of political parties

During the 19th and 20th century, many national political parties organized themselves into international organizations

along similar policy lines. Notable examples are the International Workingmen's Association, the Socialist International, the Communist International, and the Fourth International, as organizations of working class parties, or the Liberal International, Hizb ut-Tahrir, Christian Democratic International and the International Democrat Union. Organized in Italy in 1945, the International Communist Party, since 1974 headquartered in Florence and with sections in six countries, is an expanding global party. Worldwide green parties have recently established the Global Greens. The Socialist International, the Liberal International, and the International Democrat Union are all based in London. Some administrations outlaw formal linkages between local and foreign political organizations, effectively outlawing international political parties.

Types of political parties

The French political scientist Maurice Duverger drew a distinction between cadre parties and mass parties. Cadre parties were political elites that were concerned with contesting elections and restricted the influence of outsiders, who were only required to assist in election campaigns. Mass parties tried to recruit new members who were a source of party income and were often expected to spread party ideology as well as assist in elections. Because cadre parties could not expect great loyalty, many have become hybrids, maintaining elite control while expanding membership. Socialist parties are examples of mass parties, while the British Conservative Party and the German Christian Democratic Union are examples of hybrid parties. In the United

States, where both major parties were cadre parties, the introduction of primaries and other reforms has transformed them so that power is held by activists who compete over influence and nomination of candidates.

Klaus von Beyme categorized European parties into nine families, which described most parties. He was able to arrange seven of them from left to right: communist, socialist, green, liberal, Christian democratic, conservative and libertarian. The position of two other types, agrarian and regional/ethnic parties varied. Another category he failed to mention are Islamic political parties, such as Hizb ut-Tahrir.

Political Parties of India

Political Parties are present in every country. In particulars these are very actively present in a democratic country like our India. The Political *parties* field candidates in elections. These contest elections by fielding their candidates. Infect, political parties are the most major actors in elections. The political party, which gets a majority of seats in the legislature, forms the government and other political parties act as opposition parties. A democratic government is always organized and worked by political parties. With out Political parties no democratic government can really work. That is why it is said, *"No Party No Democracy". Political Party* is an organization of several people who have similar political views. It tries to secure the power to rule. But this is done only through peaceful and constitutional means i.e. through

elections. Each political party tries to win elections for getting the power of rule. Further, Political Parties work for the promotion of national interest. A Political party is always keen to get more and more support of the people. Only such a support can help it to get the ruling power. To use political power for securing national interest is the objective before every political party. Political parties always depend upon peaceful and constitutional means. These play an active role in politics. These are democratically organized and these always work in a democratic way.

Features of a Political Party

A political party is a fairly large group of people.

- Members of a political party have similar political views or fait in one political ideology.
- Political party is an organized association. It has its constitution which defines its ideology, aims, objectives, and office-bearers of the Party
- A political party always tries to get the power to form the government and to rule the country.
- A political party has full faith is peaceful methods. In always acts through peaceful means, like elections, for fulfilling its aim.
- A political party always works for the promotion of interests of the nation as a whole.

- A political party always acts according to the provisions of the constitution and rules laid down by laws.
- A political party is actively involved in politics either as a ruling party or as an opposition party.
- A political party is actively involved in elections. It fields its candidates, organizes election campaigns and tries to win more and more seats in the elections.
- In a democratic state, several political parties freely participate in the political process. The people have the right and freedom to organize their political parties.

When several, essentially more than two political parties are actively involved in politics, the system is called Multi-party system. When two political parties act as major players in politics and others play a minor role, the system is called Bi-party system.

Function of Political Parties

Political Parties perform very essential and useful functions in every democracy. A democratic government always works through political parties. Election cannot be held without political parties. Political parties contest elections. These put up their candidates in elections. Each political party tries to secure maximum support for its candidates. When a political party or group of parties wins majority of seats in elections, it forms the government. Such political parties as do not get a majority, play the role of opposition parties. *Political parties* provide to the

people education about politics a government. People take part in elections and politics through their political parties. *Political parties* convey to the government the views and demands of the people. In elections, a very large number of candidates is fielded by political parties. *Political parties* always try to win public support by maintaining active contacts with the people. *Political parties* act as agencies for forming public opinion on varies issues and problems or the country. It also serves as agencies for the recruiting leaders. In fact, while working as active members of political parties several persons emerge as political leaders. It takes active part in the working of democracy. These also perform several social welfare functions and help the people during natural calamities like earthquakes, floods, famines, Tsunami and others.

