

Title

*Justice.
Principles, theoretical problems, and essentiality
as a value, today.*

By

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Abstract

The purpose of this paper is to formulate some questions about a concept, justice, and some of its theoretical problems. When we discuss social and distributive justice, we are not simply pointing to a "state" problem. Justice is a challenge that is incumbent to every human being and, therefore, to everyone, in this era that is undoubtedly that of globalized capitalism.

Taking into consideration congress emphasis on exploring dimensions of the human and inquiring into the challenges facing humanity, and our need for global discussions about the values and concepts of development, values and human concerns, trying to find out what concepts might be essential, I think that one of those essential concepts is justice. But the problem begins from its very definition – justice is a concept that, from its root, is indeterminate. Justice comprises multiple meanings: it refers to a human capacity, an ideal and an essential element in social institutions, as well as a double but, at the same time, a singular dimension, individual and sociopolitical. My pretension is to explore some meanings of justice opening a dialogical perspective, believing that this is a fertile way to consider actual world challenges.

Paper

Why justice?

The purpose of this paper is to formulate some questions about a concept, justice, and its theoretical-practical problems. When we discuss social and distributive justice, we are not simply pointing to a "state" problem. Justice as a concept and theories of justice are pressing questions for each country, of course. However, from a perspective that consciously aspires to go beyond the national-state's framework, justice is a challenge that is incumbent to every human being and, therefore, to everyone, in this era that is undoubtedly that of globalized capitalism and its contradictions.

I take into consideration congress emphasis on exploring dimensions of the human and inquiring into the challenges facing humanity, and our need for global discussions about the values and concepts of development, values and human concerns. Trying to find out what concepts might be essential when talking about philosophy of law, political systems, economics, culture or social development, I think that one of those primordial concepts is justice. But the problem begins from its very definition – justice is a concept that, from its root, is indeterminate. Justice comprises multiple meanings: it refers to a human capacity, an ideal and an essential element in social institutions, as well as a double but, at the same time, a singular dimension: individual and sociopolitical.

Why justice as one of the essential human concerns, today?

We can begin noting that an important part of the current discussions around the various conceptions of justice is taking place in China today. So, it is essential to know the ways of the various debates that occur in the country and learn from them. Some academics define the question of economic and social justice in contemporary China in terms of how to balance market economy and socialism.¹ Other voices focus on the moment the problem arises. They clearly identify that it occurs because of the transition from the planned economy, sustained in the public property, towards a market economy with multiple properties / owners. And, furthermore, that the paradigm shift means accepting distributional differences as one of its necessary effects.²

Perhaps, we can begin our dialogue putting in parenthesis why we accept that social and distributive justice *must* aspire to a "balance" between an event - the market economy - and socialism. That is, to ask what is being said with the idea of "balance" or "equilibrium".

Describing what he calls "Welfare Statism", KARATANI Kojin attempts to identify what in his view is the current situation of the left in developed nations. It could

¹ See LIN Yuchuan "Social Justice in contemporary China and the Mission of Chinese Marxism: with a Review to Rodney G. Peffer's Social Justice Theory", *American Philosophical Association (APA)* 2009, p. 1. [www.pages.drexel.edu/~pa34/LinYuchuan.pdf.]

² WEI, Xiaoping, "From Principle to Context: Marx versus Nozick and Rawls on Distributive Justice", *Rethinking Marxism*, Vol. 20, N. 3, 2008, p. 474.

be added to his diagnosis that the situation can be extended to those countries like China that a few years ago undertook market reforms to be part of the system of global commerce and economy. Karatani says:

Since 1990 the Left in the developed nations has completely abandoned the kind of revolution that it previously sought. Accepting the role of the market economy, the Left now advocates addressing the various contradictions it produces through public consensus achieved through democratic means and redistribution. In other words, the Left has settled into the position of advocating welfare-state policies and democratic socialism. But this also implies affirming the existence of the Capital-Nation-State framework and abandoning any attempt to move beyond it.³

The key to understand Karatani's idea is how he describes the so-called "capitulation" of socialism. Socialism capitulates when it surrenders to unequal agreed conditions leaving behind thought and action that could make possible to move to a different position. That is, moving away from a double overcoming of modernity⁴ which would mean being able to transcend the implicit agreement that rests on the precondition of assuming the congenital divergences of market economies. The diagnosis - a socialism that drives the revolution out of itself - gives an answer to the question previously formulated: what beats under the idea of an "equilibrium" between market-socialism.⁵ Or, in other words: the armistice between global capitalism and socialism in which the latter weakens trying to act and react within the narrow framework of the capital-nation-state triad. If this is the scenario, can this "conditioned" socialism go beyond the Capital-Nation-State triangle? Would the defense of a certain conceptualization of justice serve to do this?

