

ANNA DRABAREK

DIFFERENT MODELS OF JUSTICE AS A BASIC CATEGORY OF SOCIAL LIFE

Abstract. The article discusses different models of justice. The author presents the way the understanding of justice developed, from its being treated as the principle of harmony ruling the universe, through justice reduced to distribution of goods and meting out of punishments, to liberal justice which underscores mostly the freedom of the subject (J. Rawls), and egalitarian justice in which the equality of the subject is of foremost importance (K. Nielsen). Justice has also been analysed as one of the aspects of intuitive law (L. Petrażycki). The discussion concludes in defining justice as the reason for action in social life.

Key words: harmony, distributive and compensatory justice, liberal and egalitarian justice, intuitive law

1. Justice as a kind of harmony. 2. Distributive and compensatory justice. 3. Liberal and egalitarian justice. 4. Justice as an aspect of intuitive law. 5. justice vs. benevolence and friendship. 6. Conclusion.

1. JUSTICE AS A KIND OF HARMONY

Before justice was first perceived as a category of social life, it was treated as an attribute of nature, revealed in the regularity and recurrence of natural phenomena. The existence of the rules of justice in the world of nature was demonstrated by reference to the principle of harmony ruling the world. The Pythagoreans, Plato, Aristotle, and the

Anna Drabarek

adrabarek@aps.edu.pl

Akademia Pedagogiki Specjalnej im. Marii
Grzegorzewskiej, Instytut Filozofii i Socjologii
Szczęśliwicka 40, 02-353 Warszawa, Poland

Stoics believed mankind and the societies it created should emulate the harmony of the universe. That view was then taken up by J.S. Mill and H. Spencer, who proclaimed the right of equal liberties to all members of the society as a fundamental condition of social harmony, ensuring peaceful reconciliation between the wellbeing of an individual and the wellbeing of the society as a whole. Similar views were held by L.T. Hobhouse¹ who applied the principle of harmony to interpersonal relationships in social life, where the essence of moral effort consisted in the stabilization and expansion of the scope of harmonious coexistence by reducing areas of disharmony².

Another argument pointing to the fact justice is a structural feature of existence is provided by Ch. Darwin's theory of evolution, which pointed to a turning point in the mechanisms of mankind's biological evolution, in which "(...) the adaptive functions of processes controlled by instincts and the metabolism of living organisms have been replaced by principles representing a new mechanism of evolution which takes place in man's mental sphere and introduces these regulatory mechanisms into subsequent phases of evolution in man's nature, society and civilization"³.

Another argument proving that justice is a category which always accompanies human existence is the fact it is required in the process of distributing goods; it is the so called distributive justice. A permanent tension exists, and often evolves into a conflict, between mankind's needs, which tend to be permanently on the rise, and the amount of goods that can be mined, obtained or produced and distributed between the members of a society. Mankind's increasing needs, stimulated by the advertising industry and free market economy, generate continuous growth in the production, and even overproduction of various goods, often leading to excessive exploitation of natural resources. This pro-

¹ Cf. L.T. Hobhouse, *The Elements of Social Justice*, London 1958.

² Cf. *Ibid.*, 108.

³ H. Promieńska, *Trzy powody, dla których sprawiedliwość stanowi konieczny wymiar egzystencji ludzkiej*, in: *Czy sprawiedliwość jest możliwa*, ed. D. Probuca, Kraków 2008, 18.

blem is experienced by many individuals or social groups as injustice, which "(...) reveals not only a violation of the broadly understood principle of justice in mankind's relationship with nature, but also, through an evaluation of these negative consequences, indirectly shows the effect of the absence or failure to observe the principle of justice and moderation in human activities controlled only by market principles"⁴.

2. DISTRIBUTIVE AND COMPENSATORY JUSTICE

In his well-known study *O pojmowaniu sprawiedliwości (On the Understanding of Justice)*⁵, Z. Ziemiński discusses several meanings of the notion of distributive justice. Each of these meanings he additionally refers to as merit-based, since at the foundations of this concept of justice, concerned with the distribution of goods, is "(...) some factor on the part of the subject who contributes through his actions to the wellbeing of others or of the society"⁶.

Distributive justice may thus be divided, according to Ziemiński, into the following categories: 1) from each (to each) according to their strength; 2) from each (to each) according to their abilities; 3) from each (to each) according to their calling; 4) from each (to each) according to their effort; 5) from each (to each) according to their performance; 6) from each (to each) according to their merit; 7) to each what is due to them according to law⁷.

