CHAPTER IV

Socio-Political Concept of Justice
The notion of socio-political concept of justice has brought into limelight certain fundamental issues of justice. The dissection of the notion of socio-political body has provided a deeper and clearer insight into the functioning of its organs. The socio-political concept of justice, as a modern theory, has illuminated pre-modern problems of justice from a new viewpoint and has raised new problems concerning the functioning of modern societies. However, after the second world war, particularly it has shown signs of decay. And also it has shown its incapacity for coping with the ethical postulates of our times. The intellectuals of the present era are craving for a new ethico-political concept of justice. All the newly invented discoveries of the socio-political concept of justice can be mixed with certain changes within this notion.

Heller disagrees with Kaufmann's statement that neither the problem of retribution nor that of distribution can be legitimately discussed under the heading of justice. Heller rejects his concluding thesis that "punishment can never be just" (or his thesis that distributions can never be just) even if she subscribes to Kaufmann's thesis that
"pre-occupation with retributive justice is inhumane", if this is what is meant by pure moral judgement, and if the world 'pre-occupation' is heavily emphasized. Suppose she agrees that the former statements were true, then she is not accepting the proposal that retribution (or distribution) cannot be rationally discussed under the heading of justice.

Dynamic justice, in modern western societies, is taken for granted. If the notion of dynamic justice is taken for granted, then it transforms the dynamic justice into static justice. The framework of contemporary western society is based on ahistoricity. First of all, we have to admit that we are living in an hermeneutical age, and the relativity of our cultural values is forced into us. Secondly, various models of 'the just distribution' or 'the just retribution' in 'the just society' are made available to us. Justice is treated as a substance (like sugar or iron) either contained or not contained in norms and rules. From the analysis of the modern welfare state most of the new notions of justice start. The need structure and the personality structure of modern western man have been equated by the challengers and the challenged. The things that one feels entitled to are the things 'men' in general are entitled to.
In this chapter, Heller historically argues that all claims to justice are rooted in certain values other than justice itself—namely, in 'freedom' and 'life'. Let us see three major themes of socio-political concept of justice. They are: (1) retributive justice, (2) distributive justice, and (3) the 'just' or 'unjust' war and peace.

1. Retributive Justice

Generally speaking, retributive justice is that a person is penalized for wrongdoing. Retributive justice is the criminal justice which has come into existence with the advent of jurisprudence. According to the principles of jurisprudence, the demand for justice expresses itself in the feelings of resentment or revenge. The violent resentment may result in the infringement of any right, or the denial of any legitimate right which arouses and expresses itself in the sense of injustice. The impulsive basis of justice is found in this reaction of resentment of the family, the cluster (group) or the tribe against an individual or another cluster. "An eye for an eye, a tooth for a tooth, and a life for a life, is not only the law of the jungle, but the law of all primitive types of life. This notion of justice, Bacon describes, is 'wild justice'. Durkheim is right when he says that primitive people have
only criminal justice; and the civil and ethical justice are later additions.

Retribution is a social sanction effected according to social norms and rules when these norms and rules are violated. These sanctions punish suffering so that the offender pays his debt. This reinforces the validity of the norms and rules. Thus social justice is restored. According to Heller, the modern notion of retribution excludes revenge. Yet, the forms of revenge are explained in terms of retribution proper if the norms and rules of a society include revenge. The modern notion of retribution excludes collective retribution for the simple reason that we attribute the act solely and exclusively to the individual as a social agent. The notion of moral personality can be listed among the few indicators of ethical progress. The notion of collective retribution has not totally withered through the modern notion of retribution excludes collective retribution. But who is responsible for collective crimes?

Retribution is explained as a social sanction, but 'social sanction' is far from being identical with retribution. Strongly, Austin spoke for the identification of sanction with retribution. Yet, there are number of negative sanctions which are not retributive, since they are
not punishments because norms and rules have been violated. One who is dismissed from a job for being a 'security risk' is a sanction, but not a retributive one. Preventive sanctions are not retributive. In modern ethico-political concept of justice (in Hobbes, Rousseau and Hegel) the problem of retribution appears in conjunction with other problems. The time when retribution became the exclusive concern of criminal justice, it became questionable whether criminal justice could involve retribution at all. The principle of 'deterrence' has been increasingly substituted for the principle of retribution.

In Hobbes and in Locke, while comparing the 'state and nature', one comes to know the absence of the notion of deterrence in the former and its presence in the latter. It is not too far-brought an interpretation of Locke's contract theory to say that the contract became indispensable because the deterrence of single criminal act had become too troublesome a matter. Locke asserts that all kinds of civil governments do not propose proper remedies. Some of them are greatly inferior to the 'state of nature'. Still Locke applies the notion of 'deterrent justice' in both of its understandings. The emphasis on deterrence is so strong that it anticipates Beccaria's formulation.
It is understood that Beccaria made a strong case against torture and the death penalty and presented these issues to the public eye. He suggested refraining from legislating against infanticide. He believed that such an act is not easily detectable and so much a law can be more harmful than useful. Since there is no other authority than that of law, we may not pursue every personal interest unless we break the law. On this subject Beccaria had a humanitarian frame of reference that he referred to the misery of fallen women.

Both Kant and Hegel despised Beccaria's proposals. Both rejected the principle of deterrence as amoral, as unworthy of free human beings. Kant strongly accused Beccaria's argument against capital punishment as 'sophistry' and a distortion of law. Kant defends the death penalty in the following way:

I say that a man of honour would choose death and the knave would choose penal servitude ... because the first recognizes something he prizes more highly than life itself, namely, honour, whereas the second thinks that a life covered with disgrace is still better than not being alive at all.

In his categorical imperative, Kant argues for the principle of retribution. Evidently we can all do what is permitted since humankind dwells in all of us, since we can all do what we should do. If we fail to act in this way, humankind
punishes us. This much only marks our lack of humanity if we do not crave for retribution.

Hegel's view is different and embedded in the traditional perspective of retribution:

The deed of offence is not primary, a positive to which punishment would come as something negative, but is rather negative in itself, so that punishment is a negation of negation. The real right is the sublation of this offence, which displays its validity, precisely, in it and is preserved as a necessary mediated being.

Hegel reiterates that crime is a 'debt' which must be paid back to restore social justice. Yet, his conclusions are similar to those of Kant. Against the principle of deterrence he says:

However, right and justice must hold their seats in freedom and volition, and not in unfreedom which is addressed by threat. In this way, punishment is established as if we raised a stick at a dog, and man will not be treated according to his honour and freedom but like a dog. But a threat which so insults a man that he proves his freedom against it, sweeps aside justice completely.

Against Beccaria's denial of the death penalty he writes:

What is involved in the action of the criminal is not only the concept of crime, the rational aspect present in crime, as such, whether the individual wills it or not, the aspect which the state has to vindicate, but also the abstract rationality of the individual's volition. Since that is so, punishment is regarded as containing the criminal's right and hence by being punished he is honoured as a rational being.

Heller deals with the controversy between 'deterrence and retribution' because she wishes to make a case for the
principle of retribution as the sole principle of punishment which can legitimately be called a principle of justice. Moreover, the principle of retribution as the sole principle of punishment which can be implemented concomitantly with full respect for the person who is to be punished. The principle of deterrence and that of reform do not have this potential. A person's moral freedom does not mean that punishment administered through the principle of retribution does not go together with the latter. At this point, the problem of 'retributive justice' must be inserted into a framework of an 'incomplete' ethico-political concept of justice.

