CHAPTER III

ETHICO-POLITICAL CONCEPT OF JUSTICE
According to Heller, the ethico-political concept of justice has two dimensions. They are: (1) ethical dimension, and (2) political dimension. The ethical dimension of justice is concerned with the moral principles, whereas the political dimension of justice is concerned with the principle of polity. Let us consider how Heller treats the notion of ethical and political concept of justice from the standpoint of ethico-political concept of justice. This chapter has been divided into two parts for the sake of convenience. Part-I deals with the aspects related to complete ethico-political concept of justice; whereas Part-II deals with the aspects related to incomplete ethico-political concept of justice. These two parts cannot be treated as two independent chapters as they are parts of the ethico-political concept of justice.

PART I

COMPLETE ETHICO-POLITICAL CONCEPT OF JUSTICE

1. The Ethical Concept of Justice

The foundation of ethical concept of justice is seen in the view that the good should be happy because they
deserve happiness, and the wicked should be unhappy because they are unworthy of it. In fact a just world order is one wherein the good are happy and the wicked are unhappy. Since all kinds of ethical concept of justice may not imply a political concept of justice, it is better to say that good are indeed happy. In other words, goodness has its own reward and wickedness has its own punishment. This is true in every social and political order.

It is also true, says Heller, that every ethico-political concept of justice may not project a socio-political order where all norms are considered to be moral. In the ultimate analysis, what is considered to be morally good, virtuous is normally defined in conjunction with the image of the political order which is projected as just. Thus goodness can be interpreted in many ways.

In order to know that the good are happy, and the wicked are unhappy, one must know what goodness means. For example, if someone speaks of justice in relation to the formal concept of justice, and someone speaks of justice in relation to the ethico-political concept of justice then they are referring to the same virtue. Even Aristotle was aware of the polysemic nature of 'justice' (dikaiosune).
Heller identifies the ethical concept of justice with righteousness. A person is said to be righteous when he or she observes moral norms irrespective of social sanctions. Every righteous action is an end in itself. Every end signifies the sublime way of life. Heller makes it clear that theoretically speaking there is no proper definition for a righteous person. However, a righteous action, claims Heller, is one which aims at an end outside the action itself. Such an end must be self-affirmative. Heller recognizes two types of affirmative actions. They are — (1) A righteous person (or action) can will that everyone else should be righteous. (2) Every one should observe moral norms irrespective of social sanctions.

This may lead to self-contradictions. If everyone obeys and practises moral norms irrespective of social sanctions, then there is no one to impose social sanctions. In other words, there is no social sanction at all. A righteous person can also will that all social norms must be moral norms. If every person is righteous, then there is no righteous person at all. So in the end, what is implicit in all righteous actions is the establishment of a complete moral world where there is no choice between good and evil. It is an absurdity that every individual is righteous and all norms are moral. In other words, we can
think of the best possible moral world wherein there is a majority of righteous persons and also the majority of norms that are moral.

Suppose all norms and rules constitute social clusters, then there are no interclusteral norms and rules. In this sense, all norms and rules are applicable extrinsically to the members of one cluster or the other. Different norms and rules have different normative power. Some norms and rules are operative and some are imperative. Thus all social norms are more or less ethical norms. This is quite obvious in small tribal societies. The notion of interclusteral norms is important in understanding norms as moral norms. The interclusteral norms can be called "ideal cluster" or ideal community". Different interclusteral norms originated from different sources. As a result of that a variety of moral norms came into existence. This variety cannot constitute real social cluster or ideal social cluster. For example, says Heller, the moral norm "keeping a promise" is interclusteral norm, but this norm cannot constitute a social cluster.

According to Heller, 'righteousness' is the essence of morality. It is absolute and unconditional. The act of righteous person implies that his end is the best
possible moral world. Whether the best moral world is attainable is a different question altogether. This question is not relevant from the standpoint of morality, whereas it is relevant from ethico-political concept of justice. The ethical concept of justice considers righteousness as absolute; but the political concept of justice considers righteousness a conditional Act. Because of this conflict between ethical and political concepts, an absolute moral world is an impossibility.

2. The Emergence and the Dissolution of the Ethico-Political Concept of Justice in Modernity

To recognize a limit one has to break it. This is true in the case of ethico-political concept of justice. Initially this notion is formulated as a negation of negation, but not as an affirmation. For instance, by negating the very notion of justice the world is regarded as unjust. And this negation of justice must itself be negated. In every society justice is considered to be double-edged. First of all, men are unjust because they are corrupt and wicked, rather than righteous. Secondly, society is unjust because it relies on wickedness and allows the righteous to be crushed. Negation must also be double-edged. What is needed is the postulation of a new man of righteousness and a new city of justice. The real colours
of wickedness and injustice must be unmasked, whereas the imagined world of righteousness and justice should shine in the light of wisdom and truth. It is because of this double character of the negation of negation we can speak of ethico-political concept of justice. Offenders in a society must be condemned. Heller says that there is a tension between the ethical and the socio-political aspects of the ethico-political concept of justice. This tension can be removed by appealing to religion and philosophy. The religious solution, claims Heller, results in the paradox of faith, whereas the philosophical solution results in the paradox of reason. Hellers tries to vindicate the former by taking recourse to the Prophetic notion of justice and the paradox of faith, and the latter by taking recourse to the philosophy of Plato and the paradox of reason.

(i) The Prophetic notion of justice and the paradox of faith

In order to explain the Prophetic notion of justice and the paradox of faith, Heller relies on A.J. Heschel's notion of justice. According to Heschel, tsedakah (tsedek) and mishpat are the two key terms in Prophetic notion of justice. The mishpat refers to the judgement given by the judge (shofet). Thus the word means justice, norm, ordinance, legal right, and law. Whereas the word tsedakah means "righteousness". Though legality and
righteousness are not identical, they always coincide with each other. Righteousness is something beyond justice. Justice, on the other hand, is something that provides each person his due. Thus the formal concept of justice is shown within the framework of ethico-political concept of justice. Righteousness is considered to be the supreme form of justice. In this context justice and benevolence are not two different virtues, but they are considered to be one and the same virtue.

The act of mercy too belongs to justice as righteousness. But mercy cannot be incorporated in the formal concept of justice. If it is done so then there will not be any punishment as every offender is shielded by mercy. On the contrary, if you are merciful to some, but not to all, then you are violating the formal concept of justice. This is the reason why Prophets felt uneasy when mercy is included in divine justice.

However, Prophets raise their voices against injustice. They believe that injustice is committed by punishing virtuous, and by shielding the sinners. The Prophets do not mind turning their hands against those who commit injustice. Thus Prophetic version of justice is built upon faith. This faith is rational, since it is the faith of knowledge and wisdom.
Unlike knowledge, wisdom is temporal. In order to understand this fact we must distinguish appearances from reality. Especially, one must be aware that the distinction between the appearances of the present and the reality of the future. A rational man is silent because the time is not ripe for rational thinking. However, there is a dialectical relationship between knowledge and wisdom. This relationship makes the Prophetic notion of justice an ethico-political concept of justice. The Prophetic notion of ethico-political concept of justice is rooted in faith. And faith is supported by three main pillars. They are as follows:

(1) Moral norms are considered to be the commandments of God. One cannot question them. Knowledge in the strict sense of the term is the knowledge of the commandments of God. If one does not obey these commandments, then it is a sin. Thus, knowledge and faith coincide.

(2) God wishes that I do everything and also everyone else does that. My righteousness may contribute to the possible redemption of my people only because God wishes that I am righteous. God appreciates me even if anyone else does not, and loves me even if anyone else does not.
(3) People (my people) such as I will be redeemed when God judges nations. People such as I will inhabit 'the city of justice, the faithful city'.

Thus the Prophetic notion of justice is a blend of faith and knowledge.

