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An Essay on Natural and Distributive Justice

Szkic o sprawiedliwości naturalnej i rozdzielczej

SUMMARY

The article addresses the issues of natural justice and distributive justice. The traditional formula "to render to everyone his or her own" (*suum cuique tribuere*) was taken as the point of departure. The discussion leads to the conclusion that natural justice concerns every person, and that everyone is entitled to inherent, innate rights, fundamental human rights. The exercise of natural justice ensures basic participation in the goods of the community, namely the state. This is so because this justice requires that every person be provided with an existence appropriate to the dignity of the human person. The relationship between natural justice and distributive justice exists at the level of elementary objective needs. Natural justice, when exercised, in a sense meets the formula "to render to everyone according to their legitimate needs", meeting objective, basic needs, but this applies only to part of society. This justice is broader, it does not boil down to these elementary needs and, of course, it relates also to other things than needs. In a sense, it could be said that natural justice "intervenes" where justice applied according to the principles of proportionality is not enough. Man, with his or her guaranteed natural, equal rights enacted as positive law in line with natural justice, through his or her own action "uses justice" by using (positive) law and provides himself or herself with a decent life. However, natural justice does not omit anyone, its implementation actually replaces the formula of distribution justice "render to everyone according to legitimate needs". In distributive justice, equality is about proportion to the contribution made, but also to the merit. Of these two principles, the guiding principle, because of its universality, is the formula "render to everyone according to their contribution": those who contribute more to the good of the community, receive more.

Keywords: natural justice; innate human dignity; distributive justice

I.

Justice is a value closely related to law, it is crucial for law. The types of essential importance in law are distributive justice and corrective justice. Since Aristotle's times, the dichotomous meaning of justice understood both as distributive justice

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Data: 19/11/2026 06:36:45

(*iustitia distributiva*) and corrective justice (*iustitia commutativa*)[1] has been widely accepted in European philosophy, followed by law and legal sciences. To this day, the Aristotle's approach forms a canon and is considered as model one[2]. For the purposes of this paper, the issue of distribution justice will be of significance.

However, when talking about justice, we must first distinguish natural justice. What is it?

As a point of departure, we take the traditional formula "to render to everyone his or her own" (*suum cuique tribuere*)[3].

Justice demands to give everyone his own, *suum cuique*. But what specifically, what is his own? What is one's own, what is due? This is about rights of man. Man has his entitlements, he or she has rights resulting from his or her innate dignity. These rights are rooted in the very ontic human structure. These are natural rights. The formula "to render to everyone his or her own" is usually associated with a natural entitlement, one's right, the right to something, and therefore to render "something to which one is entitled".

Justice is the respect for the rights owed to man. Their source, let us repeat it, is rooted in the inherent dignity of man, and therefore they are natural rights. These natural rights must be ensured, guaranteed and pursued by positive law. The

[1] On distributive justice (*dikaion dianemetikon*), cf. Arystoteles, *Etyka nikomachejska*, Warszawa 2008, 1131 a-b (English version: Aristotle, *Nicomachean Ethics*, www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0054%3Abekker+page%3D1131a [access: 10.10.2020]). Corrective justice is also referred to as "commutative justice", "contractual justice", "commercial justice" or "compensatory justice".

[2] As H. Kelsen wrote, "there is no exaggeration in saying that everything that is said about the essence of justice in the work of philosophers or lawyers can be found in the Plato's and Aristotle's writings" (cited in S. Tkacz, *Rozumienie sprawiedliwości w orzecznictwie Trybunału Konstytucyjnego*, Katowice 2003, p. 9). J. Stelmach (*Współczesna filozofia interpretacji prawniczej*, Kraków 1995, p. 135) stresses that "Starting with Plato and Aristotle, the theory of justice becomes one of the most fundamental ethical and philosophical theories". The thought and distinctions proposed by Aristotle were referred to by Saint Thomas Aquinas. They were alluded by G. Radbruch as well. He wrote: "Both of these terms [distributive and corrective justice – W.D.] can be found in the famous teaching of Aristotle, who called each *absolute* equality between *goods* (e.g. between work and remuneration, damage and compensation) the corrective justice (*ausgleichende Gerechtigkeit*); on the other hand, he had called *equal treatment* of different people (e.g. by taxing them in an amount proportional to their financial strength or by helping them as needed, rewarding them according to merits, and punishing them according to guilt) *distributive justice* (*austeilende Gerechtigkeit*). Corrective justice requires the participation of at least two persons while distributive justice – at least three. […] Corrective justice is typical of civil law [literally private law, *des Privatrechts*], while distributive justice is typical of public law" (G. Radbruch, *Filozofia prawa*, Warszawa 2009, pp. 38–39). Cf. e.g. W. Sadurski, *Teoria sprawiedliwości. Podstawowe zagadnienia*, Warszawa 1988, pp.70–78.