In fact, the principle of retribution gives priority to the value of freedom against that of life. Does such a priority necessarily entail the acceptance of the death penalty, as Kant and Hegel believed? As stated, the principle of retribution signifies the notion of proportionality between crime and punishment. But generally proportionality itself does not call for the lex talionis or make the demand of 'a life for a life' in particular. Or does it? The answer is not that easy as it appears to be. By accepting the principle of retribution, it is easy to deny capital punishment in all cases excepting one, that of murder. If someone commits premediated murder, it is just
that the person should die. Whether or not capital punishment stops this extreme act is irrelevant here. This is where the two universal principles (of life and freedom) are in agreement. On purpose taking a human life is a simultaneous violation of the value of life and of freedom. If one who is guilty of this crime respected humankind in him (or her) then this man would experience the will to die. Taking his (or her) acting as a free being, would amount to the administration of justice. Heller does not say that this argument is wrong at the same time she does not say that both Kant and Hegel were 'cruel' or 'inhumane'.

The matter of crimes committed against humankind must not overrule the Kantian - Hegelian principle. The guilt is not simply 'beyond reasonable doubt' here, but is absolute and incontestable. The excommunication from the human race implies that chance should not be given to a guilty person. The excommunication leads to the death penalty. The arguments of Kant and Hegel retain full force, if crimes are committed against humankind.

Heller has advanced the hypothesis that deterrence as the principle of punishment has nothing to do with justice. Why this is so? If an act is already committed,
then it can involve punishment. Punishment, should be equivalent to the offence. In meting out punishment if one considers the person is likely to commit the same crime again, then punishment simply cannot be equivalent to the crime. If the quality and quantity of punishments are compared with one another, then they can only be consistent as well as equivalent. Punishment cannot be equivalent to the offence when the deterrence principle is applied. This is what justice is in punishment.

Now we can think of reform as a guideline of punishment. It is a future-oriented as the principle of deterrence. In this principle, punishment happens in order to reform the wrongdoer or criminal. The principle of reform cannot be a principle of justice. It does not even permit for the same degree of just application of the standard as the principle of deterrence does. One cannot know what kind of punishment will actually reform a particular person. Punishment becomes a conjecture as well as arbitrary. This fact alone would not make the principle irrelevant. The principle of reform is beyond justice because it involves charity rather than justice.

Authentic reform is always self-reform. Reform of character is always self-reform according to Heller. It begins with an insight. Punishment can be the occasion, but
not the case of such insight. Punishment is seen as the cause of reform. Such a belief is absent if punishment is governed by those sharing the principle of retribution. If the punishment serves to draw out insight, it is left to the offender to change character. The principle of retribution gives the offender an account of freedom of choice. No authentic reform follows, if conscience does not accompany punishment. If someone is put to shame, then he does not feel ashamed. Real reform depends upon the deep internalization of norms, but not upon the punishment. Fear and pain can be the effects which motivate and activate reform. But the fear must be the fear of evil (the fear of norms and the fear of God) and the pain must be the pain of being ashamed. The fear of punishment and the pain accompanying punishment will never suffice.

If and only if the punished person is ashamed by his sense of conscience, then legal sanctions as well as moral sanctions can be true occasions for reformation. This is so if the punished person accepts the norms and rules as valid, and thus accepts punishment as right and just. Likewise, punishment by law can be the occasion for reform, if the offender regards the law as just and the punishment as just punishment. These two conditions do not necessarily coincide. Yet, the people who do feel shame and sense of
conscience, who identify the law as just and who want to be punished may receive milder punishment; whereas those who do not identify the justness of the law or have any guilt feelings are usually more severely punished. Heller says that there are two types of citizens. They are: (1) 'law-abiding citizens' and (2) 'criminals.' Then, criminals are divided into two. They are: (1) with wicked minds and (2) without wicked minds. The conclusion that we can arrive at, is that the three principles (retribution, deterrence and reform) must be mixed, and punishment should reform, although people with 'wicked minds' should be locked away. This is a straightforward legal thinking and matches the interests of the citizens who want to be saved from the murderers, thieves, drugpushers, rapists, corrupt officials etc. This is what Heller expects. However, the moral sense and the sense of justice do not find a place in these interests. Thus Heller does not subscribe to the above said view.

Heller sums up her basic statements about retributive justice in the following way.

First of all, the retribution alone is the only principle of punishment worthy of human beings. From the viewpoint of this principle man, is always treated as an 'end-
the deed and is seen as a free and rational agent. One who
offends norms should expiate this offence by paying the debt
due and thus restore justice. Once the debt is paid, the
person is no longer guilty. Retribution can also be self-
punishment. People are treated as free and rational beings,
as the sole agents of their deeds if punishment is
supervised through principle of retribution. But are they?

Secondly, Heller finds the deterrence principle
morally impermissible as the deterrence principle considers
people as mere means. This principle permits for punishment
without offence (preventive action). If the more is moral
offence, the less is the deterrent value of the law. The
practice of employing the law as a deterrent cannot be
removed today, because of the lack of civic morality.

Thirdly, the principle of reform is morally
indeterminate. Punishment, is not and, should not be the
cause of reform. The principle of reform leaves us with the
'wastebasket' of the 'wicked mind'. This 'wicked mind' can
not be reformed or deterred. So deeds stemming from this
mind must entail retribution. We come to the absurd conclu-
sion that only the 'wicked mind' is the mind of a free and
rational agent if we subscribe to the principle of
deterrence and reform. Obviously, no one would accept this.
Hence, we have enough reason to accept the principle of retribution as the only rational and moral principle of punishment. If we are not free rational actors and the sole authors of our deeds, retribution is unjust. There is absolutely no just method or principle of punishment. If it is not so, retributive justice is a chimera.

2. Distributive Justice

Distributive justice aims at the distribution of goods equally to all (people) without any discrimination. It is distributed on humanitarian basis. The problem of distributive justice is one of the important problems of an ethical theory.

Heller's notion of distributive justice does not address the distributive aspect of all types of justice. Distributive justice is a separate branch of the socio-political justice. Doing justice or injustice involves distribution. To judge others and ourselves we distribute blame and praise, approval and disapproval. In proportion to the offence retribution is also distribution of punishment. Such honours should be distributed equally among members of the same social cluster, and unequally, between people belonging to different social clusters. Accurately just or unjust distribution refers to the just or
unjust distribution of material resources and goods. In the beginning, 'distributive justice' was concerned with the distribution of properties. The distribution of general income has been the focus of attention since the emergence of the welfare state.

Distributive justice was understood within a general theory of justice and addressed within the framework of complete-socio-political concept of justice. Plato, in order to make the Republic as a whole just, proposed the abolition of private property for the cadre of guardians. Aristotle suggested a relative equality of wealth. His suggestion of wealth is neither too much nor too little but 'medium wealth' which as a condition of the good life of the good citizen and the good city. Even Rousseau subjected the solution of this problem to the general model of an ethico-political concept of justice. Locke did not totally clash with this long-standing tradition either. He contributed to the emergence of the concept of retributive justice rather than 'distributive justice'.