However, the notion of the merciful or benevolent God leads to a paradox. The righteous man is merciful because God commands mercy. If God is merciful then God can extend redemption to wicked people too. But, if God can pardon the wicked, then one's righteousness is not an essential condition for redemption. Thus one could take the route of the wicked since God does not consider righteousness as an essential element of the just judgement. If one arrives at this conclusion, then his or her righteousness is no longer rooted in faith, but it becomes philosophical. One can be righteous irrespective of God's ways.

(ii) The philosophical notion of justice and the paradox of reason

The biblical tradition came into existence many centuries ago. Still it remains an unconscious current among the people. By 'biblical tradition', Heller does not mean a doctrine that is meant for christians alone. For instance,
Alfarabi writes that most of the books of ethics still follow Plato's notion of justice as embodied and realized in the 'just city' where each group does it work.

The book of the Job begins with the bet between Satan and God. Likewise, there is also a bet between good and evil even in Plato's Republic. This is purely the medium of philosophy, but not of religion. Both good and evil are humans. Means of winning the bet is rational argument. In philosophy only rational argument can win the bet against evil. However, rational argumentation cannot win the bet because rational argumentation cannot prove that it is better to suffer injustice than to commit injustice. This is not the whole paradox.

Rational argument alone may not justify righteousness. The truth of philosophy is above argument. There are two themes. One is the recapitulation of the fundamental statement that righteousness alone promotes happiness. Second is that the theme of other-worldly justice (the myth of divine reward and retribution). The host invites the guests and the experience of host must be accepted as true account by faith. Here the paradox of reason ends in faith. Yet it still remains as the paradox of reason. It is not religion. It is philosophy which provides the faith itself.
What does Plato have to say about evil? Plato never said that 'this is an evil time', but said that all states are badly governed. Pericles corrupted the Athenian people to show that the powerful are wicked. Also, Plato made it clear that bad constitutions produce unjust citizens, and that unjust people enact unjust laws.

What is novel and grand in Plato's conception is that evil exists because of the misuse of reason. The thinkers of Pre-Enlightenment believed that reason goes well with evil. But this is not true according to the thinkers of Enlightenment. The notion that evil is the misuse of reason is the defence of Enlightenment against the conclusions drawn from the Enlightenment itself. For instance, philosophy in Plato stands for the proper use of reason, whereas sophistry or rhetoric involves the misuse of reason. Plato invoked Socrates to voice his arguments for the proper use of reason in order to prove righteousness to be the stronger than evil. Plato did not die for his righteousness. He knew that he would not. Yet it is possible to distinguish between the proper use and the misuse of reason only if it can be proved that the former wins the bet. Since Plato knew that argument alone does not settle the bet, he made Socrates to tip the balance in favour of the proper use of reason.
Now the question to be tackled is that how does Socrates make a case for good reason against perverted reason? Socrates by arguing against the perverted reason makes it clear that he is not only dealing with the ethical conception of justice but also with the ethico-political concept of justice. Therefore, Heller proposes that we must inquire into the nature of justice and injustice as they appear in the state and in the individual.

Plato's Republic suggests three possible solutions to the question whether justice is righteousness. First of all, one can take the utopia of the Republic at its face value. It is the utopia of the city because it recommends the distribution of virtues such as wisdom, courage and temperance, among the three classes. As a matter of fact, such city perfectly represents the formal concept of justice. Secondly, the norms that are applicable to the cluster of rulers are applicable to every member of that cluster. Similarly, the clusters formed by the guardians and the clusters formed by the traders must extend their norms to all their members. However, there are no transclusteral norms as every cluster has its unique virtue. But the righteousness entails the observance of certain transclusteral norms. Thirdly, there are no norms, hence there is no righteousness. This is what Plato wants to
convey in his Republic. For him, justice is the virtue of the city as a whole, but not the virtue of the individuals residing in different social clusters. Here the ethical aspect of the ethico-political concept of justice is completely ignored. Even the political aspect of justice does not fare well. Individuals living in an unjust society can recognize justice as something which is to be realized in the image of utopia. Individuals can do this since they are capable of preparing the just to the unjust. But the people who live in utopian city cannot juxtapose an unjust city to the just as they have no choice.

If we consider Plato's Republic as paradigm of a just city, then we must conclude that Plato and Socrates eliminated the problem itself, instead of solving the initial problem of righteousness. Socrates tried to prove that it is better to suffer injustice than to commit it. In an ideal city no one suffers, and no one commits injustice. This type of question cannot even be raised. The initial thesis is not substantiated by the arguments but circumvented.

Plato wished that the philosophers should rule the state. His idea of the state should be put into practice to a greater or a lesser degree. The solution to the initial
problem of righteousness surfaces if we penetrate into the next layer. Plato designed a city ruled by philosophers. In the similar fashion he founded the city called 'philosophy'. In philosophy one can build as many cities as he wishes. Every philosopher tries to establish his city, 'the city in the sky'. Whoever happens in this city is considered to be righteous. Thus the political facet of the ethico-political concept of justice is converted into a utopian reality.

The bet is with regard to righteousness. Philosophers must argue in order to capture the soul of the non-philosopher on behalf of righteousness. Thus the argument on behalf of righteousness is to be the arrangement on behalf of philosophy, and the 'city in the sky'. However, one cannot be called a philosopher simply by accepting a convincing argument. Discourse often ends in a stalemate between the repositories of perverted reason and the repositories of good reason. To catch sight of the notion is the revelation that opens the way to the 'city in the sky'. The philosopher argues for something he already sees, ergo knows. In this manner revelation precedes argument. Argument alone cannot lead to revelation.

The third meaning of the city is the city within us. This city is called the 'soul'. The preliminary
solution of a 'just soul' is now explained in detail. We know not only that wisdom means keeping anger and desire under tight control but also something more than that. If there is "true wisdom" in the soul, then anger and desire should not be kept under tight control at all. There is nothing-left in this soul. Soul is indestructible. Nothing bad or evil remains within it. We cannot believe: "...the soul, in her truest nature, to be full of variety and difference and dissimilarity." Then we must recognize the city in the soul and the city which is the soul. The soul is no longer like the Republic. There are no castes, parts, differences in it, there are only homogeneity and the unity of the good. If an individual becomes the ruler of his own city, he can be righteous. Our final stage is that we meet the man of pure conscience. Here we arrive at the myth of the immortality of the soul. It expresses Plato's deep conviction that a soul that is good in all respect deserves immortality.

But, one may ask the question that how can we become the rulers of our own city? How can we transform our city into a homogeneous soul of pure conscience? An attempt to answer this question is made in book VII. In this context, Plato quotes Socrates:
You know that there are certain principles about justice and honour, which were taught us in childhood, and under their parental authority we have been brought up, obeying and honouring them.... There are also opposite maxims and habits... which... do not influence those of us... who continue to obey and honour the maxims of their fathers.... Now, when a man is in this state, and the questioning spirit asks what is fair or honourable, and he answers as the legislator has taught him, and then arguments many and diverse refute his words, until he is driven into believing that nothing is honourable and more and dishonourable... do you think that he will still honour and obey them as before?

Socrates makes an appeal for good reason as against bad or perverted reason. He comes to the conclusion that one who is not yet righteous would be defenceless against the maxims of evil. A person neither suffers injustice nor commits it if he is already righteous. If a person is not yet righteous, then perverted reason will persuade him that it is better to commit injustice than to suffer it. The love of wisdom, and authority are the most reliable to soul. Even traditional authority is better than none. Internal authority is pure conscience. Thus the paradox of reason claims that reasoning leads to unreason. Faith surfaces three times and three forms. They are — (1) faith in other-worldly justice, (2) faith in authority, and (3) faith revelation (the sight of notions).

Thus the Enlightenment that exists in the 'city on earth' is shifted to the 'city in the sky'. It can never be proved
that it is better to suffer injustice than to commit it. But it is always proved in this 'city in the sky'.

The paradox of faith and reason are fundamental positions in pre-modern times. According to Heller, the modern ethico-political concept of justice is called "incomplete ethico-political concept of justice".

