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Definition: **justice** from *The Hutchinson Unabridged Encyclopedia with Atlas and Weather Guide*

A goal of political activity and a subject of political enquiry since Plato. The term has been variously defined as fairness, equity, rightness, the equal distribution of resources, and positive discrimination in favour of underprivileged groups. It is most directly applied to the legal systems of states, and to decisions made by the recognized authorities within them.

Summary Article: **Justice**

From *Encyclopedia of Social Problems*

A fundamental concept in human society, the topic of justice, could take volumes to explore. This entry briefly examines three contexts in which justice applies today: civil or distributive justice; criminal or corrective justice; and international justice. Justice functions as both an ideal and a practical standard, so each section discusses theory and application.

Broadly defined, *justice* is the measure of right and response to wrong—in other words, the fundamental measure and maintenance of integrity. It can be meted out as a policy or system, or it can be held as a virtue or ideal. Justice balances the integrity and rights of the individual with the collective needs of society and dictates the corresponding responsibilities or duties of society and individuals, as well as the essential rights of the individual. The nature of the balance between individual and collective is debated largely according to whether justice is considered a dictate (duty) or a state (right).

In the *Nicomachean Ethics*, Aristotle laid out the basis for our understanding of justice when he specified that justice is either universal or particular. Universal justice, which acknowledges the rights of others, is self-evident and a fundamental virtue. Particular justice governs systems of distribution, rectification (or correction), and reciprocity in economic exchange. Universal justice and particular justice are non-negotiable attributes of the just person demonstrable in the just society. Alternatively, justice is something inherent within an act or policy, not an individual or a society. According to this view, articulated by Kant in his *Metaphysics of Morals*, justice is particular, enacted or thwarted, and fundamentally contextual. Rawls extended this view by insisting that individual rights never be sacrificed for the collective good. Whatever the view and nature of justice, it is prioritized among those qualities essential to the fulfillment of human society.

Civil Justice

A central assumption of the U.S. Constitution is the promotion and protection of a just society. Justice here refers to the assumptions, norms, and laws that permit liberty and equality to thrive, even under the stress of a diverse society with competing needs. Indeed, U.S. society seeks to protect both individuals and institutions against unfair domination, be it intellectual, racial, cultural, economic, or political, and it is the task of justice to do so. To that end, *civil justice* is the system by which a society distributes its resources while maintaining the fundamental ideals on which the country is founded. This is easier to define than to execute, given the tension between individual liberty and collective equality, particularly when it is acknowledged that liberty includes liberty to acquire and that equality as humans does not mean equal quality of life, at least not in a capitalist society such as in the United States.

Philosophers and political theorists have asserted the centrality of just institutions since Plato (in the

European tradition). However, the notion that civil justice denotes the extent to which social institutions attack or promote individual well-being is relatively recent, most notably articulated by Rawls in his books *Theory of Justice* and *Justice as Fairness*. Rawls insists that justice is what is demanded by any reasonable person in the so-called original position—that is, without knowledge of individual attributes and advantage. According to this theory, justice supports the least intrusive demands on any individual and would never support the abdication of individual rights for the collective good. Consequently, the distribution of wealth and other entitlements must be such that no individual is abandoned by society for expediency and that no individual is obliged to conform to moral or other values save those that prohibit harm to others (the realm of criminal justice).

It is the task of civil justice to determine when acquisition unacceptably harms others, what the minimum possessions and possibilities needed by each member of society are, and how access and acquisition are determined and protected. As a nation Americans are only partially comfortable with this role of justice. They may agree that it is better to be rich than poor, but ubiquitous debate about government reach and tax levy demonstrate that Americans are skeptical about giving the U.S. government the authority to redistribute wealth. On the other hand, and after more than a century of effort, as a society Americans agree that the government—indeed the justice system—does have authority to assure that people of all races and both genders have equal access to education, jobs, loans, and other resources.

