

Distributive Justice and Social Justice
Joseph F. Johnston, Jr.

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The concept of justice has had a long and difficult history. The traditional notion of justice was based upon the proper assignment of rights and duties, rewards and punishments, in accordance with the rule of law. This traditional view has been expanded in recent times to emphasize the elimination or reduction by state action of economic and social inequality - a radical change in meaning.

Let's start with Aristotle's classic treatment of justice.

There are two types of justice for Aristotle: corrective (sometimes translated as "rectificatory") justice and distributive justice. Corrective justice deals with cases in which, for example, A wrongfully injures B and B seeks compensation for his injury, or A fails to perform his promise to B and B seeks damages from A for his breach.

Distributive justice deals with the distribution of honors, offices, money or other things that are to be distributed among two or more people. Sometimes the rule for distribution is governed by agreement. In a business partnership, for example, you look at the partnership agreement to see how the profits are to be divided. In the absence of a controlling agreement, Aristotle begins with an assumption: if the persons who are to receive distributions are equal, they should get equal shares; and if they are unequal, they should get unequal shares. Further, if the recipients are unequal, the awards should be made "according to merit." (Nic. Ethics, Bk. V. ch. 3, 1131a. All quotations from Aristotle are from *The Basic Works of Aristotle*, ed. Richard

McKeon, Random House, NY (1941).) But Aristotle understands that men do not agree on what constitutes “merit.” He says that, with respect to distributions among those citizens who have a share in the constitution of the state, supporters of aristocracy identify merit with excellence; supporters of oligarchy identify it with wealth (or noble birth); and democrats identify it with the status of freeman.

One of the basic functions of government is to dispense justice. Aristotle argued that there are three true forms of government, that is, forms of government that served the common interest rather than special interests. First, kingship or royalty, in which one rules; aristocracy, in which a limited number rule; and “constitutional government” (sometimes translated as “polity”), in which “the citizens at large administer the state for the common interest,...”(Politics, Bk. III, ch. 7, 1279a.) Aristotle did not favor democracy, which he defined as government in the interest of the needy: a “perversion” of constitutional government. (The perversion of monarchy was tyranny and the perversion of aristocracy was oligarchy.) In a true popular government, Aristotle argued, “men of property”, not the indigent, should be the rulers. I am somewhat oversimplifying this discussion, since Aristotle goes into a lengthy digression in which he notes a number of possible alternatives to the various forms of government.

As I previously indicated, Aristotle defined distributive justice as equal shares for equals and unequal shares for unequals. For Aristotle, the end of the state is the good life. Aristotle says that “the state is the union of families and villages in a perfect and self-sufficing life, by which we mean a happy and honorable life.” Further, “political society exists for the sake of noble actions, and not of mere companionship. Hence those who contribute most to such a society have a greater share in it than those who have the same or greater freedom or nobility of

birth but are inferior to them in political virtue; or than those who exceed them in wealth but are surpassed by them in virtue.” (Politics, Bk. III, ch. 9, 1280b-1281a.)

Aristotle gives an example that is relevant to our present topic: “If the poor, for example, because they are more in number, divide among themselves the property of the rich – is this not unjust?... if this is not injustice, pray what is?... Again, when in the first division all has been taken, and the majority divide anew the property of the minority, is it not evident, if this goes on, that they will ruin the state?” (Politics, Bk. III, ch. 10, 1281a.) Aristotle, of course, also chastises tyrants and oligarchs who plunder the people. Subsequently, Aristotle repeats this point in blunt language: “[I]f justice is the will of the majority, as I was before saying, they will unjustly confiscate the property of the wealthy minority.” (Politics. Bk. VI, ch. 3, 1318a.)

Aristotle explains very clearly why there is a serious danger in what he calls the “extreme” type of democracy, which he calls the worst form of government.

“And in democracies of the more extreme type there has arisen a false idea of freedom which is contradictory to the true interests of the state. For two principles are characteristic of democracy, the government of the majority and freedom. Men think that what is just is equal; and that equality is the supremacy of the popular will; and that freedom means the doing what a man likes. In such democracies every one lives as he pleases, or in the words of Euripides, ‘according to his fancy.’ But this is all wrong; men should not think it slavery to live according to the rule of the constitution; for it is their salvation.” (Politics, Bk. V, ch. 9, 1310a.)