The paradox of freedom is the paradox of modernity. The paradox of reason and the paradox of faith become facets of this overarching paradox. This is why we have to confront it with new problems and new perplexities in the light of which even the pre-modern questions need to be reformulated. Here the greatest of perplexities is the problematization of 'good'. In pre-modern period everyone knew what was good and righteous. Even Callicles and Trasymachos argued that being righteous we harm ourselves and so it makes no sense to be good. But they never said that in being righteous we harm others. Being righteous we can have evil consequences. What is being righteous? How can we be righteous? What can we do if we are brought face to face with differing and even contradictory norms of righteousness? This problem becomes central in modern ethical concept of justice. The ethico-political concept of justice is disintegrated in spite of the efforts to keep it intact. The ethical problem of justice loses its socio-political
character. These remnants are called retributive justice, distributive justice, and just-war theory. These aspects will be analysed in chapter IV under the head Socio-Political Concept of Justice.

Now let us examine how Heller analyses the following aspects of ethico-political concept of justice.

(i) The ethico-political concept of justice and the birth of modernity.
(ii) The 'city of the soul' reconsidered.
(iii) Beyond justice, or the anthropolitical revolution.
(iv) Towards an incomplete ethico-political concept of justice.

(i) During modern times, writes MacIntyre, we often use ethical terms without being able to attribute meaning to them because we have disconnected these very terms from the totality of ethical beliefs that once gave meaning to them. But in pre-modern times, there were perfect virtues. There was a consensious agreement with regard to the knowledge of moral ends. Human nature was considered to be the raw material to be shaped in order to achieve this end, 'this good'. He asserts that this consensual knowledge of the moral end is now absent, hence the very discussion of 'human nature' and its moral potential is therefore meaningless.
Even Hegel was aware of this problem. In his *Phenomenology of Spirit*, Hegel writes that virtue in the ancient world had its own meaning. It had spiritual foundation. Whereas the virtue that we are considering now does not have any spiritual content. Thus it is an unreal virtue. It is only a virtue for the sake of virtue. Prophet had an 'evil time' because men forgot God's commandments, and became wicked. It was a timeless time. In this timeless time modern moralists of virtue are not opposed to the wickedness. But, is virtue possible in a time that generates wickedness? As regards good and evil modern practical reason and conscience become the ultimate arbiters. Conscience can be divided into three states: (1) bad conscience, (2) sceptical conscience, and (3) legislative conscience.

Since bad conscience has recourse to divine judgement, sceptical conscience restricts itself to an ethical concept of justice, and legislative conscience establishes new forms of the ethico-political concept of justice. For legislative conscience, an image of human nature is by no means the real point of departure. Here this procedure is similar to pre-modern one described by MacIntyre. There is an image of the end (the image of the good itself). Human nature is constructed in a way that
enables it to be the vehicle for the realization of the final end. Human nature cannot be constructed in a way that is radically evil. Yet human nature cannot be constructed as radically good either as society would then be neither unreasonable nor wicked. There would be no legislative conscience.

In philosophy, one cannot explain good by simply pointing out to the voice of substantive conscience. One must prove the goodness of the particular good. Also, one must find evidence for it on the basis of which good may be deduced. Hence we now turn to 'human nature'. Good will must be proved to be good by deducing it from human nature. The nature of human race is to be the nature of all individual human beings. All individuals must share the same nature. The best possible world is seen as the world of (1) optimum (or maximum) freedom, (2) optimum (or maximum) reason, and (3) optimum (or maximum) morality. Human nature encompasses freedom and reason. The formal concept of justice applies only where there is freedom. Hobbes worked with a complete ethico-political concept of justice. He was none the less rooted in Aristotelian tradition both in discussing justice and in relating righteousness to the observance of socio-political norms.
Whether society (political) was believed to come about as the 'natural goal' of men and of human associations, or was due to the famous 'covenant' makes no difference here.

According to Hobbes there are three important laws of nature. They are — (1) Every individual in society must aim at peace and preserve it. Otherwise, he has to defend himself which may even result in a war. (2) An individual must be willing to enter into a contract to protect his own rights as well as the rights of the others. (3) Every individual must respect the covenants they made.

This third law of nature is the covenants that which effects the transfer of rights of nature (liberty) and establishes the rule of justice. Heller mentions here that the rule of justice is complemented by that of equity:

...if a man be trusted to judge between man and man, it is a precept of the Law of Nature, that he (Hobbes) deal Equally between them.

It is the sovereign who establishes the laws, that is, the rules of lawful and unlawful, of good and evil.

There are different descriptions of human nature in Hobbes and Rousseau. We can learn that man is evil by nature in Hobbes, and good by nature in Rousseau. To Heller, human nature is neither radically evil nor radically good, but rather malleable. It is true that Hobbes simply
sees man as he is, and Rousseau as he ought to be: both of them see man in both these ways. For Hobbes, not much effort is needed to transform men into just and righteous (what they might become and ought to be); whereas Rousseau postulates a vast gap between degradation and perfect elevation. Hobbes is more Pagan, whereas Rousseau is more Christian. It is obvious that there is a marked difference between Hobbes' and Rousseau's approaches to the evaluation of human nature. But this is not because the former sees it as 'evil' and the latter as 'good', Hobbes looks at the human nature 'as it is', and Rousseau looks 'as it ought to be'. Reason is not problematic for Hobbes, but it is problematic for Rousseau. Reason is the bearer of the 'laws of nature'. Good practical reason is 'natural' for Hobbes. The so called distinction between theoretical and practical reason is relative.

Rousseau is first to distinguish theoretical and practical reason. Thus, will and understanding are divided. This division is necessary to transform the notion of virtue. According to Hobbes, virtue is still identical with justice and righteousness. Rousseau does not abandon the full concept of the ethico-political concept of justice. He never reduces it to a mere ethical notion. In the absence of ethico-social community (cluster) there is no morality.
Rousseau develops two different notions of virtue. One is happiness (central notion of the pre-modern ethico-political concept of justice) and another is freedom (centre of discourse). Rousseau sees happiness in the innocence of the noble savage. The happiness of ignorance is a far cry from the reflected happiness of antiquity. For Hobbes, happiness means the constant satisfaction of desires. Thus it is devalued rather than abandoned.

Heller opines that intersubjective relation are based on mutual recognition of all members of society. To quote Heller in this context:

Recognition means the recognition of one another's needs, of one another's character, and - what is of the utmost importance - the recognition of one another's values.

Not all values, but only some values are shared by all the members of a group. These shared values are respected by every member of the social group. The personal relationships develop because of the shared values. How can we listen to each other's arguments if our notions differ? How can we come to rational understanding and co-operation while preserving our uniqueness, freedom and disagreement? Rousseau raises these questions. The contradiction has to be reconciled first because Rousseau likes to uphold the ethico-political concept of justice.
In Rousseau, general will plays a dominant role. According to Rousseau:

... the general will is, in each individual, a pure act of the understanding which reasons, when the passions are silent, about what a man can ask of his fellows and what his fellows have the right to ask of him.

The above quotation of Rousseau expects Kant's solution. But it lacks socio-political relation.

Heller tries to show the fact that Rousseau's 'general will' does not necessarily contradict the 'will of all'. The general will 'is in each individual'.

Rousseau's social contract meets the same fate of Plato's Republic. The attempt to solve the puzzles that arise out of ethico-political concept of justice ends in the destruction of the very idea of free morality, a morality which is rooted in conscience. The question, is it better to commit injustice or to suffer it?, calls for a solution. Like Plato, Rousseau ends up with a double edged solution which is not a solution at all. Justice becomes institutionalized in the republic of Rousseau. The formal concept of justice is the only justice. People who apply the norms to each and every person ('to each the same thing') are just. There is nothing but subjective morality. It is as good as having no morality. Thus ethico-political
concept of justice is once again proved to be self-contradictory.