[3] The formula "justice is rendering to everyone his/her due" was well known to Plato and Aristotle. As an example, cf. Plato, *The Republic*, Michigan 1968, Book I, 332 c. Cf. M. Piechowiak, *Do Platona po naukę o prawach człowieka*, [in:] *Księga jubileuszowa Profesora Tadeusza Jasudowicza*, eds. J. Białocerkiewicz, M. Balcerzak, A. Czeczko-Durlak, Toruń 2004, pp. 339–345.

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Data: 19/11/2026 06:36:45

mere existence of those rights obliges the legislative authority (the persons holding positions within it) to safeguard them, to make them real. The most fundamental ones are the right of every person to live and the right to personal development. However, it must be strongly emphasized that these are real natural rights, not the entitlements resulting from some ideological pressure or even manipulation[4]. For there is a risk of recognition of some ostensible rights as human rights and even innate rights. Unfortunately, the category of dignity in legal terms happens to be deformed by some (which, of course, is a misunderstanding and a mistake) who derive from this category rights against man, for example to abortion[5], or euthanasia.

Human rights were aptly read and expressed in the Universal Declaration of Human Rights adopted in 1948. This declaration, as it is sometimes noted in the literature, articulates natural rights, although it seems that it does so not fully clear when it comes to the first of these rights, namely the right to life, the right to be born.

The right of an individual to develop, the right to integral human development, concerns the physical, intellectual and moral development. But, of course, to be able to develop, one first has to exist. Let us emphasize here that the starting point is the right to life, the right to be born. The right to live from the very conception is a synthesis of all rights; without this right all other rights are deprived of their sense[6].

Of course, justice requires ensuring conditions that are conducive to human development and ensuring dignified existence of the individual in society. This entails providing the conditions for the fullness of existence and the life of man. Legal regulations are supposed to establish structures and institutions in order to provide the possibility of all-embracing human development. The law, through appropriate regulation, should support the man in his or her development. It is evident that this development covers such things as health, education, knowledge, work and fair remuneration, freedom, property, security.

Justice imposes a moral and legal obligation to render to everyone his own. In the normative perspective, justice is considered not so much as a norm, but rather as a principle-norm, a principle of law: it requires giving what is due. Thus, it further

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[4] Thus, this is about innate, objective rights of man. Regretfully, however, the reference to human dignity in legal terms seems not to be sufficient nowadays. We may even speak of the divergence between human dignity and human life (and protection thereof). Cf. E. Picker, *Godność człowieka a życie ludzkie. Rozbrat dwóch fundamentalnych wartości jako wyraz narastającej relatywizacji człowieka*, Warszawa 2007, p. 35.

[5] Cf. e.g. R. Dworkin, *Biorąc prawa poważnie*, Warszawa 1998, p. 237.

[6] As John Paul II (*Evangelium vitae*, 1995, [w:] *Encykliki Ojca Świętego Jana Pawła II*, Kraków 2007, 57) wrote: "As far as the right to life is concerned, every innocent human being is absolutely equal to all others. This equality is the basis of all authentic social relationships which, to be truly such, can only be founded on truth and justice, recognizing and protecting every man and woman as a person and not as an object to be used". Before the requirements of justice "there are no privileges or exceptions for anyone", "before the demands of morality we are all absolutely equal". Cf. idem, *Veritatis splendor*, 1993, [in:] *Encykliki…*, 96.

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Data: 19/11/2026 06:36:45

strengthens, by its authority, and additionally justifies the need to safeguard and protect these natural rights, fundamental human rights: it guarantees them.

To be fair, the positive law must take into account the requirements of justice we call natural justice, expressed not in an empty formula, but filled with content, and containing the precept to "render to everyone his or her own" which can also be expressed as "to give everyone his or her due". Natural justice is to become the principles and norms of positive law. Entitlements, human rights "brought by natural justice" give space for the development of talents, initiatives and business activities[7]. The exercise of natural justice allows active and creative participation in economic and social life.

