

CAN THERE BE JUSTICE IN AN UNEQUAL WORLD?

The purpose of this document is to provide background information for my talk on 15th November when I shall attempt to show that there can be justice in an unequal world if, and only if, a particular type of injustice or inequality is eliminated. I shall not be presenting all the information in this document.

Section 1 is a selection of what various philosophers say about Justice and Equality. It is not a complete survey. Its purpose is to indicate the deep complexities which arise when talking about Justice. It shows there is no consensus as to whether Justice is:

- a virtue (of individuals or institutions);
- a value (justice is generally considered good or desirable and injustice is not);
- a sentiment or feeling;
- a tool (for achieving fair or equal distribution of wealth or for achieving social harmony or for maintaining expectations which have arisen from past social conventions);
- a political concept (an idea or belief of particular groups);
- an imaginary personage;
- moral awareness

NOTE: The Greek word for 'Justice' is 'dikaiosuné', which also translates as 'general moral rightness'.

Section 2 provides details of two real-life case studies and other information I shall use in my talk.

SECTION 1

Plato

Justice consists of granting the 'equality' which unequals deserve to get.

The Laws, 757d ed/tr. Saunders, Trevor J, 1970, p.230

My general description of injustice is this: the mastery of the soul by anger, fear, pleasure, pain, envy and desires, whether they lead to actual damage or not.

The Laws, 863e

One ought not to return a wrong or an injury to any person, whatever the provocation is.

The Last Days of Socrates, ed/tr. Tredennick, H., 1969, p.88

The following quotes are from *The Republic*, trans. Desmond Lee, Penguin Classics, 2007

'Justice' or 'doing right' (the two terms are used interchangeably):

1. consists simply in truthfulness and returning anything we have borrowed (331c)
2. is to give every man his due (331e)
3. is to give every man what is appropriate to him (332c)

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4. is to benefit one's friends and harm one's enemies (332d)
5. is useful in business (333a)
6. is a kind of stealing, though it must be done to help a friend or harm an enemy (334b)
7. is what is in the interest of the stronger party (338c) – Each type of government enacts laws that are in its own best interests [...] in enacting these laws they make it quite plain that what is “right” for their subjects is what is in the best interest of themselves, the rulers, and if anyone deviates from this he is punished as a lawbreaker and “wrongdoer” (338d).
8. is that which *seems* to the stronger to be in his best interest (340c).
9. consists in minding your own business and not interfering with other people (433b; 441d)

The real concern of justice is not with external actions, but with a man's inward self, his true concern and interest. The just man will not allow the three elements [reason/intellect, desires/appetites, will] which make up his inner self to trespass on each other's functions or interfere with each other (443d).

The just man will call unjust any action destructive of this disposition, and the opinions which control such action ignorance (443e)

[argument by way of analogy with health and body parts]. Justice is produced by establishing in the mind a similar natural relation of control and subordination among its constituents, and injustice by establishing an unnatural one [...] excellence is a kind of mental health' (444d).

Aristotle

Justice seems to be equality - not for everyone, but for equals. Justice also seems to be inequality - not for everyone, but for unequals.

Politics [c.332 BCE], 1280a11, ed/tr. Reeve, C.D.C.. Hackett, 2017, p.63

The following quotes are taken from *Nicomachean Ethics* (c.334BCE) ed/tr. Thomson J A K, Tredennick H, Penguin 1976:

There are two sorts of political justice, one natural and the other legal; the natural is that which has the same validity everywhere and does not depend upon acceptance (1134b18).

It is the way that we behave in our dealings with other people that makes us just or unjust (1103b16).

All men agree that what is just in distribution must be according to merit in some sense, though they do not all specify the same sort of merit, democrats identify it with the status of freeman, supporters of oligarchy with wealth (or with noble birth), and supporters of aristocracy with excellence.

The word 'unjust' is considered to describe both one who breaks the law and one who takes advantage of another, i.e. acts unfairly. (1129a32)

We call 'just' anything that tends to produce or conserve the happiness of a political association. (1129b18)

Chrysippus c.240 BCE

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One can find no other starting point or origin for justice except the one derived from Zeus and that derived from the common nature; for everything like this must have that starting point, if we are going to say anything at all about good and bad things.

