

Concept of Justice Difficulties in Defining Justice

Komal Parnami
Rajiv Gandhi National University of Law
Punjab, India

ABSTRACT:

Justice is one of the most important moral and political concepts with no agreed definition. Various philosophers interpret the meaning of justice differently. The concept of justice without law perhaps is not incoherent, but it is unavoidably vacuous. This paper analyses the concept of justice as defined by various philosophers and the difficulties in defining justice. The idea of justice depends upon the specific situation and the prevailing laws.

I. INTRODUCTION

Justice is one of the most important moral and political concepts with no agreed definition. The word justice is derived from the latin word “jus” meaning right or law. The *Oxford English Dictionary* defines the “just” person as one who typically “does what is morally right” and is disposed to “giving everyone his or her due,” offering the word “fair” as a synonym.¹ The claim for justice gains meaning in specific circumstances and cultural contexts. Justice is an evolutionary concept. The evolution of the meaning of justice from the ancient Greek period to the modern day is interesting to know.

One of the earliest written definitions of justice is by Aristotle. “Equals should be treated equally and unequal unequally”. Aristotle talks about distributive justice, corrective justice, commutative justice, legal justice, moral justice. In the middle ages, justice was described as the foundation of the state by St. Augustine who believed justice was created by the church.

According to Karl Marx, the idea of justice and its content varies with the economic interest of the ruling class.² Justice according to Chaim Perelman is a virtue among others. “Each will defend a conception of justice that puts him in the right and his opponent in the wrong.” Gautam Buddha’s concept of justice is not confined only to respecting the law, but it also justifies a revolutionary concept of disobedience or defying law, if the law is evil.³

Philosophers such as Kant, Mill, Rawls, Nozick have given their theories of justice. John Rawls propounds the idea of “justice as fairness”. *A Theory of Justice* is one of the most important works of John Rawls. It offers two principles of justice.⁴ From a utilitarian perspective, justice is about designing rules and political institutions

¹ <https://www.iep.utm.edu/justwest/>

² https://shodhganga.inflibnet.ac.in/bitstream/10603/67805/6/06_chapter%202.pdf

³ Ronald Dworkin, *A Matter of Principle*, p. 104-118 Harvard University Press, 1985.

⁴ John Rawls, *A Theory of Justice*, Harvard University Press, 1971.

that bring about the greatest happiness for the greatest number of people.⁵ There are multiple dimensions of justice identified by Amartya Sen.

The interrelationship between justice and the law is complex. Legal and political theorists since the time of Plato have wrestled with the problem of whether justice is part of law or is simply a moral judgment about law. An example of the latter is when we speak of an "unjust law."⁶ When stated negatively, the concept of justice is the avoidance of injustice.

There are problems in defining justice due to the individualistic nature of the concept. What might be just for me in a particular situation might not be just for someone else in some other situation. There are no universal principles by which justice or injustice can be defined other than the way in which the government has made its laws.⁷ However, since law is the means to an end, the law itself should be a just law as a pre-requisite to use it as a means of serving justice.⁸ Despite being endlessly discoursed from the ancient times, the concept of justice constantly appears to be one of the most stimulating as well as penetratingly controversial ideas.⁹

II. THE CONCEPT OF JUSTICE

To an ordinary person, justice may mean due punishment for a crime. To a philosopher, justice may mean morality. To a lawyer, justice may mean the application of the rule of law. The concept of justice is not static; it is an evolutionary concept. The meaning of justice in popular discourse is the idea of getting what one deserves, fairness, moral righteousness and equality. The question 'What is justice?' can be tackled as narrowly or as broadly as one likes.

Getting what one deserves includes getting punishments for "immoral" actions. Fairness is the idea of treating equals equally. It may also mean treating people unequally to recognise and correct past injustices. For instance, if women or members of racial minorities have been historically excluded from certain relatively well-paid occupations, there may be a justifiable case for employment equity measures — giving suitable candidates from the disadvantaged group preference in hiring.¹⁰ One common understanding of justice also equality in the form of equal citizenship rights. The understanding of justice as moral righteousness means individual virtues and ethical conduct.