If justice can be considered as one of the essential values, the first task would be to overcome the shortcomings of certain preexisting theoretical approaches. As Will KYMLICKA objects, philosophical and political polemics about justice need to be revised, basically when most debates focus on dogmatic perspectives about the meaning of justice as value. He says:

The traditional picture suggests that different theories have different foundational values: the reason that right and left disagree over capitalism is that the left believes in equality while the right believes in freedom. Since they disagree over fundamental values, their differences are not rationally resolvable. (...) But there is no way to argue for equality over freedom, or freedom over equality, since these are foundational values, with no higher value or premiss that both sides can jointly appeal to. The deeper we probe these political debates, the more intractable they become, for we are left with nothing but conflicting appeals to ultimate, and ultimately opposed, values.⁶

³ KARATANI, Kojin, *The Structure of World History. From Modes of Production to Modes of Exchange*; Durham, London: Duke University Press, 2014, pp. 261-262.

⁴ See NAK-CHUNG, Paik, "The Double Project of Modernity", *New Left Review*, n. 95, Nov-Dec. 2015, pp. 71-86.

⁵ At least, two classic economic options reflect this balance: the German model known as "social market economy" and the Chinese model, "socialist market economy".

⁶ KYMLICKA, Will, *Contemporary Political Philosophy. An Introduction*; Second Edition, Oxford, New York: Oxford University Press, 2002, p. 2.

Kymlicka is right to point to the fact that theoretical conflicts and problems around the conception, principles and scope of justice are based on the dogmatic acceptance of a single and unique value - that is, a foundational value. From the epistemological point of view, foundationalism asserts that a single original belief (foundational) requires no further reasoning or justification - it is self-evident, it is self-justifying. The most intriguing question is that, once the foundational value (equality, freedom, etc.) has been accepted without further examination, this "value", which appears as infallible and unquestionable, plays the role of mere dogma, indisputable. Therefore, the foundational "value" is nothing more than an absolute but inert principle. Nonetheless, as part of its indubitability as a foundational value, the "relational" character is left unexplored. That is, the potential of its complementarity with other values equally necessary to theorize but, above all, to apply the right sense of what is "just" inside different social organizations.

Theories of justice architecturally designed around a single and ultimate value (equality, freedom, contractual agreement, common good, utility, rights, identity, etc.) simply prove to be effective by reducing everything to a single metaphysical thing-in-itself. Therefore, limiting the possibilities of realization. In addition, there is a reductionist bias in another sense: the normative position usually assumes that the vindicated "ultimate value" is Euro-American and cannot be non-Euro-American.

Is it possible a theoretical proposal of justice that instead of being designed around a single and final "value" could accept the contrast in a wider critical and dialogical space?

Some principles of justice to consider from a dialogical perspective.

Since the 1990s, comparative studies on Chinese and "Western" political philosophy proliferate. The problem with the "comparative" criterion is that, surreptitiously, departs from the assumption that the "Chinese" and "Western" theoretical approaches are contrary to each other or are simply juxtaposed. If we want to explore as a working hypothesis the possibility of a "more satisfactory" and less monist theory of justice, we should overcome the dichotomous scheme between atomized cultural spheres and, instead, promote common argumentative places.

Of course, every concept and, by extension, the concept of justice, is subject to historical context and circumstances. Without forgetting that there is no doubt that "society" and "concepts" are often in tension, in what follows, I will offer a set of different meanings of justice, of course, not exhaustive, but only with the intention to open the field to clarify the meanings of justice and not only depending on that of the well-known classical theories.

Justice as impartiality: With respect to what normally adjectivize "Chinese" and "Western" perspectives on justice, there are good reasons for overcoming the division between societies dominated by individualism ("Westerners") or by the community ("Asian"). This division can be discarded when one attends to some meanings of justice, such as that of impartiality. For instance, Joseph CHAN⁷ demonstrates that one of the Confucian principles of justice, which can be translated as "impartiality", is essential in

⁷ CHAN, Joseph, "Making Sense of Confucian Justice", *Polylog: Forum for Intercultural Philosophy*, Vol. 3, 2001. <https://them.polylog.org/3/fcj-en.htm>

the genealogy of ancient political philosophy in China just as it is in ancient Greek political thought. He says:

'Justice' [yi-義] is about fair distribution of benefits and burdens in society. The idea of *gong* [公], or impartiality, gives one interpretation of "fair distribution" – a law or policy is fair or just only if it *impartially* treats the subjects who would be affected by it.⁸

In Confucian thought, the significance of impartiality that starts from a “neutral” position is unquestionably. And it is also significant in the context of Mozi's thought that, by amending the consequences of the Confucian *ren* and arguing about the general interest, the common good, protects this common good through impartiality. Thus, impartiality seems to be one of the key principles of justice in its twofold, formal and substantive, dimensions. Formal because it claims the neutral view of equity. And, substantive, as a moral value which derives from practical reason and does not mutate or vary according to the interests, preferences or desires of society and/or of everyone.