Certainly, Hume is the founding father of the branch called socio-political justice. This is otherwise known as 'distributive' justice. He asserted that property and property alone is the subject matter of justice.
Further, he affirmed too that retribution (negative sanctions) is the suspension of justice for the sake of social utility:

When any man, even in political society, renders himself by his crimes, obnoxious to the public, he is punished by the laws in his goods and person; that is, the ordinary rules of justice are, with regard to him, suspended for a moment ...

Also, Hume deduced justice from 'public utility'. In property ownership inequality is just because it is useful. We can assume two cases where property qua justice loses its social usefulness. They are: (1) The situation of absolute abundance and (available in sufficient quantity) and (2) The situation of absolute scarcity (not available in sufficient quantity).

In the first case property is useless, redundant because (if all needs can be satisfied) we are beyond justice. In the second case property rules are violable. This justice must be suspended. Still, we live in a situation limited by abundance or scarcity. That is why property qua justice is useful. In Humean view, the notion of justice reduces to the notion 'to each according to his property entitlement'. All other uses of the notion 'justice' are seen as relating to the 'suspension of justice'. Heller does not offer either a historical or a patterned model of just distribution. Further, Heller says
that this is far from her intention that she wishes to make it clear that the questions raised under the headings 'distributive justice' should be handled within the models of an ethico-political concept of justice.

The liberal models rely on the imagination. Persons are atoms. They all follow their interests. They are endowed with higher or lower degree of talent. Some of them are won in the 'natural lottery'; others could be considered meritorious. One who has more talent has success and the like. This is unfair. The state must take up the task of redistribution, preferably with the agreement of all. The state must 'confiscate' income from the most talented and redistribute it to the least talented. Redistributive theories differ in their arguments. They also differ on whether they still consider property relations, or only inequality of incomes (goods and service included), as the problem. Besides, they differ as to whether such moral norms are considered decisive in attaining the agreement in question. Conclusively, they differ in whether they point equality in satisfaction or equality in resources. But, whatever may be the differences and how important they might be for the theoretical argument, in practice we are always confronted with a triad. This consists of:
(1) The individual (the atom) endowed with interests and a certain degree of talent as the competitor and the receiver; 

(2) the state as the redistributor; and 

(3) money (in the form of income, welfare spending and the like) that is redistributed by the state and received by the less fortunate individual atoms.

What Heller means by notion of justice is as follows:

Justice means that the norms and rules constituting a social cluster are applied to every member of the cluster consistently and continuously. 

If the notion of distribution is 'to each the same thing(s)', then distribution is properly applied. Within a social cluster equal distribution is the case if the cluster to which the norms and rules of 'to each the same thing(s)' includes the population of that social cluster in question.

Then, Heller claims:

Justice will then mean the distribution of exactly the same things, and the same amount of things, to each and every member of society consistently and continuously.

Liberal models would not accept this model, because:

(1) It is not possible to attain the agreement of all concerned regarding the implementation of this model. It is not only rejected by wealthy alone, but Heller doubts, even the poorest would do so.
(2) Strikingly, complete distributive equality is unequal. It is based on the assumption that 'the needs and need structures of all persons' are similar. This assumption is not true. So, if the model of complete equality were implemented, the needs of some people would be satisfied in full, others in part, some others are neither in full nor in part. The outcome of egalitarianism is not equality.

Truly, liberal theorists are supporting a specific type of unequal distribution when they formulate the claim to equal distribution. Upon what criteria inequality should be based, the following questions they address: what kind of inequality should be achieved, how far inequality can go, what is the just limit to inequality. They do not argue for equality of income but equality of life chances. Heller agrees with this. Yet, they believe that equality in life chances depends first on income. Heller refutes this view. May be, if the triad (the individual atom as competitor and recipient; the government as redistributor; the money to be redistributed) is the sole model of distributive justice, then life chances truly depend on the amount of money because the satisfaction of non-monetarized and non-monetarizable needs cannot be catered for any social regulation. Theories of distributive justice must address
the problem of just distribution adequate to this form of life since the way of life (a single way of life as a generalized model) is taken for granted. They can only be different in their recommendation of different kinds and forms of inequality. They see recommendations as the only way to the just distribution. If the triad model is accepted and equality of life chances is taken as the major value we can still select between two (secondary) principles in our argument. We can depart from the principle of 'equation in satisfaction' or from the principle of 'equality in resources' as Dworkin stated. Equal satisfaction means one of two things. We can either say that the same needs should be equally satisfied for all or say that the needs of all should be equally satisfied. Equality in satisfaction is not tantamount to the Marxian notion 'to each according to his needs'. The former does not mean satisfying all needs whereas the latter means satisfying all needs.

The satisfaction of the same needs mean the same concrete (single) needs or the same cluster of needs. On the basis of certain objective criteria we can define the sameness of needs. Also, we can accept a person's claim that his or her needs are 'the same' as someone else's. The needs can be held to be satisfied with the same amount and different amount of satisfiers with one particular or
another particular satisfier. Conclusively, we can attribute the same needs to social clusters as well as to individuals.

To show that needs are not the same, Heller illustrates simple incident in a concentration camp where a cluster of ten people (men, women, and children) have two loaves of bread and one packet of cigarettes. There are three smokers among them. All ten are hungry. We can assume that all have the same need for bread, but not for cigarettes. What can they do now? They can distribute the bread equally among all ten, and the cigarettes equally among the smokers. This means presupposing that their needs are not the same and the smokers have an additional need compared with the others. Consequently this form of distribution is unequal. There are greater complications in this simple model.

If (i) we impute certain kinds of needs at all, (ii) we define the quantity and quality of satisfiers to meet those needs, the proposal 'The same needs should be satisfied for all' only makes sense.

Here a question may arise that how can we know that all needs are equally satisfied? If each and everyone is equally free to say dissatisfaction, and yet each and everyone claims to be completely satisfied, then all are
indeed equally satisfied. The theory of 'equal satisfaction' does not condition that each and everyone must be completely satisfied, only that they must be equally satisfied. Complete satisfaction is relative to the system of needs. If each and everyone needs only water and bread, everybody in the 'first world' would be completely satisfied. We need nothing else if we are completely satisfied. Whether complete satisfaction is desirable or undesirable is a matter addressed in the last sub-chapter of the third chapter 'Ethico-political Concept of Justice'.

Besides one thing is beyond question. We have a situation of complete abundance, a world where (as Hume correctly observed) the notion of 'justice' makes no sense, if all needs are completely satisfied. Further, Heller says that 'equal' satisfaction cannot be 'complete satisfaction' if we know that people are equally satisfied if equal satisfaction is not equal to complete satisfaction. By reversing this question, we may try to answer, for it, that people are equally satisfied if they are equally dissatisfied. How can we measure the amount of satisfaction and dissatisfaction? Apart from that, how can any social regulation achieve an equal amount of satisfaction or dissatisfaction? There is an ineliminable individual aspect to the matter of satisfaction and dissatisfaction even if we condition
ourselves to socially produced and scarce satisfiers. An open objection to this is that 'equal satisfaction' means equal satisfaction as far as income and share in service is concerned. Even though we were all satisfied with our income and service, we should still not be equally satisfied. Satisfaction with out income and services means equal satisfaction only if we are completely satisfied in all our needs.