In her exquisite novel "To Kill a Mockingbird", Harper Lee familiarises the readers with justice through a vivid description of injustice. Justice is one of the most important moral and political concepts with no agreed

⁵ <https://www.cisl.cam.ac.uk/resources/publication-pdfs/the-multiple-meanings-of-justice-in-the-context-of.pdf>

⁶ <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1001&context=facultyworkingpapers>

⁷ <https://www.abyssinialaw.com/blog-posts/item/1477-law-as-a-means-of-serving-justice>

⁸ *Ibid.*

⁹ http://www.ritsumei.ac.jp/acd/cg/ir/college/bulletin/e-vol.13/01_Bhandari.pdf

¹⁰ <https://fernwoodpublishing.ca/files/pursuingjustice.pdf>

definition. Both ancient, for example Aristotle and modern thinkers, for example Rawls see justice as a principle to be embedded in all social institutions and as a necessary virtue of individuals in their interactions with others.¹¹

The most plausible candidate for a core definition comes from the Institutes of Justinian, a codification of Roman Law from the sixth century AD, where justice is defined as 'the constant and perpetual will to render to each his due'.¹² Conservative justice is to respect people's rights under existing law or moral rules, or more generally to fulfil the legitimate expectations they have acquired as a result of past practice, social conventions, and so forth. In contrast to it, ideal justice gives us reason to change laws, practices and conventions quite radically, thereby creating new entitlements and expectations.

When justice deals with the distribution of rights, goods etc. to the citizens, it is called distributive justice.¹³ Corrective justice implies making good the loss of a person to whom some wrong has been done. It stands against injustice. Justice takes a comparative form when to determine the due of a person, we need to know the claims of others. It takes a non comparative form when we know what is due to a person by knowing only the facts regarding that person.

III. JUSTICE AS DEFINED BY VARIOUS PHILOSOPHERS

Justice was closely related to ethics in its Greek concept. According to **Cephalus**, justice means telling the truth and repaying one's debt. Polemarchus defines justice as giving what is due to every person in society. **Plato** believed in the natural inequality of men and therefore he advocated the class system. He divided people into four categories, namely, the ruling class, the military class, the producing class and the craftsmen. For Plato, justice is the fundamental virtue and a principle of non interference, which keeps within proper bounds the various classes of society, various individuals of each class and various elements in an individual's soul.¹⁴ It is a principle of functional specialization.

According to **Aristotle**, justice is principally used to describe a conduct in agreement with law. He classified justice into two categories: distributive justice and corrective justice. Aristotle powerfully argues that all lawful and fair acts are just; all unlawful and unjust acts are unfair.¹⁵ But if there is conflict between fair and lawful standards, what standards should the people and institutions choose? This question discounted by Aristotle in analysing the concept of justice has opened a historically unsettled debate on the nature of law, morality, and justice.

¹¹ <https://www.cisl.cam.ac.uk/resources/publication-pdfs/the-multiple-meanings-of-justice-in-the-context-of.pdf>

¹² <https://plato.stanford.edu/entries/justice/#JustMappConc>

¹³ Aristotle, *Nichomachean Ethics*, Transt H. Rackham, Edn. 195, BKV.11 7

¹⁴ <https://brewminate.com/the-concept-of-justice-in-greek-philosophy-plato-and-aristotle/>

¹⁵ Aristotle, *Nicomachean Ethics*, ARISTOTLE'S COLLECTION 29 BOOKS (W. D. Ross Transl. Kindle Edition, 2007)

The classical Roman lawyers were influenced by the Greek philosophy. **Cicero** was a lawyer who advocated that justice is a natural law which does not depend upon the consent of man. In the middle ages, St. **Augustine** stated that justice is the foundation of the state. According to him, justice is not created by the civil authority but by the Church. Despite his Christian commitment to love and peace, Augustine is not a pacifist and can support “just wars” as morally permissible and even as morally obligatory.¹⁶ St. Aquinas conceded with Aristotle on the concept of justice based on equality.