Now, we turn our attention towards Hegel's notion of ethico-political concept of justice as analysed by Heller. His model is based on a complete ethico-political concept of justice. Hegel in his philosophy of history postulated the 'end of history'. Thus, his notion of history is self-contained. A complete ethico-political concept of justice is both adequate to modernity, and still anchored in reality. A 'complete ethico-political concept of justice' contains three basic components. They are (1) the 'city on earth' (the real city), (2) the 'city in the soul', and (3) the 'city in the sky'. A 'complete ethico-political concept of justice' postulates all these three together. Hegel tries to keep all these components together. He postulates the 'city on earth' as the 'end history', namely, the good: "The good is the Idea...freedom realized, the absolute end and aim of the world." The good is the idea of modern society and modern state in their difference and identity. The realization of the freedom of all is called optimum freedom. The real city is purely subjective spirit. The 'city in the soul' (of the ethical personality), on the other hand, represents the identity of the two kinds of righteousness (in their
difference). They are: (a) obedience to the laws of the 'good city', and (b) the moral motivation of the pure conscience towards maximum freedom. The 'city in the soul' is purely objective in its nature (objective spirit). The 'city in the sky' philosophy represents absolute freedom. The 'city in the sky' is absolute spirit. These three cities do not struggle against each other because 'ought' and 'is' are reconciled. They are tragically divided. Hegel believes that he has fully accomplished what Plato could not, possibly, accomplish because world history was not then at the end of its march.

18 According to Heller, Hegel combines all the traditional categories of the ethico-political concept of justice in order to reinterpret them within the framework of his philosophy of history. First of all, Hegel addresses the problem of evil although he rejects the concept of the radical evil. He analyses the modern form of evil after briefly discussing the historicity of evil. However, Heller says that it is not our concern here that evil of this kind appears in various forms. It should be noted that Hegel discovered the truly modern form of evil.
Secondly, virtue is the ethical order reflected in the individual character so far as that character is determined by its natural endowment. Hegel distinguishes virtue from righteousness. He describes virtue as 'ethical virtuousity'. Hegel's distinction between virtue and righteousness suits well the restricted liberalism of his ethico-political concept of justice.

Thirdly, in Hegel, the political aspect of the ethico-political concept of justice becomes socio-political. His distinction between state and civil society is well known. Civil society is conceptualized as the source of legitimation of the state.

(ii) In England, the ethico-political concept of justice has been made into two distinctive parts. They are: (i) the philosophy of morality and (ii) the socio-political concept of justice. A concept cannot be cut into two, says Heller. However, each part being substantially altered in the process, the socio-political concept of justice became less and less concerned with the best possible moral world. It suggests for a legal-political order that may possibly secure the rights (freedom) of citizens, but not their goodness. The socio-political concept of justice addresses the issues such as distribution and retribution. The notion
of best possible world is dependent on the problem of just 19
distribution. When Rawls defines justice as fairness, he only pays tribute to the subsequent emaciation of the notion 'justice'. Justice became fairness, and knowingly or unknowingly this result makes an impact on the moral issue of approval and disapproval. What is approved of as 'fairness' is the unfair remnant of the 'sum total of virtues' which was once called 'justice'. Minimum morality remains only on the plane of socio-political justice.

Social philosophy can stop raising questions about the supreme good and the good life, and it can stop making inquires into human motivations. Like social philosophy, moral philosophy too cannot do this, (because it is moral philosophy) because it raises these questions and makes these inquiries. If the notion of a 'city on earth' (the real city) is not interpreted, the symmetry between macrocosoms and microcosmos cannot be postulated. As Hegel remarks, the 'city on earth' has always been built on the ground of a pre-existing moral order (Sittlichkeit). The norms and rules of this 'ideal' city (the real city) were thought as the pre-conditions of the education (paidia) of virtuous men (just men), and as the end result of virtuous activity. The norms and values of the present cannot be opined, and the individual's ethics cannot be interpreted as the observance of these opined norms and values if there is
no longer a pre-existing collective morality. Thus morality loses its intersubjective ground. It must be located in the subject. But morality cannot be subjective. Morality collapses and becomes a matter of taste if human action or the maxim for action does not carry a general validity. Generality is universal in modern times. Heller claims that the break down of the ethico-political concept of justice paved the way for the emergence of the notion of universal validity. The subject should be the bearer of the ultimate universal, humankind. Humankind is not a social cluster. To humankind, the formal concept of justice cannot be applied. That is why moral philosophy of modern times must leave behind the formal concept of justice.

Heller agrees, in toto, with MacIntyre that intuitive and emotivist moral philosophies are no moral philosophies at all. In modern period, there are two important moral philosophies in her view. They are: (1) utilitarianism and (2) Kantianism. The Kantian ethics is far superior to the utilitarian ethics because of the following reasons:

First, Kant succeeded complete serving of theoretical and practical reason, in preserving the traditional meaning of practical reason as distinct from calculation. Secondly, he related righteousness to the postulate of the best possible moral world while keeping the idea of 'good' and of 'benefit' categorically apart.
Heller, repeats that the question 'what should I do?' or 'How should I act?' has been supported by complete philosophical argument only in utilitarianism and Kantianism in the last two hundred years. As such no convincing alternative attempts have been made in this way.

The 'city of the soul' became the sole concern of British moralists. Happiness and goodness, motivation and consequence, private (individual) and public (whole) prompted the reconsideration of traditional moral notions and solutions. To restore the link between sumnum bonum and the good intention without returning to the ethico-political concept of justice, Heller exemplifies the concerns of the period through Hutcheson's moral philosophy, yet she does not choose these philosophers without any definite purpose. Hutcheson's early utilitarianism represents the basic tendency that the transformation of the 'city in the soul' into the modern city of London. Hutcheson says very little about society, laws and state. He does not say anything new.

One may ask that how can we know anything about the greatest happiness of the greatest number? Hutcheson argues that we can know if we apply the proper axioms to our decisions. Good moral actions depend on proper calculation, or 'computing', as Hutcheson calls it. One can arrive at
the right decision if only he can compute well. Hutcheson is aware of the problem that we do not complete properly, even if we want to do so. It is obvious that the 'greatest number' must declare itself happy. If it does, then its happiness depends on its opinion. If it is not so, computations would not be sufficient to accomplish the greatest happiness of the greatest number. We should have to know what is 'happiness of the greatest number'. To know this there is no axiom available. Hence, we have to depend upon our own opinions. Hutcheson reverses his argument. Finally, it turns out that supreme natural good (happiness) is identical with supreme moral good. There are various notions of universal good, but the 'justest' notion is that: "...virtue is the chief Happiness in the Judgement of all Mankind."  

Hutcheson brings out the notion of the honest man in the modern world. He is concerned with the natural good of others as well as with his own, but suffers injustice rather than commits it. The honest man does all this with a view to the notion of humankind which does not exist. Hutcheson deduces his notion of 'honest man' from empirical experiences, whereas, for Kant, an 'honest man' is a transcendental entity. To quote Kant in this context: 

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... to a humble plain man, in whom I perceive righteousness in a higher degree than I am conscious of in myself, my mind bows....why? His example holds a law before me which strikes down my self-conceit when I compare my own conduct with it .... I may even be conscious of a like degree of righteousness in myself, and yet respect remains .... Respect is a tribute we cannot refuse to pay to merit whether we will or not.

This affirmation is shared by both Hutcheson and Kant. We cannot help but approve of the benevolent. Kant provides a conclusive answer to the question of how righteousness can be attained.

Kant refutes the ethico-political concept of justice which is separated in modern times. Kant writes:

The ancient openly revealed this error by devoting this ethical investigation entirely to the definition of the concept of the highest good and thus posited an object which they intended subsequently to make the determining ground of the will in the moral law.... The moderns, among whom the concept of the highest good has fallen into disuse or at least seems to have become secondary, hide the error (as they do many others) behind vague expressions.

