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Justice as an Intergenerational Idea

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As Nathan Roscoe Pound's adage goes: "Law is experiences developed by reason and applied continually to further experience." Each individual and society has a varying normative understanding and perspective toward law and justice. Generally, an individual's interpretation arises from the shared belief, knowledge, culture, and tradition of a community but one's viewpoint may differ from the rest. The notion of justice is dynamic. Its connotation, from the time of Plato, has undergone many changes. Individuals fashion their lifestyles, devise an outlook and invent relations based on their comprehension and perception of what is right and wrong. Justice is not just associated with pursuing our interests but is closely linked to what is due to each person. Therefore, understanding the various facets of justice is of paramount importance. This paper highlights the intergenerational aspect of justice, its theories, its pluralization, how intergenerational relations differ from relations among contemporaries, and whether people of future generations have rights, vis-à-vis present generation people.

Keywords: *justice, intergenerational, pluralization, relations.*

INTRODUCTION

Justice is derived from the Latin word *jus* which means 'law, right or just'.¹ It can be seldom defined because of its varied interpretations. It may mean punishment for a crime to some, morality, or application of the rule of law to others. What might be just for one does not mean it is necessarily the same for the other. The concept of justice is evolutionary but its meaning in popular discourse is equated with fairness, moral righteousness, and equality.² The conception of law and justice stems from a system that is governed by a positivist notion of state and may neglect the possible nuances of legal phenomena and how their incorporation into the system is affected by different cultures and periods in history. The modern view of law is based on the concept that institutions, orders, and other specific forms seek their legitimacy from the state only insofar as they adhere to certain foundational principles of justice.³ Justice is not a static concept and often appears to be one of the most stimulating yet controversial ideas. Harper Lee, the author of *To Kill A Mockingbird*, vividly describes injustice to acquaint the readers with the abstraction of justice.

THEORIES OF JUSTICE

Many theories have been proposed by different philosophers throughout history. This section will review some of the major theories and the basic tenets upon which they are established. The philosophies did not emanate in a vacuum and are built upon the past concepts of justice or *dikaiosune*. This Greek term that has central importance in the New Testament of the Bible, Plato believed, needed clarification to understand the ordinary notions of justice.⁴

PLATO'S THEORY

In his book, *Republic*, Plato analyses justice. He believed in the natural inequality of men and therefore advocated a universal classification system. He classified them into three categories

¹ Jason Boatright, 'The History, Meaning, and Use of the Words Justice and Judge' (2018) 49(4) *St. Mary's Law Journal* 729

² Komal Parnami, 'Concept of Justice Difficulties in Defining Justice' (2019) 2(5) *IJLMH* 2

³ HLA Hart, *The Concept of Law* (2nd edn, Oxford University Press 1994)

⁴ John Uebersax, 'Righteousness' (*Satyagraha*, 15 February 2017)

<<https://satyagraha.wordpress.com/tag/dikaiosune/>> accessed 15 February 2023

based on the three elements of the human soul: the producers or workers representing appetite, the auxiliaries or soldiers representing spirit, and the guardians or rulers representing reason.⁵ He argues that although women tend to be physically weaker than men, this should not be a barrier for them to get educated or freedom to achieve justice.⁶ He holds that it is the soul that is either virtuous or vicious. His theory also focused on equality. Plato's principles of categorization of men do not find relevance in the modern world and hence cannot be applicable because society today is not organized into just three categories and is much more complex than in the past. Though equality for men and women is relevant.

ARISTOTLE'S THEORY

In *Politics*, Aristotle argues that justice involves "equitable fairness". This means that only equals can be treated equally and it is called distributive justice.⁷ He also discusses the relationship between justice and decency where achieving justice sometimes meant the violation of fairness or reasonable equity to follow the law.⁸ Unlike Plato, whose classification was based on elements of the human soul, Aristotle recognizes equality according to merit which he did not specify precisely but hints at the involvement of moral and intellectual virtue. This theory finds relevance in contemporary times as most democratic countries believe in meritocracy. Although what is just and unjust is believed to be prior knowledge or consciousness in an individual, the criteria are determined through the science of law today.