Apart from distributive justice, we may, following Aristotle, also distinguish between compensatory and legal justice. It is related to the principle, not always respected, which says that law must be just. Despite these objections, it is commonly believed that the law represents a kind of "social grammar" which, just like the grammar of a language,

⁴ Ibid., 19.

⁵ Cf. Z. Ziemiński, *O pojmowaniu sprawiedliwości*, Lublin 1992.

⁶ Ibid., 93.

⁷ Cf. J. Byrska, *Typy sprawiedliwości a funkcjonowanie demokratycznego państwa*, in: *Czy sprawiedliwość jest możliwa*, ed. D. Probuska, Kraków 2008.

provides a certain structure, legible and comprehensible to every member of a society.

The category of justice thus represents the constitutive foundations of a society, and it depends on its functioning in social life whether or not a society may be considered well-organized. That is why in democratic societies justice is believed to be one of the most important values applied in social life.

Plato's negative attitude to democracy is well-known, and yet from a radical dislike it did transform over time into a very cautious and critical acceptance. His question concerning the possibility of organizing a state so that justice would be its most important point of reference is still present in projects, concepts and analyses of philosophy, sociology, and political sciences.

Writing about democracy, Plato says it is a form of government "dispensing a certain equality to equals and unequals alike"⁸. And since justice gives everyone what they justly deserve, that order of just distribution is infringed in democracy. This is because the natural differences between the talents and abilities of every person call for a gradation and a hierarchy, while democracy does not take such differences into account, considering everyone equal and thus presuming that anyone may wield power.

One may ask if talent in politics means the same as talent in painting, singing, speech, martial arts, or dancing. Plato believes no one is born with a political talent, such skills are acquired in the course of a long process of education; in "The Laws" he asserts, however, that in political matters everyone has the right to speak out and be listened to. Such right is held by everyone, since everyone is capable of having a sense of shame and a sense of law⁹.

What is a sense of shame in that context? It is probably related to respect for customs and laws which create the social space. A sense of law could, in turn, be referred to as an intuitive, "elementary" sense of justice. Naturally, an elementary sense of justice is only possible if

⁸ Plato, *The Republic*, trans. A. Bloom, New York 1991, 236.

⁹ Cf. Plato, *Laws*, trans. R. Mayhew, New York 2008.

the state has established its laws. And yet, even the most rational legal regulations require the consent of citizens who accept their provisions and applications. Plato is critical of the postulate of democratic equality, because in his opinion the equality of numbers, so popular in democracy, should be contraposed to a justice that is more fair, the justice of proportions. In Plato's concept, this means giving everyone what they deserve in the right proportion to their abilities. Such just equality is expressed in the following statement: "it gives to the greater more, and to the inferior less and in proportion to the nature of each; and, above all, greater honour always to the greater virtue"¹⁰.

It may thus be asserted that already in antiquity, an act was considered unjust if it infringed upon the rights recognized in a particular group, and just if it gave to each what they justly deserved. The Roman principle *suum cuique* proclaimed by Ulpian, and by Cicero before him, was expressed in saying that every person may retain what is due to them by law¹¹.

Apart from the broadly understood concept of justice, which appears to lack precision in defining just and unjust acts, there is also the principle of so called distributive justice, introduced by Aristotle¹². According to the Stagirite, to observe distributive justice, at least two people are needed and at least two objects. That kind of justice is concerned with the distribution of goods, duties, privileges, and can therefore be observed and applied in social life. It would probably be superfluous in interpersonal relationships if, as D. Hume said, mankind lived in a world in which there were enough goods, and people were not egotists¹³.

Apart from distributive justice, there is also compensatory justice. It was Aristotle who pointed out that anyone who wrongs another benefits, and the one who is wronged suffers a loss. Therefore "the distribu-

¹⁰ Ibid., 121.

¹¹ Cf. M. Ossowska, *Normy moralne*, Warszawa 2002, 138.

¹² Cf. Ibid., 141.

¹³ Cf. Ibid., 142.

tion of punishments, or the distribution of wrongs, is as closely related to the human understanding of justice as the distribution of goods"¹⁴.