Political Parties in India

India is world's largest functioning democracy. Democracy has been successfully working in India since her independence in 1947. After the inauguration of the Constitution of India on 26 January 1950 India became a democratic Republic and continues to be so till today. In the working of *Indian Democratic Republic*, several political parties have been playing a very important and useful role. Several parties have been now together acting as ruling parties. The people of India have the right and freedom to organize their political parties. Infect they have organized several political parties. Because of the prevailing regional and cultural diversities, the people of India have organized several political parites. India has a real multi-party system.

National Level Political Parties

Indian National Congress (INC), Bhartiya Janata Party(BJP), Communist Party of India (CPI) Communist Party Marxist (CPM) National Congress Party (NCP), Bahujan Samaj Party (BSP) are very active parties. These enjoy support and popularity in all parts of India. The Election Commercial of India has recognized these as National Level Parties.

Regional Level Political Parties

Along with these, several other political parties have been very active in one or two states. These are called regional parties or state level parties or local parities. *Dravid Munetra Kazghan (DMK). All India Anna Dravid Munetra Kazahan *AIADMK), Biju Janata Dal (BJD) Rashtrya Jaanata Dal (RJD), Shromani Akali Dal (SAD), Telugu Desam Party (TDP), Janata Dal Secular (JDS), Assom Gana Parishad (AGP)* are examples of regional parties in India.

Recognition of Political Parties

Infect, the *Election Commission of India* recognizes various political parties as *National Parties, Regional Parties, Local Parties and Registered parties.* Such recognition is based upon the performance of the political parties in elections. Such political parties as win several seats in several different states or poll a large proportion of votes of the people, are recognized as national parties. The political parties, which are active in two or three states, are recognizes as Regional Parties. A political party,

which is active only in one state, gets recognition as a local party or a state party. Each political party has its own constitution and an organization. Each has its own symbol. For example, the congress has Hand, the BJP Lotus Flower, and the BSP elephant, as their respective party symbols. Each political party has the freedom to carry out its activities in the country.

Registration and Classification of Political Parties

Each party in India has to get it registered with the *Election Commission*. Each Party has to submit a copy of its constitution and a list of its office bearers to the *Election Commission*. It has to affirm full faith in the Constitution of India. On the basis of the performance of political parties, the *Election Commission* recognizes each party either as a national party, or a regional party to a local party or registered and recognized party. The *Election Commission* grants such recognition on the basis of the achievement of various parties is elections, which are held from time to time. The political parties which are recognizes as national parties enjoy popularity and support in all parts of India or at least in three or more states. A regional parity is an active party in one or two states. All political parties national or regional or local have the freedom to freely participate in all elections. These are also free to perform other activities and to carry out their programmers. In practice all the *Indian political* parties always contest elections in India. The Constitution of India has granted to the people of India the fundamental right to freely organize their political parties. The only condition is that each political party has to declare its faith in the Constitution of

India and the sovereignty, unity and integrity of India as a sovereign independent republic.

Freedom of Wise Society and their rights

This chapter in vokes something that is not generally appealed to in contemporary philosophy: the idea of a wise society. One of its aims is to stimulate exploration of this idea, which is pertinent to several branches of the subject. These include both political philosophy and epistemology, in particular social epistemology. The idea of wisdom, in general, is a longstanding part of the philosophical repertoire. The very word “philosophy,” as is well known, comes from the Greek for “love of wisdom.”

That is not to say that there is general agreement on what wisdom is. Nor is it to say that latter day philosophical discourse is peppered with references to “wisdom,” Paradoxically perhaps, it isn’t. It is even less common to find references in this discourse to the wisdom of a society as opposed to that of an individual person. The same is true of the frequent contemporary philosophical references to knowledge, belief, and other close cousins of wisdom. There are incomparably more discussions of the knowledge and beliefs of individuals than of the knowledge and beliefs of societies.

