

The System of Social Justice Principles in the Contemporary Law Tradition of the West

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1. The Outlines of Social Justice in Liberal Philosophy

- **J. Hospers:** “<...> *no one is the ruler of other person’s life and therefore every person has the right to act on his own choice, if that action does not interfere with the freedom of other people.*”
- ***The right to property*** is the core of ***libertarian*** philosophical thought.
- The phenomena of social life and institutions are assessed by the extent to which they help or intervene the realization of that right.

- **R. Nozick:** the majority of public resources of a free society is legitimate (reasonable) and fairly distributed by individual interchanges.
- **R. Nozick:** *“The structural principles of distributive justice imply the alienation of person's activities and results”* and thus violate the rights of contributing person.
- **R. Nozick** recognizes the necessity of the state of minimum power as the dominant defence agency or as **a night-watchman state** which main function is *“<...> the protection of citizens against violence, robbery, fraud, breaking of contract and so on.”*

- **R. Nozick** develops the *theory of proprietary equitable distribution*. This theory involves three procedural principles of justice:
 - the equitable initial *acquisition*,
 - the equitable *transfer* and
 - *rectification* of injustice.
- **F. A. Hayek**: the forced distribution of wealth administered by centralized state is immoral and social justice can be a cover for totalitarian regimes.
- As to define common rules for the spontaneous order that characterizes *Great Society*, F. A. Hayek uses concept of *catallaxy* - a specific type of market order, according to which members of the society are anonymous helpers to meet each other's needs.

- S. Arlauskas: the principle of “**libertarian social justice**”:

“Social and economic inequality is acceptable if <...> it creates prerequisites for everyone who has abilities to act professionally to live from his legitimate work results assessed under the conditions of market“ .

- This principle implies that **individuals are free to choose** activities and to take care of their and their families’ well-being.
- The main function of government is to **provide legislative measures** for protection of the personal freedom to act.

- **J. Rawls:** what reasonable conceptions of justice may guide the democratic regime?
- The essence of J. Rawls's conception of justice is Kantian idea that a person acts autonomously when he adequately chooses his action principles as *free and equal to others rational being*.
- The central feature of J. Rawls's theory of justice is hypothetical *original position*. Its' main component is *the veil of ignorance*: to insure impartiality of judgment, the parties are deprived from all knowledge of their personal characteristics and social and historical circumstances.
- It is presumed that:
 - the parties in original position are *equal*.
 - the parties of the agreement possess *rational and moral powers* and their "*<...> society tends to justice and all that follows from it.*"

J. Rawls: rational individuals in the original position will choose *two rather different principles*:

- the first principle requires each person to be entitled to *equal scheme of underlying rights and liberties* which would match the rights and liberties of other individuals and in which *equal value* was manifested through *equal political freedoms*;
- the second principle states that *social and economic inequality is acceptable* if:
 - *offices and positions are open* to every individual under conditions of *fair equality* and
 - it is *beneficial for the least advantaged members* of the society.

- These principles embody justice as fairness and must be applied to the regulation of ***the development and operations of fundamental societal structure***, forming social institutions.
- The first principle is the primary standard of ***constitutional assembly***.
- The second principle (also known as the principle of ***distinction*** or ***differentiation***) is applicable to the ***legislative stage*** and represents one of the most important goals of political and social justice.
- The principles are ***listed lexicographically*** which means that “<...> *if one principle has the priority over another, the latter one can not be obtained until the former is not fully realized.*”

- **R. Dworkin** highlights *the lack of a criterion* which allows determining exactly to what people this principle should be applied.
- **R. Dworkin** constructs a hypothetical situation – *auction* in which resources are distributed on the basis of *equality criterion* and *envy test*.
- This hypothetical situation could be realized in a real society. In this case the auctioneer role is played by the *state*, which distributes resources on the basis of various *security systems*, without prejudice to the constitutional rights and autonomy, leaving its citizens more possibilities *to live according to their own choices*, and *free market* establishes the prices for goods and services.

- This distribution generated by a hypothetical auction may be called the ***standard of egalitarian justice***, since it presupposes that ***in the situation of the initial equality (when the society distributes common resources) an individual has to be entitled to have that part of resources which corresponds to his motivated choice of independent way of life.***
- The libertarian and liberal principles are reasonable requirements which are recognized by people as soon as they identify themselves in a specific social situation.

2. The Impact of the Communitarian Philosophy on the System of Principles of Social Justice

- Communitarians do not accept the liberal belief that "*<...> the moral eligibility of the existing social structures and cultural practices can be checked on the basis of universal justice and rights*".
- If the liberals tend to look for the **universal (global) justice** (whether it be J. Rawls's principles of justice, R. Nozick's proprietary theory, or F. A. Hayek's catallaxy), the communitarians talk about **local justice** inherent from a particular **culture, traditions** and **moral system** of particular **community**. Thus, **different communities may have a different standard of justice**.

- **M. Walzer:** *“Membership is important because of what the members of the political community owe to one another and to no one else, or to no one else in the same degree. And the first thing they owe is the communal provision of security and welfare”.*
- Distributive justice in the community is multiple, based not only on the recognition of needs but also on the **recognition of membership**: *“Goods must be provided to needy members because of their neediness, but they must also be provided in such a way as to sustain their membership”.*

- **M. Walzer** doubts the possibility of single formula of equitable distribution.
- He allocates justice not only in particular society but also states that the concept of the principle of justice depends on the *particular sphere* where it is applicable.
- There is neither common distribution scheme, nor the sole criterion by which the distribution can be described as fair.
- **M. Walzer** believes that to search for unity is to misunderstand the subject matter of distributive justice and favours *the pluralism of justice conceptions*, which is implied by multiplicity of the society.

- **Communitarian social justice principle** can be formulated as follows: *when the society distributes public resources the social situation of members of society can be changed in such a way as it is required by collective decisions made democratically and legitimately regarding public needs.*

3. The System of Principles of Social Justice

A. Each person should be entitled to *equal scheme of underlying rights and liberties* which would match the rights and liberties of other individuals and in which *equal value* was manifested through *equal political freedoms*.

B. *Social and economic inequality is acceptable* if:

B.1. It creates prerequisites for everyone who has abilities to act professionally *to live from his legitimate work results* assessed under the *conditions of market*.

B.2. *Offices and positions have to be open* to every individual under conditions of *fair equality*.

B.3. In the situation of the initial equality (when the society distributes common resources) an individual has to be entitled to have that part of resources which corresponds to his *motivated choice of independent way of life*.

B.4. It is *beneficial for the least advantaged members* of the society.

C. When the society distributes public resources the social situation of members of society can be changed in such a way as it is *required by collective decisions* made *democratically* and *legitimately* regarding *public needs*.

Thank you for your attention!