Thus, there are principles of justice which are related to the distribution of goods, privileges and punishments. They may be considered as dynamically developing and changeable, dependent upon the changing conditions of life and the awareness of those who apply such principles in practice. The relativism and subjectivism of these principles of justice is visible, for instance, in the changing connotations of such rules as: the principle of equal measure, the principle of rendering to every individual according to their needs, or the principle of giving to each according to their work.

One may observe, however, that since the times of Plato and Aristotle, those creating the social space have believed it is necessary to arrive at a principle of principles, or justice governing the application of the principles of justice.

Such metaprinciple, which Aristotle referred to as the most important of all virtues, as it contributed to building a sense of unity and community, in contrast to the dynamically evolving principle of distributive justice, would be called static, ideal, utopian even, as it shows mankind's longing for an ideal order that would make it possible to organize social relationships so that the sense of justice was satisfied for every citizen.

3. LIBERAL AND EGALITARIAN JUSTICE

The contemporary concepts of justice try to identify methods of eliminating conflicts in the social and moral life of a community by reconciling the principle of freedom and equality which in modern times have become the fundamental values, if not rudimentary rules of democracy.

Would it then be safe to say the opponents of equality are proponents of injustice? After all, already Aristotle, and then F. Nietzsche asserted that justice was associated with equality first of all by the poor

¹⁴ Ibid., 143.

and the weak, who forgot such egalitarian justice as soon as they became rich, replacing it with the principle which says that privileges and goods are due to the dignified, the brave and the strong, and not to the weak and the inadequate. Therefore, a proper principle of justice is not based on the principle of equality, but mostly on inequality, i.e. rendering to each according to their merit. Should those who claim nature does not endow people with equal abilities, inventiveness, creativity, enterprise, beauty or all kinds of talents, in a way introducing differences between us, be called unjust?

How should we then interpret the views held by J. Rawls, who writes in his famous book *A Theory of Justice*¹⁵ about two principles of justice? The first guarantees abundant liberties to every individual, the other provides for and mandates care and assistance to those least fortunate. Rawls says that in the system of interests and powers he proposes, the scope of freedom should be as broad as possible, but limited to account for co-existence with the worst-off members of society. What about equality, then? Everyone is supposedly entitled to equality, but its presence is not acknowledged by everyone. Equality, after all, is to be the guarantee of the state's existence and its interest in those citizens who have been unfortunate in life.

Rawls asserts that just as truth is indispensable in any system of thought, so justice is the first virtue of social institutions. He writes that: "A theory, however elegant and economical, must be rejected or revised if it is untrue; likewise, laws and institutions, no matter how efficient and well-arranged, must be reformed or abolished, if they are unjust. (...) For this reason, justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. Therefore, in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests. The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one; analogously, an injustice is tolerable

¹⁵ Cf. J. Rawls, *A Theory of Justice*, Cambridge, 1999.

only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising”¹⁶.

Justice in Rawls’ concept is thus a metaprinciple which will have social institutions master the tactics of equilibrium, balancing, looking for the golden mean between extremes, between surplus and insufficiency. Is it practicable?

Rawls says that in order to consider a society well-organized, it is not sufficient for its individual members to multiply their possessions. Such feeling of fulfilment and wellbeing must be additionally “effectively regulated by a public conception of justice”.

How are we then to treat people with divergent aims and goals? Can they be persuaded to accept and respect the shared principle of justice? According to Rawls, the general desire for justice limits the pursuit of other ends. If a universally accepted concept of justice is generated, it will constitute “the fundamental charter of a well-ordered human association”.

Rawls himself reasons that it is difficult to identify an existing society which would be well-organized, and the crucial point of dispute are the issues of justice. And yet, people feel it is necessary to adopt a set of rules, a certain *universum*, which would include the basic rights and duties, or the benefits and burdens of social coexistence. He is thus interested mostly not in the individual sense of justice, but in social justice¹⁷.

Social justice, according to Rawls, is concerned with the structure of society, or more exactly, the way in which social institutions determine the division of rights and duties. By social institutions, he understands „(...) the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions¹⁸.

¹⁶ Ibid., 3.

¹⁷ Cf. Ibid., 6.

¹⁸ Ibid., 7.

The social institutions Rawls writes about define men's rights and duties, influence their choices in life. The structure he describes is the primary subject of justice because it contains various social positions, and men born into different positions have different expectations of life. These expectations depend on political systems, but also on the economic and social circumstances. Rawls believes that social institutions favour certain starting places over others, which gives rise to inequalities affecting men's initial chances in life¹⁹.

