

*Justice as Liberty, Equality,
Solidarity: Beyond Rawlsian
Contractarianism*

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Contending concepts concerning justice with their rival claims to truth often diverge. Mapping a minimal common ground across these is a daunting task. For justice in a society must be founded on a consensus of moral values and implemented fairly by agreed procedures. While the substance of justice must be premised on these values, just procedures must follow due process. However, some viable consensus on both is essential. For then a credible substantive understanding of justice can be spelled out in realisable procedures. This will not result in a comprehensive agenda in our quest for a just society, but in our quest for just ends through just means, it will address and narrow the 'justice-gap' (Samaddar 2009: 16) between the formal claims for, and the practical implementation of justice. In this presentation we will try to unravel the four levels of justice to find a viable consensus for the pursuit of just ends through just means.

Even as we celebrate the seminal contribution of John Rawls' (1999) This essay attempts to go beyond the contractarian framework, which Rawls pushes to its limits and goes beyond Amartya Sen's *Idea of Justice* (2009) as 'capability theory', to follow through with Martha Nussbaum to the *Frontiers of Justice* (2007)

Fourfold Context

If justice is to be understood as credible and is to be seen as implementable, we need to look at it in the context of its distinct but not separate dimensions:

individual behaviour, exchange transactions, the distribution of social goods and services, and institutional structures and relationships.

In common parlance a 'just man' is generally someone who does no wrong, fulfils his duties, violates no one's rights, thus conforming to some generally and locally accepted standard of rectitude or righteousness. This perception of *justice as virtue* pertains to individual virtue. It implies personal integrity and respect for others. It is what we mean when we call someone 'just'. In interrelations between persons, we expect the just man to be fair, i.e., impartial and reasonable, respectful of the freedom of others, giving each their due. This is *justice as equitable exchange*.

However, it is not only personal relationships that mediate how each one's dues are met. This happens in the larger context of social institutions. Through its institutional structures a society distributes social rewards and sanctions, privileges and burdens, rights and duties. In a particular society, the returns received and contributions made follow institutional norms. *Distributive justice* demands a correspondence between these, the proportionate distribution of rewards for contributions in accordance with the roles people play in society.

However, institutions in society often limit the life-chances and life-choices of people, as happens to *dalits* in the hierarchical and caste-ridden society of India, or to the minorities in a majoritarian democracy, or to women in a patriarchal society. Here, justice demands a restructuring of such social institutions for a relevantly just society. *Social justice* refers to such a structural equity.

An understanding of justice that emphasises just one dimension to the neglect or negation of others, rather than a balanced integration of all four will inevitably be truncated and eventually unjust. Liberals and libertarians, who privilege individual freedom over other considerations as long as it does not violate others, will stress justice as an individual virtue that at most extends to inter-personal relations. In this they abdicate responsibility for other levels of justice, equitable exchange, fair distribution and just social structures.

Our understanding of justice must also be inclusive of the fourfold context indicated here. Thus the virtue of the righteous person must carry over into equitable relationships, which in turn must sustain this virtue. Together these must facilitate just distributive social institutions and set the norms and values for just social structures, even as these social structures must be expressed in fair distribution and just institutions, sustained by equitable relationships and personal virtue.

Justice as Personal Virtue

In the classical Aristotelian tradition, righteousness or *dikaiousune*, that is, giving each his due, was the defining characteristic of the just man in the Athenian city-state, the *polis*. This tradition is carried further by the medieval scholastic philosophers in Europe, like Thomas Aquinas, for whom 'justice was one of the four cardinal virtues with prudence, temperance and fortitude. Most religious traditions stress righteousness as a virtue that emphasises duties, rather than rights.

Thus in the Biblical tradition there is a twofold understanding of justice: one more focused on the personal, *sedaqah*, righteousness, as when the just man fulfils all his duties and obligations to God and humans; and the other more concerned with the social, *mishpat*, right judgement, as when I do unto others as I would they do unto me. The rabbinical tradition developed the concept of *tzedakah*, which Johnathan Sacks, once chief rabbi of the Commonwealth, characterises as more than charity and compassion; it is helping a person in need to become self-sufficient. For "a society must ensure equal dignity – the Hebrew phrase is "*kavod habriyot* 'human honour' – to each of its members" (Sacks 2002: 120).

