
Editors' Introduction

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Although the theme of justice has occupied a high ground in philosophical discussions since the beginning of political philosophy, in terms of democracy and popular politics, its exact meaning and implications have been nebulous, in part because justice, in reality, is a meeting ground of many ideas, situations, concepts, expectations, mechanisms, and practices. Many things intersect to form the context of social justice: ethical ideas of the people, laws, the evolving nature of claims, the pattern of collective claim-making politics, institutional issues relating to the delivery mechanisms of justice, ideas about rights and entitlements, ideas among the citizens about the responsibility of the rulers, and many situations generating countless conditions of justice. All these contribute to the social context, form, and site of justice.

This book aims to explore some of the complexities of justice that emerge from its “social embeddedness.” Three years ago, as part of a collective research program on social justice undertaken by the Calcutta Research Group, we had planned to deliberate on what we had conceptualized as the “other spheres of justice.” As we began our discussions around a set of presentations, some of which later found their places in this volume, we realized that what we were terming “other spheres” were actually the *borders* of various conceptions, ideas, and forms of justice. “Others” anticipate the “this,” “the existing,” “the main,” and so on, whose others are then anticipated in turn. In this sense, justice is always conceptualized as achieving the just on the borders,

and thus, justice is achieved when the situation at the margin, anticipating the other, has been addressed. Justice and marginalities or marginal situations remain integrally connected, and precisely this connection shows how central and strategic situations constructed as marginal and borderline are in the field of contentious politics. Power, force, institution, rule, law, right, virtue, or ethics cannot alone appear as a complete requirement of justice, though each of these may be a necessary element. In each of these sites justice appears as a borderline existence. The essays of this volume are dialogic—they speak to each other—and they convey a sense of fleeting glimpses, as if only when these essays have conversed among themselves can they give us a clear idea of what we wanted to address: *other spheres of justice. Justice is addressed only by addressing the other—that is, by addressing its multiple borders.* And in this perspective, justice also allows, and at times creates, the scope for a dialogue between philosophy and politics.

Bringing together the writings of scholars from different geographic and disciplinary backgrounds working on the theme of justice, this volume concentrates on finding out the reasons that make justice always a complex concept and a reality, that indeed suggest its “hidden abode,” its neglected other scene, taking us unflinching to the beyond yet calling us back as if in a circle to return to its social character. The book touches on some of the crucial issues at stake in contemporary debates on justice, combining a theoretical perspective with an engagement with specific contexts of claims, judicial administration, and experiences of injustice. The wide range of these contexts marked by several overlaps is one of the defining features of the book, which comes out of a long-lasting dialogue between scholars engaged in critical thinking in India, Europe, South America, and Australia.

All contributors share the idea, developed for instance by Jacques Derrida, among others (and discussed in this book particularly in the chapters by Balibar and Samaddar), of the structural excess of justice with respect to every historically given regime of justice administration. This leads to an emphasis on the one hand on the problematic and elusive nature of justice, and on the other hand on its dynamic moment—that is, on its relation with different forms of struggle and with conflictive processes of subjectivation. It is precisely this element of *struggles in and for justice* that builds the focus of several chapters of the book, which combines theoretical perspectives and case studies to show how the threshold between procedural justice and its excess crystallizes in the multiplication of *borders of justice*. Also shown is how struggles arising on this threshold and around these borders play a crucial role in the transformation of historically given regimes of justice and in the articulation of popular politics. Far from aiming at a new ambitious theory

of justice, the book shows the enduring relevance of the concept of justice by looking at the blind spots of existing theories of justice, at what is left outside their reach, at their margins.

The importance of struggles for any theory of justice has been widely recognized in recent debates. The great Hegelian tale of “struggles for recognition” has been tackled and developed by a wide variety of authors and approaches, deeply influencing, for instance, discussions of “multicultural” justice. The names Charles Taylor and Axel Honneth come first of all to mind here (and their works are discussed in detail in some of the chapters that follow, most notably in the essays by Naishtat, Rudanko, and Renault). In a different perspective, Charles Tilly’s and Sidney Tarrow’s works on “contentious politics” have also been an important source of inspiration for us. One could add to these the emphasis from the point of view of legal theory on material developments—an emphasis that has often characterized legal debates—in particular, the debates *de jure condendo* (that is, on the foundation of new law). To give some examples, one could recall the famous lecture given by the German jurist Rudolph von Jhering in 1872 (*The Struggle for Law*) or, in the U.S. context, the tradition of “civil disobedience” reelaborated by John Rawls in *A Theory of Justice* and, although on a different ground, by Ronald Dworkin in *Taking Rights Seriously*. And we should also mention here several attempts to give civil disobedience a more political (that is, not merely legal) foundation: the names Hannah Arendt and Howard Zinn immediately come to mind in this respect.

