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Wojciech Dziedziak
Maria Curie-Skłodowska University in Lublin, Poland
ORCID: 0000-0002-7335-8471
wojciech.dziedziak@umcs.pl

Thoughts on the Notion of Justice

Rozważania dotyczące pojmowania sprawiedliwości

ABSTRACT

The article has addressed the problem of understanding justice. The traditional formula "to render to everyone his own" (*suum cuique tribuere*) was taken as the point of departure. The discussion leads to the conclusion that natural justice applies to every person, and that every person is entitled to natural, innate, fundamental human rights. The traditional formula with regard to law should be understood as a principle-norm, a principle of law that imposes an obligation to render to everyone what is due. It is the duty of authorities (which manage the social life) to implement this obligation. The innate natural 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, a moral and legal obligation, of the human being not to violate these natural rights) with the prohibition of violating them by others.

Keywords: justice; human being; innate human rights; fundamental human rights; principle of law; natural justice

INTRODUCTION

It would seem that the issue of justice and its meaning is sufficiently recognized and discerned. One may think that nothing new can be written on justice and its notion.

CORRESPONDENCE ADDRESS: Wojciech Dziedziak, PhD, dr. habil., Associate Professor, Maria Curie-Skłodowska University (Lublin), Faculty of Law and Administration, Institute of Law, Plac Marii Curie-Skłodowskiej 5, 20-031 Lublin, Poland.

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But still, and despite the huge, enormous multitude of works that can fill many libraries, the issue of justice – including its understanding – is subject to debate, especially depending on the philosophical position taken. It must be stressed, even more strongly, that this is a very contentious category. It should be added that it is sometimes confusing, a bit vague, complicated, and certainly a multifaceted, difficult and very complicated issue.

Over the course of many centuries, thinkers, philosophers, moralists, ethicists, poets, writers, social reformers, economists and of course lawyers used to undertake reflection about justice. We may come across various concepts, approaches and theories of justice in the literature on the subject.

Of course, the problem of justice, including its understanding, constitutes one of the central philosophical and legal problems. It is a classic subject, still valid, inherent in the law. According to many, justice is the most important value associated with law.[1] Let us recall, Domitius Ulpianus (Ulpian) derived the concept of law from justice.[2] Gustav Radbruch stated: "The idea of law may only be justice".[3] John Rawls wrote: "[…] justice is the first virtue of social institutions".[4]

However, the category of justice has generally been subjectified and relativised today, its moral or ethical character has been lost, the narratives characteristic of liberal, utilitarian and neo-Marxist thought are still in fashion and dominate. It is assumed that the basis of justice is convention. This category is based on some kind of social and pragmatic convention, contractual constructs (a hypothetical contract[5]), or experiences, feelings and emotions. The scientific literature often

[1] This concerns both the fairness of the law itself and its fair application.

[2] When explaining the meaning of the word *ius*, D. Ulpian derives the notion of law from justice. *Iuri operam daturum prius nosse oportet, unde nomen iuris descendat*. *– Est autem a iustitia appellatum* ("A prospective lawyer at the beginning of his studies should know where the word 'law' [*ius*] originates. It is derived from justice [*iustitia*])" (D. Ulpianus, D. 1.1.1 pr.).

[3] G. Radbruch, *Filozofia prawa*, transl. E. Nowak, Warszawa 2009, p. 37 (English version for reference: idem, *Legal Philosophy*, transl. K. Wilk, [in:] *The Legal Philosophies of Lask, Radbruch, and Dabin*, Cambridge 1950). In the discussion on the notion of law, we can read: "[…] law is the reality whose sense and meaning is to serve a kind of value (*dem Rechtswerte*) […]. The fact that justice is the ultimate and impassable starting point also entitles us to accept that everything that is fair […] has an absolute value that cannot be derived from any other value".

[4] J. Rawls, *A Theory of Justice*, Harvard 1971, p. 513. As J. Rawls writes, "laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust" (*ibidem*). Cf., e.g., R.A. Tokarczyk, *Sprawiedliwość jako naczelna wartość prawa*, „Państwo i Prawo" 1997, no. 6, s. 3–20.