Let us think again: what positive law, in its deepest sense, is just? Let us reiterate: a positive law is just when it respects, protects, exercises and guarantees natural justice. Then, these innate rights enshrined and safeguarded in positive law will be combined with the statutory, precise, strengthened norms of this law, and thus enhanced (since it is a natural obligation, or, one might say, a moral and legal obligation of the human being not to violate these natural rights) with the prohibition of violating them by others.

Attempts to base justice in relation to the law not based on inherent dignity and natural law, but on other foundations have led to the relativisation of this category.

It also must be stressed that understanding natural justice (and its requirements) is a precondition (when we speak of genuine, not apparent justice) for introducing other forms, types or kinds of justice. This applies, in particular, to its basic types, i.e. distributive justice and corrective justice, which should be in some sense a "reflection of natural justice", and therefore involve some kind of equality, non-discrimination, non-arbitrariness, impartiality and fairness.

So much for an introduction about natural justice.

II.

However, man also has the right to a fair distribution of goods, fair in the sense of properly understood *iustitia distributiva*.

But what criterion (criteria) of distributive justice should be adopted?

There are numerous formulas of justice, which are the subject of dispute. Some of them are unacceptable today, as if the feudal formula "to each according to his

[7] Cf. chapter II of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483 as amended). English translation of the Constitution at: www.sejm.gov.pl/prawo/konst/angielski/kon1.htm [access: 10.09.2020].

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Data: 19/11/2026 06:36:45

or her birth"[8]. Various formulas are in fact irreconcilable and often contradict each other. The proposals put forward in the literature to mathematise the criteria of distribution do not propose a universal criterion appropriate to each type of goods[9].

As far as distributive justice is concerned, it should be stressed that the legislative authority must properly establish the principles of equal (proportional) distribution of goods and participation of the state community in the good concerned[10]. Distributive justice is not guided by the principle of absolute (strict) equality but proportional one. It is equality in proportion, "proportional equality". What is fair, is what is proportional. This proportional equality should be a manifestation of the principle s*uum cuique tribuere* – "to render to everyone his or her own", which does not mean giving everyone exactly the same. Strict economic equality, regardless of the workload, social function and contribution to the good of the community, is not justice. Strict mathematical equality would in fact be a harm to many people. The concept of justice referring to the equal distribution of goods, and therefore to simple egalitarianism expressed in the formula "equally for everyone" ("giving everybody the same" – Ch. Perelman)[11], not referring to proportionality, is unacceptable.

As G. Maroń notes:

> Probably the only advantage of the formula of simple egalitarianism is the ease of implementing it in a technical sense. If the term "everyone" is to be understood as an individual, then it is enough to draw up a list of the population living in the area covered by the distribution (e.g. country, municipality, locality), and then divide the entire resource to be allocated by the number of these inhabitants. The quotient obtained through elementary mathematical operation is a portion of goods that should be allocated and given to each individual[12].

This author emphasizes that the egalitarian formula:

> […] petrifies mediocrity, minimalism, and sluggishness by discouraging effort, development-oriented activity and progress. The strengthening of the conviction on the indifferent (in terms of the causality of obtaining gains) nature of innovation, operability and entrepreneurship generates not only economic losses on a macro scale, but also affects the mentality of modern and future generations and consolidates the demanding attitude of the public towards the state as the administrator of goods being distributed. Creative and inventive individuals are not rewarded. Increasing work productivity is not rewarded, since the rule "down you lie or up you stand, either way you'll earn a grand" is

[8] However, Z. Ziembiński see certain manifestations of its topicality. See Z. Ziembiński, *Zarys zagadnień etyki*, Poznań–Toruń 1994, p. 83.

[9] Cf. H.P. Young, *Sprawiedliwy podział*, Warszawa 2003.

[10] Contribution to the common good concerns also the distribution of burdens, such as taxes. Distributive justice is also about duties towards others. It is obvious that not everyone is able to bear the same burdens for the community (e.g. pay taxes in the same amounts).

[11] Ch. Perelman, *O sprawiedliwości*, Warszawa 1959, p. 38.

[12] G. Maroń, *Formuły sprawiedliwości dystrybutywnej*, „Resovia Sacra. Studia Teologiczno-Filozoficzne Diecezji Rzeszowskiej" 2010, R. 17, p. 200.