Outside the circle of professional philosophers-and, indeed, within it-discussion of the latter topic may recently have been

stimulated by a popular work in which James Surowiecki argues that the wisdom of a crowd-"loosely defined"-may be superior to that of an expert on a given subject. As will emerge, a society, as I understand it, is a subtype of "crowd" in Surowiecki's sense. I take it that if a society can be wise, it will be better for being so, all else being equal. It is therefore important to consider both whether a society can be wise, and, if so, what that wisdom entails. For instance, given what it is, does a society's wisdom militate against its having some other valuable feature or features?

This paper addresses one aspect of the question just mooted: can a wise society be a free one? One's first response to this question is likely to be "Of course!" or at least "Why on earth not?" My main aim in this paper is to show how one can argue for a negative answer.

More precisely, it is to show how one can argue that, in plausible senses of the pertinent terms, the wiser a society is, the less free it is.

For the sake of a label, I call the argument I present the negative argument. It is essentially conceptual. It raises various evaluative questions but does not itself proceed at the level of evaluation. Given its focus, the paper might be categorized as an essay in political philosophy. Given that a good deal of time is spent elaborating an account of a wise society, however, it might also be categorized as an essay in social epistemology. Before setting out the negative argument I must explain how I am

interpreting its key terms. They are all open to, and have received, a variety of interpretations. Thus some degree of clarification is necessary. It is possible that the negative argument works for interpretations other than those I offer here. It is also possible that it fails to work for one or more plausible construals. For present purposes I set these possibilities aside.

I take a society to be a kind of social group, where paradigmatic social groups include informal discussion groups, army units, sports teams, and labour unions. To give a rough and partial characterization of such a group one might say, echoing Rousseau, that its members are unified in such a way that they constitute more than a mere aggregate of persons.

Typically a society, in particular, includes many smaller social groups. Thus within a given society there may be many families, labour unions, sports teams, and so on. A society is therefore relatively large, in contrast with a family, say, or a sports team. For now, this brief characterization of societies will suffice.

Personal Freedom and a Free Society

The freedom of a society, as I shall construe that, is closely tied to the personal freedom of the individual members of that society, understood in a certain way. A concern for personal freedom in some sense of the phrase is central to a number of evaluative stances in political philosophy.

Thus, on one account of it, anarchism involves “a concern for preserving individual freedom and a distaste for the coercive

measures of governments....” A government coerces by “threatening to use force or impose punishments if a person does not follow its laws”. Now, in what I take to be the central sense of the term, punishment requires a special standing or authority. As I understand it, to have the authority to punish is not necessarily to be justified in doing so, but it does away with a possible objection to its use by a given agent. It cannot be objected “It is not for you to do that.”

Indeed, anarchism is often characterized in terms of distaste, not so much for the coercive measures governments take but rather for government itself. Here government is construed as a matter of the authority to command, to demand or insist on compliance when noncompliance is threatened, and, where appropriate, to punish. The problem of government is posed in terms of the loss of personal autonomy inherent in the authority of one person over another, whether they command, demand conformity, or punish. That is the tenor of the well-known brand of philosophical anarchism that was advocated by Robert Paul Wolff, for instance.

The anarchist’s concern is often couched in terms of the authority of one person, or of a body of persons smaller than the society that is in question. I take it, meanwhile, that there can be whole societies-even societies reasonably thought of as political societies or polities-without such a ruling person or body. Even in such “acephalous” societies, there are issues of personal autonomy. Such societies are likely to have a variety of rules. Each member will then have the authority to insist on any other’s

conformity to a given rule and to rebuke any other for not conforming to it.

Evidently, I take it that one cannot rebuke someone without a special standing or authority. One can, of course, speak in a rebuking manner without such authority, just as one can speak in a demanding manner, without the authority actually to demand.

Rebukes and demands may be unaccompanied by physical force or by threats that such force will be applied unless what is demanded is done. There is, nonetheless, something forceful about any rebuke, just as there is something forceful about demanding. Indeed, in The Concept of Law, Hart suggests that rebukes lie at the informal end of a spectrum at the formal end of which lie punishments imposed through due process of law.

Penal sanctions may sound-and may be-worse than informal demands and rebukes, but most people do not relish such forceful interventions from others. Most would prefer not to incur the reproofs of strangers, the rebukes of colleagues, or the reprimands of friends and intimates. Mill, the great philosophical champion of liberty, saw this clearly. And verbal chastisement can be the precursor of physical violence.