[5] More broadly, see J. Rawls, *op. cit*. It is worth noting that Ronald Dworkin (*Taking Rights Seriously*, London – New York 1977, p. 186) states in this context: "Rawls does not suppose that any group ever entered into a social contract of the sort he describes. He argues only that if a group of rational men did find themselves in the predicament of the original position, they would contract for the two principles. His contract is hypothetical, and hypothetical contracts do not supply an independent argument for the fairness of enforcing their terms. A hypothetical contract is not simply a pale form of an actual

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refers to the "strong emotional colouration of this term".[6] As Zygmunt Ziembiński wrote: "[…] defining the meaning of the word is a very complex matter, especially since the term requires multifaceted relativism".[7] Maria Ossowska stated as follows:

> When we address the issue of justice, we know in advance that we will not satisfy anyone with our comments. The notion of justice has such an enormous scope of associations and such a great emotional charge that it is difficult to respect all the intuitions associated with it.[8]

It is often explicitly argued that the foundations of justice are arbitrary. Chaïm Perelman states that:

> Any system of justice is merely a development of one or more values whose arbitrary nature is related to their very nature. This allows us to understand why there is no single system of justice, why there can be as many as different values.[9]

And further, with regard to justice, this author writes: "[…] it must not be forgotten that its operation is based on arbitrary, irrational values and that these values are opposed by other values, which cannot be completely ignored by the sense of justice".[10]

NOTION OF JUSTICE

When it comes to understanding justice, we take as our starting point the traditional formula: "to render to everyone his own" (*suum cuique tribuere*).[11]

But what is due? What and to whom?

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contract; it is no contract at all". The defective nature of the Rawls' concept is referred to by Zygmunt Ziembiński (*Sprawiedliwość społeczna jako pojęcie prawne*, Warszawa 1996, pp. 48–49). Naturally, the Rawls' construct is a hypothetical and abstract model. Harry Brighouse (*Justice*, Cambridge 2004, p. 8) notes that since the publication of *A Theory of Justice* in 1971, "All theorizing about justice in the English language since that time operates within a framework set by Rawls. Even if a theorist disagrees, absolutely, with everything Rawls says, the theorist has to explain why […]".

[6] Cf. S. Wronkowska, Z. Ziembiński, *Zarys teorii prawa*, Poznań 1997, p. 95. Similarly Z. Ziembiński, *Sprawiedliwość…*, p. 11; idem, *Zarys zagadnień etyki*, Poznań–Toruń 1994, p. 79. Chaïm Perelman (*O sprawiedliwości*, transl. W. Bieńkowska, Warszawa 1959, 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.

[7] S. Wronkowska, Z. Ziembiński, *op. cit.*, p. 95.

[8] M. Ossowska, *Normy moralne. Próba systematyzacji*, Warszawa 1985, p. 138.

[9] Ch. Perelman, *op. cit.*, p. 98.

[10] *Ibidem*, p. 109.

[11] The formula "justice is rendering to everyone his due" was well known to Plato and Aristotle. As an example, cf. Platon, *Państwo*, transl. W. Witwicki, Kęty 2009, Book I, 332C, p. 19. Cf. M. Pie-

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A. To whom first? And here it must be stressed that justice concerns a human being. It applies to every human being. Thus, justice does not refer to an abstract, an idea, but a concrete. Justice applies to that reality which is human being.

And if one asks: when a human being starts to be a human being? A human is from the moment he or she comes into existence.[12] Mieczysław A. Krąpiec wrote as follows about this issue:

> […] a fertilized human ovum is already a real human being, with a full information "bit" managing "from within" the development of the human being in his womb stage regardless of the parents' (mother's) influence. And it does not seem possible to explain the nature of the human foetus (even if it were the first days of life of a fertilized ovum) other than to say that this is already a human being, organizing the matter for himself to be a full, functional human body.[13]

Let us repeat, justice applies to human being. Of course, the term "justice" is used in various meanings. It is used in relation to man himself (a just man), to human deeds,[14] to someone's conduct or action.[15] There is talk of fair or unfair law (laws, regulations), fair or unfair procedure, also about fair or unfair trial, about fair or not decision. But these different meanings are related to the original dimension.