Following Rawls's line of thinking, it may be concluded that justice considered from the social perspective depends, among other factors, on the distribution of fundamental rights and duties and their detailed applications. He wants to go in his reflections more in the direction of analyzing the goals of a perfectly just society, since such goals represent the fundamental part of his theory of justice.

Consequently, Rawls refers to the principles of justice in general, comprehensively, where justice is simply finding a balance between competing social claims. An important assumption that is made in his theory, I believe, is the compatibility of the principles of social justice with the principles of justice contained in the theory of ethics adopted by the society concerned.

Justice of the primary structure, or justice in the public sphere, is placed in the foreground, and individual instances of the operation of the principle of justice, specific embodiments of just deeds expressed, for instance, in Aristotle's question about what is due to whom, what is owned by whom, and the resulting consequences in the form of privileges, punishments, benefits and losses, should not, Rawls believes, be in conflict with that fundamental thesis.

Analysing justice, Rawls treats it as a particular kind of impartiality. That impartiality can only be obtained through rational consideration of what is just, and what is unjust. It is a state analogous to the state of nature which J.J. Rousseau or J. Locke probably had in mind when they formulated their theories of social contract. It can be achieved by "rational men (...) in this hypothetical situation of equal liberty"²⁰.

¹⁹ Cf. *Ibid.*, 7.

²⁰ *Ibid.*, 12.

According to Rawls, those people who could participate in defining the rules of justice must not know their position or social status, they must not know who they are or what their natural assets and abilities are, for the principles of justice are formed behind „a veil of ignorance”.

Why should those who define what is just hide behind a veil of ignorance? To ensure that „no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favour his particular condition, the principles of justice are the result of a fair agreement or a bargain. For given the circumstances of the original position, the symmetry of everyone’s relations to each other, this initial situation is fair between individuals as moral persons, that is, as rational beings with their own ends and capable, I assume, of a sense of justice”²¹. Thus, impartial people hidden behind a veil of ignorance are to choose the first principles of the concept of justice together, and then, based on these principles, establish a constitution. Rawls assumes that a society which intends to implement the principles of justice in the social sphere must make all free citizens hypothetically equal, so that justice becomes impartiality and approximates the abstract model, the ideal of voluntariness.

Writing about the so called initial situation, which he also refers to as “primary”, Rawls tries to make it more precise by adding details on the participants in the project. He says, for instance, that the parties in the initial situation are rational and mutually disinterested, that they are not egoists, that they are not concerned with only certain kinds of interests, such as wealth, domination or prestige. They do not take interest in the interests of other people either. The fact the principle of freedom is placed before the principle of justice results in Rawls’s concept being considered liberal. He believes justice and law are strictly dependent upon each other, indeed, that they form a unity.

K. Nielsen probably had in mind a certain kind of unity between justice and law as well when he pointed to the importance of the concept of social justice. He does not accede to Rawls’s liberalism and pro-

²¹ Ibid.

poses an egalitarian approach to justice instead²². He believes justice should be achieved in two aspects:

1. "Each person is to have an equal right to the most extensive total system of equal basic liberties and opportunities (including equal opportunities for meaningful work, for self-determination and political and economic participation) compatible with a similar treatment of all."

2. "After provisions are made for common social (community) values, for capital overhead to preserve the society's productive capacity, allowances made for differing unmanipulated needs and preferences, and due weight is given to the just entitlements of individuals, the income and wealth (the common stock of means) is to be so divided that each person will have a right to an equal share"²³.

Nielsen's concept of justice is thus based not on the principle of a broadly conceived system of basic liberties, unlike that of Rawls, but on freedom and equal opportunities which must be created for every member of a particular community. Analyzing the concepts proposed by K. Nielsen and J. Rawls, J. Hołówka says:

"If everyone is to use the most extensive system of basic liberties, it is obvious, that attractive social positions will be taken by those who are the most efficient, the strongest, and the most influential. The others will continue sliding downwards. (...) A spirit of rivalry will pervade social life. Some will become the elite and will use almost all goods there are, while the vast majority will merely achieve the economic minimum, and some will not achieve even that. Liberal justice creates a society that is unequal and greatly conflicted. (...) In Rawls's concept, the losers may not get anything. In any case, nothing is due to them under the first principle of justice. Only the second principle guarantees assistance to victims of the "rat race", pushed to the margins of society. In Nielsen, already the first principle guarantees a share in some universally valued goods – opportunities. (...) In Rawls's society, every individual earns their own living and pays taxes on their income.