The Stoics Reader, ed/tr. Inwood,B/Gerson,L.P., 2008, p.9

Justinian Corpus of Civil Law (529-534CE)

Justice is the constant and perpetual will to render to each his due.

- 1) Justice is the opposite of arbitrariness (*constant* and *perpetual*). It requires Impartial and consistent application of rules. Where two cases are relevantly similar, they should be treated in the same way.
- 2) Justice requires an agent (*will* to render) – an individual person, group, or an institution whose will alters the states of affairs. It is bad luck but not unjust when someone's house is destroyed by storm.
- 3) Justice is a matter of claims that can rightfully be made against an agent dispensing justice (just treatment is something *due to* each person). Rights and obligations – implies justice is enforceable. Cf. other virtues: we demand justice, but we beg for mercy.
- 4) Justice has to do with how individual people are treated (to *each* his due). We appeal to justice to resolve conflicts.

Baron de Montesquieu (1689-1755)

In monarchies and despotic states, no one aspires to equality. Not even the idea occurs; everyone aspires to superiority. People of the very lowest rank only wish to rise in order to become masters of others

The Spirit of the Laws (1757) in *Selected Political Writings*, ed/tr. Richter, M, Hackett, 1990, p.141

David Hume (1711-1776)

In a hypothetical state of abundance where 'every individual finds himself fully provided with whatever his most voracious appetites can want, [...] the cautious, jealous virtue of justice would never once have been dreamt of'

An Enquiry Concerning the Principle of Morals: 183-4

Immanuel Kant (1724-1804)

If justice perishes, there is no further point in men living on earth.

Metaphysics of Morals I: Doctrine of Right (1797) in *Political Writings*, ed/tr. Reiss,H, CUP, 1996, p.155

Rightful equality within a state is a relationship among citizens where no-one can put anyone else under a legal obligation without submitting simultaneously to a law which requires that he can be put under the same kind of obligation by the other person.

Perpetual Peace (1795), in *Political Writings* ed/tr. Reiss,H, CUP 1996, p.99

Jeremy Bentham (1748-1832)

Justice in the only sense in which it has meaning, is an imaginary personage, feigned for the convenience of discourse, whose dictates are the dictates of utility, applied to particular cases
The Principles of Morals and Legislation. p.125-6

John Stuart Mill (1806-1873)

Two essential ingredients in the sentiment of justice are the desire to punish a person who has done harm and the knowledge or belief that there is some definite individual or individuals to whom harm has been done. [...] It is natural to resent or repel or retaliate any harm done against ourselves or against those with whom we sympathise

Utilitarianism p. 51

Protection, therefore, against tyranny of the magistrate is not enough: there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony with its ways, and compel all characters to fashion themselves upon the model of its own.

On Liberty, p.7

Simone Weil (1909-1943)

Justice consists in seeing that no harm is done to men. Whenever a man cries inwardly: 'Why am I being hurt?' harm is being done to him. He is often mistaken when he tries to define the harm, and why and by whom it is being inflicted on him. But the cry itself is infallible

Human Personality (1977) in *The Simone Weil Reader*, ed. Panichas, G.A, p.334.

Bernard Williams (1929-2003)

Equality seems to require that each person is owed an effort at identification; they should not be seen as a surface to which a label can be applied, but one should try to see the world (including the label) from their point of view.

The Idea of Equality, 1962, §2)

Marcus Singer (1926-2016)

I am to treat others as I would have them treat me, that is on the same principle or standard as I would have them apply in their treatment of me

The Golden Rule, 1963, *Philosophy* 38, p. 300.

John Rawls (1921-2002)

The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts

A Theory of Justice, 1972, 17

Rawls assumes: (a) individuals value freedom more than equality; (b) that individuals would rationally choose (from behind the *veil of ignorance*) rules that generate inequality on the grounds that such rules would have the greatest benefit for all; (c) some inequalities serve as incentives to greater production that raise the position of the worst-off in society.

It is the methodology by which goods get divided that matters: not the consequences.

Fairness is about being impartial rather than trying to create equality.

Friedrich Hayek (1899-1992)

Law-making is a process driven by processes more or less indistinguishable from market process except that benefits to legislators are concentrated while costs are widely dispersed. It is driven by untested ideas about how to respond to contemporary crisis, and gets passed without anyone knowing the lasting consequences.