IMMANUEL KANT'S THEORY

Kant develops the theory of justice in his *Metaphysical Elements of Justice* which constitutes the first part of *The Metaphysics of Morals* and his concept is known as *Rechtslehre* or "doctrine of justice". He asserts that justice is bound by obligations that one must comply with. This means

⁵ Anugra Anna Shaju, 'Plato's Theory of Justice and its Importance in the Modern Period' (*Jus Corpus*, 25 December 2020) <<https://www.juscorpus.com/platos-theory-of-justice-and-its-importance-in-the-modern-period/>> accessed 15 February 2023

⁶ Wayne P. Pomerleau, 'Western Theories of Justice' (*Internet Encyclopedia of Philosophy*) <<https://iep.utm.edu/justwest/#SH1a>> accessed 15 February 2023

⁷ Anton-Hermann Chroust & David L. Osborn, 'Aristotle's Conception of Justice' (1942) 17(2) *Notre Dame Law Review* 136

⁸ *Ibid*

that one has duties of justice against the other as much as the other has duties towards him as both have rights against each other and so that duties of justice and rights are correlative. Human right is innately possessed by all and that is the freedom to do what one wants but it should be compatible with the freedom of everyone else.⁹ Kant's theory seems reasonable because it emphasizes that one should be just as it is our duty and the right thing to do. Only pursuing our self-interests while disregarding others' rights or freedom will lead society into chaos. A common cause for the rejection of his theory is that it is deemed too idealistic to be realistically applicable in the "real world".¹⁰

JOHN RAWLS' THEORY

Rawls' concept of justice is called *Justice as Fairness*.¹¹ In his best-known political-philosophical publication *A Theory of Justice*, he offers two principles of justice. "The first requires equality in the assignment of basic rights and duties, while the second holds that social and economic inequalities, for example, inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society."¹² His theory has an underlying Aristotelian assumption that a prior theory of the good must exist and a thought experiment called "veil of ignorance" is used to test the fairness. The basic idea behind this is to produce a fair and egalitarian society. When individuals do not know what status they have in society, cognitive biases melt away, and they think rationally about their actions that will have ramifications. Their sole incentive would be self-preservation and the pursuit of self-interests which ultimately leads to the preservation of the whole.¹³ Rawls, akin to Kant, prioritizes right over good. He presents his theory as an alternative to the theories

⁹ Frederick Rauscher, 'Kant's Social and Political Philosophy' (*Stanford Encyclopedia of Philosophy*, 24 July 2007) <[https://plato.stanford.edu/entries/kant-social-political/#:~:text=The%20%E2%80%9Cuniversal%20principle%20of%20right,%E2%80%9D%20\(6%3A230\).](https://plato.stanford.edu/entries/kant-social-political/#:~:text=The%20%E2%80%9Cuniversal%20principle%20of%20right,%E2%80%9D%20(6%3A230).>)> accessed 16 February 2023

¹⁰ *Ibid*

¹¹ 'Justice as Fairness: John Rawls and His Theory of Justice' (2007) 23(3) Constitutional Rights Foundation <<https://www.crf-usa.org/bill-of-rights-in-action/bria-23-3-c-justice-as-fairness-john-rawls-and-his-theory-of-justice>> accessed 16 February 2023

¹² *Ibid*

¹³ 'The Fairness Principle: How the Veil of Ignorance Helps Test Fairness' (*Farnam Street*) <<https://fs.blog/veil-ignorance/>> accessed 16 February 2023

given by utilitarians and hence justice cannot be reduced to utility. Rawls assumes that the goods chosen by rational individualities, upon whom the elemental structure of a liberal and democratic society is erected, would widely remain valid ever.

One set of criticisms that his theories face is impracticality because a society cannot function properly without differentiating incentives and the disregard for people with disabilities or those who require differential treatment to lead a normal life.¹⁴ The other is that his “justice as fairness” concept does not allow enough tolerance for people belonging to different creeds and also that his theory revolves around the idea of the greatest benefit to the least advantaged members of society and not an equitable treatment for all.¹⁵

PLURALIZATION OF JUSTICE

One of the premises of the social interpretive theory is that people act on their beliefs and preferences.¹⁶ So the concept of justice is shaped by factors such as individuals’ imperfect knowledge and cultural bias which leads to its pluralization. The process of decision-making is complex because humans face the fundamental problem of analyzing situations to come to conclusions and determine repercussions keeping in mind the cognitive capabilities of people and the convolutions of the world they live in.¹⁷ Ascertaining what is just and unjust involves learning because it is important to assess that part of the information on which determination depends according to an individual’s capabilities and each individual may have different criteria to judge the facts of a situation or information that is already known. A dilemma arises when a new belief is developed after inference based on a similar experience in the past and the reasoning opposes the earlier belief and therefore compels individuals to reconsider their former opinion.