²² Cf. K. Nielsen, *Equality and Liberty: A Defense of radical Egalitarianism*, Totowa 1985.

²³ *Ibid.*, 48–49.

In Nielsen's society, no one earns to maintain themselves; they earn to maintain the state, and the state distributes equal shares to everyone. (...) Nielsen's principles thus necessarily introduce a socialist regime, which he admitted himself²⁴.

Each of the concepts of justice described above emphasizes another value, liberty or equality. Both of these values cannot be equally represented and emphasized at the same time. Implementation of the principle of equality necessarily requires a socialization and politicization of production, which is postulated in the name of justice by trade unions, for instance, defending the right to work and adequate pay. The principle of freedom, on the other hand, entails privatization of production and maximization of income in the name of freedom, which contradicts the principle of equality.

4. JUSTICE AS AN ASPECT OF INTUITIVE LAW

The specific nature of the concept of justice consists in the fact it has an enormous influence on the development of human psyche, as it adapts human subjects to social life.

The concept of justice and the law that is founded upon it are subject to constant transformation. Thus, there is a strict interdependence between motivational and educational effects of the concept of justice and law established on its foundations, and the social awareness of people who are to apply it. A legal system is adequate if its effect on human psyche is such that individual people and the society as a whole aim at a common good.

Such interpretation of justice can be found in the views of the Polish lawyer and philosopher of law, L. Petrażycki, who left Germany in 1896 after completing his work on the so called BGB Code, or *Bürgerliches Gesetzbuch*. At that time, all outstanding theoreticians of law worked on that code, and L. Petrażycki left Germany nicknamed "the brilliant Pole"²⁵.

²⁴ J. Hołówka, *Etyka w działaniu*, Warszawa 2001, 296–297.

²⁵ A. Drabarek, *Prawo intuicyjne i jego rola w kształtowaniu porządku społecznego*

Petrażycki claimed that all law, with its codes and norms, was simply a definition of what is and what is not just. Aside from the conscious and deliberate transformation of legal norms and the concept of justice which influence the society, there are factors participating in the development of a sense of justice and law of which people are not aware²⁶. Living side by side, people “infect” one another intellectually and emotionally. Such mutual interaction results in certain average emotional interactions, emotional judgments which are the outcome of many facts of a particular category in the lives of subsequent generations. The resultants of emotional interactions affect individuals by way of emotional and intellectual associations already in childhood. On the basis of such associations, whose origins are obscure to the individual himself, in the event of certain emotional inclinations to a certain behaviour which are inherited or acquired during his life, conflicts of values and emotional struggles occur in his psyche. That is why, according to Petrażycki, there is an analogy between the process involved in developing a sense of justice and law, and the struggle for existence and natural selection²⁷. That which is worse is eliminated by that which is better; that which is less adequate by that which is more adequate at a particular moment. Thus, in virtually every sphere of life, there are processes operating not only to intentionally create justice and law, but also shaping them without anyone being aware.

Petrażycki introduces a distinction between intuitive and positive law. It is not aimed at contrasting established norms with what could be referred to as desired, or ideal law. The content of intuitive law, just like that of positive, or codified, law is also often unreasonable, barbarian and backward. What is meant here is a crucial difference between the composition of intellectual legal experiences.

w ujęciu Leona Petrażyckiego, in: *Filozofia społeczna w kręgu wybranych zagadnień*, ed. L. Zdybel, Lublin 1993, 31.

²⁶ Cf. L. Petrażycki, *O nauce, prawie i moralności. Pisma Wybrane*, Warszawa 1985, 297.

²⁷ Cf. *Ibid.*, 300.

Intuitive law does not contain norms, but entails an awareness of the duty to act properly, which is independent of any authorities. The content of positive (codified) law is established based on the perception of external facts. Consequently, codified law is supposed to provide standardized regulations applicable to large groups of people, or the society as a whole, notwithstanding any individual differences between particular human subjects.

Intuitive law is individual and changeable by nature, since its contents depend on the character of individual men. Petrażycki was convinced it depended on their education, upbringing, social affiliations, as well as occupation and personal relationships. The homogeneity of living conditions within a family or social group results in a certain similarity of intuitive legal experiences.