Suppose, now, that there is a rule in my society that women are not to contradict men. I know that if I, a woman, contradict a man on some point, the other members of my society have the authority to rebuke me for doing so. Accordingly, I may regularly decide not to make some point though I desire to do so. In other

terms, my freedom is limited in an important way: there is something I want to do, but I risk an authoritative forceful negative response should I do it. The account of a society's freedom that I shall make use of in developing the negative argument reflects the idea that the standing threat of such a response is an important limitation on personal freedom. In speaking of a "threat" here I do not mean to imply that the response is imminent, or even probable, but rather that it is "in the cards." If someone has the standing to rebuke me for doing something, I know that, should he speak to me in a rebuking manner, I cannot dodge the issue by saying "It's none of your business." If he has the standing to rebuke me, it is his business.

I shall say that a given member, M1, of a society S, is personally free to perform a given action, A, in face of another member, M2, if and only if M1 is under no threat of an authoritative forceful negative reaction from M2 should M1 perform A or, indeed, should M1 propose to perform A. For the sake of brevity, I shall generally refer in what follows to being under no threat of a rebuke. It should be understood that all forms of authoritative forceful negative reaction are included under this heading.

Now, a given member, M1, of a society S, may be under a threat of rebuke from another member, M2, where these rebukes are not grounded in his membership in S as such. For instance, M1 promised M2, and no one else, that he would not do A. I am not concerned with such grounds here. The definition of personal freedom just given should be interpreted accordingly. What is at

issue is rebukes whose ground is some aspect of the membership of M1 and M2 in society S.

I take it that a society itself can be "personally free" in the defined sense, insofar as it can be a member of a society of societies. Meanwhile, the type of societal freedom with which this essay is concerned relates to the personal freedom of a society's members as just defined. This might be referred to as the society's internal freedom. My focal case continues to be a society whose members are individual human beings as opposed to other societies.

I shall assume that, as a matter of definition, a society becomes less free as particular personal freedoms are subtracted from those its various members already have. This is clearly only a partial account of societal freedom. It concerns only a single condition under which a society can be said to become less free than it was. Nonetheless it is of interest to ask whether a society's relative freedom in the respect at issue is altered by one or another factor.

I shall not attempt to offer a full account of a free society. Given the notion of personal freedom with which I am operating, however, a plausible account will not allow that a society is free when its members have little personal freedom. Nor will it demand that a free society be maximally free, where a maximally free society is one in which, for any action whatever, each member of the society is personally free to perform that action in face of any other member. It may reasonably be questioned

whether a maximally free society, as just defined, is possible. As will emerge, it can be argued that it is not, given what a society is.

A Wise Society

Some may be inclined to deny that there is such a thing as a society that is wise to any degree. They may point to the fact that wisdom involves or is closely connected to knowledge or, at least, good judgment and argue that a society is not the kind of thing that can be wise. Individual human beings can be wise but societies are not sufficiently like them for a wise society to be possible.

When it is presented, this argument may look plausible. Yet people regularly talk about a society's beliefs, judgments, decisions, and knowledge. Thus a particular society may be said to have made a wise (or unwise) decision, wrongly to consider itself superior to other societies, and so on.

When people talk about the belief of a society or other social group, they think of themselves as speaking literally rather than metaphorically. Rather than assuming that they are misguided, one might do well to consider what phenomenon on the ground, so to speak, they have in mind.

Perhaps because they think along the skeptical lines mentioned above, contemporary political philosophers have not paid attention to the idea of a wise society. Following John Rawls,

they have considered the key quality of a good society to be its justice and focused on that.

In the Republic, Plato also focused on a society's justice. This did not lead him to neglect the idea of a wise society. Indeed, he thought of a society's wisdom as necessary to its justice. Notoriously, he did not think this way about its freedom. Plato does talk about freedom. His picture of what he called "democracy" in Book of the Republic is perhaps the closest to true anarchy-and maximal personal freedom-that one can imagine. It is not clear, indeed, how consistent a picture this is. There is some talk of "laws" and "courts" of law, yet-he says-one can do anything one pleases. Those condemned to death or exile walk about as if they are heroes and nobody cares.