The aim of legislation should be to make things better not fairer; to make things more productive, not more level; to channel innovative thinking in the direction of wealth creation, not wealth capture.

Law, Legislation and Liberty, vol II: The Mirage of Social Justice, 1976

Thomas Nagel (1937-)

Egalitarianism was once opposed to aristocratic values, but now it is opposed by adherents of two non-aristocratic values: utility (increase benefit, even if unequally) and individual rights (which redistribution violates).

Mortal Questions (1981) p.109

The ideal of acceptability to each individual underlies the appeal to equality.

Mortal Questions (1981) p.123

Ronald Dworkin (1931-2013)

Justice is a principle of equal concern and respect for persons even if there are relevant grounds for discrimination.

Sovereign Virtue: the theory and practice of equality (2000)

Paul Johnson

Mosaic law meant that God ruled through his laws, and since all were equally subject to the law, the system was the first to embody the double merits of the rule of law and equality before the law.

A History of the Jews, 1993, p.40

Jonathan Wolfe (1939 -)

Justice is the last virtue of society, or at least the last resort. Rights, or considerations of justice, are like an insurance policy: something offering security to fall back on.

An Introduction to Political Philosophy, 2006, p.198

Michael Sandel (1953-)

The following quotes are from *Justice: What's the right thing to do?* (2009)

To ask whether a society is just is to ask how we distribute the things we prize - income and wealth, duties and rights, powers and opportunities, offices and honours (p.19)

Debates about distributive justice are about not only who gets what but also what qualities are worthy of honour and reward. (p179)

Justice is not only about the right way to distribute things. It is also about the right way to value things. (p261)

Amartya Sen

It was the diagnosis of an intolerable injustice in slavery that made abolition an overwhelming priority, and this did not require a search for a consensus on what a perfectly just society would look like.

The Idea of Justice, 2010, p.21

Every normative theory of social justice that has received support and advocacy in recent times seems to demand equality of something.

The Idea of Justice, 2010, p.291

John Charvet

That the relation of equality might be considered a value in itself is an absurdity. Would the equality of blinding the only sighted person in a blind society be good? Is it inherently good that two trees are the same height? This is nonsense.

Liberalism: the basics, 2019, p.86

Anthony Grayling (1949-)

The concept of democracy - embodying the principles of participation and equal concern - entails that social justice is a mandatory aim.

The Good State, 2021, p.55

Section 2

Information on two cases I shall analyse during the talk:

- Camden Wonder [Camden Wonder - Wikipedia](#)
- Court of Appeal quash convictions against Sally Clarke (2003): [Clark, R v \[2003\] EWCA Crim 1020 \(11 April 2003\) \(bailii.org\)](#)

Other material:

- David Miller, *Justice*, Stanford Encyclopedia of Philosophy, (revised 06 Aug 2021) [Justice \(Stanford Encyclopedia of Philosophy\)](#)
- Richard Wilkinson and Kate, *The Spirit Level: Why Equality is better for everyone*

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- Fiona Guy (2018), Wrongful Imprisonment in the United Kingdom: *When innocence is not enough*, in True Crime and Justice, [Wrongful Imprisonment In The United Kingdom: When Innocence Is Not Enough | Crime Traveller](#)
- Sandra Lavine for The Guardian, 30 Sept 2013, *Witnesses tell of feeling abandoned and uninformed in criminal court cases*, [Witnesses tell of feeling abandoned and uninformed in criminal court cases | UK criminal justice | The Guardian](#)
- Jessica Jacobson, Gillian Hunter & Amy Kirby, (2015) *Structured Mayhem: Personal Experiences of the Crown Court* [Courts, court users and the judicial process | Institute for Criminal Policy Research \(icpr.org.uk\)](#)
- Report for the Secretary of State for the Home Department of the Departmental Committee on Evidence of Identification in Criminal Cases (1976) [Return to an order of the Honourable the House of Commons dated 26th April 1976 for report to the Secretary of State for the Home Department of the Departmental Committee on Evidence of Identification in Criminal Cases HC 338 \(publishing.service.gov.uk\)](#)
- Clair, Matthew, and Amanda Woog. (2022). “[Courts and the Abolition Movement](#)”. California Law Review 110 (1):1-45
- Restorative Justice: [Criminal justice | Restorative Justice Council](#)