

# JUSTICE AND FAIRNESS



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Justice and fairness is concerned with the comparative treatment of members of a group when:

- (i) Benefits and burdens are distributed (distributive justice)
- (i) Rules and laws are administered: (administrative justice)
- (ii) Individuals co-operate and compete:
- (iii) Individuals are punished (retributive or compensatory justice)

Justice and rights are correlated: e.g., if I have the **right** to free speech, **justice** requires that this right be respected

If people have the right to shelter, it would be unjust not to provide them with it, etc.

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Justice is *commonly* thought to be more important than utility: i.e., we generally condemn a society that is unjust to some of its members, even if that injustice promotes overall utility

However, (other things being equal) if a society is poor enough, etc., we may allow utility to override justice

Why?

Justice doesn't ordinarily trump individual rights, since violations of rights are themselves a form of injustice

However, serious injustice may warrant restricting some individuals' (negative) rights

Thus justice may entail a positive duty to enable others' negative rights -- respect their positive rights

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**Fundamental principle of distributive justice:** "Individuals who are similar in all respects [relevant to a proposed treatment] should be given similar benefits and burdens, even if they are dissimilar in other irrelevant respects; and individuals who are dissimilar in a relevant respect ought to be treated dissimilarly, in proportion to their dissimilarity." (89)

The principle doesn't tell us what *relevant respects* are, only that we ought to treat similar cases the same way

**One simple principle of justice:** "first come, first served," for those waiting in line, or seniority principles

**Candidates for basic justice principles:**

**(1) Egalitarianism:** Justice = Equality

"...when workers in a group receive equal compensation, they tend to become more cooperative with each other and to feel greater solidarity with each other" (90)

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For example, the more collectivist Japanese (Canadian?) society values equality more than does the U.S.

Egalitarians emphasize our *common* humanity, needs, wants, etc.

**Reasons for adopting egalitarianism as a justice principle:**

- i. Its focus on what we have in common, as human beings
- ii. Its moral importance, as shown by general approval for such egalitarian drives as: Freeing slaves, eliminating racial, sexual and property requirements on voting and holding public office, as well as free public education

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**Criticisms of the view that all justice is equality:** Human beings are not fully equal *in all ways relevant to distribution of benefits and burdens*. On this objection, egalitarianism:

- Ignores the value that competition and hard work have in producing society's benefits (i.e., it ignores a crucial, human *motivation*)
- It treats people who produce more of society's needs no differently than lazy people, who contribute little; it also marks no difference between those who are especially needy (the sick, poor) and the rest of us.

So, the counterargument goes, we shouldn't give everyone the same amount, or the lazy will receive as much as the hard-working, the sick will get only as much as the healthy, the handicapped will have to work as hard as the able bodied, and so on

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Instead, critics argue, distribution should be based on need, ability, and effort

**One Egalitarian Response:** The equality referred to is political, not economic, equality

Further, some egalitarians support economic equality if it is appropriately limited: e.g., everyone is equal in deserving a *minimum* standard of living, though we may allow extra benefits for those who contribute more

**Conclusion:** While egalitarianism places an important emphasis on justice issues based on our *common* humanity, it seems to have trouble with justice considerations about what makes us unique (e.g., effort, need, skill).

So egalitarianism cannot be a **complete** account of justice.

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### **Capitalist (Desert-Based) Justice = Contribution**

“Benefits should be distributed according to the value of the contribution the individual makes to a society, a task, a group, or an exchange.” (91)

“...when workers are paid [thus], this tends to promote among them an uncooperative and even competitive atmosphere in which resources and information are less willingly shared and in which status differences emerge” (91)

**Further (Relevance) Problem:** Measuring “contribution”

(i) **work effort?**

**Problems:** hard work can produce things that are not worthwhile; and rewarding only hard work may not lead to rewarding productivity, talent, etc.

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(ii) **productivity**

**Problems:** Productivity ignores people's needs; also no objective measure is given on what counts as *useful* productivity or in what fields we *should* be productive

(iii) **market forces of supply and demand**

**Problem:** Though the market reflects what people generally *believe* is worthwhile, people can easily be mistaken, or manipulated into being mistaken; and the market still ignores people's needs

- ★ Markets ignore *intrinsic value* and can, e.g., reward entertainers more than doctors, junk bond dealers more than scientists, artists, etc.
- ★ Markets also can reward those who've acquired something merely by *chance* (inheritance, stocks, lottery)

**Conclusion:** Capitalism/Markets are generally very good at rewarding and motivating many (though not all) kinds of social contribution; they do not seem to be able to meet all needs, and they can focus our efforts on things that are not (relatively) worthwhile.