Justice as merit: In the *Corpus Iuris Civilis*, the roman civil code under Emperor Justinian (482-565), justice was defined as follows: "The constant and perpetual wish to give everyone that which they deserve." Likewise, the precepts of the law were established to, according to the code, "to live honestly, not to injure others, and to give everyone his due".⁹ The notion "merit" is rather imprecise, but together with the idea / ideal of justice, is clearly relevant. Connects with the verb “to merit” that, when refers to a person, indicates the quality of being worthy of reward or punishment. Despite the imprecision of the notion, we can indicate some aspects to study if some different meanings of merit can be put here into dialogue:

- In its utilitarian formulation, John Stuart MILL considered that every person should receive the good or evil which deserves, and unjust to receive an underserved good or evil.¹⁰ The philosopher defines "merit" based on right or wrong: if you act correctly, you merit a good; if you act incorrectly, you deserve evil. For Mill, "merit" responds specifically to a purpose of justice: the human capacity which is, in a sense, a feeling or wish to punish those who act contrary to promoting the good of humanity.

- In Marx's formulation, albeit in a less clearly identifiable way, "merit" is shown in a specific way. It is possible to find the principle of "merit" in the process of transforming the "principle of equal rights" into distributive justice towards the "principle of distribution according to needs". The distribution according to needs and, thus, extending the meaning, guaranteeing that each one receives what he/she deserves according to what he/she needs, it was enunciated by Marx -the well-known formulation “From each according to his ability, to each according to his need”¹¹-, but clearly historically conditioned to the upper phase of communism. The problematic nature of this formulation is even more serious today than it was in the XIX century.

⁸ Ibidem.

⁹ WACKS, Raymond, *Philosophy of Law: A Very Short Introduction*; Oxford: Oxford University Press, 2006, p.59.

¹⁰ MILL, J. S., *El utilitarismo*; Madrid: Alianza Editorial, 1997, p. 105

¹¹ MARX, Karl, “Critique of the Gotha Programme” (1875), in MARX, Karl, ENGELS, Friedrich, *Selected Works, Volume Three*; Moscow: Progress Publishers, 1970. <https://www.marxists.org/archive/marx/works/1875/gotha/>

The tensions for a possible application of the Marxist principle are exacerbated in current times. Not only the structures of subordination with respect to the relations of production (or property) have not been dissolved. Today, they have been strengthened in the relations of exchange (between companies and the market, the worker and the companies, consumers and markets, etc.)

- Finally, we can look at Rawls' reading of "merit" and the contrast of the meaning in the light of the Marxist rule. In a passage of his *Theory of Justice* (1971), Rawls comments on whether, in the case of wages, a satisfactory conception would be possible by adopting the utilitarian principle that establishes the correctness or incorrectness of actions (such as determining wages) around whether profession-effort-contribution tend to promote utility (or greater happiness) or to produce quite the contrary.¹² In Rawls's view, this would not be the case, as lacks a clear criterion to determine capacity and need of each one, and so, a criterion to, for example, determine wages.¹³

Justice as freedom and consent: Classical liberal economic and political thought and, thus, its theories of justice, are nourished by the close relationship between ethical values and economic interests: thinkers such as Adam SMITH did not conceive the moral and economic sphere as separate areas. For Smith, the modern world fostered the emergence of trade, and partly because of it, the worker began to enjoy a personal freedom that had long been denied. Why? According to the philosopher, the worker had a personal freedom previously non-existent because in the new social situation, is free to sell his workforce without being conditioned to "sell" or to make his own full personality available (as slave or as servant under feudal structures). However, in front of this (modern) personal freedom, as its shadow, we have the other element: fear. Fear of not disposing or losing job. Fear modulates (and lowers) freedom and, by extension, justice. It is precisely the fear of not having or losing ones' job that qualifies the Weberian idea of capitalism's "free labor" that defines the disposition of people (in a legal and economic sense) "obliged" to sell "freely" their activity in a market.¹⁴ The free disposition is not free if the person is forced to "sell" its activity following certain heteronomous rules. Freedom is nuanced and, therefore, the connection between justice and freedom, mediated by consent (contractual, for example). If free consent requires a condition of equality, this is not the case, in an essential way, when the worker sells his work force. What we have is an irreducible asymmetry. Therefore, if initial equality is reduced, so is liberty. And, thus, much of the theorizing of justice which is based on liberal principles in the strong sense is inherently imperfect.

Final remark.

I cannot extend these reflections here, but I hope, at least, to have reached the proposed goal of formulating some questions about justice and a way to discuss together its essentiality or contingency in current times. The complexity of the issue requires further study and plural dialogue to give some light for today's exploration of the meanings of justice in confrontation with social reality. To start asking and

¹² MILL, op. cit., pp. 45-46.

¹³ RAWLS, John, *Teoría de la Justicia*; México D.F.: FCE, 2006, p. 282.

¹⁴ WEBER, Max, "El origen del capitalismo moderno", en *Historia económica general* (1923-24), México: F.C.E., 1978, pp. 237-238.

formulating questions, may well serve for now to take the road to a possible world of mutuality of dignity.

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