¹⁴ ‘John Rawls’ Theory of Justice’ (*iPleaders*, 30 June 2022) <<https://blog.iplayers.in/john-rawls-theory-of-justice/#Introduction>> accessed 16 February 2023

¹⁵ *Ibid*

¹⁶ Mark Bevir and R. A. W. Rhodes, ‘Interpretive Theory’ (*eScholarship*, 2002)

<<https://escholarship.org/uc/item/0bk3k2nq>> accessed 17 February 2023

¹⁷ Vasudha Chhotray and Gerry Stoker, *Governance Theory and Practice* (1st Edition, Palgrave Macmillan London 2009) 38

HOW INTERGENERATIONAL RELATIONS DIFFER FROM RELATIONS AMONG CONTEMPORARIES

Since there exists no cooperation among non-contemporaries, it may appear that considerations of justice do not apply to intergenerational relations due to the paucity of direct reciprocity between generations of individuals who are not contemporaries.¹⁸ The present generation has the power to affect the desires of future generations but the latter cannot influence the former. Albeit the future generation can reassess past decisions to influence the interests and conduct of individuals. The reasoning behind the decisions one makes has a lot to do with the genes that are passed down and will be passed down from generation to generation which explains why individuals differ in their thinking and analytical abilities.¹⁹ Therefore, many of our actions do have an indirect effect on future people but they will not have any effect on the past generations. Kant's theory of justice applies to the relations among contemporaries since it is concerned with the compliance of obligations individuals have towards one another to enjoy one's rights.²⁰ Assuming the relationship between living people and future non-contemporaries as a matter of justice implies that a person can have a valid justice claim against another person (who is subject to correlative duties) without harming or benefiting him or her.²¹ It would be right to say that the present generation should fulfill their duties to future people just as the past generation did to them.

DO FUTURE PEOPLE HAVE RIGHTS, VIS-À-VIS PRESENT GENERATION PEOPLE?

Some philosophers argue that future persons do not have rights because they do not exist.²² This is the nonexistence argument. Richard De George presents his argument as: "Future generations

¹⁸ Lukas Meyer, 'Intergenerational Justice' (*Stanford Encyclopedia of Philosophy*, 3 April 2003) <<https://plato.stanford.edu/entries/justice-intergenerational/#HowInteRelaDiffRelaAmonCont>> accessed 17 February 2023

¹⁹ 'Parents Pass on Genes for Reasoning and Memory' (*NewScientist*, 12 May 2007) <<https://www.newscientist.com/article/dn11831-parents-pass-on-genes-for-reasoning-and-memory/>> accessed 17 February 2023

²⁰ *Ibid*

²¹ *Ibid*

²² Aaron M. Griffith, 'The Rights of Future Persons and the Ontology of Time' (2017) 48(1) *Journal of Social Philosophy* 59

by definition do not now exist. They cannot now, therefore, be the present bearer or subject of anything, including rights. Hence they cannot be said to have rights in the same sense that presently existing entities can be said to have them. This follows from the briefest analysis of the present tense form of the verb “to have”.²³

Others argue that future people should have a right to existence ascribed to them to have rights vis-à-vis the present generation.²⁴ Eternalists would argue that presently future people do not exist but they will later and that existence is a required condition to hold a right. It may seem implausible that a nonexistent person has a right because future generations are yet to exist.

CONCLUSION

The concept of justice will have more connotations in the future and the previous concepts might become partially redundant but the new theories will have their foundations built upon the earlier theories as theories do not emerge out of a vacuum but are just new interpretations of the existing theories after extensive analysis. Just as among the different theories mentioned earlier, the one presented by John Rawls is the aptest in the modern world but it also has an underlying Aristotelian assumption. The future generations do have the capacity to overturn past decisions or verdicts. For instance, Justice D Y Chandrachud overruled his father’s (Y V Chandrachud’s) judgment in the case of *Joseph Shine v Union of India*²⁵ by striking down Section 497 of the Indian Penal Code, 1860.²⁶ The pluralization of justice would continue as newer generations come up with new inferences. The debate whether future people hold rights vis-à-vis present generation people is yet to be addressed.

²³ *Ibid*

²⁴ *Ibid*

²⁵ *Joseph Shine v Union of India* (2018) SC 1676

²⁶ Satya Prakash, ‘Justice D Y Chandrachud Overrules Father’s Verdict Yet Again’ (*The Tribune*, 27 September 2018) <<https://www.tribuneindia.com/news/archive/nation/justice-yv-chandrachud-overrules-fathers-verdict-yet-again-659658>> accessed 16 February 2023