

# Introduction to Politics

Justice

# Justice

## Meaning and Interpretation

- Justice has been of central importance to political philosophy for over two thousand years. Through the ages, political thinkers have portrayed the ‘good society’ as a ‘just’ society. However, there has been far less agreement about what justice stands for.
- In everyday language, in fact, justice is used so imprecisely that it is taken to mean ‘fairness’, ‘rightness’ or, simply, that which is ‘morally correct’. Without doubt, justice is a moral or normative concept: that which is ‘just’ is certainly morally ‘good’, and to call something ‘unjust’ is to condemn it as morally ‘bad’.
- But justice does not simply mean ‘moral’. Rather, it denotes a particular kind of moral judgement, in particular one about the distribution of rewards and punishments. Justice, in short, is about giving each person what he or she is ‘due’. However, it is much more difficult to define what that ‘due’ might be.
- Justice is an ‘essentially contested’ concept. No settled or objective concept of justice exists, only a set of competing concepts.

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## Legal Justice

- Legal justice is concerned with the way in which law distributes penalties for wrong-doing, or allocates compensation in the case of injury or damage. Justice in this sense clearly involves the creation and enforcement of a public set of rules, but to be 'just' these rules must themselves have a moral underpinning.
- Two forms of justice can be identified at work in the legal process. **First**, there is procedural justice, which relates to how the rules are made and applied. **Second**, there is substantive justice, which is concerned with the rules themselves and whether they are 'just' or 'unjust'.
- Questions about justice in either of these senses are crucial because they bear on the issue of legitimacy. People recognize law as binding, and so acknowledge an obligation to obey it, precisely because they believe it to be just. If, however, law is not administered in accordance with justice, or law itself is seen to be unjust, citizens may possess a moral justification for breaking the law.

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## Procedural Justice

- Procedural or ‘formal’ justice refers to the manner in which decisions or outcomes are achieved, as opposed to the content of the decisions themselves.
- This clearly applies, for example, in the case of sporting competition. The object of a running race is to establish, quite simply, who is the fastest runner. Justice in this respect is achieved if procedural rules are applied which ensure that all factors other than running talent are irrelevant to the outcome of the race. Thus justice demands that every competitor runs the same distance, that they start at the same time, that none enjoys an unfair advantage gained through performance-enhancing drugs, that officials adjudicating the race are impartial, and so on.
- Legal systems can claim to be just in precisely the same way: they operate according to an established set of rules designed to ensure a just outcome. In short, justice is ‘seen to be done’.



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## Procedural Justice

- At the heart of procedural justice stands the principle of formal equality. The law should be applied in a manner that does not discriminate between individuals on grounds like gender, race, religion or social background. This, in turn, requires that law be impartially applied, which can only be achieved if judges are strictly independent and unbiased.
- Moreover, the legal system must acknowledge the possibility that mistakes can be made and provide some machinery through which these can be rectified. This is achieved in practice through a hierarchy of courts, higher courts being able to consider appeals from lower courts.
- Procedural justice is also said to require the presumption that the accused is ‘innocent until proved guilty’. This has been described as the ‘golden thread’ running through the English legal system and those derived from it. The presumption of innocence ensures that the mere fact of an accusation does not in itself constitute proof; the onus is on the prosecution to offer evidence which can prove guilt beyond ‘reasonable doubt’. This is also why certain evidence, for instance about the accused’s previous criminal record, may be inadmissible in court, since it could taint the jury’s views and prevent a verdict being reached on the ‘facts of the case’.
- In the same way, an accused person has traditionally been accorded a right to silence, on the grounds that it is the prosecution’s job to establish guilt.

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## Substantive Justice

- The requirements of legal justice cannot be entirely met by the application of procedural rules, however fair these rules may be and however scrupulously they may be applied. This is the sense in which law is different from competitive sport; its outcomes, and not merely its procedures, are claimed to be just. The legal process may thus generate injustice not because law is unfairly applied but because law itself is unjust.
- For instance, laws which prohibit women from voting, or which ban ethnic minorities from owning property, are not made 'just' by the fact that they are applied by courts whose procedures are fair and impartial. The content of law must therefore be judged in the light of a principle of substantive or 'concrete' justice.
- Like all normative principles, the idea of substantive justice is subjective; at heart, it is a matter of opinion. Notions of justice therefore vary from individual to individual, from group to group, from society to society, and from period to period.