To Heller's mind, Dworkin's view is probably right in rejecting the 'satisfaction' paradigm. His paradigm, 'equality of resources', circumvents most of the problems we have encountered in analysing the theory of 'equal satisfaction'. This paradigm is as follows. Symbolically, we all get the same sort of resources. Because we are all aware of risks involved in the gamble of life, we can be handicapped, and experience other misfortunes, we take out a life insurance policy. If we are among fortunates, we simply pay the premium to those who have failed; they on their part collect this premium. Dworkin does not assume, as some of his critics believe he does, that people in fact start their lives with equal share of resources; in other words, the term 'initial' in the expression 'initial equal share of resources' represents not an empirical fact, but a constitutive notion.
Heller does not support her arguments with empirical facts either. Hence, she assumes a real (not just imaginary) equal opportunity for all. Thus, she assumes that everyone has an equal opportunity to develop certain endowments won in the 'natural lottery' to become a politician, manager, businessman and so on, whatever the person concerned deems fit.

Heller says that all human endowments must be equally recognized. The development of certain endowments is a need. One should recognize all human needs, and all equally. Under the condition of relative scarcity, all these needs cannot be satisfied simultaneously. However, all needs awaiting satisfaction are not concomitant with the development of our endowments. In this connection, Heller wishes to make the following theoretical proposal:

... realizing the universal idea of 'equal life chances for all' does not presuppose either the satisfaction of all human needs or the distribution of an equal share of the available material resources to everyone. What it does presuppose is the satisfaction of all needs for the motivation of our endowments whatever these endowments may be, unless the satisfaction of an endowment as a need implies the use of others as mere means.

Heller has only suggested another formula for an old demand, that of fair and equal opportunity for all, which is only one possible interpretation of the 'triad model'. The
formula can mean that everyone gets the same amount of 'manna' at the outset and subsequently makes the best or worst of it (some finishing well, other not). It can even imply that the poor runners (or the unlucky investors of the manna) may be compensated later with some 'welfare sugar'. Irrespective of our likes or dislikes of the 'triad' model, it is now obvious that what is called fair and equal opportunity helps the development of certain endowments into talents and stops the development of others. Endowments must be known in order to be developed where there is only one way of life. Certain endowments which may have been totally developed remain infertile. Even inferior endowments are developed. The notion of 'equal life chances for all' be actualized only if different ways of life and social patterns co-exist, only if a person is free to change the way of life to find more adequate values and means of unfolding his or her endowments into talents. Heller subscribes emphatically to the concept of Nozick in this respect that the utopia worth pursuing is the realization of all utopias (not just of one).

Though one may take shelter in such a utopia, it may not be true that an equal 'start' will lead to the satisfaction of all needs for the cultivation of one's endowments. The promotion of such endowments requires
greater social spending than those of others. Society must spend an amount necessary for raising a person's talents. Otherwise, this expenditure must be unequal.

Keeping in mind the actualization of the ultimate value of 'equal life chances for all', Heller reverses the qualification signs between 'start' (or 'opportunity') and 'end state'. In the usual 'triad' model we have initial equality (equal start, equal distribution of manna, equality in resources, and the like) after which competition begins; and the end state involves attaining the proper level of inequality of income and wealth.

Heller's model would involve initial inequality in that, everyone receives what is necessary for the development of his or her abilities into talents and the practising of these talents. This is a principle of inequality as endowments are unique. But she sees no reason for anyone to get a higher income as a result of this. So considering, she believes that all talents to be equally precious. No particular talent contributes more to the good life than the others.

Now, Heller has shifted to the problem to another level. To substantiate her view she quotes Ackermann's view as follows. Ackermann writes:
According to Nozick, so long as the first generation began from a just starting point at Time One, individual seniors may pick out particular juniors for special favour—by gift, inheritance, or otherwise. The fact that a rich junior can trace his title through a series of voluntary actions to an initially just Time One discharges him—so far as Nozick is concerned—from any claim of injustice made by his second-generation contemporaries. In principle, all eternity could be barred from all claims of injustice so long as a single generation had attained a just starting point for a single moment.... For it should be very obvious by now that the human race has never in its long history approached a single moment at which a single generation’s starting point was arranged in a way that approximated the liberal ideal of undominated equality. We are, in short, at generation zero...the problem of inheritance is of such great theoretical importance that we must confront it head-on if we hope to grasp the shape of liberal ideals.

Heller says that Ackermann is genuinely correct. Nozick’s status of excluding all forms of redistribution as acts of injustice is truly untenable from the status of our dominant sense of justice, but not for historical reasons. Historically speaking, there has never been 'Time One'. Yet, if we were to establish Time One here and now, and if we also remain with the notion of nil redistribution, 'tomorrow' would not differ from 'yesterday' as far as distributive inequality is concerned. This problem, Hume mentioned, was well known to socialists of the nineteenth century. To put an end to the right of inheritance was always on their list. Whether right or wrong, it can still be stated in good faith that 'A' (at Time One) acquired
greater wealth than 'B' because 'A' was more talented or more frugal than 'B' but if A's son inherits this wealth it is hard to refuse that son possesses something that has not resulted from his own talents or merits. Therefore, the son should not have this wealth. And what is true about individuals is equally true about communities and nations. True, we inherit far more than just wealth but Heller will return to this matter very shortly.

Heller thinks that, here, we arrive at a point where theoretical suggestions might truly clash with what she believes to be 'human nature'. Humans are mortal and know they are. We all feel the need to leave behind some trace of ourselves and we commonly complete this by offering the fruits of our lives to the future generation.

Heller says that we cannot favour the actualization of all utopias, as Nozick did, and reject the principle of redistribution, as he did, without self-contradiction. Certain ways of life may be more able to cope with material exigencies, and others are less able. Certain communities may flourish whereas others may perish because of factors beyond human control. Redistribution is not the opposite of inheritance. But, in fact, it is necessary for the preservation of inheritance.
As far as redistribution among various forms of life is concerned, the arguments of modern liberal theory for 'initial equality in resources' (or 'equal amounts of manna at Time One') remain in force. No general 'pattern' of justice can be established as far as just distribution within each form of life is concerned. Every way of life must go according to its own distributive justice. Only members of each community and each way of life are qualified to decide what form of distribution is just or unjust. Here Heller herself says that she is not qualified to decide it.

3. 'Just' and 'Unjust' War

War is generally understood as a state of open conflict carried on between nations, or parties, or states. A war can redress wrongs only if wrongs have been done. In Medieval Europe war was the normal condition of society. On theological or astrological grounds pessimistic doctors argued that, during this time, it is necessary to have wars, and the slaughters, and infinite sufferings of war. Some men were dazzled by the pomp and circumstances of glorious war. Most doubtless agreed that: "Warres & bataylles shold be acursed thyng, & not due." Now the question may arise that when will war begin? To this question Grotius answers that: "War begins ... where the law courts end." There are two types of war. They are: (1) 'just' war, and (2) 'unjust' war.
In the present century, the commentators on the Decretum (of Gratian), of whom Rufinus was the first, developed a theory of war. In the thirteenth century, this theory was elaborated by Decretalists such as Raymond of Pennafort and by theologians such as Alexander of Hales, and Thomas Aquinas. In the fourteenth century, this theory was vigorous when John of Legnano and Baldus de Ubaldis served as the representative figures. In the sixteenth century, it was discussed by men of the stature of Vitoria and Suárez. The final flowering of the tradition may properly be seen in Hugo Grotius's De jure belli et pacis, a masterpiece standardly taken to mark the beginning of modern political theory. This theory is now most familiar from Aquinas' brief essay De bellow. When a person fights justly with any parties, or states, or nations it is called 'just war'. The Roman formula says: "... a war is just if it is waged ... for the restitution of goods or for defending one's country." On the other hand, when a person fights unjustly with any parties, or states, or nations it is called 'unjust' war.