Kantian intention is to save the notion of the 'highest good' as the end of moral intention (Gesinnung) without relapsing into the fallacy of heteronomy implied by every ethico-political concept of justice. Instead of the interplay between righteousness and the supreme (socio-political) good, Kant designs a one-track solution that supreme good is posulated by the moral law.
According to Heller, both Kantianism and utilitarianism are philosophies beyond justice. It is well-known to us that all kinds of justice must be of a nature that allows the application of the formal concept of justice. Kant himself did not remove the notion of justice but keeps it within the framework of the doctrine of law. In moral philosophy, rational humankind (intelligible humankind) is not a social cluster to which the formal concept of justice applies. To be just does not figure among norms which qualify for the maxim of the categorical imperative and for good reason. Only absolute concrete obligations qualify for 'duty as such'. We all know what we should not do if moral commandments prohibit us in doing certain things such as 'you should not murder', 'you should not lie' and 'you should not embezzle'. If a commandment orders, we must first know what justice or injustice is. For Heller, to be just means to apply the same norms consistently to all the members of social cluster that constitute it. According to Kant's categorical imperative, we must first examine the very norm that has to be applied. If the latter cannot be willed to be natural law, we obviously ought to be unjust because we are not allowed to apply that norm. To repeat Heller's remark, Kant goes beyond justice in the sense that we ought to act such
that the maxim of our action could become the universal law (law for all intelligible beings). What Kant envisages is the universal criterion for a non-existent justice. We ought to act as if this criterion exists, though it does not exist empirically. Accordingly, every individual belonging to the intelligible world of humankind should be treated as an end-in-itself. On the other hand, utilitarianism remains 'below justice' as it does not suggest any universal criterion of justice either. The notion 'the greatest happiness' is to be accomplished for the greatest number. It is not the same happiness for each and every member of any society or humankind. It is not even a happiness proportionate to something under the guidance of any notion of justice.

The greatest question of all moral philosophies is summed up in the statement that it is better to suffer injustice than to commit it does not appear for good. The dilemma in utilitarianism is easily solved, whereas in Kant it is seriously faced and then removed. 'Phenomenal men' obviously prefer to commit injustice than to suffer it. And their unjust acts may even profit the public and quicken material process. On the other hand, 'noumenal men' cannot commit injustice. This would be ethically self-contradictory. The moral law in us injures, (it causes
pain) and desires some goal. Simultaneously, we cannot be
good and happy. But the righteous man (righteous man alone)
is worthy of happiness. Kantian argument does not stop
here. If it did, the unity of supreme moral good and
supreme natural good could not have been postulated. The
possibility of supreme good must be deduced transcendentally
since it cannot be deduced empirically in the form of a
postulate. Kant presents both the paradox of reason and the
paradox of faith, theoretically, to prove the unity of the
supreme moral and supreme natural good. But it is Kantian
point of departure that such an attempt cannot be
undertaken. The paradox of faith is the result of belief in
a hidden God. It is Kantian point that we do not know and
cannot know whether God exists at all. Here Kant does not
reject the existence of God but the knowledge of God. The
transcendental deduction of the postulate of the existence
of God avoids both the paradoxes (viz., paradox of reason
and paradox of faith). In the world, therefore, the highest
good is possible only on the supposition of a supreme cause
of nature which has a causality corresponding to the moral
intention. The postulate of the supreme original good backs
the postulate of the supreme deduced good of the best world.
But we have no duties towards God (whose existence we
postulate):
All that here belongs to duty is the endeavour to produce and to further the highest good in the world, the existence of which may thus be postulated ....

Finally, Kant thus postulates the possibility of the best possible moral world. What it is like? To apprehend this world the only theoretical possibility is to postulate it as the unity of the realm of nature and the realm of morality. So, the best possible moral world presupposes an anthropological revolution.

(iv) Diderot in his *A Refutation Following the Work of Helvetius Titled 'On Man'* (It is unpublished work in his life time) writes:

We all are born with a just spirit! But What is a just spirit?...A commonly well-organized man is capable of everything. Believe this, Helvetius, if it suits you....I have not found justice, and I have looked for it with more effort than you demand....Do you want a most simple question? ...Is or is not a philosopher who is summoned to a court of law obliged to confess his feelings and put his life thereby at peril?...what is the best government for a great empire, and by what solid precautions would we succeed in limiting sovereign authority?...what are the circumstances in which a simple individual might believe himself to be interpreter of all wills? Is eloquence a good or a bad thing? Do we have to sacrifice to the hazards of a revolution the happiness of a present generation for the happiness of a coming generation? Is a savage state preferable to a police state? These are not childish questions, and you believe that every man received from nature the ability to solve them? without false modesty, please give me dispensation.
As Heller sees it, this statement carries a triple message:

(1) Various conceptions of the ethico-political concept of justice promoted the philosophical reflection which could solve the problems connected to that.

(2) The solutions presented by the ethico-political concept of justice are wrong. (And here Diderot has Rousseau in mind as well). They are wrong because philosophers do not penetrate into the depths of the problems they address. One gets entangled in contradictions even if the courage to do so is there. Ethico-political concept of justice fails to distinguish between the solutions offered to these problems philosophically and the practical solutions.

(3) The solution to philosophical problems is possible. Resignation should be final. To raise the questions presupposes the notion that such issues can be solved. But it is not a constitutive notion but it is a regulative notion.

Diderot searches for answers in ever so many ways. He does not restrict himself to any particular place of enquiry. He was the first to formulate the programme of a deliberate incomplete philosophy. It remains incomplete because it addresses them, but not because it turns away
from the supreme (traditional) issues of philosophy. Philosophy made the last ditch effort to systematize its sublime issues in a complete ethico-political concept of justice.

PART II
INCOMPLETE ETHICO-POLITICAL CONCEPT OF JUSTICE

Now we pass on to Heller's notion of justice as seen as an incomplete ethico-political concept of justice. This area is located in the normative ground of justice. A brief introduction to the incomplete ethico-political concept of justice is necessary at this point. The incomplete ethico-political concept of justice strives to establish a common normative foundation for different ways of life. It does not suggest us to alter ways of life in a single 'ideal pattern', and does not recommend a single ethics (Sittlichkeit) intrinsic to such an ideal pattern. It rather postulates simultaneous existence of ways of life all bound to one another by ties of symmetric reciprocity. Ways of life can be bound together when they have certain norms in common, and when they are 'equalized' by common norms. Ethico-political concept of justice raises a question that how a pluralistic universe is possible in which such a culture is bound to every other culture by ties of symmetric reciprocity?
Well, it is not possible to stretch our imagination beyond certain limits. This is why the common normative foundation of various ways of life cannot be based on two assumptions: (1) abundance, and (2) the perfection of human nature. Concrete utopias (arising out of a single way of life) which do assume abundance cannot be simply dismissed. The normative foundation of the incomplete ethico-political concept of justice is not the normative foundation of morals, but the normative foundation of justice. According to Heller, the common normative foundations must be theoretically offered for the actual normative foundation of social intercourse, communication, mutual understanding, and co-operation.

An incomplete ethico-political concept of justice cannot claim to be able to design the best possible way of life. If we infer that there are many ways of life, each of which is the 'best possible' for those who live in it. Then we must abandon the ambitious project of the complete ethico-political concept of justice. Our ethico-political concept of justice is incomplete not because we forgo the designing of a way of life best for us (people), but because we are aware that what is best for 'us' may not be best for everyone. As far as the design of concrete utopias is concerned, theories conceived in the spirit of an incomplete ethico-political concept of justice complete one another.
1. Is a Completely Just Society Possible and Desirable?

Moralists of the past have rejected the norms and rules of their times as wicked. They have decried that virtue is completely ignored and evil has been encouraged. Thus, there was no justice on the earth. Justice consists in the actualization of the notion 'to each according to his or her moral goodness'. Is such justice possible? The promoters of injustice never had this kind of justice in mind. Their main objective has been to possess a greater amount of freedom. The changes in life must look for an alternative political and social institutions. Such objectives are postulated in the light of perfect justice. The world would be just if only society would accept the new norms and rules.