This is not Plato's favored scenario. In the type of political society he favors, the laws are taken seriously. Most important for present purposes, the rulers are few in number and carefully selected and trained. Those with the right natural aptitudes go through the rigorous training necessary for one who loves wisdom-a philosopher-to reach his goal, knowledge of the Good.

Before the details of this training have been developed Plato considers what it is for a political society to be wise. What he says is open to different interpretations, and I shall not attempt carefully to probe it here. At a minimum, it seems fair to characterize his opinion as follows. The judgments of the rulers, in making rules and decisions for the society, must, in a phrase, track the Good.

I shall work with an account of a wise society that has something of the same spirit. I shall not require that such a society is ruled by a particular person or body of persons, however-let alone a body of persons trained from birth for the purpose. Thus I shall allow that in principle an acephalous society can be wise. I shall not attempt carefully to explore either the idea of wisdom in general or the idea of a wise society in particular. The account of the latter that I shall work with has something to be said for it, but it may well be that an alternative account is more plausible. I hope that my discussion will help to stimulate consideration of precisely this issue. In the meantime, it is important to see that on the account of a wise society proposed, the negative argument is sound. A wise society, on this account, is a society possessed of features that, whatever their relation to wisdom in particular, would appear to be desirable, all else being equal.

The working account I shall adopt appeals, simply, to a society's true value judgments, in particular those relating to the goodness and badness of human and societal features and actions. Such judgments may be very general-as in the judgment that wantonly destroying a human life is a very bad thing-or quite specific-as in the judgment that Hitler was an evil man. They may not lead to specific decisions or actions or they may. If one judges that wantonly destroying another's life is a very bad thing to do, for instance, one is likely to avoid such destruction.

A true value judgment evidently tracks the Good at least to some extent. It may be plausible to argue that if a value judgment fully tracks the Good it must not only be true but it must also have

been made on good grounds. It is not, then, "fortuitously" true. That said, I focus here on the simpler condition. I shall assume that, by definition, the true value judgments of one who is wise will be relatively numerous.

This, along with the following points, is intended to apply both to individual human beings and to human societies. I shall assume one who is wise, as a matter of definition, does not make false judgments. If the truth on some matter of value is hard to discern, one who is wise will if necessary act on working assumptions understood to be such. These are relatively stringent conditions. They are not, however, as stringent as they might be. At the upper limit of wisdom, one would get everything right. I shall take the stated conditions to be both necessary and sufficient for one to be wise. I shall make the following comparative judgment about one who is wise on the above account. Any new true value judgment one makes in addition to those one has already made amounts, by definition, to an increase in one's wisdom. This is only intended to be a partial account of what makes for an increase in wisdom, but it suffices for presentation of the negative argument. It is now time to turn to the core of the negative argument. This is the pertinent account of what it is for a society to endorse a particular value judgment.

A Society's Value Judgments

I have elsewhere developed an account of what it is for a group to believe that such-and-such. I have also proposed a related

account of what it is for a group to make a particular value judgment. Here I shall do little more than sketch the account, saying only what I take to be needed to make the negative argument. I proceed in terms of an illustrative value judgment, which may or may not be true: marriage is a valuable social institution. I shall refer to this judgment as V. Obviously any other particular judgment might stand in its stead.

According to my account of such matters, in terms that will be explained, a society judges that V if and only if its members are jointly committed to judge as a body that V. I have argued at length elsewhere that the concept of a joint commitment is a fundamental part of human life, embedded in many of those central concepts with which human beings approach their interactions with one another. I must now say something about what a joint commitment amounts to.

A joint commitment, as I understand it, is a commitment of two or more parties. It is not a combination of commitments, one of one party, one of another, and so on. Given their joint commitment, each party has sufficient reason to act accordingly, just as one has sufficient reason to act according to a personal decision one has made. As I understand the phrase, if one has sufficient reason to do something, then one is rationally required to do it, all else being equal.

Any joint commitment is a joint commitment to "do" something as a body, in a broad sense of "do" that includes judging that V. To say that certain people are jointly committed to judge that V as a

body means something like this. They are jointly committed as far as is possible together to constitute a single body-or person-that judges that V. I say more about this shortly.