In order to wage a war with any states, or parties, or nations certain conditions must be satisfied. The conditions were arranged under formal heads; but there was no uniformity. Alexander of Hales gives the most
elaborate system of war. According to him, to determine whether war is just or unjust, one has to take into account the authority, the state of mind, the intention, the condition, and the cause that makes a person declare war.

With this backdrop, let us enter into Heller's notion of 'just' war and 'unjust' war. Heller makes use of Hegelian terminology that it is war that attains the synthesis of retributive and distributive justice and injustice. Both power and wealth are redistributed in wars.

The notion of just war was first coined by Augustine. According to him, a war was absolutely just if fought under the direction of God in order to fulfil the commands of God. Exactly, this kind of interpretation is excluded by modern theorists of 'just war'. Wars are to be considered as completely secular undertakings. What is new is not the distinction between *jus ad bellum* and *jus in bello*, but the principles on which these two rights rest and the metaprinciple that the same principles apply to all warring parties. Likewise, the principles of just war are regarded as universals, which, in the modern tradition, were restricted to the 'civilized' world for earlier theorists. Particular principles of justification are not valid if they contradict these universal principles of justice and injustice.
Just war theories are rational. People reject other than universal principles of justice as unjust. The warring cluster must have recourse to the universal principles of war and prove that the other cluster has infringed the norms of international justice. For this reason the waging of this particular war is justified. The principles of freedom and life are the chief values maintained and reinforced. Injustice happens if the freedom or survival of a nation state is endangered. Even if both universal values (freedom and life) underlie the principles of just war, freedom is the guiding value in all these theories. If one addresses matters of war, it goes with loss of life. It must be emphasized that in just war theories peace is more highly valued than war. These theories know that most wars are unjust. Just war theories do not legitimize wars. Preferably, they restrict legitimation to particular wars (which are just).

Even if 'retributive justice', distributive justice', and 'just war theory' are considered as separate branches of justice they have emerged simultaneously, and can be considered as three different answers to the same historico-social challenge. Theories of retributive and distributive justice have been continuous. They have constantly been redefined since first formulated. This case
is different from just war theory. In modern period just war theory is never questioned. The only interest has been whether principles of retribution and distribution are just or unjust. Besides, there have always been times when it was questioned whether wars can be categorized as 'just' or 'unjust' at all. It is possible to insist (with Hegel) that all wars are just, or else state (with Kant) that wars are not just. Really, if peace is not valued more highly than war, a theory of 'just war' makes little sense, says Heller. Rather, if a person such as Kant holds firmly the view that an achievement of eternal peace is within our reach, a theory of 'just war' further makes little sense. The principle of just war did not undergo substantial change.

Principles of 'just war' have been more firmly constituted since Grotius's time than the principles of retribution since Locke's time or those of distribution since Hume's time. Sometimes, the principles of just war have been supplemented by certain procedural and substantive criteria. To quote Heller in this context:

By procedural criteria I mean conditions such as who decides to launch a war or to defend a country by means of war, and who wages the war (the armed citizenry, conscripts, professional armies, or other forces). By substantive criteria I mean conditions such as what kind of ideas the war is waged for, what kind of institutions the warring parties defend or fight against.
These additional criteria can relativize the consistent and continuous application of the principles themselves. It is not easy, and sometimes even problematic, to abstract completely from the additional criteria of *jus ad bellum*. Interstate relationships involve in the theory of 'just war'. If the institutions of a particular state are considered to be unjust by a substantial part of the populace, then the war will strengthen and stabilize internal injustice. If it ends in victory, then the shadow of injustice might fall on the war as well, even if it is fought in accordance with the universal principles of 'just war'. The tradition of 'just war' distinguishes between two kinds of justice and injustice in war. They are: (1) *jus ad bellum* and (2) *jus in bello*.

*Jus ad bellum* prescribes the principles for entering into a state of war, whereas *jus in bello* prescribes the principles for the conduct of war. Consequently, countries entering into a particular war with the principles so designed have a right to fight this war, whereas the conflicting countries entering into a war in a manner with these principles have no right to fight that particular war. No country has the right to conduct a war breaking the principles of just conduct. This consensual and transcultural acceptance of certain principles of just
war has had no impact on warring clusters since that time. War is about winning. According to Trasymachos, right is always the right of the strongest is unfortunately true in war. In utilitarian terms, only principles of just war can have a limiting effect on the conduct of war (as calculated by Sidwick). Warring clusters might forego the use of means, contrary to the principles of just conduct of war, if the use of such means is superfluous for achieving the goal of victory. Principles of just war can also have an ideological function that warring clusters always find it necessary to engage in distorted communication by 'justifying' their wars with these principles. If there is an initial just cause for fighting a war, then the right to war holds good. There are four situations where such a right to war exists and makes the war absolutely just (in terms of *jus ad bellum*). There are two additional situations where an existing right to war makes it conditionally just.

(1) The war is absolutely just from the side of the attacked, if a state is in breach of a valid pact or treaty which was not signed by the attacking notion in a situation of duress.

(2) The war is absolutely just from the side of the attacked, if a state is attacked without provocation, or if provocation could have been dealt with by
peaceful means but such initiatives were rejected or left unexplored by the attacking nation.

(3) The nation state under threat has the right to wage war if the sovereignty of a nation state is not recognized by its enemies and so the sheer survival of this state and the life freedom of its citizens is under constant threat, or if the life and freedom of a state citizens is threatened by a potential or actual genocidal enemy, even though the sovereignty of this state is recognized.

(4) The war is absolutely just from the side of the dispossessed if a, once, sovereign state is dispossessed of its sovereignty under duress and begins a war against the dispossessor so as to regain its sovereignty.

These four situations do not seek any other benefit than the successful defence of the just cause.

The principles of the absolute *jus ad bellum* numbered above are completely formal. So long as relatively just wars are considered, procedural and substantive qualifications cannot be entirely left out of consideration. If the mere formal criteria of just war are changed by the addition of certain procedural and substantive criteria, then they can be just to a lesser or greater extent. Two
types of war belong to this category. They are: (1) those fought with the purpose of regaining a territory lost in a previous war and, (2) the so-called 'wars of liberation'.

The war can be relatively just, if the purpose of a war is to regain lost territory, if (a) the former peace treaty was signed under duress and (b) there are certain procedural and substantive criteria present for fighting this particular war.

What Heller means by substantive criteria is:

... the populace of the territory in question is exposed to harsher forms of domination, to more violence, than the indigenous populace of the country to which they now belong; that they are exposed, moreover, to harsher forms of domination and to more violence than they would be had they remained citizens of their 'original' country.

If both these criteria are applied then the war fought to regain this territory is also a war of liberation. If neither of these criteria are applied, then the war cannot be justified by having recourse to the value of freedom. The war fought in order to regain territory will be unjust since all wars cause loss of life.

According to Heller: "By procedural criteria ... the methods for deciding upon the matter of war and peace." The war cannot be even relatively just if it is
only a small ruling elite of a country makes the decision to wage war to regain territory. Such wars can be relatively just only if the decision to wage a particular war is made by the entire population.