Thus justice is something dynamic. If this view is accepted, then justice rapidly changes into injustice. What was justice yesterday may become injustice today and today's justice is tomorrow's injustice. Thus justice keeps on changing its colours. We look for justice without embracing it. We always attain particular justice but never be able to attain complete justice. Justice is a phantom of different forms. Can this phantom be caught at all? Is a just society possible and desirable?
Heller says that there are many answers to this question, but she specifies only four. They are as follows:

1. All societies have been just, at least as long as a particular form of domination has enjoyed legitimacy. Just society is possible, but 'justice' is not an indicator of the desirability of a society.

2. All hitherto existing societies have been unjust, because, owing to exploitation, domination and the division of labour, they have not experienced factual equality (égalité de fait). The future society will abolish the social division of labour, and all exploitation and inequality, thus the future society (socialism) will be the perfectly just society. This society has not so far been possible, but it is possible now. Indeed, a completely just society is desirable.

3. We must accept 'chasing the phantom' as part of our human condition, and live with it. We are always able to correct some injustices. New injustices will undoubtedly occur, and in time be corrected. Progress is piecemeal. The just society is indeed a phantom, because it is neither possible nor desirable.

4. A society beyond justice is impossible and undesirable. A completely just society is possible but undesirable.

The last statement coincides with Heller's own standpoint. She elaborates it in detail.

A society 'beyond justice' is one where no notion of justice is applicable. A completely just society is a society where only the static concept of justice is
applicable. Heller's discussion starts from first statement and proceeds to the last.

Wherever there is justice, there is injustice as justice and injustice derive their meanings from their opposites. They are polar concepts. If it is so, there would be no justice, if there were no injustice. If we choose for a society in which there is no injustice at all, then the notion of 'justice' would no longer make sense in that society. Thus we would choose for a society beyond justice. A society beyond justice must be one where the formal concept of justice does not apply since the formal concept of justice is the maxim of justice. The formal concept of justice enjoins that the norms and rules must be applied to every member of the cluster consistently and continuously if certain norms and rules constitute a social cluster. If all norms and rules are ignored, then the formal concept of justice can also be ignored.

Let us imagine a society without any norm or rule. Such a society is only conceivable, if we project a humankind, in which every single human being is the embodiment of morality. Even though normative authority dwells 'within' individuals, it should become completely 'internal'. Still it could provide us with a yardstick to measure our actions and judgements. This yardstick should
then be applied consistently and continuously in our interaction with all other people. The Young Marx believed that society's punishment in future (a non-alienated society) would become self-punishment. Our fellow beings could help our absolution. He was still operating with the concept of formal justice. Though he thought that he had moved beyond justice. If we assume that every individual is equally and completely identical with rational humankind, a situation where no one can commit injustice, then there is neither justice nor injustice. Thus the notion 'justice' does not make any sense at all. This state can be called "beyond justice".

According to Heller, the 'anthropological revolution' is an impossibility. It is only a rational utopia. Such a rational utopia can still supply regulative notions for our actions and judgements. Though the situation projected by the notion of an 'anthropological revolution' is a non-rational utopia because it includes a self-contradiction. It is self-contradictory not only as a socio-political utopia but also as a moral utopia. This argument proceeds in the direction that a person who prefers suffering injustice to committing injustice is a righteous person. If injustice cannot be either committed or
suffered, it does not mean that everybody will be righteous; rather nobody will be. That is why the 'best possible moral world' must be one wherein injustice can still be committed as well as suffered. This argument clearly vindicates that the 'anthropological revolution' is neither viable nor desirable.

Heller says that it is unnecessary to touch upon the problem of 'human nature' in order to reject the utopia of a society beyond justice projected on the basis of an 'anthropological revolution'.

Trying to make a case against the 'anthropological revolution' is not equal to trying to make a case against changing our social nature. Upto certain extent, human nature is very elastic for the better as well as for the worse. Even individuals can undergo substantial modifications in the direction either of moral elevation or of degradation. This point was highlighted by Karl Popper in his Poverty of Historism. According to him, human nature is highly unpredictable. The commitment to positive norms and values can bring out the best in us. The non-commitment to certain norms and commitments can bring out the worst in us.
2. The Normative Foundation of an Incomplete Ethico-Political Concept of Justice

An incomplete ethico-political concept of justice, holds Heller, contains two elements like ethico-political concept of justice. They are: (1) the political (socio-political) element, and (2) the ethical element. The political (socio-political) element is the normative foundation of the possibility of a pluralistic universe in which every culture is tied to every other culture by bonds of symmetric reciprocity. The ethical element addresses the problem of the moral-ethical propensities required for the readiness to actualize such universe to live up to its normative requirements. Once again Heller repeats that the normative foundation of the best possible socio-political world must not presuppose the state of 'abundance' and must not presuppose any 'anthropological revolution'.

The formulation of an incomplete ethico-political concept of justice poses some serious difficulties, because the concept is simultaneously universalizing and deuniversalizing the standards of morals. That which is to be universalized (and generalized) is the 'golden rule' of just procedure. However, everything else should be deuniversalized if the simultaneous existence of several different cultures
and ways of life is postulated. The only institution to be addressed in concrete terms is the procedure inherent in symmetric reciprocity for, this alone is postulated as universal. Correspondingly, only that aspect of ethics is to be addressed in universal terms which recommends the universal institutions. Complete ethico-political concept of justice has the advantage of concreteness. Since they reflect upon one single way of life and idealize one particular kind of moral custom, they feel no restraint in universalizing it. The protagonists of the complete ethico-political concept of justice must intuit rationally. This kind of intuition can be good and fruitful. Rawls' Theory of Justice is a good and genuine sample of a complete ethico-political concept of justice. Rawls who operates with the idealized pattern of the 'triad' and hides his own intuition behind the ingenious construct of the 'original position'. The pattern of 'just distribution' becomes concrete because it is the idealized distributive patterns of a particular way of life. The incomplete ethico-political concept of justice is apparently filled with a dilemma. Either we restrict ourselves to the discussion of a few norms, procedures, and thus completely forego any discussion on political institutions, social structures, proper relations, technologies and moral norms proper or we
commit the 'universalizing fallacy'. Yet Heller believes that this dilemma can be negotiated.

In this chapter, she discusses only those norms that she recommends as universals. And without making any attempt of concretization she does so in highly abstract terms. She admits openly that her cultural background, her intuition, her tradition, are the sources of her concrete ideal. But she does not intend to universalize her ideal. Instead, she invites all those committed to generalizing and universalizing the 'golden rule' to present their own social ideals, their own traditions, their own cultural background and their own institutions. If one is not trapped by universalizing fallacy, the plurality of such social ideals can be nothing but the happy expectation of a pluralistic universe where each culture is tied to every other culture by the bonds of symmetric reciprocity.

Habermas in his study *Discourse Ethics* (Diskurse-thik) proposes the theoretical acceptance of the 'fundamental principle of universalization' as the sole moral principle. 'Discourse ethics' is specified as the procedure by which human beings can completely live up to the imperative of the moral principle. For the 'fundamental principle of universalization' itself has been found
through a quasi-transcendental deduction from the conditions of argumentation. At this juncture, it is not necessary that we should follow the logical, and critical steps which have resulted in Habermas' theoretical proposal. It is sufficient to discuss the proposal itself.