One of the problems with extreme democracy, according to Aristotle, is that it can lead to a perverted form of government in which “not the law, but the multitude, have the supreme power, and supersede the law by their decrees.” In this state of affairs, demagogues rise up to

control the masses, leading to despotism. The demagogues “hold in their hands, the votes of the people, who are too ready to listen to them.” (Politics, Bk. IV. ch. 4, 1292a.)

At this point, the constitution has been superseded and constitutional government (that is, the rule of law) no longer exists. This scenario may perhaps sound somewhat familiar to you.

It is inconceivable that a philosopher who holds the views that I have just summarized could be in favor of the state taking away part of the wealth of some persons who have lawfully acquired it and redistributing it to others, simply because the former are wealthier than the latter. But this is exactly what the proponents of the currently fashionable concept of “social justice” demand. As Barrack Obama continually repeats, he is merely asking that “the wealthiest Americans” pay their “fair share.” But what is their “fair share?” Apparently it is whatever the spokesmen for the majority say it should be. This is precisely the position that Aristotle specifically rejects.

Let us take hypothetically the radical egalitarian criterion of extreme democratic theorists: every person who contributes to the productive process should receive the same remuneration. This solution is unjust because it would treat unequals equally. People are different in terms of their ability, leadership qualities, willingness to work and endurance, and their valid claims to compensation are therefore different. Moreover, the standard of equal incomes is counterproductive because it would discourage the best workers from using their best efforts, leading to lower productivity. (See the discussion of this question in Nicholas Rescher, Distributive Justice, Bobbs-Merrill, New York, 1966, ch. 4.) The only practicable solution to this problem is to let compensation be decided by the spontaneous order of the free market, regulated by the neutral principles of the rule of law. This is what we call by the short-hand term “capitalism.”

I don't have time today to go into the details of the intellectual history of the modern concept of social justice. Fortunately, Patrick Burke has done this for us in his excellent book, *The Concept of Justice*, published in 2011. I urge you to read this book. Meanwhile, let me just make a few brief points that will put this discussion in the context of our present predicament.

The topic of distributive or social justice was largely ignored by academic philosophers in the twentieth century until John Rawls wrote an article called "Justice as Fairness" in 1958, followed by several other articles and then an influential book, *A Theory of Justice*, published in 1971. I cannot discuss Rawls' theory in detail here; I am sure most of you are generally familiar with it. I will only summarize one aspect of this theory that is most relevant to our subject.

Rawls argues that some members of society are favored with intellect, skill, energy and other natural talents that are not deserved, but which give them an advantage over others who are not similarly endowed. Any success they gain is accordingly, at least in part, unfair. Rawls assumes that we ought to analyze our society based on a hypothetical "original position" in which the founders are ignorant of their own wealth, social status and other social contingencies. If we did this, according to Rawls, we would agree to a rule of "justice as fairness" under which some could gain from their inherent advantages or good luck, but only to the extent that the resulting distribution also benefits the "least favored" members of society. What this formulation does as a practical matter is to justify the forcible redistribution of wealth for the benefit of the "least favored," as defined by the political process. Rawls' theory, which was extremely influential, thus provided a theoretical justification for what the architects of the liberal welfare state were inclined to do anyway.

You can hardly pick up a newspaper or a political magazine today without seeing references to "social justice." This term is almost always used to mean that the existing

distribution of wealth is unjust because some people are much wealthier than others. Of course, this has been true of most societies throughout the history of civilization, and is certainly true of free societies in which people can use their God-given energies and talents to improve the lives of themselves and their families. To the extent that the citizens' wealth, gained by their thrift and industriousness, is confiscated by progressive taxation, the society is less free.