Amartya Sen, the Nobel laureate economist, distinguishes the Sanskrit term *niti* as referring to "organizational propriety and behavioural correctness", while "*nyaya* stands for a comprehensive concept of realised justice" (Sen 2009: 20). The first is more an ethical virtue, the second a social condition. Both these come together in the concept of *dharma* as representing the duties of one's life situation. Fulfilling these obligations makes one righteous, or *dharmic* (often loosely and

not quite correctly translated as 'religious'). In Buddhism, *dhamma* is a universal ethical law. In Islam, a 'Muslim' in Arabic is one who submits to God, and from this supreme duty all else follows. In the Judaic tradition, *Yahweh* demands fidelity, in the Christian one the emphasis is on the obligations of love God and neighbour.

In general religious traditions stress our duty to God, or to some universal ethical principle. Our duties to one another derive from these. The religious concept of rights is primarily derived from our relationship to this divinity or principle and the implication it has on our other relationships. This correspondence between rights and duties is critical to any further understanding of justice. But for justice to be a practiced virtue, rights and duties cannot remain formal abstractions. They must be grounded in a community (common unity) bound together by a sense of common union (communion). Even as a personal virtue this solidarity is essential to the practice and understanding of justice.

For justice as an ethical virtue is founded on two crucial premises: humans are moral and therefore responsible, rational and free; and further they are social, that is interrelated and interdependent. Without these it is not possible to construct or participate in any understanding of justice. A just society is necessarily contingent on the righteousness of its members. Obvious as this may seem it is more remarkable how easily these are at times forgotten or denied. Yet it must be an essential element in our understanding of justice in any interaction between human beings as moral and rational, free and interdependent. However, the inevitable dilemmas and tensions even between virtuous and righteous individuals must be considered at another level of equity in exchange.

Justice as Equitable Exchange

The interactions between persons and groups in any society are ruled by norms codified in customary law or formalised in legal systems. Exchange relationships and binding agreements are based on these. Commutative justice refers to such transactions. For these to be just, the exchange partners must be equal: equally informed and equally free agents. Such considerations must go beyond the

requirements of customary or formal law for an equitable exchange, based on principles of fairness.

For the political philosopher John Rawls (1921- 2002), “justice as fairness” is defined by “the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association” (Rawls 1999: 10). These principles are presumed to be fair if all the affected participants choose them from behind a “veil of ignorance” in an “original position of equality” (ibid.: 11). From this he derives two fundamental principles:

“First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage,

and (b) attached to positions and offices open to all.” (ibid.: 53)

For Rawls, “injustice, then, is simply inequalities that are not to the benefit of all” (ibid.: 54), such as gross inequalities that inevitably lead to unequal exchange and undermine people’s self-respect and their exercise of equal rights. Inequalities are not unjust if they work for the “common good, that is, maintaining conditions and achieving objectives that are similarly to the advantage of all” (ibid.: 205), but not necessarily to the equal advantage of each.

However, free agents rationally pursuing their interests in fairness seems an idealised understanding of humans that cannot be taken for granted in the actual exchange of the partners involved. For the political philosopher, Thomas Hobbes (1588-1679), “the life of man, solitary, poor, nasty, brutish, and short” (Hobbes 1991: Ch. 8) characterises “The Natural Condition of Mankind”, wherein humans pursue an aggressive self-interest: “a perpetual and restless desire of Power after power, that ceaseth only in Death” (ibid.: 70). This necessitates a social contract, enforced by a sovereign authority. Later more liberal social contract theorists, like John Locke (1632-1704), modified this into a less obviously aggressive, more

‘enlightened’ self-interest that prioritised broader, more rational interests over narrower more immediate ones for a more humanised life.

But as yet for many liberals individual self-interest remains the basic explanation for social relations. Such individualism can hardly be a sound basis for human social solidarity and the pursuit of the common good as the good of all, individually and collectively. It is very far from Aristotle’s understanding that “man is by nature a political animal” (*Politics* 1253 a1), and even further from the virtuous citizen in Aristotle’s *polis*.