If the victorious parties have fought a just war, peace can only be just. Wars won by aggressors cannot, in principle, end in just peace. As just war is not distributive but retributive (restitutive), the parties which have fought a just war should not follow any distributive objectives on the eve of triumph. The winner imposes a particular peace on the loser, but the imposed peace should not contain any stipulations beyond just cause of war. The recognition of the sovereignty of a nation state; the security, freedom and life of the state; the freedom and the well-being of its citizens should be the aims at the peace treaty. If something more than this is gained the peace will be unjust, it will indeed serve to legitimize further (just or unjust) wars. If the peace is just, the defeated may in time heal, though not necessarily. If the peace is unjust, this is highly unlikely. The second world war did not come out of blue. Hitler himself was an unintended and far from necessary product, yet a product of an unjust peace.
Just war theories cover the social clusters (parties) of 'all sovereign states'. This is taken for granted that a series of conflicts of interest might arise among sovereign states. Such conflicts are normally solved by the use of arms. At the same time, a standard is provided for comparing and ranking wars. According to standards, wars are initially just; wars fought by infringing these standards are initially unjust. The standards provided by theories of just war are not only standards for comparing and ranking but also norms of action.

Just peace is the final objective of just war. It is beyond the scope of competence of theories of just war. Like the problem of retributive and distributive justice, this problem ('just' and 'unjust' war) can only be addressed within the framework of an (incomplete) ethico-political concept of justice. Theories of just war can only supply us with standards to judge justice and injustice in war.

4. The Concept of Dynamic Justice in Modernity

Under this head, we are going to examine (i) the criteria of justice, (ii) the sense of justice and (iii) the social and political conflicts viewed from the point of view of dynamic justice.
Dynamic justice is viewed as an opposite of static justice. According to static justice, norms and rules are just; whereas norms and rules are considered to be unjust from the point of view of dynamic justice. Here, our main concern is with Heller's analysis of modernity.

(i) The criteria of justice

We pass judgements on certain cases of unjust. This act of passing judgements is a value judgement and also a statement of fact. This judgement does not differ from judgements passed within the framework of static-formal justice. To say that a particular act is unjust is shorthand formulation of an evaluative sentence deduced from a statement of fact. For example, 'P' is innocent; in spite of the fact that he (P) is innocent he was sentenced by 'Q' which resulted in the act called 'Z', therefore act 'Z' is unjust. If norms and rules are taken for granted, then it is also taken for granted that if 'A' acts in such and such a way, 'B' will act in this way as well. If 'B' acts otherwise, injustice has taken place. This is why evaluation follows from the statement of facts, even if the process is concealed by the shorthand formulation ('Act X, the act of B, is unjust'). If we assert that the norms and rules are unjust, then the procedure is reversed. I have certain
values, norms, virtues, principles or maxims in mind from the view of which I evaluate facts as unjust. The facts are de facto existing norms and rules themselves. If norms and rules are applied properly, then they are not doubted. In dynamic justice, if we say that certain norms and rules are unjust, then others may say that they are just. If there is no one to make such statements, then the norms and rules in question would no longer exist.

However, feels Heller, the critics of norms and rules devaluate existing norms and rules by invoking normative criteria whose observance contradicts those norms and rules. There are four such criteria: (1) particular principles (or notions), (2) moral norms and practical maxims (in the Kantian understanding of the concept), (3) pragmatic maxims, and (4) substantive values. Heller wishes to set forth the hypothesis that the first three kinds (1, 2, and 3) of criteria are either directly or in the last instance rooted in substantive value. Ultimate criteria are always substantive value. Universal values themselves can be interpreted either as universal principles or as universal goals (ends). One substantive value is excluded from the criteria of justice, 'the value of justice' and it stands to reason why. If someone devalidates existing norms and rules as unjust and raises a
claim for any alternative system of norms and rules considered by that person as just, it must be argued why this is so. Justice (as a value) cannot be part of this argument because it would be *petitio principii*, which is not a rational answer to a problem. Recourse must be had to another value. It should be proved that the accepted value is completely observed in the alternative set of norms.

In modernity, only two universal values (freedom and life) are recognized. All the principles and maxims which devalidate norms and rules as unjust have recourse to these two universal values. Though they are not convincing. If we look at the discussion of principles and maxims, and cases which illustrate their application, we see equality as the common value in all of them. Theories of natural law force not only that we are born free and that we all have a right to life, but also that we are all born equally and endowed with reason and conscience. Besides, if we define 'conscience' as involvement in practical reason, this would be itself enough to postulate reason as yet another ultimate value. Hence, we would not end up with two but four universal values according to Heller. They are—(1) life, (2) freedom, (3) equality, and (4) reason.

Heller argues that equality and inequality are not universal propensities. People are unique. Equality and
inequality are created by norms and rules. People who belong to the same social cluster are socially equal because the same norms and rules apply to them. And also she pointed out that we can claim that humankind should be the overarching social cluster, but only under the stipulation that the common norms and rules should be such as to reduce domination, force and violence. To put it in other words, the common norms and rules which constitute the overarching essential social cluster should ensure freedom. Our sense of justice will raise a powerful protest against the recommendation that humankind should be the overarching social cluster at all, if we do not postulate the common norms and rules constituting humankind as rooted in freedom. She has also argued that we cannot will that humankind should be the only social cluster, because denying the plurality of normative systems (way of life) is equivalent to denying freedom. The claim to equality is subject to the claim to freedom. Otherwise, equality cannot be regarded an ultimate universal value.

Further, people claim equality in something whenever they claim equality. 'Something' can stand for many thing, but all of them can be decreased to two forms of equality. They are:(1) equality in freedom, and (2) equality in life chance (termed by the famous political philosophy of the Jacobin period 'égalité de fait').
The claim to equality of freedom can encompass two claims. They are: (1) both claims can be related, and (2) both the interpretations of freedom are accepted: (a) the democratic is the first interpretation, (b) the liberal is the second interpretation. Isaiah Berlin labelled these two interpretations as 'positive' freedom and 'negative' freedom, respectively. Two different claims belong to one interpretation of freedom. The democratic aspect of freedom is that one can claim that each and every person should have equal rights to participate in all decision-making processes concerning his or her community or body politic. Secondly, one can also claim that each and every person should have the equal right to do so and the possibility of doing so. The liberal aspect of freedom is that one can claim that each and every person should have the right to decide his or her own fate to prefer his or her own way of life, to do anything that does not stop others from doing what they like doing. Secondly, one can also claim that each and every person should also have the possibility (life chances) of practising this right. According to Heller, both claims and both interpretations can be brought together under the following formula:

The norms and rules of society should be such as to ensure to every person the right (and eventually the ability) to participate in all decision-making processes concerning his or her
community or body politic (which is the pursuit of public happiness), and, in consequence, all norms and rules, whatever social cluster they may relate to, should ensure the same. And further: The norms and rules of society should be such as to ensure to every person the right (and eventually the ability) to decide upon his or her own fate, to choose his or her own form of life (which is the pursuit of private happiness); thus each and every person should have the right (and the equal ability) to leave one social cluster and join another.