Regardless of whether justice is referred to the man himself as his quality (e.g. a just judge), or his deeds, actions, justice concerns the human being. And regardless of whether we relate it to institutions, laws, norms, decisions on the application of the law – justice concerns the human being.

Since we refer the term "justice" to human being,[16] it does not apply to non-human beings, it does not apply to animals.[17] Man is a special being, so different from others available to our (human) direct cognition.[18] It differs from animals. Of all beings living on earth, man is the most perfect being, the most important, is the

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chowiak, *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.

[12] More on data from biological sciences (especially embryology and genetics), as well as on philosophical arguments, see W. Dziedziak, *O prawie słusznym (perspektywa systemu prawa stanowionego)*, Lublin 2015, pp. 126–140.

[13] M.A. Krąpiec, *Człowiek i prawo naturalne*, Lublin 2009, p. 240.

[14] That they are or they are not fair.

[15] Aristotle writes in the opening sentence of Book V of *Nicomachean Ethics*: "With regards to justice and injustice we must consider what kind of actions they are concerned with" (Arystoteles, *Etyka nikomachejska*, transl. D. Gromska, Warszawa 2008, Book V, 1, 1129a).

[16] Justice occurs between people. Justice is not referred to in relations between animals, or between man and an object.

[17] Another view is proposed by, e.g., R. Ingarden, *Wykłady z etyki*, Warszawa 1989, p. 274 ff. This author discusses fair human behaviour towards animals. Some contemporary law theorists strongly claim that people can act fairly or unfairly towards animals.

[18] Man appears to be an extraordinary being.

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"peak form of being".[19] It is a being on which the positive law also recognizes its inherent dignity by deriving human rights from it.[20]

It must also be noted that justice is directed towards others. Justice is a concern, as is sometimes claimed, about someone else's good.[21] So we are not talking about justice towards ourselves.[22]

B. And what is due? Justice demands that "render everyone his own". *Suum cuique* – to give everyone his due. And what to give, what is everyone's due? What is one's own, what is due? This is about human rights. Human being has his entitlements, has rights resulting from his innate dignity. These rights are rooted in the very ontic human structure. These are natural rights. The formula "to render to everyone his 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 human being, and therefore they are natural rights. These natural rights must be ensured, guaranteed and pursued by positive law. The 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.[23] For there is a risk of recognition of some ostensible rights as human rights and even innate rights.[24]

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[19] M.A. Krąpiec (*Człowiek jako osoba*, Lublin 2009, p. 26) states: "[…] the being structure of man is something absolutely unique in the whole of nature and therefore it cannot be reduced to one side of its existence – be it the purely psycho-spiritual side (as R. Descartes and some of his followers wanted to see man), or the purely material, animal side, or even worse, to a pure, subjectless structure, which ultimately works (and exists) by chance."

[20] Cf. e.g. Article 30 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: 10.05.2021].

[21] Aristotle (*op. cit.*, 1130a) states: "[…] justice, alone of the virtues, is thought to be 'another's good'".

[22] Another view, but not without doubts regarding this issue, was presented by R. Ingarden (*op. cit.*, pp. 272–274).

[23] Thus, this is about innate, objective rights of human being. However, under law, recourse to human dignity today unfortunately does not seem to be enough. We can even talk about divergence between human dignity and human life (and its protection). Cf. E. Picker, *Godność człowieka a życie ludzkie. Rozbrat dwóch fundamentalnych wartości jako wyraz narastającej relatywizacji człowieka*, transl. J. Merecki, Warszawa 2007, p. 35.

[24] 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, e.g. to abortion, euthanasia.

