

SHIFTING THE FOCUS FROM PURSUING JUSTICE TO PREVENTING MANIFEST INJUSTICES

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ABSTRACT

Most of the time people look to the law for justice. The demand for justice is made in the form of a legal or moral claim. A person accused of a crime claims the right to fair trial or procedural justice. People's demand for punishment of a criminal act is a demand for justice. A citizen's claim to equality before the law is a claim of justice. Justice is not exclusively a jurist's concern. It is at the center of moral and social philosophy. Justice has been termed as the highest virtue. It has also been equated with fairness. The concept of just entitlement is also central to the theme of justice. A person who is fair, generous and helpful engages in the virtue of beneficence. Sympathy is the origin of the ideas of beneficence and of justice. The most recent idea of justice puts emphasis on the role of public reason in establishing what can make societies less unjust. The aim of this paper is to evaluate various paradigms of the concept of justice and to highlight how the ideal of justice may be achieved by moving on the path to prevent prevalent injustices in varied forms in our societies.

KEYWORDS: Justice, Fairness, Public Reason, Virtue, Manifest Injustice

INTRODUCTION

Justice is universal aspiration, and the sense of injustice is a powerful human emotion. It is strongest when a person's own interests are harmed, but is also aroused in civilized people when they witness wrongs done to others (Suri Rampala, 2011; 318). Inflaming the minds of suffering humanity is of immediate interest both to policy –making and to the diagnosis of injustice (Amartya Sen, 2009; 388). The ultimate object of every legal system is to secure justice. Everyone wants justice, but each one's concept of justice may be different from that of another. The meaning of justice also varies with time and place (N.K. Jaya Kumar, 2004; 163).

Justice is at the centre of moral and social philosophy. A society that does not have justice as a governing principle is an unstable society that will be held together, if at all, by force. The concept of justice has a central place in moral philosophy. In its widest and most profound sense it means righteousness, or living in harmony with the higher cosmic laws. Justice in this sense corresponds to the Dharma in Hindu and Buddhist philosophy and to Jen in Confucian thought (Suri Rampala, 2011; 322).

The requirements of a theory of justice include bringing reason into play in the diagnosis of justice and injustice. Over hundred of years, writers on justice in different parts of the world have attempted to provide the intellectual basis for moving from general sense of injustice to particular reasoned diagnoses of injustice, and from there to the analyses of ways of advancing justice (Amartya Sen, 2009;5).

The instinct for justice leads us to believe that right, and not might, is the true basis of society. Instinct for justice finds its expression in the rule of law. The law, in fact, is a body of abstract rules of justice that bind a community together (Francis Fukuyama, 2012; 245). In order that right, and not might, should be the basis of society, the people must be under the rule of law, and there are four fundamental requisites which the law must fulfill: (1) it must be certain so that the people may act safely upon it; (2) it must be just so that they will approve of its being enforced; (3) it must be readily ascertainable, so that they may know what their rights and duties are; (4) it must be enforced by independent and upright judges in whom the people have confidence (A.T. Denning, 1953; 4). Western philosophers generally regard justice as the most fundamental of all virtues for ordering interpersonal relations and establishing and maintaining a stable political society.

DISCUSSIONS

Life in democratic societies is rife with disagreement about right and wrong, justice and injustice. People do not dispute the importance of justice but disputes about justice almost always take the form of argument, not about how important justice is or when it should be sacrificed to other values, but what it is.¹ The principles of justice that define our duties and rights should be neutral with respect to competing conceptions of good life.²

Open-minded engagement in public reasoning is quite central to the pursuit of justice.³ The idea that justice means respecting freedom and individual rights is at least as familiar in contemporary politics as the utilitarian idea of maximizing welfare. And around the world, the idea that justice means respecting certain universal human rights is increasingly embraced.⁴

In fact, everyone wants justice, but each one's concept of justice may be different from that of another. The meaning of justice varies with time and place. The concepts of justice have several dimensions.⁵ Europe had been unique in its state formation process as this process was based less on the capacity of state to deploy military power than on their ability to dispense justice.⁶ There are many theories of justice which have evolved and concretized over thousands of years from ancient Greek philosopher to modern day Harvard scholars such as Amartya Sen, Thomas Pogge and Michael Sandel. Broadly speaking, ancient theories of justice start with virtue, while modern theories of justice start with freedom.