It is open to us that in the above mentioned formulation equality in freedom and equality in life chances are apprehended of as being actualized simultaneously. And also, it is open to us that equality is considered not as an independent universal value, but rather as a condition of the complete and unfailing actualization of the values of life and freedom. Besides, the notion 'to each the same thing' is being applied here without making the persons involved. Norms guarantee equal rights in so far as they guarantee freedom. People can still prefer to be unfree, or else freedom would not be guaranteed. Norms do not exclude unequal life chances in so far as they guarantee equal life chances. Some will make better use of these equal chances than the others. This is the case with all norms, though not with all rules. Even if their respective life chances are entirely the same, one person will live up to moral norms completely, another will live up to a substantial degree and a third will live up not at all neither to moral
norms completely nor to a substantial degree. Though love is no less sublime a value than freedom or life, love is one of these values. Notion of justice does not apply to love. It is not even in christianity, which preaches love thy neighbours, commands you to love each and every person equally. It demands inequality in love.

Heller comes to the conclusion that there are only two ultimate universal values in modernity. They are: freedom and life. Equality is the condition (in the forms of equality in freedom and equality in life chances) under which any universal principle based on universal values can be formulated. If this condition is not met, neither goals nor principles can be thought of as universal. Rationality of intellect is the procedure by which we revalidate or devalidate any norms and rules with universal principles constituted by the ultimate values of life and freedom. Shortly, the procedure of rationality of intellect is the universalistic procedure if universal principles regulate this procedure. This can be formulated in another way also that the values of freedom and life can only be observed as ultimate-universal values if norms and rules are devalidated by arguments and if all norms and goals rooted in the values of life and freedom are argued for rationally.
Although the universal principles of freedom and life do not logically contradict each other, there are innumerable concrete situations where our actions cannot be guided by both principles.

Heller wishes to set forth the hypothesis that all value discussions which remain unsettled in modernity can (finally) be reduced to two types:

... those where freedom and life are interpreted in eventually conflicting ways; and, secondly, those where there is a conflict between the values of freedom and life.

The first type of conflict in principle can be settled here and now. The second type of conflict cannot be settled.

Values cannot be 'invented' by any subject, but subjects can offer new interpretations of pre-existing values. In pre-modern times, contradiction between the validity and the actualization of a value, contradictions between the abstract and concrete facets of the same norm served as points of departure for dynamic justice. This part of departure offers itself in modern times as well. Values and principles can be received from the set of norms and rules of our society. All this occurs today as well. For the sake of analytical clarity, only the empirical variety of such procedures has been neglected here in contemporary dynamic justice.
(II) The sense of justice

Heller suggests that it is the 'sense of justice' that denounces the use of different standards as double standards if we come to judge acts of domination, force, and violence. Thus the 'sense of justice' makes the claim that humankind should be the overarching human social cluster. She has therefore set forth the hypothesis of the existence of a 'sense of justice' without supporting it with any evidence other than the denunciation of the use of 'double standards'. Nothing has been stated about the sources, propensities and functions of the sense.

Heller starts this section with the assumption that the notion 'sense' has two connotations (mental ability (as *recta ratio*) and feeling). Philosophy has discovered the notion 'reason' as an evaluative abstraction in reference to 'good sense' and 'good practical sense'. The same is openly true of 'moral sense'. It has two aspects. They are: discrimination, and involvement in the positive side of what has been differentiated (good or right). As stated, the attitude of reason can be called 'rationality of reason'. Norms and rules are being observed. The observance of such norms and rules presupposes positive involvement in both the norms and their observance. The
feeling of shame is our involvement in the 'taken-for-granted' norms and rules and their observance. Norms and rules are the external authorities of the judgement of conduct. If actual norms and rules are denied from the standpoint of observing alternative values, norms, rules, virtues and the like, then the rationality of intellect (practical reason proper) becomes the authority of judgement in human conduct. Heller has defined conscience as follows:

I have defined conscience as the involvement in this (internal) authority as the secondary moral feeling (secondary historically, not as far as its sublimity is concerned, both philogenitically and ontogenetically).

Heller instructs the reader to remember that norms and rules can be devalidated from the standpoint of value, virtue or moral norm as bad, wicked, evil even if not as unjust. Under certain conditions this term would not make sense. Equality, we deny actions by denouncing them as evil or wicked, but not as unjust. This may occur in another way also that we may appraise an unjust act as meritorious or supererogatory. All this only indicates that 'moral sense' is a broader category than the 'sense of justice'. But no moral sense can approve of norms and rules as good or sacred if they are considered unjust. In the same manner, if a set of norms and rules is considered unjust, it cannot simultaneously be judged as 'good'. This is only another
formulation of the same assertion. This again suggests that the 'sense of justice' is a particular manifestation of the 'moral sense'.

The differentiation between moral sense in general and the sense of justice in particular has still further consequences. It is most important that the sense of justice differentiates between right and wrong (and not between good and evil). Whenever and wherever we ask the question 'How far right norms binding?' The question cannot be raised about moral norms (the norms of good) for they are by definition binding. In this moral conflict Heller is compelled to justify her decision. To justify it she has infringed one moral norm by giving priority to another. Universal principles as moral maxims function in exactly the same way as has been argued in relation to the problem of value discussion (the conflict of life and freedom). Yet, if we say, 'These norms and rules are unjust', and if we recommend an alternative set of norms and rules as substitutes, if we state 'These norms and rules are thought, but not necessarily in direct actions'. In this context, Kantian differentiation between the private and the public use of our reason is relevant. if we state that, 'These norms and rules are wrong,' this statement is binding in public debate because we ought to argue for devalidation
in detail and also we are forced to present alternative and right (alias just) norms and rules as substitutes for the existing ones. But, the same statement is not binding in the so-called 'private sphere' unless such actions also infringe moral maxims (norms). If we can justify this practice with the observance of a moral norm (maxim) other than the infringed one, in the second case, we can still proceed to act according to norms and rules denounced as unjust. We cannot be justly called 'unjust' simply because we observe norms and rules we deny as unjust. But we can justly called rascals, hypocrites or insincere if we conform to the very element of the wrong norms and rules that involves the morally bad (evil). If we publicly argue for the devalidation of one norm or rule we can justly called biased. Lastly, if we observe certain norms and rules, but we criticize the same behaviour in others, we can be justly called hypocrites and unjust.

Heller's assumption is that the sense of justice devalidates norms and rules as wrong, and not as evil. From this, she has concluded that the devalidation of norms and rules is not necessarily binding in action but is binding in judgement. If everyone behaves and acts exclusively in his or her socio-political situation and culture, the judgement that 'The norms and rules of one’s socio-political
stem or culture are worse than those of others' is not unconditionally binding in action if the statement is true, but is definitely unconditionally binding in action if the statement is untrue. All aspects of the norms and rules which we do not compare can still be subjected to judgement by the sense of justice. The denial of norms and rules with due observance of those norms and rules do not involve moral contradiction.

(iii) Social and political conflicts viewed from the point of view of dynamic justice

In the previous section we have seen Heller's view that whenever we deny norms and rules as unjust, our judgement is guided by the sense of justice. Norms can be called unjust when they are bereft of moral content. Thus we deny them as bad (evil). But the norms and rules we deny as unjust are not moral, but social and political. Hence the statement 'These norms and rules are unjust' expresses a social and political conviction. Social and political conflicts can be resolved by speech acts. If this is not recognized by both parties, the conflict is resolved by means of direct actions (practices). Accordingly, the following alternative solutions emerge:

(1) One part may force the other to listen to its arguments.
(2) One party may force the other to obey norms and rules which the latter believes unjust.