How do people become jointly committed? Failing special background understandings-in the basic case-a given joint commitment can only be created by all of the parties together. The same is true of its rescission. Here is a rough account of the conditions under which such a commitment is created in the basic case.

Each of the would-be parties must express his readiness to be jointly committed with the others in a particular way, and the fact that these expressions have taken place must be open to all or, in something like David Lewis's sense, common knowledge. Though I shall not attempt to elaborate on this point here, this account does not rule out joint commitments on a large scale. I take it that people can enter joint commitments in situations of strong pressure. Just as you can make a decision under pressure to do so, you can enter a joint commitment in such circumstances. To say that is not, of course, to contest the desirability of one's making decisions and entering joint commitments in the absence of such pressures.

Special background understandings allow for nonbasic cases. Thus all of the members of a given population, large or small, may create an open-ended joint commitment such that one person or a smaller population of persons is in a position to create new joint commitments for the population as a whole. For

example, the members of a labour union may jointly commit to conform as a body to any fiats issued by Jones under certain conditions. In that case when Jones issues a fiat under the relevant conditions, the union members are jointly committed to conform, as one, to that fiat. To keep things simple here, I am going to focus on societies where no such special background understandings prevail.

For the purposes of the negative argument the most important feature of a joint commitment is this. If I am jointly committed in some way with another person, I am answerable to him with respect to my proposed or actual nonconformity to the commitment. Not only do I owe him an explanation of any proposed or actual nonconformity, I also owe him actions that conform to the commitment. I owe these to him insofar as he participates in the joint commitment.

I have said that the negative argument is essentially conceptual rather than evaluative. The point just made may seem to refute that. However, it relates to what a joint commitment is, as opposed to its value or the value of any related actions.

One way of amplifying the point is as follows. There is a sense in which, by committing each party to act in certain ways, a joint commitment in and of itself creates in each party ownership of the actions in question. Being in the future, the actions are owned but not currently possessed: in that sense they are owed.

Evidently this puts each of the other parties in a special position in relation to me. If I propose not to perform an action the

commitment requires, he has the standing or authority required in order that he demand it.

He can say, in effect, “Give me that! It’s mine-qua party to the joint commitment!” He also has the standing to rebuke me. After the fact, he can say, in effect, “How could you not have given me that! It was mine!” Thus those who either propose to violate a standing joint commitment or who do violate one lay themselves open to the authoritative forceful negative reactions of the other parties.

So much, then, for the nature and implications of joint commitment. I turn now to the relationship of joint commitments to social groups. I have argued elsewhere that those who are jointly committed in some way constitute a social group in a central sense of the phrase. This accords with the rough characterization of a social group offered earlier in this chapter: its members are unified in such a way that they constitute more than a mere aggregate of persons.

Given this amplification, if certain persons are jointly committed to judge that V as a body then they constitute a social group. Indeed, they constitute a social group that judges that V. As I have argued elsewhere, to say that under these conditions people constitute a social group that judges that V answers to a standard everyday concept of a social group that judges that V.

In sum, the present account of a society’s value judgment is not merely stipulative. It accords with entrenched, everyday understandings of the component ideas. On the account

proposed, then, a society judges that V if and only if the members are jointly committed to judge that V as a body. That is, they are jointly committed as far as possible to constitute a single body that judges that V. How might this commitment be fulfilled?

When people are acting in conformity with the commitment, they might confidently state that V when talking to one another. They would refrain from calling V or obvious corollaries into question without preamble. In short, they would suggest by their actions and emotional expressions that V. They would refrain, therefore, from acting contrary to V and from reporting contrary actions with bravado.

Thus one would not say out loud, with an air of bravado "I've managed to avoid getting married again!" or, critically, "Marriage? That's for the birds!" I do not say that in order to act in conformity with the commitment people must personally judge that V. There are several reasons for this, but for now I simply state my understanding that a joint commitment to judge that V as a body does not require the parties personally to judge V. Should one judge that not-V, however, he is committed not to say this without preamble. Rather, he must say, for instance, "Personally, I don't think marriage is such a wonderful thing." This indicates that he is speaking not from the perspective of the group as a whole but from his personal perspective.