Norms and the resulting duties in the case of positive law are considered high-degree regulations applicable at a given time and within a particular territory. The duties resulting from intuitive law are perceived as high-degree regulations which apply always and everywhere, thus being a kind of natural or universal law.

Justice is one of the aspects of intuitive law. The concept of justice is closely related to ethical experience and the sense of duty. Just action, being mandatory, is independent of any goals or calculation. That is why seeing someone act unjustly towards somebody else causes in us a feeling of indignation and moral condemnation. If we are the doers of an unjust act, we feel remorse.

“Based on a division of moral experiences into imperative, or moral, and imperative-attributive, or legal ones, we will come to the conclusion that the experiences of justice belong to the latter category”²⁸.

Justice is thus based on realizing what obligations people have and what others are entitled to. This is not a unilateral, or imperative, obligation. It would thus be a mistake to say justice belongs only to the sphere of morality – contrary to what moralists claim; it would also be a mistake to contrapose justice and law, as is often proposed by lawyers.

²⁸ Ibid., 288.

Justice, Petrażycki believes, is an intuitive-legal phenomenon, and is not related to the statutes codified by positive law. Instead, it depends on conscience determined by our convictions, which are not subject to external authorities. That is why legal regulations are often criticized from the point of view of justice as a certain higher criterion. The sense of justice is in fact an intuitive ethical experience of the attributive-imperative kind. It represents intuitive law as understood by L. Petrażycki.

The concept of justice is usually considered in two aspects:

- 1) objective, when we talk about intuitive-legal norms;
- 2) subjective, when we take into account relevant legal relationships, duties, entitlements, or legal claims.

Apart from the above meanings, the word “justice” also refers to the pursuit of actions consistent with the requirements of justice, or the requirements and norms of intuitive law.

In what circumstances do we use the word “just” or its opposite “unjust”? A number of situations could be listed where the adjective applies. It is used to refer to deities, or God, when they are acknowledged as the highest instance in the distribution of benefits among people. We also talk about just legislators, monarchs and lords with respect to their subjects. Justice is also required of superiors with respect to their subordinates, judges with respect to the judged, parents with respect to children, critics with respect to those criticized, evaluators with respect to those who are evaluated.

If justice is intuitive law, the experience of justice, unlike moral experiences referred to as imperatives, include bilateral, or attributive emotions. Beliefs concerning justice pair up, as they encompass those to whom something is due and those from whom it is due. That is why the experience of acts of justice has a stronger influence on people’s behaviour than unilateral acts – imperative ones, in which a benefit, privilege or service is not necessarily due to the recipient.

Justice as intuitive law thus appears to be timeless, unchangeable, and universal. That is why a sense of justice determines the structure of positive law, which, in turn, means that either through a consensus, or through revolution, it affects any changes which are made to positive law²⁹.

²⁹ Cf. *Ibid.*, 290.

The stance taken by the Polish scholar with regard to justice treated as intuitive law is considered controversial – which only makes it interesting and inspiring. Indeed, the more the bilateral operation of justice, the balance between the so called giver and taker in this specific relationship, is experienced and respected, the more both of the parties to it are convinced that the situation is right. There is, however, a certain complication that occurs between justice and rightness, as not every just act is right, or ethically good, and not every act that is not right, or that is ethically wrong, must necessarily be unjust. Thus, there may be acts which are not right, i.e. are ethically wrong, which are at the same time just. The example that is often cited is that of administering just punishment or just revenge. In such situation we are dealing with an act that is ethically wrong while being a just punishment, and which should not burden the one by whom it is administered with a sense of guilt.

5. JUSTICE VS. BENEVOLENCE AND FRIENDSHIP

Justice is often contrasted with benevolence, and that conviction has been around in moral philosophy ever since D. Hume's times³⁰. He was the one who considered justice to be an artificial, and not a natural virtue. Natural virtues, he believed, were disinterestedness and benevolence. According to Hume, some people have a natural inclination towards justice, while most are only capable of recognizing the need for justice in social life through rational deliberation. The optimistic picture of human nature, emphasizing the tendency to a benevolent and friendly approach to others, is sometimes disturbed by negative life experiences, which force people to become wary and mistrustful. That is what D. Hume and J. Locke claimed.