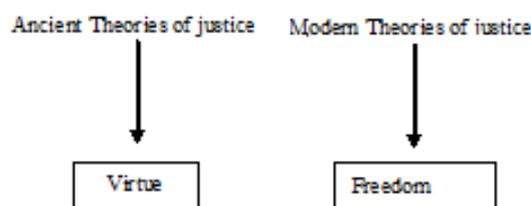


Figure 1

Justice as Virtue

Justice is often considered as the highest virtue as a number of other virtues either come out of it or are intrinsically connected to it. Truth, honesty, liberty, integrity, fraternity, egalitarianism and a number of other precious rights inextricably operate in close vicinity of this highest virtue. In his book *The Republic*, the Greek philosopher Plato (C.427-348 BC) developed a detailed theory of the just person and the just state. In book I of the *Republic*, Plato set up a debate between Socrates and Thrasymachus the Sophist. Socrates argued that injustice only leads to conflict and disharmony, whereas justice promotes harmony.

Similarly, he argued that injustice produces conflict within the individual so that it renders him incapable of action because of internal conflicts and division of purpose, and sets him at variance with himself and with all who are just.⁷

A sense of injustice must be examined even if it turns out to be erroneously based, and it must, of course, be thoroughly pursued if it is well founded.⁸ Plato took the teleological view that everything and everyone has an appointed purpose within the scheme of the universe and therefore each has a peculiar excellence. Justice means to sense that purpose and strive for that excellence. A horse has a purpose, so has a man. There is an ideal horse that represents the excellence of being a horse. It is better to be a good horse than a bad horse. The eye and the ear each have its purpose and its peculiar excellence. An excellent eye provides better vision than a defective eye.

An excellent ear provides better sound than a flawed ear. Likewise, Plato argued that human mind has a purpose and its peculiar excellence. The mind's function is to provide control, attention and deliberation, which are essential to rational living: it follows therefore that a good mind will perform the functions of control and attention well, a bad mind badly'. Plato concluded that justice is the peculiar excellence of that mind and injustice its defect. The excellence of the mind consists in balancing and harmonizing its three different tendencies: reason, appetite and spirit.⁹

In later parts of the *Republic*, Plato developed his theory of just state, which was a state that consisted of different classes performing different functions, making up an efficient system in harmony with the cosmic law. There were three major classes in his ideal state, the entrepreneurs, who produced and traded them, symbolized appetite; the auxiliaries, or the military, which provided security, represented spirit; and the guardians, who were philosopher, provided reason. The guardians guided the state and ensured the justice of the system.¹⁰

Aristotelian Concept of Justice

Aristotle regarded justice as inseparable from virtue. He understood virtue in the teleological sense as right conduct in accordance with universal law. He divided virtue into moral virtues and intellectual virtues. Moral virtue is to 'act according to the right principles'. Intellectual virtue, is the virtue of prudence which enables a person to determine the right principle.¹¹

Aristotle says that justice means giving people what they deserve. And in order to determine who deserves what, we have to determine what virtues are worthy of honor and reward. Aristotle maintains that we can't figure out what a just constitution is without first reflecting on the most desirable way of life. For him, law can't be neutral on questions of good life.¹²

Aristotle also divided virtue from another angle. He says that virtue consists of ethics and justice in the universal sense. In his specific intellectual paradigm ethics is moral virtue which can be practiced within oneself and need not be practiced in relation to others. A person can be courageous, temperate and modest without affecting others. In contrast to moral virtue, he believes that justice is virtue as practiced in relation to others. A person who practices virtue privately as well as towards others is just in the universal sense.

