

What is Justice?

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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. Some of these theories, we will find, are empty formalisms that say nothing as to the nature of justice. Others, so we will find are theories not theories of justice at all but are instead theories as to how unjust situations can be made just. We will also consider theories that, although not viable theories of justice, prove to contain elements of such a theory, and we will develop such a theory by duly modifying these theories. 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 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. Suppose it turned out that a society that was run along strictly libertarian lines turned out to do much more to thwart than to promote the flourishing of its members. In that case, we would probably describe such a society as "unjust." Or suppose that a certain kind of rigidly social order did more to promote than to thwart the flourishing of its members. In that case, we would be reluctant to describe it as "unjust." Whether or not a given social order is just or unjust depends on whether those subject

to it flourish; all other considerations are irrelevant. A democratic social configuration is unjust if 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 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. Similarly, “communism is unjust” is true only to the extent that communism thwarts flourishing.

Consequently, democracy is not *inherently* just: it is just only to the extent that it promotes flourishing. And if it does in fact promote flourishing, that is an empirical fact that can be established only on the basis of observation of democratic societies. Similarly, communism is not *inherently* unjust: it is unjust only to the extent that it prevents flourishing. And if it does in fact promote flourishing, that is an empirical fact that can be established only on the basis of observation of communist societies.

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.

The following hypothetical will help us evaluate Rawls’ analysis. I have to split a pie with someone one thousandth my size and who therefore only needs one thousandth as many calories. One of us is doing the cutting and the other is doing the choosing. The result will be a certain kind of equality, but it won’t be justice. By Rawls’ reasoning, if I split the pie in a way that corresponds to both of our respective food-related needs, the other person can justly keep 99.9% of the pie for himself, even though he will let 99.8% of it go to waste and needlessly let me starve in the process. If I split the pie down the middle and the other party only eats what he needs, then 49.9% of the pie will go to waste; and this outcome would just, according to Rawls’ theory. But such an outcome obviously wouldn’t be just.

Another hypothetical will help us proceed. 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. It would not be like the Soviet Union under Stalin, since no single person would be oppressing everyone else.

Nor would it be like the United States in the early 20th century, since no one would have the freedom to distinguish himself, commercially or otherwise. 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 state (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 no taxes; nor should there be antitrust laws; nor should there exist regulatory agencies, such as the Environmental Protection Agency and the Securities and Exchange Commission (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. They shouldn't be allowed to own air or oceans. People *should* be allowed to own firearms---within limits. They shouldn't be allowed to own rocket-launchers. People *should* be allowed to vote—within limits. 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.

In any case, Rand's conception of justice is certainly a better approximation to the truth than Rawls. The few Randian societies that have existed did in fact prosper, this being subject to the qualification that they all ended up having to regulate themselves in order to hold onto their wealth. By contrast, every Rawlsian society that has existed has been a failure, for the simple reason that there cannot possibly be development without a certain measure of inequality, including inequality of opportunity.

[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, these being:

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.

According to Immanuel Kant (2001), our sole *categorical* moral obligation—in other words, the one moral obligation that we have no matter what—is the obligation to respect other people's autonomy. I always have an obligation to respect Smith's autonomy. I may or may not have an obligation to play tennis with him, depending on whether the operative circumstances predicate my respecting his autonomy on my playing tennis with him. A similar point holds in connection with justice. 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 freedom 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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