It goes without saying that I am not defending wealth gained by fraud, deceit, theft, embezzlement or other unlawful practices. Nor am I defending monopoly, price-fixing, insider trading, stock manipulation or Ponzi schemes. There are already laws discouraging these kinds of conduct, which should be vigorously enforced. I am simply saying that, if someone has acquired money or other property lawfully, whether by earning it or receiving it by a lawful gift from someone else, the government is not, for that reason, justified in taxing him at a higher rate in order to benefit other persons chosen by the government. I realize that this proposition is regarded today as radical, and it is. It is radically fair.

This does not preclude a basic 'safety net' to protect from penury those who cannot protect themselves (although I believe it should be administered locally); but our contemporary welfare states go far beyond this. Many government programs provide benefits to those who are able to take care of themselves. The point has been reached in many of the contemporary welfare states where the society cannot afford to pay for the level of benefits that the elected representatives have awarded, except through unsustainable borrowing. In several of the European welfare states, the limits have already been reached and exceeded.

In the Greek and Roman world, justice was a moral virtue that applied to individuals. It was one of the four cardinal virtues: prudence, courage, temperance (or self-control) and justice. The traditional precepts of justice are summarized in Justinian's digest (sixth century AD):

“These are the commandments of the law: to live honestly, not to harm others and to give to each person his due.” From these precepts of natural justice, it follows that injuries are to be rectified, contracts fulfilled, stolen property restored and quarrels adjudicated. In the traditional view of justice, as Patrick Burke points out in his book (*op. cit.* pg. 12), “an injustice cannot exist unless someone has done something wrong.” In the modern notion of social justice, however, those who are targeted by punitive taxation have not done anything wrong: they just have more money than the legislators think they ought to have. As Michael Oakeshott pointed out, the rule of law does not leave room for coercive re-distribution of money or goods because such a distribution “requires a rule of distribution and a distributor in possession of what is to be distributed;....” But civil rulers in a state subject to the rule of law have nothing to distribute because whatever they have to give away, they must first take from the taxpayers. (Michael Oakeshott, *On Human Conduct*, p. 153, n.1 (Clarendon Press, Oxford, 1975).) Frederic Bastiat makes the same point, as does Bertrand de Jouvenal in *The Ethics of Redistribution*.

To declare an action to be just means that it must be justified as being in accordance with a recognized system of rules. A determination by a civil ruler or rulers (whether or not elected by the people) that A has too many assets, and therefore some of A’s assets should be taken away and given to B, is wholly arbitrary and not justified by any morally acceptable, neutral rule or principle. It cannot, therefore, be in accord with the rule of law.

Am I saying that there is no such thing as social injustice? Certainly not. Hitler’s Germany was an unjust society because its rulers deprived many Germans (and others) of their life, liberty and property without any lawful justification. These actions were unjust under anyone’s definition. And this is why the allies were justified in punishing some of the worst offenders at Nuremberg.

The Nazi state also followed other internal procedures that violated the rule of law, such as adopting secret decrees, passing retroactive legislation and depriving millions of people of the equal protection of the laws on the basis of race and ethnicity.

What concerns me is that the notion of an unjust society is now being extended to include societies in which the laws may be properly enforced, but there are wide disparities of wealth, which, as I noted previously, has been true of most human societies throughout recorded history. A large proportion of the American public has been persuaded that people who are financially successful – who have followed the classic American path of gaining wealth to improve the lives of themselves and their families – are somehow evil, reprehensible and unfair, and that they should be punished by subjecting them to increasingly severe levels of progressive taxation. This is an attitude that is punitive, mean-spirited, pernicious and inherently dangerous. It will divide our society and make it less productive.

We have seen that the intellectual foundation for the contemporary theory of social justice is very weak. In the public mind, “social justice” seems to mean little more than an emotional feeling of collective compassion for the poor. Compassion is a perfectly valid and worthy sentiment. The problem is that, when politicians talk about compassion, they mean compassion with other people’s money – under penalty of fines and prison sentences. Whatever that is, it is not compassion and it is not charity. It is what Bastiat called “bogus philanthropy,” where some try to live at the expense of others. Just, please, do not call it justice.

In conclusion, we have to face the fact that there is a serious tension between freedom and equality. If we have a free society, economically and socially, there are going to be inequalities. And we cannot achieve economic equality by compulsion without serious restrictions on freedom. I hope that, in this Society, we will choose freedom.