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Human rights were aptly read and expressed in the Universal Declaration of Human Rights (UDHR) adopted in 1948. This Declaration, as it is sometimes noted in the literature, articulates natural rights,[25] 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 to personal development, or the right to integral human development, concerns physical, intellectual and moral development. The personal development of human being – this category is not an expression of some particular thinking specific to certain currents of philosophy, it is not some abstraction. This is referred to in normative regulations, primarily in the Universal Declaration of Human Rights. One can mention here Article 25 UDHR which reads: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family […]"; Article 26 UDHR which states: "Everyone has the right to education. […] Education shall be directed to the full development of the human personality […]"; and Article 23 UDHR, which reads: "Everyone has the right to work […]. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity […]". Important in this matter are Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights,[26] according to which States Parties recognize the "right to work", "the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular […] fair wages and equal remuneration for work of equal value without distinction of any kind […], a decent living for themselves and their families […], equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence […]". Article 13 of this Covenant states that "education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms". Also, Article 29 of the Convention on the Rights of the Child[27] states that: "States Parties agree that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential". Even only these articles indicate the importance of comprehensive human development.

But of course, to be able to grow, one has to be. One has to exist. Let us stress here that the starting point is the right to life, the right to birth. The right to life

[25] Cf. H. Waśkiewicz, *Prawo naturalne – prawo czy norma moralna*, „Roczniki Filozoficzne" 1970, vol. 18(2), p. 15; M.A. Krąpiec, *Człowiek i prawo…*, p. 299.

[26] International Covenant on Economic, Social and Cultural Rights, opened for signature in New York on 19 December 1966 (UNTS vol. 993, p. 3).

[27] Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 (UNTS vol. 1577, p. 3).

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from the moment of conception is a synthesis of all rights, all others lose their meaning without it.

Undoubtedly, justice requires ensuring conditions that are conducive to human development and ensuring dignified existence of the individual in society. It is about ensuring the conditions leading to the fullness of human existence and life. Legal regulations are to establish structures and institutions designed to ensure the possibility of comprehensive development. The law, through appropriate regulation, should support human being in his development. Of course, this development concerns health, education, knowledge, work and fair remuneration, freedom, property, security.

C. And what does it mean to "render" everyone his due? One can also use the word "guarantee" or "provide". When we consider justice in relation to law, this concerns the normative dimension. Justice should be regarded as a norm, which relates to the whole formula being analysed. And norm is a rule of conduct, a model of behaviour. Justice thus approached imposes an obligation (imperative) to give everyone what is due. And we know that this is about rights, fundamental human rights. Of course, we do not play down the role of justice as a virtue. The virtue of justice enables people to respect other's rights. It can be said that norm also "demands" virtue, this permanent inclination of will, the ability to give everyone his due, as if it "cried out for virtue". However, from a juridical point of view it is about a norm, and indeed more than a norm, about the principle-norm, about the principle of law. The principle that imposes a moral and legal obligation to render to everyone his own. Justice orders giving what is due, and thus further reinforces the need to safeguard and protect these natural rights, these fundamental human rights, and guarantees them.

NATURAL JUSTICE AS AN OBLIGATION OF THE LEGISLATIVE AUTHORITY

Positive law, if it is to be fair, must take into account the requirements of justice, which we call natural justice, expressed by the formula, not empty one but filled with content, and which is an imperative: "to give everyone what is due", which can also be expressed as "to give everyone his own".

Assuming, as has already been said, that the existence of natural human rights, stemming from natural human dignity, obliges the legislature (its holders) to safeguard them, and the principle-norm of justice with its power strengthens and further justifies this obligation.

Natural justice is supposed to become the rules and norms of law. Taking it very generally, one can say that justice is aimed at "doing good" and "avoiding evil".

Let us think again: What kind of positive law is fair, then? Let us reiterate and stress: positive law is fair when it respects, protects, enforces and guarantees

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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[28]) prohibition of violating them by others. A fair law (referring to the earlier statement here) is supposed to "facilitate the doing of good and hinder the doing of wrong".

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

Let us add that understanding natural justice (and its requirements) is a precondition (when we speak of actual, 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.

CONCLUSION

It seems that this study, even if only to some extent, has shown that the traditional formula of "rendering everyone his due" is neither empty nor "strictly formal"[29] nor absurd, as is sometimes claimed. The currently dominant relativisation and subjectification of the category under review make it important to try to identify the objective content of justice.