Aristotle³¹ said that the state was indebted to friendship for its emergence, since friendship was a natural and universal emotion, and citizens who were bound by friendship had no need for justice. Friendship and

³⁰ Cf. D. Hume, *An Enquiry Concerning the Principles of Morals*, Whitefish 2004.

³¹ Cf. Aristotle, *The Complete Works of Aristotle. The Revised Oxford Translation*, ed. J. Barnes, Princeton 1984.

benevolence do not, after all, require contracts or collaterals, and so they do not need to have dues and obligations established or written down.

Paraphrasing Cicero's thoughts expressed in his philosophical writings on justice³², one may say the association of justice with kindness and benevolence is mistaken, since the essence of justice is strictness and severity, and every person fears it. Therefore, many consider thinking about justice in terms of positive, emphatic feelings to be wrong, since empathy and positive feelings introduce a certain kind of partiality into relationships between people, while justice should be impartial. Impartiality is the most emphasized attribute of justice. Thus, justice should not be founded on love, friendship, or mercy, as that would eliminate impartiality, replacing it with partiality and favouritism, which is an element disturbing the operation of that social virtue.

Idealization of human nature is thus unreasonable, which is why J. Locke³³ claimed an individual's natural tendencies had to be enhanced and perfected by law, T. Hobbes³⁴ in turn believed law was necessary to provide protection against such tendencies. We may thus say that justice is a continuous process that is constituted on a certain interdependence and a socially acceptable manner of concerted, compatible acts of individuals and social groups. This is visible particularly well in D. Hume, who said: „The same happiness, raised by the social virtue of justice (...), may be compared to the building of a vault, where each individual stone would, of itself, fall to the ground; nor is the whole fabric supported but by the mutual assistance and combination of its corresponding parts”³⁵.

6. CONCLUSION

When justice is treated as a kind of harmony and reduction of disharmony, due to the abstract nature of such a general postulate we are

³² Cf. M. Ossowska, *Normy moralne*, Warszawa 2002, 149.

³³ Cf. J. Locke, *Two Treatises of Government*, Whitefish 2004.

³⁴ Cf. T. Hobbes, *Leviathan*, Oxford 2012.

³⁵ D. Hume, op. cit., 98.

inclined to accept rather than question it. When we undertake a more thorough analysis of the concept of justice, however, with its distributive and compensatory aspects, or its liberal and egalitarian dimension, the “sterile sky of pure conceptual relationships”³⁶ often demonstrates the incompatibility of theory and practice. Based on various examples, ranging from the ancient concepts of Plato and Aristotle, to those of contemporary writers L. Petrażycki, J. Rawls, and K. Nielsen, the article presents the evolution of the concept of justice and its different forms, pointing to one fact that is beyond dispute – the indispensability of that category in social life. The philosophers discussed here refute the rather popular thesis – polemicized with also by H. P. Young in his famous book *Equity: In Theory and Practice*³⁷ – which says justice does not exist, and deliberations on justice are devoid of any substance. It is also difficult to agree with the claim that justice is but a useful piece of fiction which is too subjective to yield to scientific analysis.

The concepts of justice presented here prove there is a social demand for their creation, so that the desired social changes can be driven through them. Another conclusion, however, is that the question about the essence of justice, in the Aristotelian meaning of essence, is objectionable, since such deliberations do not offer any satisfactory results in terms of social practice. Thus, it might be more adequate, perhaps, to ask not about the essence of justice, but rather about the practical and socially useful application of its principles. We can see that the changeability and instability of modern societies, in fact boiling down to the incessant drive towards development, generates many injustices. And yet, these injustices may be one of the necessary conditions for equitability of the social structure as a whole. We should therefore try to define justice through just actions which qualify as reasons for action.

The notion of justice is indispensable in social life, as it coordinates and validates opinions and decisions concerning goods, privileges, rights and liberties. The principles of justice constitute the necessary

³⁶ K. Arbiszewski, *Sprawiedliwość i jej ramy w kontekście modeli nowoczesności*, in: *Czy sprawiedliwość jest możliwa?*, ed. D. Probuca, Kraków 2008, 395.

³⁷ Cf. H. P. Young, *Equity: In Theory and Practice*, Princeton 1994.

grammar of the language of agreements and negotiations in any community. Thus, if a particular society agrees on the fundamental principles, e.g. of equitable distribution of goods, and that agreement has been reached by taking into consideration different opinions and balancing contradictory points of view, then any solution that is inconsistent with these principles will be considered unjustified and unacceptable.

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