(3) A compromise may occur where norms and rules are more or less changed but the suggested alternative rules are not substituted.

Social conflicts can be settled in the first and the third of these solutions if both parties in question accept that the new norms and rules are fair. But they are never settled in the second solution.

Next, we will see the theoretical proposal which Heller makes that all social and political conflicts arise around the matter of justice or injustice. Besides, all social and political oppression is the suppression of a particular claim to justice. All social and political compromises are compromises concerning the justice or injustice of certain norms and rules.

The statement, 'all social and political conflicts arise around the issue of justice or injustice' leaves wide open the problem of the motivating forces of social and political conflicts. It does not mean that groups or individuals in social and political conflicts are motivated by the notion of justice. According to Heller, people who protect norms that are taken for granted as just are
normally motivated by authorized interest whereas those who challenge the same norms and rules as unjust are often motivated by dynamic interest. Particular social conflicts often arise out of the private or public display of passion (e.g. irrational disobedience). Such passions, which cannot be apprehended in terms of interest, may continuously fuel such conflicts. World views are of tremendous motivating force. This is open and almost a redundant statement. All norms and rules are legitimized by dominant world views. It has also been argued that the political conflicts arise around the matters of freedom, and social conflicts arise around the matters of life chances. As per our understanding, social equality is constituted by norms and rules. Norms and rules 'equalize' people of different clusters. Then it stands to reason that every time social and political conflicts arise out of the widening or restricting of a social cluster.

All social and political conflicts do not aim at increasing or decreasing equality or reversing the hierarchy of social and political clusters. The claim for greater or lesser social equality is absent (justice in terms of static justice) if neither the substance of the norms and rules nor their broadness is questioned, and social and political conflicts still arise around the matter of the inconsistent
application of norms and rules. This is equally true if social conflicts appear in the form of disobedience. It is not the form of a social or political conflicts that decides whether a greater or lessor degree of equality is at chance, but the overt or implicit claims made by the social actors.

The system of norms and rules of any society includes procedures for handling social or political conflicts. For handling interclusteral conflicts and interclusteral ones, there are usually different procedures. Sometimes other procedures for dealing with both kinds of conflicts depending on whether they happen within or among higher, or lower, clusters. To put it in other words, there are different procedures for social and political conflicts among equals and among unequals. All such procedures are rational, where 'rationality' stands for 'rationality of reason', if norms and rules are taken for granted.

According to Heller, there are three kinds of procedure for settling social and political conflicts. They are: (1) discourse, (2) negotiation, and (3) force. These three are rational if the priority given to one or the other procedure in a particular type of conflict is normally imperative or optative. This procedure is just if the norms and rules prescribing it are applied consistently and
continuously. The notion of justice applying here is 'to each the same', 'to each according to his rank', and 'to each according to his merit'. Here 'merit' stands not for purely moral merit but for social and political merit.

The use of force as a procedure for settling social and political conflicts is unjust if the norms and rules enjoin us to settle this kind of conflict by discourse or negotiation. As there are established institutions to conduct such discourse, there are always norms enjoining us to settle at least a few types of conflict by discourse, except under tyranny. But, by discourse only interclusteral social-political conflicts can be settled. Interclusteral social-political conflicts have never been settled by discourse alone. Yet, there are usually optative norms recommending the settling of certain conflicts by negotiation rather than force, or by force only if negotiation is fully exhausted. Ultimately, there are certain interclusteral social conflicts which should be settled by force. There is a system of laws, procedural imperatives and options prescribed by those laws. What Heller means by procedural imperatives and options is:

By 'imperative' I mean ...: 'Each and every time such and such a conflict occurs, an attempt must be made to settle it by either discourse, negotiation, or force, and in that order.' By 'option' I mean ...: 'If social or political actions are conducted in one or another way by one
party (or by any party), an attempt must be made to settle the conflict by this or that procedure, and in that order.

For settling social and political conflicts the justness of a procedure can also be tested within the framework of static justice. The sense of justice been the sense of dynamic justice the justness of the procedure can be questioned for settling social and political conflicts. 'P' can say, 'such and such social or political conflicts should be settled not by force but by discourse or negotiation.' By telling this much 'P' claims that the procedure of using force is unjust, and cannot have just results. 'Q' can say, 'such and such social and political conflicts cannot be settled by discourse or negotiation, but by force'. Since the formula here involves the phrase 'cannot be settled' instead of 'should not be settled', it does not question the justness of the procedure per se, but only affirms that this procedure cannot have just results. This is why force should be used.

Now, let us take the case of Q. Q claims that certain social and political conflicts cannot be justly settled except by force. He does not have any position to devalidate the use of force by the challenged party. Q can never claim that the use of force is an unjust procedure. You can only argue that 'They should not have done what they
did'. Thus what is the standard here? It can be the standard of the challenging party alone. Hence Q devalidates the norms and rules of the challenged party from the standpoint of alternative ones. But the alternative procedural norm is supposed to be force. To accuse the challenged party for the use of force on the grounds that they 'should have acted otherwise' indicates the devalidation of the same norms which were revalidated. This ridiculous inconsistency, we come across. Sorel is the only consistent modern advocate of the procedure of force (as violence). He argues: "... it is equally just for both challenged and challengers to settle the social conflict by violence."

We can devalidate concrete norms and rules in many respects without denying the norms concerning procedures firmly fixed in them. Besides, we can give conditional support to social actors who question the justice of certain norms and rules we question ourselves but settle the conflicts with a procedure we believe inappropriate.

All claims to justice raised by any challenging party in social and political conflicts include a retributive or restitutive element or both. In static justice, both these elements are always present even if the
challenging party does not take justice into its own hand, which it sometimes does. This is obvious that the norms and rules of the existing social order have been infringed in static justice. If the same norms and rules are continuously observed, the challenged party is compensated, and person and institutions infringing the norms (laws) are punished, 'social justice' is restored. In dynamic justice, this matter is far more complex. Norms and rules are devalidated and challenged from the standpoint of norms and rules that have already at some time existed. It seems embellished and idealized in the imagination of challenging party. The challenging party claims that the contemporary norms and rules are distortions of the 'original' ones. Their existence is an infringement of the original normative and legal system. Thus, the proposal to substitute other norms and rules for the existing ones is equivalent to the proposal to restore the factual validity of these is still valid. The claim to restoration includes the claim to restitution and usually to some kind of retribution. The challenged party forcibly protects the existing order. It is the guilty of offence against the 'original laws' and norm. Those guilty must be treated retributively unless mercy is granted.
Theories of natural law universalize the usual procedure because the statement 'Every human beings is born with the right to life and liberty, and equally so' is here substituted for the traditional statement that 'we (our social cluster) have the right to life chances and freedom (s) equal with yours (those of another social cluster).

Besides, theories of natural law also generalize the usual procedure because 'freedom' and 'life' do not stand for a particular interpretation of the notions 'freedom' and 'life'. The claim to freedom is not specific. For instance, 'we should be eligible for this office as well as you.' The claim to life chances is not specific either. For example, 'we should get a share of the spoils of war as well as you.' In traditional societies, specific claims normally relate to a specific interpretation of freedom and life chances. Life and freedom in their totality are unspecific.

According to Heller, people are not empowered by concrete norms and rules to contest and eventually devalidate any of these norms and rules but they still have a moral right to do so, sometimes they have, sometimes they do not have.
NOTES

18. *Ibid.*, p. 120.