Practically, then, civil justice requires assessment of the means of distribution within society. The primary resources to be distributed are wealth, of course, but also education, credit, power, the right to vote, mobility, and status. The task of policymakers who guide collective activity is to determine what goods and rights are central to just distribution; and when distribution must be protected, when it must be promoted, and when it must be left to market or other forces. The task for individuals is similarly complex: When is it acceptable to pursue one's own interest, when must one defer to a standard that does not prioritize self-interest, and when may one claim ignorance or passivity legitimately?

U.S. society maintains numerous institutions and systems of social justice. The income tax distributes wealth; publicly funded education provides for children under the age of 18 as a means of setting a baseline of opportunity; everyone over the age of 18 may vote as a means of distributing political will. Despite criticism of all of these systems as inadequate or worse, at least in principle they each seek to distribute fundamental resources among citizens.

Criminal Justice

Perhaps the most recognized form of justice in the United States at this time is in the definition of, and response to, criminal activity. Criminal justice specifies what constitutes a crime; how society polices, prosecutes, and punishes people who commit crime; and the mechanisms for implementing these activities. Criminal justice is administered through three systems designed to be coordinated: police, courts, and corrections. Clearly, crimes consist of violation of law, but which violations are crimes and how those crimes are regarded varies by social norm, statute, and geographical location. Once crime is defined, justice responds to crime. But here, too, there is divergence. Should justice look back at the crime alone to determine appropriate punishment, or should justice look forward to the impact of the crime *and* of the punishment on society as a whole?

Because criminal justice responds to active violation, rather than intrinsic conditions and distributions, it is retributive in its basic function. U.S. society defines these violations as crimes and weighs their

relative offense according to fundamental principles, or rights, to which Americans adhere. Because liberty and autonomy are critical to U.S. society, the society regards interpersonal crimes (such as robbery or assault) as more reprehensible, with more severe punishments, than “victimless” crimes with no directly injured party (such as prostitution, drug use, and business fraud). For the same reason, punishment must meet standards of fairness and humanity, at least in principle. At the same time, criminal justice varies by state in law and by locality in practice. Further, some states vary punishment not only based on the nature of the crime itself but also on the criminal record of the person who commits the crime. Criminal justice, then, as practiced in the United States, does not hold that all persons will be treated the same way for the same behavior.

Utilitarian concepts of criminal justice hold that a violation of law is a violation of the principles of society and must be addressed as such. A crime must be punished for the relative harm it caused, and the punishment must promote the public good as much as is possible. Under this system, the individual harm caused to the victim is less the focus of the punishment than the total harm that the crime causes society as a violation of social norms and law. Because utilitarian punishment seeks to redress the wrong to society, it condones punishment that serves both symbolic and practical purposes. The U.S. prison system is intended to incapacitate offenders, thus deterring individuals from re-offending and deterring other people who might otherwise offend but fear that they too would be put in prison. Prisons, according to utilitarian principles, also symbolically remove offenders from society, demonstrating the refusal of society to condone violation of fundamental principles. Finally, utilitarian punishment uses the term *corrections* because prisons are also intended to rehabilitate offenders so that they do not commit crimes upon release, thus restoring the confidence of society.

In contrast to the utilitarian approach, retributive justice looks only at the crime itself to determine appropriate response. Grounded in a moral system that prioritizes autonomy and freedom, retributive justice is tied to the liberal tradition (Kant, Rawls) that maintains the primacy of rationality over sentiment and the centrality of the individual. This approach focuses on delivering punishment to the guilty that is proportionate to the nature of the offense itself as an appropriate—that is, rational, not symbolic—response to the offense and the offender. In this way retributive justice limits the reach of the justice system (i.e., the state or collectivity) and avoids the responsibility of predicting and promoting social benefit. Under this theory prison systems should provide incapacitation and retribution to the offender, but need not rehabilitate the offender or prevent future crimes. In addition, the state must not prolong punishment in the interest of setting an example for the general public, satisfying an individual or collective desire for revenge, or creating more law-abiding citizens from the criminal population.