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Data: 19/11/2026 06:36:45

applied. We assign to the same category of beneficiaries both an enthusiastic employee full of new ideas, constantly striving to improve his or her profession, increase the efficiency of his or her effort, and a person with completely different traits[13].

And he further writes:

> Assigning the same proportion of each of the distributed goods to everyone, according to the populist rule that "we all have the same stomachs", leads to the waste of these goods. […] Seeking justice in the above formula is inherently combined with the standardisation of human existence[14].

As stated by J. Hervada: "Providing the same to everyone does not take into account the whole richness of social situations, merit, diligence, dedication to the community; it denies the diverse needs and opportunities, etc."[15].

Z. Ziembiński stresses that the formula of equal distribution of goods has "several so negative social consequences that it is only proclaimed as a basic principle in naively populist ideologies"[16]. This author states: "Thus, the formula of simple egalitarianism is a primitive formula of justice and can rather be postulated during rallies than in a serious social policy"[17].

Let us also add that strict egalitarianism could affect human personality dignity[18].

Distributive justice is supposed to be based on impartiality and non-arbitrariness – these qualities being, in principle, in conflict with emotionality and emotions. We mention this today because justice is often reduced to subjective judgements, experiences, feelings and emotions. The scientific literature refers to this by mentioning "strong emotional overtones of this concept"[19]. However, can justice thus understood, be a "universal legal value", "universal constitutional value" or can it be a permanent foundation of law?

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[13] *Ibidem*. H. Brighouse (*Justice*, Cambridge 2004, p. 4) writes that "under a strict regime of economic equality many people would work less hard, and take fewer productivity-enhancing economic risks".

[14] G. Maroń, *op. cit.*, p. 201.

[15] J. Hervada, *Prawo naturalne. Wprowadzenie*, Kraków 2011, p. 51.

[16] In more detail, see Z. Ziembiński, *O pojmowaniu sprawiedliwości*, Lublin 1992, pp. 104–106.

[17] Idem, *Sprawiedliwość społeczna jako pojęcie prawne*, Warszawa 1996, p. 24.

[18] This dignity is not innate and inherent, but acquired, developed, and dependent on free human decisions. Personality dignity regards the area of human behaviour and action, it may be related to contribution and merit.

[19] Cf. e.g. S. Wronkowska, Z. Ziembiński, *Zarys teorii prawa*, Poznań 1997, p. 95; Z. Ziembiński, *Zarys…*, p. 79. Ch. Perelman (*op. cit.*, p. 107) writes that due to the very emotional nature of the values underlying each normative system, the exercise of justice in practice is an operation involving also the emotional factor and that the whole justice system may have some emotional flavour given to it by the basic value the rational development of which it constitutes. Cf. *ibidem*, p. 90.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:36:45

But there is still a question what rules (principles) of the distribution of goods and participation in the national community resources should be adopted. After all, not everyone, as already mentioned above, should be granted equally the same goods. So how to make distinctions in this distribution?

Obviously, the exercise of natural justice ensures basic participation in the goods of the community, namely the state. Goods that concern everyone in elementary terms are ensured by natural justice. This is so because this justice requires that every person be provided with an existence appropriate to the dignity of the human person. Man, with his or her guaranteed natural, equal rights enacted as positive law in line with natural justice, through his or her own action, "uses justice" by using (positive) law and provides himself or herself with a decent life. However, justice does not ignore anyone. It does not ignore those who cannot provide themselves with a dignified existence by their own actions, it does not ignore those who cannot contribute to the development of the community, does not ignore individual or many rights and freedoms vested in them, for example the right to work. It must be made clear that justice concerns the rights of every person, that is to say, the disabled, the sick, the unemployed and those rejected by closest family members. Justice affects everyone, and no one can be set aside. A person has the right to be provided with the means necessary for a decent life. Justice keeps its sense when it is justice for all.

This is about the requirements of natural justice that are supposed to safeguard elementary, basic, objective[20] needs such as food, clothing, housing or healthcare[21]. Here, in a sense, one could speak of the point of contact between natural justice and distribution justice, which, when properly read, understood and based on the same basis, namely inherent (innate) dignity of each person, and thus preserving the attribute of universality, could define the principles of natural justice in greater detail and more accurately (especially in laws and regulations). However, natural justice can be understood as an embodiment of the formula "render to everyone according to their legitimate, elementary, basic needs" (or "render to everyone according to their 'justified' needs"). Although, of course, this justice does not boil down only to such needs and not only needs are concerned here.