It is worth noting that the considerations concerned the kind of justice we called natural justice. It is the responsibility of the authority (which manages social life)[30] to implement justice. If its requirements are not implemented, then by no means is

[28] Still, the non-infringement of these innate rights is a natural obligation, one may say: a legal and moral obligation of human being.

[29] Cf. K. Ajdukiewicz, *O sprawiedliwości*, [in:] *Język i poznanie*, vol. 1, Warszawa 1985, s. 367.

[30] It is worth citing J. Rawls, who starts with different assumptions (liberal ones, the social contract) and approaches justice differently, but his thought expressed in *A Theory of Justice* is worth attention: "Those in authority are accountable for the policies they pursue and the instructions they lay down. And those who acquiesce in carrying out unjust commands or in abetting evil designs cannot in general plead that they did not know better or that the fault rests solely with those in higher positions" (J. Rawls, *op. cit.*, p. 455). On the other hand, David Lyons writes that "the fact that someone holds a public office does not necessarily mean that they are morally obliged to be attached to law. If so, an official who is to enforce an unjust law may not have any moral dilemma. He may be exposed to a risk if he decides to challenge an unjust law, but his departure from the law will not automatically violate some moral principle, including the principle of justice. […] since the official has a general duty to obey the law, we can assume that the law has its moral limits. If the law he has to enforce is sufficiently immoral, then there is no moral argument for him to adhere to it, even if he has honestly undertaken to apply the law as it is" (D. Lyons, *Etyka i rządy prawa*, transl. P. Maciejko, Warszawa 2000, pp. 81–82). John Paul II wrote: "To refuse to take part in committing an injustice is not only a moral duty; it is also a basic human right" (John Paul II, *Evangelium vitae*, 74, www.vatican.va/

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it an argument against it. It will therefore remain unfair "not to give a person what is due". And it must be added that justice entails responsibility.

And one more remark. What is puzzling is the popularity, promotion and basically domination of the procedural approach and the understanding of justice not only in Polish legal sciences.[31] The Constitutional Tribunal of the Republic of Poland also recognizes that the principle of procedural fairness is a "value in itself".[32] This perception of justice makes it sometimes difficult for an educated lawyer to discern and figure out what is fair and what is not.

Nevertheless, the question of natural, substantive justice, is still and will be relevant, as it concerns man and his innate, fundamental rights, including the first among all, i.e. the right to life from the moment of conception.

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content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html [access: 18.11.2020]).

[31] Some assume that justice, as referred to law, is of an exclusively procedural, not substantive character. Cf. W. Sadurski, *Teoria sprawiedliwości. Podstawowe zagadnienia*, Warszawa 1988, p. 69. It is claimed that the determinant of justice is not the content of substantive law but the procedure (procedural justice).

[32] Judgement of the Constitutional Tribunal of 2 October 2006, SK 34/06; judgement of the Constitutional Tribunal of 12 January 2010, SK 2/09.

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Judgement of the Constitutional Tribunal of 12 January 2010, SK 2/09.

ABSTRAKT

W artykule podjęto zagadnienie pojmowania sprawiedliwości. 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, należne są mu naturalne, przyrodzone uprawnienia, podstawowe prawa człowieka. Tradycyjna formuła w odniesieniu do prawa powinna być rozumiana jako zasada-norma, zasada prawa, która nakłada/narzuca obowiązek oddania każdemu tego, co mu się należy. Jego realizacja jest obowiązkiem władzy (zawiadujących życiem społecznym). Przyrodzone naturalne uprawnienia wpisane i zabezpieczone w prawie pozytywnym (stanowionym) będą łączyły się z prawnopozytywnym, sprecyzowanym, umocnionym normami tego prawa i tym samym wzmocnionym (gdyż niezmiennie nienaruszanie tych naturalnych uprawnień jest obowiązkiem moralno-prawnym człowieka) zakazem ich naruszania przez drugich, przez innych.

Słowa kluczowe: sprawiedliwość; człowiek; przyrodzone uprawnienia; podstawowe prawa człowieka; zasada prawa; sprawiedliwość naturalna