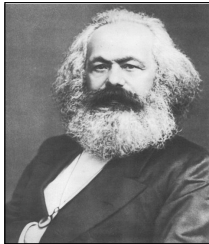
So desert-based justice is not a complete account of justice.

**Justice Based on Needs and Abilities: Socialism**

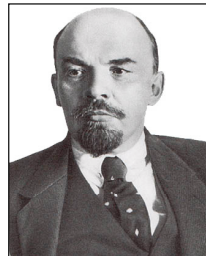
Blanc, Marx and Lenin's dictum, "From each according to his ability, to each according to his needs" (92)



Pierre Blanc



Karl Marx



V. I. Lenin



- I don't want to belong to any club that will accept me as a member.
- There is only one way to find out if a man is honest...ask him. If he says 'yes', you know he is crooked.
- Those are my principles. If you don't like them I have others
- I've got a good mind to join a club and beat you over the head with it

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Socialists believe people fulfil their potential in productive work; so,

**First**, Work is both a benefit and a burden and should be distributed:

(a) to allow as many people to fulfil themselves as possible (filling needs); and

(b) to be as productive as the workers are able to be (= work according to ability)

**Second**, benefits produced should go first to satisfy everyone's basic biological and health needs, and then for other, less basic ones

The socialist views social relations on the model of family relations

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We see this sort of model on athletic teams, though it is “least acknowledged in business...” (93)

Socialist justice is appealed to in business, e.g., when managers try to distribute tasks according to the special needs and abilities of some of their workers

**Criticisms of socialism:**

- (i) If people receive what they need, there’ll be no incentive to work, leading to a stagnating economy

**Reply:** This seems just to be a “gut-level” belief, since there is no proof—in fact, evidence suggests otherwise

**Deeper Objection:**

- (ii) Societies aren’t like families, because human beings don’t naturally treat strangers like family members

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**Replies to (i) and (ii):** Capitalist society trains us to be selfish and competitive, but people do not have these vices by nature. By nature, we begin as family-oriented creatures who instinctively help each other.

If we want the benefits of a socialist society, we should nurture these “instincts”

- (iii) **A libertarian objection:** Socialism would obliterate individual freedom; government/the social group would decide who did what, who drank what, etc.

That is, socialism substitutes individual freedom for paternalism (coercion)

**Conclusion:** Socialism works well at distributing benefits and burdens to meet people’s common needs, but seemingly at the cost of respecting their needs *as individuals*

So, socialism cannot be a **complete** account of justice.

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### Justice as Freedom: Libertarianism:

According to the Libertarian, the only justice is recognizing people's basic individual liberties to control their own destinies; among other things, people should be allowed to freely trade what they rightly own

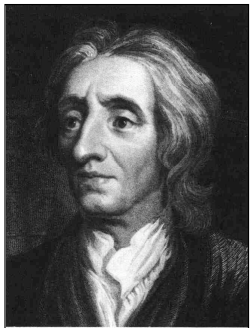
On this view, freedom from coercion always trumps other rights and values

"[Nozick] From each according to what he chooses to do, to each according to what he makes for himself (perhaps with the contracted aid of others) and what others choose to do for him and choose to give him of what they've been given previously (under this maxim) and haven't yet expended or transferred" (94)

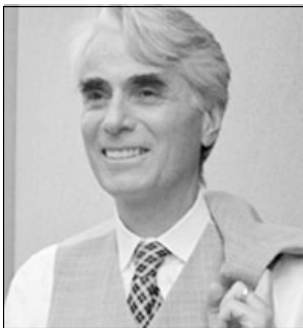
Unlike socialism, which emphasizes our common purposes, libertarianism stresses our individuality

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Libertarians (Locke, Nozick) argue that whatever we find in the world is ours to keep, so long as we leave "enough and as good" for others.



John Locke



Robert Nozick

However, Libertarianism provides no clear answer about how to determine "enough and as good," nor how to reverse historical injustices, etc.

