

It is “right” and just: inviolable rights as necessities of (social) justice and bulwarks of liberty

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Introduction

Social justice, a term used by both philanthropists and much of the political left alike, applies concepts of morality, ethics, and fairness to entire societies. Within the (at least superficially) classically liberal framework of the West’s political culture, this attempt to pin characteristics of individual justice to a wider human community raises the question “can individual liberty and social justice be reconciled?”

In this essay, I will argue that the “social justice” of a redistributive state that seeks to coercively minimise economic inequality neither advances justice in a society nor allows for individual liberty – this is because justice demands rights that recognise human liberty. However, since a distinction exists between state and society, private individuals can advance their own visions of social justice in a free society. Because individual liberty and social justice can be reconciled through rights and voluntary action, the two concepts are theoretically and pragmatically compatible.

I will begin by explicitly defining social justice, and then present a common conception of it – that of distributive justice, featuring a state that mitigates economic inequality. Consequently, I will establish fundamental axioms of justice, which suggest that humans have

inviolable rights that guarantee liberty. In doing so, I will dismiss distributive social justice and suggest an alternative society that recognises social justice and individual liberty.

This essay will focus on questions of property and legitimate violence, rather than the status of marginalised groups in societies, as this latter issue is not as central to social justice.

Defining Social Justice

An authoritative definition of justice does not exist. However, considering contradictory definitions, Perelman established a useful metric for understanding the term. He divided it into “formal” and “substantive” elements. Formal justice refers to the shared characteristics of varying definitions of justice, while substantive justice refers to the nature of their differences. He defines formal justice as “a principle of action in accord with which beings of one and the same essential category must be treated in the same way.”¹ This definition, however, cannot accurately reflect the popular understanding of justice – in addition to treating people equally in some way, it must also treat them in a manner that is *right*. This provides a limitation on this definition, which is otherwise workable if applied to the tendencies of human communities rather than the actions of individuals. One must note, though, that this definition – by excluding the equality criterion – says very little. This essay will attempt to establish a standard of justice compatible with this formal definition.

¹ C. Perelman, *Justice, Law, and Argument*, quoted in H.C. Su, “Is social justice for or against liberty? The philosophical foundations of Mill and Hayek’s theory of liberty,” *The Review of Austrian Economics* 22 (2009): 408-409.

Distributive Social Justice

One wider school of social justice thought, that commonly associated with the political left, is championed by a range of thinkers from Pierre Proudhon to John Rawls. It holds that unrestrained capitalism featuring private property leads to unjust economic inequality. Some members of this school go further, and claim that private property is itself a deontological ill.

Rawls's conception of social justice is of particular notability. Rather than extending his belief in inviolable rights to property, he justified the compromise of property rights with the "reflective equilibrium." This equilibrium, which Rawls uses as a guide for practical philosophy, is between abstract principles and concrete intuitions.² Similarly, Riemer frames poverty as a collective moral issue faced by society irrespective of rights – he assess, *prima facie*, that a society containing both suffering and wealth people cannot be just. For this reason, he suggests establishing a "right not to be poor."³ Both of these theories hold that politics should be organised using the basic moral impressions rather than deontological principles alone. Therefore, the use of state coercion to redistribute wealth is not necessarily an ethical issue for these thinkers.

Rawls also revisits the Lockean Social Contract, and introduces his "veil of ignorance." That is, he imagines a group of people organising what the society they will be born into will look like without any knowledge of their human characteristics, and claims this would result in a "just" distribution of goods and services.⁴ This allowed him to justify the difference principle – that wealthier individuals must give up wealth for the less well-off, but not to the extent that all

² Hilde Bojer, "John Rawls," in *Handbook of Economics and Ethics*, ed. Jan Peil and Irene van Staveren (Cheltenham, UK; Northampton, MA: Edward Elgar, 2009), 426.

³ D.R. Riemer, "Economic Equality Should Be a Legal Right," in *Social Justice: Opposing Viewpoints*, ed. Carol Wekesser and Karin Swisher (San Diego: Greenhaven, 1990), 86-93.