Heller sums up her view of the 'discourse ethics' as propounded in Habermas' work. She writes that (1) both the 'fundamental principle of universalization' and the procedure by which men and women can live up to 'discourse ethics' can be viewed as alternatives to a social-contract theory. Habermas proposes a principle under the guidance of which, and a procedure through which, socio-political norms can be tested and established in a world of general and universal symmetric reciprocity. To put it in other words, only socio-political norms, which are tested and established under the guidance of the fundamental principle of universalization and through the procedure of discourse ethics are the real socio-political relationships established as relationships of symmetric reciprocity. This is why Heller accepts both the fundamental principle of universalization and the discourse ethics as the basic normative foundation of an incomplete ethico-political concept of justice, and simultaneously as the normative foundation of a (possible) world in which all cultures are
tied to one another by the bonds of symmetric reciprocity. However, Heller adds that the basic normative foundation is not yet the complete normative foundation, and she will adduce suggestions as to how to complement it. (2) Heller tries to show that Habermas' 'sole moral principle' is not a substitute for the categorical imperative (as he believes it is). Habermas' 'sole moral principle' is the principle of justice. Of course, justice includes a moral aspect, and for this reason the principle of justice is also a moral principle. But the principle of justice is not a pure moral principle par excellence (as the categorical imperative truly is), because it has to have recourse to interests and consequences, which a pure moral principle must not do. From this point of view the Habermasian proposal is utterly un-Kantian. Yet in another respect it is Kantian in an orthodox sense. Habermas wants to reduce all moral principles to one 'sole' principle, and he does so more conclusively than Kant ever did. In the view of Heller, morality cannot be grounded on one single principle, not even on one kind of principle.

Now Heller turns to Habermas' proposal in detail. The 'fundamental principle of universalization' is formulated twice. The first formulation runs as follows:

Thus every valid norm must satisfy the condition that the consequences and side effects which would
(predictably) result from its general observance in the course of satisfying the interests of each and every individual, could be accepted (and preferred to all known alternative regulation) by all those concerned.

The second formulation of Habermas' "discourse ethics" is given below:

In a discourse ethics, a norm may only claim validity when all those potentially concerned with it, as participants in a practical discourse, achieve (or could achieve) a consensus that this norm is valid.

The second formulation is more laconic, but it is also stronger:

Only those norms which find (or can find) the consent of all those concerned as participants in a practical discourse may claim validity.

Habermas infers that the choice of norms can be rationally grounded. Again, he imposes a restriction on the factual universality of the fundamental principle of universalization. He introduces this principle of universalization:

"...as a rule of argumentation which makes consensus possible in practical discourses when matters can be settled in the general interest of everyone concerned."

Habermas in his fundamental principle of universalization has taken a decisive step away from his own orthodox consensus theory of truth in practical discourse. The discourse within the orthodox consensus theory is not
guided by any principle at all. The rules of speech themselves engender the true consensus. In discourse the participants live up to the rules of speech and to these rules alone. To the rules of speech living up is not dependent on the empirical will that it is not a matter of choice. Before he wrote his paper on discourse ethics, Habermas was in complete agreement with Apel. According to Apel: "...the moral 'founding norm' is implicit in the will to argumentation and that this is why this will can be termed as 'unconditional' and 'categorical'." It is a fact that Apel limited this proposal to philosophical argumentation alone, whereas Habermas applied it to every discourse.

In spite of this departure from his former theory, Habermas, according to Heller, has not as yet gone far enough. The fundamental principle of universalization has been kept completely formal. Since Habermas' fundamental principle of universalization, in Heller's view, is a sensible alternative to the 'social contract'. Here Heller refers not to all norms proper, but only to social and political norms. Social-political norms and rules must be tested whether the foreseeable consequences and side effects they would exert on the satisfaction of the interests of every single person which would be accepted by each and every person.
Heller feels that Habermas actually ends up proposing something very similar to that of her own. The discourse itself will aim solely at 'will formation' if we accept the fundamental principle of universalization as the guiding principles of discourse. The sole criterion of the correctness (justness) of norms will be whether each person accepts the side effects and consequences coming from the acceptance of any given norm. The discourse will centre on the free acceptance of consequences and side effects, but not on determining through a cognitive process whether the norm is suggested that the sole criterion of the righteousness and justice of a socio-political norm is the free acceptance of all side effects and consequences which the norm would impose on every individual by everyone. Again, the 'will of all' becomes equivalent to the 'general will'. But we do not know that whether it is 'good will' or a bad one. There is no substantive criterion for measuring the goodness of the will.

A value discourse cannot be settled in the way in which Habermas insisted as different values are proposed by different participants of a discourse. Each one tries to justify his values as right and true. They do so by resorting to values higher than those which they want to justify. If the participants do not accept any supreme
value, they will resort to different kinds of supreme values. Then the discourse remains unsettled. If they accept supreme values, then the discourse can be settled in one of two ways. The ways are either that all contesting values can be related to the supreme value without self-contradiction or that they are only different interpretations of the same value. In both these cases all contesting values are true values. Since all contestants have already accepted this supreme value as an absolute and unconditional.

The value of the 'higher-order consensus' must be taken for granted as self-evident. It has a normative power beyond reasoning. What Heller calls the attitude of 'rationality of reason' is the foundation of all kinds of rationalities. Even the attitude of rationality of intellect cannot completely conquer it. If we all agree on something else, we can reach agreement about something we disagree upon. If we do not accept any substantive value as taken for granted, consensus can be based on will formatting alone. Thus it will not be rational. To Heller total rationalism is self-contradictory.

Thus it is seen that the fundamental principle of universalization of Habermas does not supply us with the
supervision intended by Habermas himself unless one substantive value is given.

Now, Heller reformulates the fundamental principle of universalization of Habermas and the definition of 'discourse ethics' as the normative foundation of an incomplete ethico-political concept of justice and the normative foundation of a pluralistic cultural universe where each culture is bound to every other culture by the bonds of symmetric reciprocity.

Heller's reformulation of the fundamental principle of universalization runs as follows:

Every valid social and political norm and rule (every law) must meet the condition that the foreseeable consequences and side effects the general observance of that law (norm) exacts on the satisfaction of the needs of each and every individual would be accepted by everyone concerned, and that the claim of the norm to actualize the universal values of freedom and/or life could be accepted by each and every individual regardless of the values to which they are committed. The consequences and side effects of these norms must be preferred to those ensuing from all alternative regulations, and the norm must actualize the universal values of freedom and/or life to a greater extent (more fully) than other alternative regulations would do.

Thus the fundamental universalization in Heller's conception is the principle of socio-political legislation. No single individual can live up to the fundamental principle of legislation. This type of homogenous system of values and
needs might have been possible in ancient communities, but not today. Real discourse in modern society must be conducted with the participation of everyone concerned. If the requirements of the fundamental principle of legislation are to be met, discourse is the only possible solution. Heller subsequently subscribes to Habermas' definition of 'discourse ethics' with one modification: "I do not speak of norms in general, only of social and political norms (laws) in particular." Her formula reads as follows:

According to the ethics of discourse, a social-political norm (law) can claim validity only if all those concerned, as participants in a practical discourse, aim at (or would aim at) agreement about the validity of that norm.

Discourse ethics is, no doubt, an ethics because it includes certain attitudes towards values (norms). At the same time it supplies a yardstick for the recognition or non-recognition of practical claims. Although, discourse ethics does not encompass all of its aspects, it is the central moral institution of the ethics citizenship of Heller's mind.

Now we pass on to universal maxims, which are both substantive and formal. Heller adds one substantive qualification to it (actualization of the universal values of life and freedom). The fundamental principle of universalization is formal. Real discourse is not needed in
testing norms by maxims, whereas the validation of all socio-political norms should occur through real discourse. The fundamental principle of universalization performs the function of guiding and testing. Heller calls this principle the "universal maxim of dynamic justice" wherein the norms and rules are treated as unjust.

Heller repeats certain basic steps of her argumentation. She defines the formal concept of justice and dynamic justice in the following way:

... if the same norms and rules constitute a social cluster, these norms and rules apply to every member of that cluster. I termed this formal concept of 'maxim of justice' (all kinds of justice must meet this standard). Dynamic justice, on the other hand, has been defined as the procedure by which existing (valid) social and political norms and rules are tested, queried and devalidated, and simultaneously, where alternative social-political norms and rules are validated.