While we keep all these approaches (and many others) in mind, what distinguishes the approach followed in this book is a more direct focus on the connection between the moment of *claim* and the processes of subjectivation that give rise to the justice-seeking subject. On the one hand, this means opening up the space for a programmatic intertwining between theoretical reflection and ethnographic account of specific contexts of injustice and struggles for justice; the chapters by Renault and Sinha are particularly effective in this regard, but the “methodological” point is shared by all contributors. On the other hand, it means that this book challenges and problematizes the very idea of a purely normative theory of justice by bringing material conditions “back in” (among the chapters that address the limits of a merely normative theory of justice, see the essay by Das).

When we started the conversation that eventually resulted in this book, a further important point of reference and departure was Michael Walzer’s now-famous book *Spheres of Justice*. It was clear to us since the beginning, however, that we were trying to shed light on “other” spheres of justice. As Mezzadra and Neilson in particular show in their chapter, the mere fact that

for Walzer the decision on “membership” in the political community must precede all other decisions on the “just” distribution of social goods bears the risk of *neutralizing* the strategic element of the *border* between members and nonmembers (that means citizens and noncitizens) around which some of the most intense struggles for justice arise in the contemporary world (see, for instance, the chapter by Halpérin). The “other” scenes of justice investigated in this book (from a wide variety of “borderscapes” to the debate on abortion in India and in the United States; from the movements for the rights to coastal waters in the southern Indian state of Kerala to the uprisings in the French *banlieues* or to the claims for justice of Australian Aboriginal communities) are therefore defined not only in terms of institutional and anthropological functions but also in terms of social and geographic loci, including the “paradoxical” loci, of which the border itself, in its multiple aspects, is one of the most significant instances.

Therefore justice will be always burdened with our notions of the social and thus clouded with too many ideas, realities, and expectations. Even when the reality of justice in our time is continuously transformed with the Midas touch of money, the society of the subjects weighs everything with the criterion of justice—law, government, delivery mechanisms of administration, punishment, peace, war, reconciliation, revenge, reproof, relation with the rulers, historical memory: everything that affects the subject’s individual-collective life fraught with different sociopolitical issues. The idea of justice, we can therefore say, is the great supplement of our time. Hence, any theoretical and empirical inquiry into the idea of justice remains tantalizing.

The idea of justice approaches various spheres of justice yet recoils from finally defining, once and for all, what justice is. The question therefore cannot be fully answered: Is justice then fundamentally a response to what is perceived as injustice, a reaction, an idea better understood as a negative notion (the *other* of injustice) and understood properly only when taken as response to injustice? The essays we present here suggest to a certain extent that the answer is yes; hence, there is the prominent idea of the inexhaustible nature of the phenomenon, as various ethnographic accounts of popular life and even analytic commentaries testify. Yet there is something more to this manifold nature of justice, which we can attach concretely only to its forms, such as attainment of dignity, reconciliation, retribution, instant and restorative restitution, pardon, sentencing, or redress of historic injustice. These forms indicate the particular ways in which ideas of justice respond to various conceivable situations; these ideas bring to mind certain injustices committed as well as some positive principles and practices that build the foundations of

these forms. In popular politics justice remains a contentious phenomenon. In philosophy it always appears as a paradox.