He says that universal justice is the whole of virtue. Apart from universal justice, there is also particular justice, which is not the whole of virtue but a part of it. Injustice in the particular sense is the injustice that causes harm to others. A person can be unjust in the universal sense without being unjust in the particular sense. A man who refuses financial help to another is unjust in the universal sense but not in the particular sense, for he commits no positive moral harm.¹³

However, the term justice in the present world is predominant in the moral assessment of social rules (laws, practices, social conventions and institutions).¹⁴

Aristotle moved deeper into his explanation of particular justice and classified it into two kinds: distributive and certificatory. Distributive justice, he says, is the just distribution of honor or money or such other assets as are divisible among the numbers of the community. In fact, contemporary notions of the distributive justice are based more on the needs of persons than on the contributions they make to the social wealth as unfulfilled needs of people most often lead to human capabilities remain unutilized.

However, traces of Aristotelian distribution remain in the modern age. The Queen of the United Kingdom grants peerages and honors to her subjects on the basis of merit determined by the government. The Governor- General of Australia awards honors to Australian citizen in many commonwealth jurisdictions, selected senior lawyers are appointed as Queen's Counsel or senior counsel.¹⁵

Aristotle says that certificatory justice operates in relation to provide transaction. It is not about shares of the public goods but about wrongs done by one person against another. There are two branches of certificatory justice, which correspond to voluntary and involuntary forms. Voluntary transactions refer to contracts for the sale of property, letting and lining, pledging, lending money with or without interest, and so forth. Involuntary transactions are those that constitute crimes and torts in present day legal language. Here the parties are treated as equal and the question is not about distribution but about certifying wrongs.¹⁶

The virtue based approach connects justice to reflection about good life. This approach maintains that justice means giving people what they morally deserve-allocating goods to reward and promote virtue.

Shift in Focus from 'Virtue' to 'Freedom and Capabilities'

The perspective of social realization, including the actual capabilities that people can have, takes us inescapably to a large variety of further issues that turn out to be quite central to the analysis of justice in the world, and these will have to be examined and scrutinized.

Any substantive theory of ethics and political philosophy, particularly any theory of justice, has to choose an informational focus, that is, it has to decide which features of the world we should concentrate on in judging a society and in assessing justice and injustice.¹⁶Utilitarianism, pioneered by Jeremy Bentham, concentrates on individual happiness or pleasure as the best way of assessing how advantaged a person is and how that compares with the advantage of others.¹⁷ The philosophy launched by Jeremy Bentham has had an influential career. In fact, it exerts a powerful hold on the thinking of policy-makers, communist, business executives, and ordinary citizens to this day.¹⁸

We all like pleasure and dislike pain. Utilitarian philosophy recognizes this fact, and makes it the basis of moral and political life. Maximizing utility is a principle not only for individuals but also for legislators. In deciding what laws or policies to enact, a government should do whatever will maximize the happiness of the community as a whole.

The approach to justice that begins with freedom is a capacious school. In fact, some of the hardest fought political arguments of our time take place between two rival camps within it, the *laissez-faire* camp and fairness camp. Leading the *laissez-faire* camp are free market libertarians who believe that justice consists in respecting and upholding the voluntary choices made by consenting adults. The fairness camp contains the theories of a more egalitarian bent.

They argue that unfettered markets are neither just nor free. In their view, justice requires policies that remedy social and economic disadvantages and give everyone a fair chance at success.¹⁹

In *Anarchy, State and Utopia* (1974), Robert Nozick offers a philosophical defense of libertarian principles and a challenge to familiar ideas of distributive justice. Prominent among the things that no one should be forced to do is helping other people. Taxing the rich to help the poor coerces the rich to help the poor coerces the rich. It violates their right to do what they want with the things they own.²⁰

According to Nozick, there is nothing wrong with economic inequality as such. Simply knowing that there are people having billions while others are penniless does not enable you to conclude anything about the justice or injustice of arrangement. Nozick rejects the idea that a just distribution consists of a certain pattern- such as equal income, or equal utility, or equal provision of basic needs. What matters is have the distribution came about.²¹