⁴ Hilde Bojer, 427-428.

given individuals would lose wealth to achieve greater equality.⁵ Rawls believed that this would reflect the distributive terms of a social contract between the ignorant.

Another strain of thinking sees property as an injustice that must be abolished to create a moral society. Proudhon, for example, separates possession and property, claiming that individuals may possess things by applying their labour to them, but cannot justly make something inviolably *theirs*. Therefore, when a worker applies their labour and effectively possesses capital, which remains the property of an industrialist, an injustice is occurring. In fact, by seizing property and forcing others to possess it with limited personal gain, Proudhon claims that the capitalist is committing theft, and that all protection of property is, in this sense, robbery.⁶

Justice and Property Rights

Not only do these conceptions of social justice violate individual liberties, they promote injustice. In fact, the concepts of individual liberty and justice are irrevocably connected through the concept of inviolable rights. These individual rights, which no person can morally violate, can be deduced in a variety of ways.

The first comes from the idea of “the separateness of persons,” proposed by Robert Nozick. As individuals are separate and society as a whole can feel no pleasure, he argued, it is absurd to argue that the wellbeing of distinct individuals can be balanced and labelled justice; there is no way to compensate one person’s pain with another’s pleasure due to their

⁵ Ibid, 428-429.

⁶ P.J. Proudhon, *What is Property?*(Project Gutenberg, 1995), <http://www.gutenberg.org/files/360/360-h/360-h.htm> (accessed August 31, 2013).

separateness.⁷ This position is reminiscent of Kant's Second Formulation of the Categorical Imperative, which demands people never use others as solely means to an end.⁸ Because of their separateness and natural state of self-governance, people have a right to not be violated without their consent for some common good that cannot concretely exist. Similarly, Auberon Herbert points out that, since individuals are capable of making moral judgements and accepting their consequences, they have a natural authority over themselves that their compatriots lack.⁹ This reasoning leads to individual rights to live free of coercion as long as one does not coerce others, and that "good" can only be applied to individuals.

This analysis fails for many leftists, who frame their programme as compatible with rights by rejecting private property. However, property must follow from basic rights. Individual liberty necessarily implies that people are able to exercise their bodily capabilities in a way that they see fit short of physically impeding another individual's liberty to do the same. In order to survive, an individual must apply his/her bodily functions to objects to provide food, water, shelter, etc. And in order to consume such resources, the individual must first have what Locke calls a "means to appropriate" them; that is, a way to authoritatively possess them.¹⁰ He/she does this by applying his/her labour to the resource, thus making it his/her own. If this notion of private property is unaccepted, and some public arbiter, the state, is entrusted to decide who gets what, the ability of the individual to live becomes subordinate to this state's whim rather than the free labour of the individual and his/her ability to accumulate property. This discards the

⁷ Jonathan Wolff, *Robert Nozick: Property, Justice and the Minimal State* (Cambridge, UK: Polity, 1991), 16-23.

⁸ *Ibid*, 27-29.

⁹ Auberon Herbert, "The Right and Wrong of Compulsion by the State," in *The Right and Wrong of Compulsion by the State and Other Essays*, ed. Eric Mack (Indianapolis: Liberty Fund, 1978), 125-130.

¹⁰ *Ibid*, 18-19.

indisputably inviolable right to life. Furthermore, by violating one's right to earned property, a state indirectly violates his/her more basic freedoms to move and work – since property is an extension of labour, property rights extend from basic rights.

Property rights also follow from social contract theory. In Hobbes's state of nature, all humans are better off resorting to violence whether their fellow people do or not. However, they are all worse than if they were all peaceful, and there property was secure.¹¹ Although Hobbes uses the state of nature to justify absolutism, it is contradictory to say that a lack of security in property would lead people to will a state that could equally plunder it with a monopoly on violence. Locke's "state of liberty" and social contract also provide justification for property rights. In his "State of Liberty," natural laws exist as individuals are free but equal to and independent of each other; therefore, they are limited in their freedoms by the freedoms of others. It follows that a legitimate state must enforce natural laws that protect private property, which is essential for life (or, at least, a right to life).¹²

What do property rights imply about distributive social justice? First, that as long as it necessitates a state to forcibly steal property, it is unjust irrespective of its intentions or consequences. Property rights stem from more basic inviolable rights, and disrespecting them is necessarily a deontological moral ill. In addition, property rights tangibly advance individual liberty by curbing the state's power to arbitrate who gets what.¹³

¹¹ Thomas Hobbes, *Leviathan* (Project Gutenberg, 2009), <http://www.gutenberg.org/files/3207/3207-h/3207-h.htm> (accessed September 1, 2013).