It should be noted that the aforementioned formula as a formula of distributive justice is not a matter of one or another convention or calculation, it is not created

[20] It is not about subjectively felt needs, their relativity.

[21] Although it is obvious, it must be said that natural justice is not intended to guarantee everyone welfare, fulfilment of one' desires and realisation of all preferences. Justice does not concern various human tastes and opinions on the criteria (models) of a full-fledged life, it does not concern ideas of a happy life, one's own vision of happiness. As W. Sadurski (*op. cit.*, p. 155) argues: "The needs of love, self-fulfilment or prestige are very important in the life of an individual, and yet they do not constitute a basis for legitimate claims against society". He also states: "[…] not every fact of an unmet need is tantamount to injustice".

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:36:45

by man, but is read (recognized) by the right reason of man. It is rooted in the inherent human dignity, which is the basis for justice[22]. The properly read formula of justice must be based on the affirmation of the other as a human (a person) and as the subject of law and moral subject, on the affirmation of the other as equal in dignity. And again: this formula retains the attribute of universality and objectivity. As for critics who question the material possibilities and conditions for meeting basic needs, one of the counterarguments is pointed out by W. Sadurski:

> […] a real measure of the possibility of practical satisfaction of basic needs should be the actual means and resources on an international scale, not on the scale of an individual country. Even if there are individual countries whose resources do not allow them, for example, to feed all their populations, global resources are sufficient to achieve this goal[23].

Benedict XVI also stresses that the world's wealth on a global scale is growing. "On this Earth there is room for everyone: here the entire human family must find the resources to live with dignity, through the help of nature itself […]"[24].

Man has the right to enjoy the appropriate conditions of social life, has the right to be provided with the resources necessary for a decent life, he or she cannot be deprived of material goods that affect his or her human existence.

And if someone still do not fully understand why to "render what is one's own" by using the formula "to render to everyone according to their elementary, legitimate, objective needs", the answer is as simple as that: because he or she is human.

In a sense, it could be said that natural justice "intervenes" where justice applied according to the principles of proportionality is not enough. Generally speaking, when it fails, it is not enough for man to participate in the distribution of goods in proportion to his or her own contribution to that pool of goods[25]. Then we reach out to the requirements of natural justice that is technically more detailed by the formula of distributive justice "to render to everyone according to their elementary, legitimate, objective needs", which, of course, applies to a limited number of people.

But it can also be simply assumed, and this is correct, that natural justice, when concretised and embodied in this aspect, "replaces" the formula of distributive

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[22] In more detail, see W. Dziedziak, *Godność człowieka jako podstawa sprawiedliwości*, [in:] *Księga Jubileuszowa dedykowana Profesorowi Lechowi Dubelowi*, „Annales UMCS sectio G (Ius)" 2019, vol. 66(1), DOI: http://dx.doi.org/10.17951/g.2019.66.1.87-99.

[23] W. Sadurski, *op. cit.*, p. 187. The author points out: "According to some jurists (although it is not a widely accepted view), UN Member States have made a legally binding commitment to provide adequate living conditions both for their citizens and for the citizens of all other member states. Studies on the food situation indicate that the agricultural and food resources in the world are sufficient to meet the food needs of all the inhabitants of the globe" (*ibidem*, p. 188).

[24] Benedict XVI, *Caritas in veritate*, 50. Cf. 22, 27, 42.

[25] This applies, of course, only to part of society, including those who do not contribute at a given time to the increase of the pool of distributed goods as a result of heteronomous circumstances, such as atmospheric conditions resulting in natural disasters.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:36:45

justice "to render to everyone according to their legitimate needs" while being a broader concept. However, since the concept and issues of natural justice is misunderstood or *a priori* rejected by some, even many people, it would be appropriate to postulate the adoption and implementation, as one of the principles of distributive justice, of this very formula "to render to everyone according to their elementary needs" (food, clothing, basic accommodation, health care).