One of the significant themes addressed in various chapters (most notably those by Halpérin and Samaddar) is the relation between law and justice. Once again, the strategy has been to go into specifics that will tell us of the formations in which justice and law have hitherto related to each other—in philosophical discourses and in public politics. A constitution, insofar as it lays down the profile of fundamental legal justice in course, appears as the other scene of that reality, in which political justice makes sense only when it has addressed issues of *social justice*, and politics makes sense only in the mirror of popular perceptions of justice. All of these speak of what we discuss above as the “excess” of justice. This phenomenon can also be termed a “justice gap,” which means the gap between claims for justice and the governmental (including legal and juridical) regime of justice. Thus, this volume, as if in a continuing narrative, operates on two registers—one that is linked with the context of political contentions, mass politics, judicial activism, and policy games, and the other that shows how the policy game goes on in the language of courts and law.

Yet both of these registers indicate how the issue of justice remains inextricably bound up with the issue of expansion of democracy, because democracy widens not as we are told historically through calls for liberty or laissez-faire or economic liberalism or individual freedom or even nationalism but through calls and claims for attaining or ensuring *justice*. Can we say then that the *gap* is never fully bridgeable? And to the question of what constitutes the *social* in social justice, can we say then that the social (in the context of justice) is what remains beyond what is governmentally and administratively constituted, or constituted by considerations of rule (that is, considerations of territory, security, and streamlining of people into population groups)? Maybe that, too, is social justice, yet clearly, in the domain of social justice, we have no consensus. Conflicts abound.

Finally, and by way of concluding, we are once again seized with borders of justice—that is, justice that addresses borderline existences, borderland existences. Migration is a great indicator of marginalities, and more often than not, in this nationally constituted universe and capital-constructed market, migration indicates marginal situations, marginal actors. It also indicates processes of making segments marginal, techniques of producing marginal situations, and the asymmetric power play in society. But more than all these, marginalities indicate strategies of inclusion, exclusion, differential inclusion and exclusion, and most important, techniques of turning spaces into marginal enclaves—and all these in the interest of effective government. What is at stake

in these conflict-ridden processes is the very *production* of marginality, which can be understood only as the result of specific struggles and tense constellations of power and resistance. In this dynamic field, the migrant appears as the final figure of the justice-seeking subject. In today's world, as the international jurist François Crépeau has argued, migrants remain a test for democracy.

Until now we have tried to show the crosscutting themes addressed in various chapters of this book. For easy reading we now present a chapter-by-chapter summary of the book.

In Chapter 1, Étienne Balibar stresses the equivocal and problematic nature of the concept of justice through a reading of three classical authors of the Western philosophical tradition. His aim is to point out the tensions that crisscross the relationships of justice and law (Pascal), justice and subjectivity (Plato), and justice and conflict (Marx). Inscribing himself in a long tradition of republican and democratic thought that proclaims the inseparability of justice and equality, Balibar shows how the concept of justice is characterized by what he calls an "internal void" or an "internal excess," which challenges—through the emergence of specific subjective claims and struggles against injustice—the "plenitude" of the social fabric.

In Chapter 2, Francisco Naishtat discusses some of the recent attempts to establish a theory of global justice (from Thomas Pogge to John Rawls and Jürgen Habermas) to shed light on what he calls the political issue of global justice, which means the rebuilding of a common on a global scale, rooted within the historical tradition of the cosmopolitan public sphere. This political issue is often obscured by theories referring to an a priori universality of the principles of justice in general, and can only be redeemed, says Naishtat, by a theoretical practice looking at "our common historical world, as it is affected through the process of capitalist globalization, and as it can be *disrupted by political action*." This leads to an emphasis on what Naishtat calls "disruptive justice."

The problematic nature of the universality of the principles of justice is also at stake in Juha Rudanko's essay in Chapter 3. Discussing the relationship between liberalism and multiculturalism, the author criticizes both Will Kymlicka's attempt to ground a liberal multiculturalism on autonomy and Brian Barry's attack on multiculturalism from a liberal egalitarian standpoint. Rudanko rather finds a possible base for a liberal multiculturalism in John Rawls's notion of self-respect, which he interprets in a very original way, stressing the traces of Rousseau and Hegel in Rawls's theory.

Subir Sinha presents in Chapter 4 an alternative approach to the topic of subaltern politics that have been most notably dealt with in India by the

Subaltern Studies project. Working with the notion of “subaltern power,” he contends that subaltern struggles and movements played a constituent role in forging the postcolonial modernity we inhabit, not only because of their resistance to dominant elites but also “positively”—that is, with their ways of seeing and imagining the world as well as their notions of a just society. To illustrate this, he particularly draws on two movements that started in the late 1960s: for rights to coastal waters in the southern Indian state of Kerala and to forests in what is now the Indian state of Uttarakhand.