So much for the definitions and assumptions in terms of which I shall present the negative argument. They all have some

plausibility, and it is worth considering what follows from them for the question: can a wise society be a free one? I am supposing that, by definition, a wise society endorses a fair number of true value judgments and eschews false ones, and that a new true value judgment added to its current stock of such judgments increases its wisdom. The negative argument can be put as follows.

Suppose that society S is wise. Suppose now that it adds a new true value judgment J to its current stock of true value judgments. By definition, it becomes wiser. Given the nature of societal value judgments in general, J provides the members of S, as such, with a ground for rebuking one another for a new range of possible actions, R. R includes speech acts as well as actions that do not involve speech. Thus S becomes less free.

A query may arise as to this conclusion. What if there was already a joint commitment in S-one distinct from that underlying S's new value judgment J-such that members of S have a ground for rebuking one another for the very same range of actions R covered in the case of J? Assuming for the sake of argument that this is possible, it is still fair to say that S becomes less free on making J, for now there is a new ground for rebukes in relation to R.

People can certainly have the standing to rebuke one another for performing a given action on more than one ground. Perhaps, for instance, several of us agreed not to do something, and I made a special promise to you that I would not do it. Then you can

upbraid me both on the ground that we agreed not to do it and on the ground that you promised me not to do it. It seems fair to say, generally, that the more grounds for rebuke there are for one's performing a given action, the less free one is.

Now it is true, of course, that if S were to add a false value judgment to its current stock of value judgments, it would also become less free. The striking thing about the negative argument, however, is this: something that on the face of it is a bonus-S's increasing wisdom-turns out to have a specifiable cost-a corresponding loss in S's freedom. That assumes, of course, that a lessening of societal freedom, in and of itself, is a bad thing, while an increase in societal wisdom is a good thing. As said, at least on the face of it, this is so.

I should emphasize that the negative argument does not render problematic the idea that, all else being equal, it is better for a society to replace a false value judgment with a true one, if these are the alternatives. It implies, however, that it would make for more freedom in a society with a false value judgment if that judgment were simply abandoned-if the society were left with no view on the matter-rather than replaced by the corresponding true judgment. True judgments, just like false ones, reduce the freedom of society.

The negative argument raises or highlights several important questions. Before concluding I note and discuss a number of these without attempting fully to answer any.

It may be proposed that the loss of personal freedom entailed by a wise society's increasing wisdom will make no practical difference if each member was happy to enter the relevant joint commitment. It may be added that it will matter even less if at the time they happily entered the joint commitment they personally endorsed the society's value judgment.

This seems not to be so. Suppose Qiong was happy to enter the joint commitment at issue in my focal example, personally believing that marriage was an excellent social institution. Suppose that through personal or vicarious experience she later changes her mind. Her change of mind is one thing; her society's change of mind is another. The joint commitment may still stand. She is then still subject to it.

At this point Qiong may well find none of her choices attractive. She can baldly make concordant statements she believes to be false and act in ways she takes to express a false value. She can cause herself to stand out from the crowd by saying, as the joint commitment permits," Personally, I think marriage as an institution is problematic." She can publicly violate the commitment and lay herself open to authoritative forceful responses. One may well shrink from any of these options, and from others that might be available-such as giving up one's membership in the society in question.

Knowing all this, one who is simply contemplating a personal change of mind may turn away from that option. Or the very movement toward such contemplation may itself be suppressed.

Note that Qiong's option of prefacing her antimarriage statement with" Personally" may do more than make her stand out from the crowd. (Some people might find that outcome relatively attractive.) Another possible outcome is likely to be less attractive. Though the joint commitment does not require her personally to endorse the value judgment in question, when she says or implies that she personally doesn't endorse it, she puts herself in a problematic position. People have reason to wonder if she can be relied upon to fulfill the commitment in the future. Might her contrary opinion not soon break out untrammeled? Might she be a spoiler? She may find herself shunned, though she did not violate the commitment.

In sum, even if each one of a number of people is happy to enter a given joint commitment, and each one's personal judgment at that point accords with the societal value judgment thus created, its providing a basis for rebuke makes a practical difference. It allows, in general terms, for a tension to arise between a given member's joint commitment, on the one hand, and his personal judgment on the other.