Justice according to **Karl Marx** depends on the modes of production and the relations of production. The idea of justice and its content varies with the economic interest of the ruling class. The discussion about the concept of justice will not be complete without reference to the ideas of philosophers of ancient India. The word “dharma” is almost synonymous to “nyaya” or justice. **Manusmriti** forms a very important part of hindu jurisprudence. **Gautam Buddha**’s concept of justice is not confined only to respecting the law, but it also justifies a revolutionary concept of disobedience or defying law, if the law is evil.¹⁷

Chaïm Perelman is considered one of the greatest Law philosophers of the 20th century.¹⁸ According to him, “Each will defend a conception of justice that puts him in the right and his opponent in the wrong.” He gives six main conceptions of justice. “To each the same thing” means all people must be treated in the same way without regard to their distinguishing particularities. “To each according to his merits” means human beings should receive proportionate considerations according to their merits. “To each according to his works” means not presupposing equal treatment for all but according to the results of their actions. “To each according to his needs” makes this justice formula similar to charity. “To each according to his ranks” means recognising differences men acquire according to their position. “To each according to his legal entitlement” means the living according to the letter of law.

Bentham’s concept of justice signifies his idea of utility as it is legitimized in law.¹⁹ Bentham’s disciple, John Stuart Mill, further explains Bentham’s concept of justice in considering that one can sacrifice his/her happiness for the sake of virtue, which is better than happiness.²⁰ According to **Immanuel Kant**, any act which is good as a means to something else, is a hypothetical imperative; whereas, any act that is self-sufficiently good in itself and conforms to reason is a categorical imperative.²¹

¹⁶ Augustine, and F. R. Montgomery Hitchcock. 1922. *St. Augustine's treatise on the City of God*.

¹⁷ Ronald Dworkin, *A Matter Of Principle*, p. 104-118, Harvard University Press, 1985.

¹⁸ http://www.scielo.br/pdf/bak/v9n1/en_03.pdf

¹⁹ http://www.ritsumei.ac.jp/acd/cg/ir/college/bulletin/e-vol.13/01_Bhandari.pdf

²⁰ John Stuart Mill, *Utilitarianism* 36, Ebook, Gutenberg, 2004.

²¹ Immanuel Kant, *The Philosophy Of Law: An Exposition Of The Fundamental Principles Of Jurisprudence As The Science Of Right*, Liberty Fund Inc., EBook, 2010.

IV. JOHN RAWLS' THEORY OF JUSTICE

“Justice as Fairness” is not only a popular phrase widely used in almost all social science disciplines under the influence of Rawls, but also represents a deep explication of the concept of justice. “A Theory of Justice” is one of the most important works of John Rawls.

In his work Rawls offers two principles of justice. First: Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.²² Second: Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.²³

Contractual nature of justice was explored by Kant that influenced John Rawls. Rawls' justice is concerned not only with human welfare but also with individual's welfare. The concept of “Veil of Ignorance” is a powerful thought experiment by Rawls. Our usual opinions regarding what is just and what is unjust are informed by our own experiences. “We are shaped by our race, gender, class, education, appearance, sexuality, career, family, and so on.” On the other hand, if we are under a veil of ignorance, the resulting society should be a fair one.

According to Rawls, the first principle has priority over the second, “at least for societies that have attained a moderate level of affluence”. The liberties Rawls has in mind are negative rights, like the freedom of thought. The distribution of social goods can include education, food, and housing; which could be considered to be positive rights.²⁴

V. KINDS OF JUSTICE

Keeping in view the various definitions of justice, it may be classified into certain kinds, namely - natural justice, economic justice social justice, political justice, legal justice.

Natural Justice: The expression "natural justice" means the innate quality of being fair, thereby meaning what is right and what is wrong. Legal experts of earlier generations did not draw any distinction between "natural justice" and "natural law". Natural justice was considered as that part of natural law which relates to the administration of justice.²⁵

Economic Justice: The concept of economic justice revolves around the idea of a socialist society. It evolves equal economic values, opportunity and right for all and prohibition of economic discrimination between man

²² John Rawls, *A Theory Of Justice*, Cambridge, MA, The Belknap Press of Harvard University Press, 1971.

²³ John Rawls, *A Theory Of Justice*, Cambridge, MA, The Belknap Press of Harvard University Press, 1971.