She argues that those contesting existing norms and rules as unjust can have a moral right to do so. In addition, she has vindicated that the contestants normally have recourse to one interpretation of the value of 'freedom' or 'life' to back their claim. Finally, she concludes that the 'contestation of justice' can be made by discourse, negotiation, and force. If the contestants are both free and each other's equals discourse is possible.
A "just society" is undesirable without dynamic justice. What is desirable is the generalization and universalization of dynamic justice as a just procedure. For dynamic justice, the only just procedure is discourse. We have a moral right to claim that the universal principle of dynamic justice should be accepted as the principle of the just procedure for establishing and contesting socio-political norms and rules. The universal principle of dynamic justice is a claim to observe a universal moral maxim in full. This maxim is akin to that of Kant, according to which no human being should serve as a mere means for any other human being. The moral maxim stands higher than the universal principle of dynamic justice; because the universal principle draws its 'moral right' from the moral maxim. It is also the source of the 'sense of justice'. The fundamental principle of universalization cannot even be viewed as the 'sole moral principle'. This universal principle of dynamic justice universalizes one of the outstanding aspects of all types of dynamic justice, namely, the possibility of having recourse to the values of freedom and life. The universal principle of dynamic justice explicitly includes the injunction to actualize the values of life and freedom. This formula itself guarantees only such interpretations of freedom and life which can be actualized.
The universal maxim of dynamic justice has turned out to be the simple reversal of the maxim of justice. The universal maxim enjoins that socio-political legislation should be the result of a 'just procedure'. Value discourse has been designated as a just procedure. Resolving the socio-political conflicts through discourse is not a novelty. If 'resolving socio-political conflicts through discourse' is the procedural norm of the (higher) social cluster, then it is only among equals that the socio-political conflicts are settled in this manner. Such a discourse is always guided by a set of traditional norms. Participants have to bank upon these traditional and sometimes divine norms, but always norms as such are taken for granted. The value discourse is governed by the universal maxim of dynamic justice. Dynamic justice is nothing but a universalization and generalization of traditional value discourse.

In practising justice, one can become just. The norms and rules all persons must learn to apply consistently and continuously are the norms and rules of Sittlichkeit (moral ethical custom) in respect of pure static justice. By moral reason, by listening to the voice of the 'internal authority' (conscience) of moral conduct one cannot as
yet infringe the norms and rules. By the rationality of intellect we test the norms and rule from the standpoint of values and (moral) norms. And so morality and Sittlichkeit do not coincide. People can choose to be 'unjust' (in terms of Sittlichkeit) in order to be just (in terms of morality) but not to apply the yardstick provided by Sittlichkeit in their actions and judgements.

The schism between Sittlichkeit and morality (in justice) disappears again if the just procedure of legislation takes root in any community. To use a Hegel’s term, this is the state of the negation of negation. At a higher stage both static and dynamic justice are negated as well as preserved and synthesized. Static justice is preserved because no one can label the just procedure as unjust. It is negated in that no socio-political norms and rules are to be taken for granted. Dynamic justice is preserved because the maximum of the value discourse is the universal maxim of dynamic justice. For obvious reasons, dynamic justice is negated. From the standpoint of dynamic justice it cannot be claimed that the application of the universal maxim of dynamic justice is unjust. To a higher (maximum) stage both kinds of justice are elevated. How does this happen? why does it happen?
This is what is shown by Habermas in his "discourse ethics". This is a correct way, according to Heller. We must suppose that value discourse has been institutionalized in the broadest meaning of the word that every member of the community of argumentation anticipates every other person to observe the rules of the value discourse. Heller considers only the institutionalization of procedures of just legislation, but not the institutionalization of all value discourses. But socialization goes with 'acquiring the practice' of conducting values discourse. The virtue of all members of a community must share the 'observing the rules of the value discourse' and observing the socio-political norms of which they have been authors. In this manner, discourse ethics is seen as the strongest version of Sittlichkeit. By this Heller means as follows:

By this I mean (a) that, as far as legislation is concerned, one cannot opt for alternative kinds of Sittlichkeit; (b) that moral customs are unconditionally binding; (c) that custom is a moral authority, and in socio-political matters the exclusive authority.

The authority of a just procedure is an external authority in the sense that it encompasses the ethos of the community. The failure to observe the rules of discourse entails the 'eye of others' bringing shame to the transgressor. For it is the authority par excellence which excludes domination yet
value discourse is the only external authority of socio-political decision making which cannot become the authority of domination. Thus internal authority cannot query and test the validity of this authority. Moral conscience cannot be other than the full internalisation of the authority of socio-political decision-making. Moral conscience not only pertains to matters of justice and injustice. It is invested in moral norms proper as well. But moral norms proper are either constituted by type of discourse or the other, or they are not constituted by discourse at all. Here the best possible socio-political world is the condition of the 'best possible moral world'. No moral norm can query the validity of just procedure.

The ethics of just procedure is the ethics of optimum freedom. It is not the ethics of absolute freedom. Absolute freedom (the making a good of individuals qua individuals) may also mean the renunciation of all human bonds constituted by symmetric reciprocity. The notion of the absolute autonomy of the empirical person is not only a chimera, but also a dangerous chimera. Relative autonomy is the human condition.

If the just procedure of value discourse is part and parcel of Sittlichkeit, and if newcomers to the
community (society) are socialized through 'acquiring the practice' of the value discourse, then no special skill, training, professional knowledge (or exceptional gift) is needed to practise such a discourse. Each and everyone is familiar with the rules, everyone has learned how to observe them. In the dialectical 'sublation', the 'preservation' of static justice is equivalent to the preservation of the attitude of rationality of reason. Heller has mentioned that the 'higher-order consensus' itself denotes the preservation of the attitude of rationality of reason. Now, it should be added that discourse ethics as Sittlichkeit keeps rationality of reason in force. Discourse ethics is 'taken for granted'. Nevertheless, the maxim of discourse ethics is the universal maxim of dynamic justice which presuppose the attitude of rationality of intellect. Rationality of intellect is argumentative reason. This the rationality of intellect and rationality of reason merge in discourse ethics. If rationality of intellect is taken for granted, then we enter into a philosophical discourse. Our reason alone is required for participating in a philosophical discourse.

It is the citizen's virtue to recognize all needs equally, except those the satisfaction of which involves the use of other people as mere means. If the citizen lives in
a world where not all needs are recognized, then the virtue of the 'original position' cannot be a 'cold' virtue, and the cognitive aspect of the virtue must be very demanding. No needs are equally recognized because, firstly, the norms and rules of a particular society receive universal recognition, secondly, no certain needs are expressed strongly enough. By lack of education, lack of organization, etc., people may not be able to express needs owing to legal constraints. But the good citizens can help them by speaking on their behalf. But he or she fails to demonstrate the citizen's virtue proper if the good citizen does no more than this. One can display citizen's virtue by helping the need speak, discovering their needs, their values etc. The good citizen does not substitute his or her values for those persons and groups whose needs are in want of recognition, but rather displays solidarity with them.

All the elements of just procedure have been related to traditional and contemporary just procedures, such as the formal concept of justice, the 'golden rule' and dynamic justice, and discourse as the means of settling socio-political conflicts. The entire model is the rearrangement of the above-mentioned traditional and contemporary practices. If humankind is thought to be the essential social cluster and if human relations are relation
of symmetric reciprocity, it is the only possible rearrangement involving all the constituents of 'justice'.

NOTES

2. Ibid., p.49.
3. Ibid., p.53.
4. Ibid., p.55.
6. Agnes Heller, Beyond Justice, p.64.
7. Cf. Agnes Heller, Beyond Justice, p.64.
8. Ibid., p.72.
9. Ibid., p.74.
10. Agnes Heller, Beyond Justice, p.73.
13. C.F. Agnes Heller, Beyond Justice, p.79.
14. Agnes Heller, Beyond Justice, p.82.
16. Ibid., p.88.
17. Ibid.
18. Ibid., pp.88-89.
22. Ibid., p.98.
23. Ibid., p.99.
24. Ibid.
27. Ibid., p.110.
30. Ibid.
31. Ibid.
32. Ibid.
33. Ibid., p.236.
35. Ibid., p.241.
36. Ibid.
37. Ibid., p.247.
38. Ibid., p.259.