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In short, libertarianism:

- (i) Doesn't give persuasive reasons why we should sacrifice such liberties as freedom from ignorance, hunger, etc. for the liberties of well-off people to control their "own" property.
- (ii) The Libertarian principle leads to unjust treatment of the disadvantaged (even those who were disadvantaged through no fault of their own)

### Justice as Fairness: John Rawls

It seems we need an overarching theory to synthesize the various elements of justice: political and economic equality, a minimum standard of living, needs, ability, effort and freedom



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Rawls tries to do this: He argues that first we need a fair way to choose the principles by which we resolve conflicts

### The original position: Making Justice Blind

Rawls's method for evaluating moral principles:

*What principles would a group of rational, self-interested persons choose if they lived in a society run by those principles, but didn't know what they would be like in that society?*

Rawls describes such lawmakers as being in the *original position* behind the *veil of ignorance*

e.g., the original position vs. racism

Principles chosen from the original position will be morally justified, because this method incorporates reversibility and universalizability, and it treats people as ends in themselves (each party has an equal say in the choice of principles)

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Rawls determines that: The distribution of benefits and burdens in a society is just if and only if:

1. **(The Principle of equal liberty)** each person has an equal right to the most extensive basic liberties compatible with similar liberties for all, and
2. Social and economic inequalities are arranged so that they are both:
  - a. **The Difference principle:** to the greatest benefit of the least advantaged persons, and
  - b. **Principle of fair equality of opportunity:** attached to offices and positions open to all under conditions of fair equality of opportunity.” (96)

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**Principle (1):** Basic liberties, such as:

- a. the right to vote
- b. freedom of speech
- c. freedom of conscience
- d. the freedom to hold personal property
- e. freedom from arbitrary arrest ...

Accepting equal liberty implies that it is wrong to interfere with people's free choices by fraud, bribes, manipulation

**(2a) The difference principle:** Encourages businesses to be as efficient as possible so that the least advantaged have as much as possible

**(2b) The Principle of Fair Equality of Opportunity:** Each should be free to apply for the plum positions in society, based on merit, and this freedom includes access to training and education required to compete on merit

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Rawls believes his two, basic principles will be chosen, because

- (i) Each person would want their basic liberties to be secured, and
- (ii) They would want that the poorest off do as well as possible, given that they might be this person

**Criticisms:**

- (i) Rawls's principles are actually opposed to our basic convictions about justice—e.g. egalitarianism, utilitarianism or libertarianism

Evaluate?

- (ii) Self-interested people might not choose Rawls's principles:

They may not be as risk averse—they may choose, e.g., to gamble that they will not be in the worst off positions, say, if the odds are 75% that they won't be

**Benefits of Rawls's approach**

- (1) The theory preserves the basic values of freedom, equality of opportunity, and concern for the disadvantaged
- (2) The theory doesn't require radical social overhaul: It fits Western social structures, since it doesn't reject the market, work incentives nor some economic inequality
- (3) The theory includes both the communitarian and individualistic elements of Western culture: Having the most talented people in important positions means everybody benefits. Equal liberty allows each to pursue their own special interests
- (4) The theory accounts for need, ability, effort, and contribution

- (5) The theory, through the original position, provides an impartial method to choose principles in the interest of everyone, which is the essence of morality

**Retributive Justice:** When is it just to punish people for wrongdoing?

(i) Ignorance and inability make a person not accountable

e.g., “if the cotton mill owners mentioned at the beginning of this section did not know that the conditions in their mills would cause brown lung disease, then it would be unjust to punish them when it turns out that their mills caused this disease” (99)

(ii) We must have very good evidence that the person accused actually did wrong;

(iii) Punishments must be consistently and proportionately distributed

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**Compensatory Justice:** restoring what’s lost when one is wronged by someone else

Sometimes it’s hard to determine what is fair compensation: for, e.g., reputation? life? sight?

“Traditional moralist have argued that a person has a moral obligation to compensate an injured party only if three conditions are present:

1. The action that inflicted the injury was wrong or negligent...
2. The person’s action was the real cause of the injury...
3. The person inflicted the wrong voluntarily....” (100)

**controversial versions:** affirmative action program

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**February 16 - 18: Distributive justice, continued.**

- Liberal justice (“Justice as fairness: Rawls”)
- The Ethics of Care
- Integrating Ethical Principles (balancing utility, rights, justice & caring)
- Virtue Ethics

*Readings*

Velasquez, Chapter 2, §. 2.3 “Justice and Fairness”;  
§2.4 “The Ethics of Care; §2.5 “Integrating Utility,  
Rights, Justice, and Caring”; §2.6 “Virtue Ethics”

**In-class exercise:** Practice exam questions