

What is Justice?

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Abstract

Several theories of justice are considered and shown to be theories as to what kinds of social conditions conduce to the presence of justice, as oppose to concerning the nature of justice *per se*. Moreover, those theories are shown to fail even as theories as to what conduces to justice. An independently plausible theory of justice is put forth. This alternate conception of justice is based on Aristotle's tenet that the good is what is promotes flourishing, where flourishing is conceived of as the actualization of biological potential.

Keywords: Justice, Ayn Rand, John Rawls, Aristotle, Veil of Ignorance, Flourishing

Introduction

What is justice? The present paper will state and defend an answer to this question. In the process, several so-called ‘theories of justice’ will be examined. We will begin by stating the conception of justice that it is the purpose of the present essay to defend. We will then state and evaluate several important so-called ‘theories of justice.’ We will conclude by putting forth a defense of our own theory of justice.

Justice in Relation to Human Flourishing: Preliminary Points

According to Aristotle, what is moral is what conduces to human flourishing and what is immoral is what undermines human flourishing (Aristotle, 2000). It is moral to provide a musically talented youngster with musical instruction, since doing so helps him flourish, and it is immoral to cut off a talented pianist’s fingers, since doing so prevents him from flourishing. In Aristotle’s view, flourishing may be identified with the actualization of biological potential, with the qualification that how biological potential is to be actualized may vary with social conditions. In any given culture, a composer’s flourishing involves his composing music, but the kind of music that he composes obviously depends on his social environment.

For argument’s sake, let us suppose that what is moral is indeed identical with what conduces to flourishing. In that case, it follows that a situation is just to the extent that it conduces to the flourishing of those involved in it and unjust to the extent that it undermines their flourishing. This follows because a situation is just if moral and moral if just, as it would obviously be incoherent to describe a given thing “just” *and* “immoral” or as “unjust” *and* “moral.” Indeed, the terms “morality” and “justice” differ not in their meanings but in their spheres of application. We tend to use the words “just” and “unjust” when describing describe

societies or social institutions, such as bodies of law, and also when describing the functioning of such institutions, this being why we describe specific judicial rulings with these terms. We use the terms “moral” and “immoral” to describe the characters and specific deeds of individuals. Theories of ‘justice’ tend to concern how societies should be configured, whereas theories of ‘morality’ tend to concern personal conduct. Consequently, if a moral act is one that conduces to human flourishing, a just society is one that promotes the flourishing of its own members.

Intuitively, this constitutes a reasonable analysis of justice. A democratic social configuration is unjust if it prevents people from doing so, and a monarchical social order is just if it allows them to do so. A communist social order is just if it allows people to flourish, and a capitalist social order is unjust if it prevents them from doing so. When we say that “democracy is just”, what we mean is that a democratic order is more likely to promote flourishing than other social orders. Consequently, “democracy is just” is true only to the extent that democracy promotes flourishing. Consequently, democracy is not *inherently* just: it is just only to the extent that it promotes flourishing. Similarly, communism is not *inherently* unjust: it is unjust only to the extent that it prevents flourishing.

Existing Theories of Justice: Rawls

In light of these points, let us consider various different so-called ‘theories of justice’, starting with that of John Rawls. Rawls’ theory is embodied in the slogan “I cut, you choose” (Steinhaus, 1948). In other words, a just arrangement is one that someone would choose without knowing which side of that arrangement he would end up on. “I cut, I choose” would presumably *not* be lead to a just outcome, since one person would end up with the entire lot; and, so the reasoning goes, “I cut, *you* choose” is just for the same reason *mutatis mutandis*. “Justice,” writes Rawls, “is fairness” (Rawls 1971: 120), by which he means that a just situation is one in

which all people are subject to the same rules and have an equal shot at success. A just society, according to Rawls, is one that a rational would choose to live in he knew its structure but his position in it were hidden from him by a “veil of ignorance” (Rawls 1971: 12)---one that a rational person would choose to live in even if he did not know whether he would be a CEO or a janitor.

A hypothetical will help us evaluate Rawls’ analysis. Smith is a rational but otherwise thoroughly mediocre person. He is not intellectually gifted, he is not good-looking, he is not witty, and so on. Smith is given the power to impose a social order of his own choosing on millions of people, including himself, with the qualification that he does not know what his position in that order will be. What kind of society will Smith create? Presumably one where he will be left too far behind. But what kind of society would that be? If that society gives people the right to freely exchange goods, services, and ideas, he will soon be left in the dust.