Getting back to proportional equality: in distributive justice, equality is about proportion to the contribution made, but also to the merit. These are essential criteria. These are the principles of distributive justice "to render to everyone according to the contribution", "to render to everyone according to merit". However, there is quite a fundamental difference between these criteria. As a general rule, those who contribute more to the good of the community receive more. Thus, they are rewarded in proportion to the contribution, its size, including its importance – and of these two principles (formulas) this would be the basic one, given its universality. This is where the important difference lies. The formula "according to merit" can be used much less frequently, as it could involve subjective judgements on the criteria and measures of merit: what to accept and what to reject, but nevertheless it is more difficult to measure, more individualised, and it is not easy to speak here of proportional equality. Initially, we assume that merit entails great value for others, for the common good, and even arouses "admiration" and a common conviction about its outstanding value. Thus, the basic criterion of distributive justice should be a formula "to render everyone according to contribution", and in a way as a complement the formula "to render everyone according to merit".

Contribution is to a certain extent measurable and sometimes also gradual. Some define this concept of justice as "to render everyone according to the result of their efforts"[26]. Ch. Perelman stresses that the concept (formula) of "to render to everyone according to their works" is based on proportionality and he writes that "this formula of justice allows, in most cases, taking into account only factors that can be calculated, weighed or measured"[27]. However, sometimes it is difficult to determine the value of a work's output[28].

To render to everyone according to the contribution – the emphasis on the outcome of the action inspires effort. As G. Maroń writes: "Effort is not valuable by itself, but it owes its value to the value of its effect"[29]. It is not what costs a person incurred to create the good, but how much the good – the result of the work – is worth it. The relevancy of effort is solely based on being a tool, a means

[26] G. Maroń, *op. cit*., p. 205.
[27] Ch. Perelman, *op. cit*., p. 24.
[28] Indeed, determining objective standards for different types of work is not simple.
[29] G. Maroń, *op. cit*., p. 206.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:36:45

of achieving a previously anticipated goal, the achievement of which results in a valuable good[30].

The principle "render to everyone according to their contribution" is for many sufficient as a principle of justice. But not for everyone.

W. Sadurski in his book *Teoria sprawiedliwości. Podstawowe zagadnienia* (*Theory of Justice. Basic Problems*) concludes that the formula "to render to everyone according to their merit"[31] is a fundamental criterion of distributive justice, and its priority is related to the implementation of the ideal of positive freedom[32]; the principle of distribution according to merit expresses the concept of a human individual capable of being responsible for its own action[33].

However, in fact, the formula "to render to everyone according to their merit" – as we have already mentioned – can be of a complementary nature, this criterion does not have the value of universality. It is about special merit, undisputed (as far as possible) and appreciated by almost everyone. The dictionary definition is essentially close to the meaning of the word, which is as follows: "[…] the results of an act, activity or work that are of great value to others, valued by the general public, worthy of recognition"[34]. Merit can be related to a non-economic, as a rule, "contribution" to social life, a "contribution" to the good of the community. This also can be a "contribution" of a spiritual nature to the life of the social community. M. Soniewicka states that the concept of merit should be referred to some objective hierarchy of values (to the overarching concept of good)[35]. But the point is how this good is to be understood. It cannot be assumed that distributive justice is based only on merit, not on contribution.

But equals need to be treated equally. We can refer to this as to the principle of "equal measure", the application of this principle[36]. In other words, it would be a purely formal principle that persons in the same relevant category should be treated in the same way (equally)[37]. This is about equality towards all entities subject to justice in the same relevant category. M. Ossowska wrote that M. Chwistek

[30] *Ibidem*.

[31] W. Sadurski (*op. cit*., p. 138 ff.) adopts a peculiar meaning of merit.

[32] *Ibidem*, p. 162.

[33] *Ibidem*, p. 268.

[34] *Słownik języka polskiego PWN*, ed. M. Szymczak, vol. 3, Warszawa 1995, p. 897.

[35] M. Soniewicka, *Granice sprawiedliwości, sprawiedliwość ponad granicami*, Warszawa 2010, pp. 54–55.

[36] The principle of equal measure proposed by K. Ajdukiewicz (*O sprawiedliwości*, [in:] *Język i poznanie*, vol. 1, Warszawa 1985, p. 372) reads as follows: "No one is entitled to anything only because it is him, not anyone else". This rule does not assume that everyone deserves equally the same. This author stated in 1939: "So when we grant John certain rights, which we deny someone else, we do so rightly only if we grant him those rights because he has certain qualities or merits that someone else does not have, and not because it was John" (*ibidem*).

[37] Cf. Ch. Perelman, *op. cit*., p. 37, 59, 71.