Nozick rejects patterned theories of justice in favor of those that honor the choices people make in free markets. They argue that distributive justice depends on two requirements, justice in initial holding and justice in transfer. Nozick concedes that it is not easy to determine whether the initial holdings that gave rise to today's economic positions were themselves just or ill- gotten.²²

Another champion of justice as freedom is the 18th Century's rare philosopher Immanuel Kant. Kant's emphasis on human dignity informs present day notions of universal human rights. More important, his account of freedom figures in many of our contemporary debates about justice. He belongs to the group which connects justice to freedom. They say that the just distribution of income and wealth is whatever distribution arises from the free exchange of goods and services in an unfettered market. To regulate the market is unjust, they maintain, because it violates the individuals freedom of choice.

The valuing of freedom has been a battleground for centuries.²⁴ Freedom is valuable at least for two different reasons. Firstly, it gives us more opportunity to achieve our objectives which are valuable for us. Secondly, freedom also provides us space to attach importance to the process of choice itself.²⁵ The basic intuition from which the capability approach starts is that human capabilities exert an ethical claim that they should be nourished. If proper educational and material support is given, human beings can perform major human functions.²⁶ In other words, it can be safely said that human beings have an inherent capability instinct which could be utilized in the most effective manner if required freedom is given to them.

If these capabilities are deprived of the required nourishment, they not only become fruitless but in same way become a shadow of themselves.²⁷ In fact; the 'capabilities approach' has clear advantages over other current approaches to the quality-of-life assessment. Assessment that uses GNP per capita as its sole measure fails to concern itself with the distribution of resource and thus can give high marks to countries with enormous inequalities and consequent manifest injustices.²⁸

The capability approach does, indeed, point to the central relevance of the inequality of capabilities in the assessment of social disparities.²⁹ It focuses on human life and is inescapably concerned with plurality of different features of our lives and concerns. It does not just concentrate on some detached objects of convenience such as incomes or commodities that a person may possess.³⁰

It is significant to note that capability approach emphasizes not just on what a person actually ends up doing, but on what one is really able to do, whether or not one chooses to make use of that opportunity.³¹ The critics of this approach point out that life consists of what really happens, not of what could have happened had the persons involved been differently inclined.³²

The law encodes our respect for human dignity in general but it does not mean that the purpose of justice system is merely to restore peace in the society.³³ It should be the guarantor of possibilities, making way for individual citizens to exercise their dignity by taking part in the processes of shaping the conditions of their lives.³⁴

In fact, capability is one aspect of freedom and it can pay adequate attention to fairness and equity involved in procedures that have relevance to the idea of justice. While the idea of capability has considerable merit in the assessment of the opportunity aspect of freedom, it cannot possibly deal adequately with the process aspect of freedom.³⁵ It should be alive to both the fairness of the processes involved the equity and efficiency of the substantive opportunities that people can enjoy. Capability is, indeed, no more than a perspective in terms of which the advantages and disadvantages of a person can be reasonably assessed.³⁶

John Rawls says in his book *The Law of Peoples* that “Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.”³⁷ The intellectual path shown by John Rawls in his seminal work is for global economic justice which might have been less egalitarian in nature but was certainly a great call for a larger reach of justice and decent institutional order.³⁸

Most often injustice relate to deep rooted social divisions such as class, gender, rank, location, religion, community and other established barriers. The contrast between what is happening and what could have happened is, indeed, central to the advancement of justice.³⁹ We need to argue and scrutinize before moving towards conclusions about whether and how justice can be advanced. An approach focusing on ‘diagnoses of justice’ must involve the ‘inflamed minds’ as a prelude to critical scrutiny.⁴⁰

Kai Nielsen develops his conception of justice on socialistic foundations and considers equality to be more fundamental ideal than individual liberty. He, therefore, proposes his own two socialistic principles constituting the core of his 'egalitarian conception of justice'.⁴¹ First principle is associated with “equal basic liberties and opportunities” including the opportunities for meaningful work, self-determination and political participation. The second principle calls for the division of income and wealth of the society in a manner that each person will have a right to an equal share and burdens of society should also be equally shared subject only to the differing abilities and differing situations.⁴²