Some are inclined to think that if any human being violates a moral rule, any other human being has the standing to rebuke him for this. Moral rules, in turn, may be conceived of as existing independently of all actual societies, and as corresponding to the subset of true value judgments at issue in the present discussion. It may then be argued that the standing to rebuke another member of one's society that one gains from a new, true

value judgment of that society does not make much practical difference to anyone's situation.

Irrespective of our status as members of one or another society, we are all always open to rebukes from others for the violation of any moral rule. The fact that with an increase in a society's wisdom some people have a new ground for some such rebukes is of interest, to be sure.

However, it would not seem to make much difference from a practical point of view. I have argued elsewhere against the idea that human beings as such have the standing to rebuke one another for violations of moral rules. If they do not then the argument in the previous paragraph must be rejected: its central premise is false.

At the least, the truth of its central premise is not immediately obvious. Given that this is so, people who attempt to rebuke others" because what you are doing is morally wrong" may be given short shrift by those to whom they speak. These latter may simply, and sincerely, respond that" It's none of your business."

Thus even if rebukes were automatically in order by reason of the existence of moral rules as such, the practical impact of an increase in societal wisdom could be considerable." This runs counter to our values" may well be received as a more pertinent explanation of rebuke than" What you are doing is morally wrong." Rather than attempting to curtail a society's wisdom-perhaps by making sure it does not address particular issues-is there a way of keeping its wisdom intact, and, indeed, increasing

it, while reducing its impact on the society's members? The full spectrum of true value judgments may, indeed, include some that will lead a society that makes them to minimize the impact of its own value judgments.

I have in mind here value judgments associated with when and how to tell people off for violating a given joint commitment. It may be that it is best to start in a kind and nonforceful manner.

A maximally wise society, at least, will take this value judgment on board. It will then be incumbent upon its members to act appropriately if someone baldly says something contrary to a value judgment of the society. For instance, he might mildly observe “That’s not a very democratic sentiment!” or “I’m surprised to hear someone from these parts saying that!” or “I take it that you are simply expressing your personal opinion?” If the person addressed answers the last question affirmatively, the joint commitments to which he and his interlocutor are parties will offer little basis for rebuke.

A society’s embracing the value judgments currently under consideration-those advocating an initially kindly approachwill most likely reduce the frequency of rebukes. If a rebuke is considered acceptable in face of a recalcitrant interlocutor, however-one who will not say the expressed opinion is his personal one, or take it back in the light of gentle suggestion-they may well sometimes occur.

Moreover, as all will understand, the members of the society will at all times have the standing to rebuke provided by the joint

commitment that underlies any of that society's value judgments. Thus should one forego an initially kindly approach and immediately offer a rebuke, the person rebuked will not be able to respond, "It's none of your business." The parties, then, are still threatened with rebuke, in the sense in question here. What if forceful responses, though authoritative, never occurred? What might the effects of this be? How necessary to the very existence of a society's wisdom is the imposition, at least after gentler responses, of rebuke?

This question recalls Patrick Devlin's argument for the very strong thesis that a society risks disintegration if at least its core value judgments are not supported with the weight of the criminal law.

His idea was, roughly, that the very existence of the society depends on the persistence of those core judgments as its judgments. If action contrary to those judgments was permitted by law, this would be liable to increase such action and would lead, eventually, to the demise of the society's value judgment as such.

The general question is: what is necessary to ensure that a given true societal value judgment will persist? I shall not attempt to answer this question here. That it can be raised suggests, at least, that there may be a cost to mitigating the effects of a society's wisdom to the point that even informal rebukes are disallowed. The cost in question is the loss of the society's wisdom.

Evaluative Questions

Many evaluative questions arise. How good a thing is it that a society makes true value judgments as these have been understood here? Is it better, all things considered, that a society minimize its evaluative judgments or sticks only to certain areas of value judgment? Is a society that is good overall one that looks the other way as far as values, or some kinds of value, are concerned-irrespective of its capacity to get things right? If so, why is that? Personal freedom is likely to be invoked at this point. Invocation alone, however, is not enough. Given that a diminution in personal freedom is always a loss, how is it to be weighed against an increase in the wisdom of a given society? All else being equal, is it indeed better for a society to make a true value judgment rather than no judgment on the topic or a false one? These questions are important and timely. They press us to think further about the wisdom of a society, its implications and its value.