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Data: 19/11/2026 06:36:45

had called this principle the principle of consistency and formulated it as follows: "[…] in identical cases, the same must be done"[38]. However, it must be made clear that the principle of "equal measure" (or other configurations of it) is a secondary, and only formal, principle.

However, it should be noted that the principle of equal measure applies fully to the formula "according to the contribution", whereas when it comes to merits, difficulties may arise due to the occurrence of immeasurability (or rather difficult measurability), which should be associated with the particular character, specificity and uniqueness of merits and sometimes difficulty in comparing them. Indeed, it is difficult to talk about the identicality of merits. However, by any means, this does not preclude the application of this principle.

It can be assumed that due to similar merits (but to the same extent), individuals should be treated equally, e.g. the Olympic gold medal in various fields of sport.

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To sum up, it must be concluded that it would be wrong to negate natural justice without any reflection[39]. It should also be emphasized that there is no place for distributive justice in some liberal, neo-liberal or libertarian concepts, and that it is commutative justice which serves in these concepts as a model for the functioning of society. But commutative justice, being a form of corrective justice, is not sufficient for the correct organization of social relationships in a state, as the rules of distributive justice are also necessary.

The implementation of natural justice (two of its principles, formulas) and corrective justice (not addressed herein) introduces order in interpersonal relationships, contributes to social order and peace, and harmonizes social life.

[38] M. Ossowska, *Normy moralne. Próba systematyzacji*, Warszawa 1985, p. 145. L. Chwistek formulated this principle in a paper delivered in 1936 at the third National Philosophical congress in Kraków.

[39] There are also sceptical opinions on the very idea, category of justice. For some legal theoreticians, the category of justice does not make sense at all, e.g. for A.V. Lundstedt.

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Data: 19/11/2026 06:36:45

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STRESZCZENIE

W artykule podjęto zagadnienie sprawiedliwości naturalnej i sprawiedliwości rozdzielczej. Jako punkt wyjścia przyjęto tradycyjną formułę „oddać każdemu to, co mu się należy" (*suum cuique tribuere*). Rozważania prowadzą do stwierdzenia, że sprawiedliwość naturalna dotyczy każdego człowieka, a należne są mu przyrodzone, wrodzone uprawnienia, podstawowe prawa człowieka. Realizacja

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Data: 19/11/2026 06:36:45

sprawiedliwości naturalnej zapewnia w zakresie podstawowym udział w dobrach wspólnoty, jaką jest państwo. Sprawiedliwość ta bowiem wymaga, by każdemu człowiekowi zapewnić egzystencję odpowiadającą godności osoby ludzkiej. Związek sprawiedliwości naturalnej ze sprawiedliwością rozdzielczą występuje na poziomie elementarnych zobiektywizowanych potrzeb. Sprawiedliwość naturalna, gdy jest urzeczywistniana, niejako wypełnia wyróżnianą przez niektórych formułę „każdemu według »usprawiedliwionych« potrzeb", zapewniając zobiektywizowane, podstawowe potrzeby, co dotyczy jednak tylko części społeczeństwa; sprawiedliwość ta jest szersza, nie jest zawężona tylko do tego rodzaju elementarnych potrzeb i oczywiście nie tylko potrzeb dotyczy. Można by w pewnym sensie powiedzieć, że sprawiedliwość naturalna jakby „interweniuje", gdy nie wystarcza stosowanie sprawiedliwości według zasad proporcjonalności. Człowiek mający zagwarantowane przyrodzone, równe prawa, wpisane w prawo pozytywne, uzgodnione treściowo ze sprawiedliwością naturalną, poprzez własne działanie, korzystając z prawa stanowionego (pozytywnego), niejako „korzysta ze sprawiedliwości" i zapewnia sobie godziwe życie. Jednakże sprawiedliwość naturalna nikogo nie pomija, jej realizacja w istocie zastępuje formułę sprawiedliwości rozdzielczej „każdemu według »usprawiedliwionych« potrzeb". W sprawiedliwości rozdzielczej równość polega na proporcji; należy oddać proporcjonalnie, ogólnie rzecz ujmując, do wkładu, ale także do zasług. Z tych dwóch zasad wiodąca, z uwagi na jej powszechność, jest formuła „każdemu według wkładu" – ten, kto bardziej przyczynia się do dobra wspólnoty, otrzymuje więcej.

Słowa kluczowe: sprawiedliwość naturalna; przyrodzona godność człowieka; sprawiedliwość rozdzielcza