Smith would therefore have to create a society that was restrictive enough to prevent others from pulling too far ahead of him, while being permissive enough that Smith would find life tolerable, no matter what his social position turned out to be. Such a state would be a giant, stagnant bureaucracy. The best real-life approximation to Smith’s ‘dream’ society would be a 1970s Soviet Bloc country, such as Poland or Hungary—a giant, stagnant bureaucracy, in which nobody oppresses everybody because everybody oppresses everybody (Struyk, 1996). Although some people outranked others in such countries, power and opportunity were dramatically more equitably distributed there than in any country where there is any commercial or cultural ferment and, indeed, in any country that isn’t a soon-to-be failed stated (Osipian, 2010).

Cultural growth is created by differences between people, and these differences invariably involve inequalities. Even if a given society’s starting point were strictly Rawlsian, it

ceases to be Rawlsian as soon as it began to develop, and the only way to make sure that such a society remained Rawlsian would be to turn it into a Soviet-style bureaucrat-state. We may conclude that Rawls' theory of justice is a complete failure, and the reason is that it would be too restrictive to let people flourish. A Rawlsian society is not one where everybody is equally free; it is one where everybody is equally unfree, and the reason is that freedom leads to inequality.

Existing Theories of Justice: Rand

A very different theory of justice is put forth by Ayn Rand. According to Rand, a just society is one in which the market is completely unregulated. Rand's argument for this is simple. Freedom is necessary to flourish; regulation eliminates freedom; therefore, freedom, including the freedom to flourish, requires the absence of regulation. Therefore, there should be or no taxes; nor should there exist regulatory agencies, such as the Environmental Protection Agency (Rand, 1963).

There are three points to make in response to Rand's theory. First, it is a strictly empirical question whether or not an absence of regulations conduces to flourishing. Too much regulation does indeed stifle economies and the people who belong to them, but it doesn't follow that a complete absence of regulation is appropriate. Second, not all invidious governmental restrictions are commercial restrictions. Third, and most importantly, Rand implicitly accepts the position that a just society is one that allows its members to flourish. We often hear of 'inalienable' rights, the idea being that, simply by virtue of being human, we are entitled to vote, to own property, and the like. But any right someone has to own property, or to speak his mind, or to own a firearm, is obviously quite alienable. People *should* be allowed to own property—within limits, e.g. they shouldn't be allowed to own air or oceans. People *should* be allowed to own firearms---within limits, e.g. they shouldn't be allowed to own rocket-launchers. People

should be allowed to vote—within limits, e.g. they should not be allowed to vote for patently immoral measures, such as permitting the recreational torture of children. The only *truly* inalienable right that anyone has is the right to flourish.

Justice in Relation to Human Flourishing

A viable theory of justice is implicit in the 15 “universal principles of justice” identified by Marry Anne Glendon:

1. the right to live,
2. the right to protection of health,
3. the right to work,
4. the right to social assistance in cases of need,
5. the right to property,
6. the right to education,
7. the right to information,
8. the right to freedom of thought and inquiry,
9. the right to self-expression,
10. the right to fair procedures,
11. the right to political participation,
12. the right to freedom of speech, assembly, association, worship, and the press,
13. the right to citizenship,
14. the right to rebel against an unjust regime, and
15. the right to share in progress.

Without any given one of these rights, there can be no flourishing. One cannot flourish without having health, freedom, and protection from violence; and each of the rights enumerated by Glendon is a direct consequence of this fact. One cannot possibly live, let alone flourish, without state protection; hence Right #13. One cannot be psychologically healthy without having the freedom to associate with others; hence Right #12. (The others scarcely require explanation.)

At the same time, none of these rights is strictly inalienable. For example, military service should sometimes be compulsory, which means that citizens can justly be required to risk and therefore forfeit their lives. The other rights are even more obviously alienable. Nobody has an unlimited right to free speech and self-expression; I do not have the right to ruin your wedding reception with endless unfunny jokes. Nobody has an unlimited right to information; I do not have the right to know your various passwords. People have these rights *only* to the extent that they do not conflict with other people's rights to flourish.

Societies are under a categorical moral obligation to let their own members flourish, but what a society must do to fulfill this obligation varies with circumstances. Sometimes it involves allowing people to speak freely; other times it involves silencing them. Sometimes it involves letting people exchange goods and services; other times it involves preventing them from doing so. The one right that a society cannot permissibly take from its own citizens is the right to flourish. Consequently, a society is just if it disposes its own members to flourish, and justice is identical with flourishing-dispositiveness.

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