The implementation and oversight of the justice system are routinely criticized from both ends of the political spectrum for failing to protect the rights of individuals (victims, suspected offenders, and convicted offenders) and for failing to maintain fundamental structures of justice, such as sufficient policing and fair and appropriate sentencing. Plea bargaining, the routine waiver of the constitutional right to trial, accounts for over 90 percent of case resolution, a fact that, on its own, casts a grave shadow over the integrity of the justice system. Yet protections afforded to individuals, such as the right to an attorney and the right of habeas corpus, indicate the commitment of a punishment-focused society to protect fundamental individual rights of all members of society. While these rights may be thwarted because of lack of resources or dedication, they form the basis of the U.S. criminal justice system.

International Justice

The concepts of both civil and criminal justice assume national identity within a society, such as the United States. How are these ideals applied to people outside of that society? What are the obligations of distribution and retribution of nations toward other nations, or toward individuals outside of U.S. society? As commerce and technology have drastically reduced the time and isolation between nations and peoples, the possibility of interdependent global responsibility has developed in response to these questions. International bodies such as the United Nations, as well as many economists and philosophers, claim that a nation is obligated to protect fundamental tenets of justice internationally and that such protection extends to both civil and criminal justice.

Justice requires that states take responsibility to avert harm that can reasonably be anticipated, for example, by stabilizing regions such as the former Yugoslavia or Rwanda that, left alone, would devolve into chaos. At the same time, international justice demands that laws and practices determining conditions in other nations protect fundamental structures of humane existence rather than exploit weak justice systems in those countries for the sake of profit alone. Thus, trade agreements, international labor practices, and environmental phenomena impacting multiple nations can be viewed as matters of international justice, demanding that both the active parties (the beneficiaries) and the passive parties (the recipients) be afforded fair minimum resources. Clearly, these views of international justice reject the position that justice posits the right to fair accumulation. Even that conceptualization of justice, however, may acknowledge that the nation-state provides a link between social norms within a nation and how that nation behaves internationally, in other words, the connection between domestic and international authority. Whether the nation is obligated to act according to domestic norms depends on whether one views justice as a function of universal morality or finite within the cultural and geographic borders of the state.

International criminal prosecution addresses those violations of human conduct so egregious that domestic prosecution is insufficient. These are cases in which large numbers of people are killed, especially people targeted because of their ethnicity, race, or other defining and unalterable characteristic. Motivation to create an international tribunal developed as nations grew into increasing interaction with each other, following advances in transportation and the corresponding impact of commerce and war. Following World War II, the Nuremberg and Tokyo Courts were established and administered by the winning allies to address war crimes committed by the losing nations. At the end of the cold war, the Rome Statute established the International Criminal Court. In meetings that began in 1998, the court's jurisdiction and administration evolved to try crimes against humanity, genocide, and war crimes. In 2002 the statute was signed and ratified by enough nations (60) to make the treaty binding and effectively establish the court. The statute has been ratified by 104 nations and signed by an additional 35. The United States opposes the treaty, based on concern that U.S. citizens could be tried in the court. Considerable debate exists about the exclusion of other crimes, notably drug trafficking, terrorism, and use of weapons of mass destruction, none of which has unanimous international agreement as to definition.

These two issues, ratification and definition of crimes, speak to the principle challenges of defining the terms of international justice as well as creating effective structures to administer justice internationally. Crimes committed by states or by individuals protected from one state's justice processes by another state are difficult to define without asserting international priority over national sovereignty. Nations, particularly those that are internationally dominant such as the United States, have

little practical reason to defer to an international determinant of right and wrong, preferring to define and address violation of law (and not the broader universal ethics) through national systems, including military courts, and thereby avoid seeing harsh punishment meted out in the international arena to citizens who would be absolved or benignly punished for crimes domestically. Indeed, the United States successfully sought assurance from the UN Security Council that no U.S. troop would be surrendered to the court, though the United Nations agreed to the provision only for UN-related activity. This protection, however, was revoked following evidence of abuse of prisoners at the Abu Ghraib prison in Iraq by U.S. military personnel. Indeed, the War on Terror demonstrates several challenges to executing international justice, including recognition of legitimacy, access to offenders, agreement on how violations are defined, and agreement on purpose and nature of punishment.

See also

Civil Rights; Human Rights; Judicial Discretion; Plea Bargaining; Restorative Justice

Further Readings

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