¹² John Locke, *Second Treatise of Government*, ed. C.B. MacPherson (Indianapolis: Hackett, 1980), 9.

¹³ Richard Pipes. *Property and Freedom* (New York: Vintage Books, 1999), 4.

The Alternative

If distributive social justice and individual liberty are incompatible, is there some other sort of social justice that allows for such freedom? The above discussion of rights implicitly suggests “yes.” For a state to be just, according to our definition, it must treat all equally according to some criterion. Since equality of outcome requires injustice (the violation of inviolable rights) to achieve, wealth cannot be the criterion. Rather, equality of rights and the protection of rights is.

Social justice may require more than solely a just state. If a state does its job protecting lives and property, it is difficult for people to behave utterly unjustly. However, considering the plurality of moral beliefs in any society, by a range of personal (not political) ethical standards, a community could be considered unjust even if it was free. Given this freedom, though, people are able to pursue their vision of justice as they see fit. This includes tackling intolerance (e.g. racism, misogyny, homophobia) or engaging in voluntary charity.

Conclusion

Thus, social justice and individual liberty can be reconciled. However, the common leftist conception of social justice as the use of the state to redistribute property is not only compatible with individual liberty, it is incompatible with justice. Justice and morality suggest humans have inviolable rights, which reflect the moral separateness of people and their necessary ability to own property. These rights are necessary for meaningful liberty. Even by analyzing states as products of social contracts, one can indicate that the purpose of states is to protect lives and property; once they stop doing so by personally using their people for abstract “common goods,”

they lose their legitimacy. Indeed justice, the purpose of law and without it law is illegitimate. However, in a free society, the state acts justly by assuring the protection of rights better than any alternative, and people are able to advance their own conceptions of social justice short of resorting to violence or using state power. In short, the existence of rights combines concepts of individual liberty and social justice, demonstrating their compatibility.

References

- Bojer, Hilde. "John Rawls." In *Handbook of Economics and Ethics*, edited by Jan Peil and Irene van Staveren, 426-432. Cheltenham, UK; Northampton, MA: Edward Elgar, 2009.
- Herbert, Auberon, "The Right and Wrong of Compulsion by the State." In *The Right and Wrong of Compulsion by the State and Other Essays*, edited by Eric Mack. Indianapolis: Liberty Fund, 1978), 123-190.
- Hobbes, Thomas. *Leviathan*. Project Gutenberg, 2009. Accessed September 1, 2013. <http://www.gutenberg.org/files/3207/3207-h/3207-h.htm>.
- Locke, John. *Second Treatise of Government*, edited by C.B. MacPherson. Indianapolis: Hackett, 1980.
- Pipes, Richard. *Property and Freedom*. New York: Vintage Books, 1999.
- Proudhon, P.J. *What is Property?* Project Gutenberg, 1995. Accessed August 31, 2013. <http://www.gutenberg.org/files/360/360-h/360-h.htm>.
- Riemer, D.R. "Economic Equality Should Be a Legal Right." In *Social Justice: Opposing Viewpoints*, edited by Carol Wekesser and Karin Swisher, 86-93. San Diego: Greenhaven, 1990.
- Su, H.C. "Is social justice for or against liberty? The philosophical foundations of Mill and Hayek's theory of liberty." *The Review of Austrian Economics* 22 (2009): 387-414.
- Wachtel, P.L. "America's Economy is Unjust." In *Social Justice: Opposing Viewpoints*, edited by Carol Wekesser and Karin Swisher, 58-65. San Diego: Greenhaven.
- Wolff, Jonathan. *Robert Nozick: Property, Justice and the Minimal State*. Cambridge, UK: Polity, 1991.