Chapter 5, by Emmanuel Renault, also deals with struggles for and of justice. Considering justice as a concept belonging to the class of “essentially contested” concepts (W. B. Gallie), he adds that its “abolitionist” nature makes the political concept of justice inseparable from a claim against social *injustice*. Starting from these basic assumptions, he proposes a discussion of several theoretical approaches to the topic of justice; his discussion incorporates as well some instances of struggles against injustice. In the concluding part of his chapter, Renault develops a “pragmatist perspective” on the productivity of experiences of social injustice, centered on the idea of the specific “framing power” that these experiences may generate.

In Chapter 6, Anirban Das starts from the thesis that the moment of decision is an aesthetic moment and that the singularity of the event called “justice” is enacted at this moment. This is the moment when the senses, in following their own particular logics, exceed the logical—but exceed without erasing. The decision he thus speaks of is a decision that does not flow from prior calculations of the one who decides. From this theoretical standpoint, Das engages himself in a critical review of recent debates on abortion in the United States and in India as a specific instance in which the limits of thinking in terms of universal solutions to a problem become apparent.

Ranabir Samaddar shows in Chapter 7 how in the Indian experience, the rich political concept of justice suffers deficit in a double absorption: justice subsumed under law and politics subsumed under constitutionalism. Combining constitutional and social history, he particularly stresses that the Indian case allows us to focus on a fundamental problematic of modern politics: its clarity about rights and its incoherence about justice. In a kind of Machiavellian move, Samaddar proposes a “return to the principles” of historical, independent India, where “politics began with a thousand cries for justice,” and proposes the outlines of an alternative model of justice, which he calls “dialogic justice.” Indeed, the essay shows what the other spheres could have been—always in the imaginary, and always lurching forward to enter the world of practices, the justice-seeking subject in this way becomes the true constitutive element of these possible other spheres.

Chapter 8, by Jean-Louis Halpérin, deals with crucial questions for any discussion on justice: Who are the subjects of justice? And how are the borders of justice traced from the point of view of law? In the modern European experience, the nation-state has successfully imposed itself as the main “container” of justice: its courts have become the privileged points of reference for justice-seeking subjects—that is, for its *citizens*. Nevertheless, this model has been challenged both by a set of claims pointing beyond the borders of the nation-state and by legal developments articulating new frameworks of conflict resolution. A new “legal pluralism” seems in the making, and Halpérin traces its penetration into the French legal order, which means into a legal order that used to be considered the “exalted reign of statutory and codified law.” His analysis of the increasing porosity of the borders of the French national legal order stresses in particular the important role that migrants (that is, noncitizens) came to play in the legal life of the country, leading to relevant transformations in the way in which justice is viewed and administered.

In Chapter 9, Sandro Mezzadra and Brett Neilson propose a critical analysis of the relation of justice and borders, starting from the assumption that, as Étienne Balibar wrote some years ago, borders no longer exist at the edge of the territory, marking the point where it ends, but have been transported into the middle of political space. Bringing together Marx’s and Foucault’s criticisms of the liberal theory of justice and their perspectives on the production of subjectivity, Mezzadra and Neilson explore some of the multifarious transformations of the border and migration “regime” that can be observed in several parts of the globe and contend that an analysis of the relationship of justice and borders, which has hitherto focused on the binary inclusion/exclusion, now needs to be enlarged to grasp the emerging mechanisms of “differential inclusion,” as well as the political significance of “border struggles” in our global world in the context of the urge for justice now being evidenced in all situations and sites of existence on the borders.

The editors collectively express their thanks to the Calcutta Research Group, which organized the Third Critical Studies Conference in Kolkata in September 2007. The conference gave rise to some of the ideas later explored in the spirit of a collective workshop. The editors also thank the individual contributors, without whose willingness to discuss and formulate new ideas and ways of thinking this volume would not have been a reality. Finally, they thank Temple University Press for agreeing to publish an experimental volume and the two anonymous reviewers for their extremely useful comments.