²⁴ <https://ethicalrealism.wordpress.com/2011/04/26/three-theories-of-justice/>

²⁵ https://shodhganga.inflibnet.ac.in/bitstream/10603/67805/6/06_chapter%202.pdf

and woman in economic matters.²⁶

Political Justice: Political justice prevails in a society where everyone has equal political rights. The state should establish political justice by creating conditions under which all including the minorities find scope for exercising their political rights in pursuance of a system of universal adult suffrage, rule of law.²⁷

Social justice: An ideal definition of social justice may be, "A set of ideas, values and social practices to ensure that all persons and groups enjoy economic security, can participate effectively in democratic decision-making, exercise mutual respect and caring for one another and live their lives in ways that protect and sustain the natural environment for future generations."

VI. INTERRELATIONSHIP BETWEEN JUSTICE AND LAW

For the lawyer, the concept of justice is usually very black and white. It is understood from a negative construct of perceived 'injustice'. A person wrongly convicted will have a strong sense of injustice.²⁸ Justice is not solely about justice between the parties in a court case. It is also about justice to society. To the judge, justice is a concept that really equates to an application of the rules to achieve an outcome.²⁹

The concept of justice without law perhaps is not incoherent, but it is unavoidably vacuous. Justice is an ideal form of interpersonal relationships. The ideal is expressed in various formulas: life, liberty and the pursuit of happiness; liberty, equality and fraternity; from each according to his ability, to each according to his need; due process and equal protection of the law, etc. As already classified by Aristotle, the concept of justice includes distributive justice as well as commutative justice, a duality that roughly corresponds to the modern ideas of substantive and procedural justice. When stated negatively, the concept of justice is the avoidance of injustice.

The process of seeking justice can begin with the person aggrieved, for example, in a statement of grievance or, more formally in a legal complaint. In seeking justice, the next stage is in which the grievant presents the complaint to someone who can exercise authority. In a constitutional regime, such a person is a judge or other legally constituted official who should respond according to legal procedures and in accordance with prescribed substantive legal standards.

A quest for justice in a constitutional regime in the real world entails an encounter with a real legal system, staffed by judges who decide cases according to established procedure and in light of prescribed substantive legal standards.³⁰ "Justice" that is not embedded in a legal system is an idealized aspiration. The significant questions about "justice" are encountered in concrete situations where real choices must be made. For example,

²⁶*Ibid.*

²⁷*Ibid.*

²⁸ Amartya Sen, *The Idea of Justice*, The Belknap Press of Harvard University Press, 2009.

²⁹ <http://classic.austlii.edu.au/au/journals/VicJSchol/2014/12.pdf>

³⁰<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=3797&context=flr>

is an unborn child a "person" in the context of a wrongful death action, having in mind that the categorization may be invoked in the context of abortion?³¹

VII. DIFFICULTIES IN DEFINING JUSTICE

There are problems in defining justice due to the individualistic nature of the concept. What might be just for me in a particular situation might not be just for someone else in some other situation. There are no universal principles by which justice or injustice can be defined other than the way in which the government has made its laws.³²

Various philosophers present their own understanding of the concept and idea of justice. There is no one straightjacket approach for defining justice. The idea of justice depends upon the specific situation and the prevailing laws. For example, differences in emphasis may be found across cultural divides. An emphasis on socio-economic rights and distributive justice can be identified in the way that political power has been exerted and legitimized in China over the past two millennia.³³ An emphasis on political rights, and the dimensions of justice as recognition and equal participation, seems to dominate political thought in the US.³⁴

VIII. CONCLUSION

Justice is an evolutionary concept. The meaning of justice in popular discourse is the idea of getting what one deserves, fairness, moral righteousness and equality. "Justice as Fairness" is not only a popular phrase widely used in social science disciplines under the influence of Rawls, but also represents a deep explication of the concept of justice. "Justice" that is not embedded in a legal system is an idealized aspiration. There are problems in defining justice due to the individualistic nature of the concept.

³¹ *Ibid.*

³² <https://www.abyssinialaw.com/blog-posts/item/1477-law-as-a-means-of-serving-justice>

³³ <https://www.cisl.cam.ac.uk/resources/publication-pdfs/the-multiple-meanings-of-justice-in-the-context-of.pdf>

³⁴ *Ibid.*