Michael Sandal proposes a ‘communitarian view of justice’ and says that the well being of a community takes precedence over individual liberty and over the socio-economic welfare of its members.⁴³ He proposes justice as a common good that cannot be understood properly by individuals detached from community. Justice must, therefore, determine what is right as serving the goods we embrace in a social context.⁴⁴

Thomas Pogge moves on the path of ‘justice as fairness’ shown by John Rawls but provides a globalist interpretation to justice as fairness which is not only unique but is also highly appreciable because it addresses prevalent injustices at global level.⁴⁵ He, therefore, proposes a global egalitarian principle of distributive justice by calling for a “global resources tax or GRT.” The global resources tax is a form of tax on consumption of our planet's resources. Corporations extracting resources would pay tax to their governments which, in turn, would be responsible for transferring

funds to disadvantaged societies to help the global poor. He further says that such payments should be regarded as a matter of entitlement rather than charity” making an obligation of international Justice.⁴⁶

In her seminal work, *Sex and Social Justice*, Martha Nussbaum argues for a feminist interpretation of justice using capabilities approach. The feminism she embraces has five key dimensions: (1) an internationalism not limited to any particular culture; (2) a human which affirms equal worth in all human beings and promotes justice for all; (3) a commitment to liberalism; (4) a sensitivity to the cultural shaping of our preferences and desires; and (5) a concern for sympathetic understanding between sexes.⁴⁷

In fact, she offers her own list of ten ' central human functional capabilities' that must be respected by a just society: (I) life of a normal, natural duration; (ii) bodily health and integrity (adequate nourishment & shelter included; (iii) bodily integrity regarding freedom of movement and security against assault; (iv) freedom to exercise one's senses, imagination, and thought as one pleases; (v) freedom to form emotional attachment to persons and things; (vi) the capacity to form one's own conception of the good and try to plan one's own life; (vii) freedom of affiliation on equal terms with others; (viii) concern for and possible relationships with animals, plants, and the world of nature; (ix) some control over one's own political environment. She asserts that women have been and still are deprived of these capabilities which must be guaranteed to them in the name of justice.⁴⁸

It is, indeed, a positive sign that most of the recent theorists of justice have rightly turned the concept of justice into the global zone. The shift in paradigm of justice will certainly lead to eradication of manifest injustices prevalent most prominently in the developing and last- developed countries.

CONCLUSIONS

The concept of justice lies at the heart of moral philosophy where righteousness, fairness and truth are the basic values. It is true that manifest injustices are prevalent in societies in different forms in several aspects of human life and institutions. It is, indeed, a big challenge to identify such manifest injustices and eliminate them at the earliest and it needs to be done in the best form and manner.

In addition to it, justice should include people from all walks of life, with no discrimination between them. It will allocate resources fairly among people, without taking their race, religion and language into consideration and will aim to create a world in which the superior is the one, who is right, not the powerful. What often distances people from justice is their rejection of it. They may concur in principle but they reject it when it conflicts with their own interests. Everyone, for instance, spurns bribery and in theory agrees that taking bribes is immoral. However, faced with an attractive offer of a bribe, some people fabricate “justifications” and violate the principles they theoretically agree with.

It would be an incomplete discussion on the concept of justice if the Qur’an’s view of justice is not mentioned here because the values of the Qur’an command an absolute justice that makes no discrimination between people, that sides only with what is true and just. In Sura Nisa, God commands people to rule with justice, even if it works against them. Qur’anic commands maintain that justice which is carried out with fear of God and with the sole intention of earning God’s approval is true justice.

This form of justice makes no discrimination between people. When such justice is the main goal neither one’s personal interests, kinship, enmity, outlook on life, language, color, nor race will influence his decisions. He will decide

only in favor of righteousness. Only someone who fears God, irrespective of religion, and knows that he will be questioned on the Day of Judgment can exercise true justice.

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