Adam Smith (1723- 1790) in *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) legitimised this individualised self-interest with his ‘invisible hand’ that makes the selfishness of each work for the good of society. Free market capitalism is founded on this understanding. However, weaker parties, and more vulnerable partners in such free market exchanges are at a perpetual disadvantage vis-à-vis the stronger and more powerful players, for whom the supposed efficiency of the market works best. But unequal exchange inevitably becomes unfair, if not paternalist.

This is not a self-correcting process, and if the pursuit of self-interest is unregulated, oppressive inequalities and injustices will accumulate relentlessly. When this happens for generations, it inevitably leads to exploitative and oppressive relationships of dominance-dependence. Such a situation is neither just nor sustainable. Without adequate protective and remedial measures, the outcomes can only become increasingly skewed and dangerously unstable.

Moreover, ignorance cannot validate or justify an exchange agreement, even if made on the basis of genuine ethical commitments. However adequate, this information must be equally available to the transacting parties, or once again the imbalance will give one an unfair advantage over another. In this context as in many others, knowledge is power and the powerful prevail.

In a free, unregulated market the sellers will generally know more about what they are selling than the buyers will about what they are buying. Akerlof’s Nobel prize-winning essay on the used car market, “The Market for Lemons”, so convincingly

argued this (Akerlof 1970), that the used car salesman has become the epitome of unfair deals: I would trust him like I would a used car salesman! Marketing is all too often more a manipulative than an informative process.

Yet trying to do away and replace the market with a command economy controlled by the state has proven to be economically wasteful and uncompetitive, and eventually as disastrous. One set of oppressions is replaced by an even more extensive one, market capitalism by state capitalism. This meant more equality but decidedly less freedom, more material security but muted human rights. This cannot be a just society.

From the days of barter, markets are necessary social institutions for the exchange of goods and services but they must be regulated for the common good of all. A one-sided dependency makes for unequal exchange and the inevitable consequences that follow. Social Darwinism with its survival of the fittest by natural selection may seem biologically efficient, but this is certainly incompatible with a just and egalitarian society. In a world where the weak and strong live together 'predatory capitalism' thrives on the unregulated free market. Speculative markets for profit buy and sell risk. They do not create real wealth for the commonweal. This 'casino capitalism', with its unregulated speculation has inevitably precipitates periodic financial crises in varying degrees of severity. Such unbalanced social exchange cannot be equitable.

Of the *Two Traditions* in the studies of *Social Exchange* (Ekeh 1974), anthropologists have shown how in pre-capitalists societies exchange was often, less for economic profit than to establish social solidarity through extended networks of exchange. Often the exchanges involved had little or no economic value as with the Kula ring in the Trobriand Islands (Malinowski 1922). Across thousands of miles of ocean red shell disc-necklaces were traded to the north circling clockwise, for white shell armbands traded in the southern direction circling anti-clockwise in a continuing process of exchange: "once in Kula, always in Kula" (Damon, 1980: 282). This was a generalised exchange of gifts, with no direct use value, between one group of islanders and another.

On the other hand, many sociologists have focused on the individual actor in their theories, to explain *Social Behavior: Its Elementary Forms* (Homans 1974) or *Exchange and Power in Social Life* (Blau 1964). Individual choice dictated by self-interest is assumed in interactions between individuals that then get structured into networks of exchange. These models of individual exchange are then projected to explain social exchange. But the behaviorist psychology and the calculus of rational actors on which such individual choices are premised misses the critical aspect of group exchange for social solidarity that the anthropologists have found. We need to recapture this for equitable exchange in the larger context of society.

Already in 1945 Karl Polanyi had warned of the dangerous dislocation of the capitalist market from social control, when not embedded in social relationships, and where the economic laws of supply and demand, profit and loss are allowed to operate independently of other more human social considerations (Polanyi 1957). However, classical liberals see any restrictions on individual exchange as a violation of individual freedom. The only legitimate constraint can be the respect due to the corresponding freedoms of others.

Hence only the minimum needed to make market exchange function is acceptable. But function for whom and how are questions of equity that libertarian free-marketeers do not raise. For them commutative justice implies only the enforcement of the minimal legal requirements. Such market liberalism rejects the welfare state as paternalistic in favour of a minimalist one (Sandel 2009: 58). The economic individual displaces the social person. In such a context justice as equity becomes a chimera.

The unregulated free market does not result in fair exchange and whatever its economic efficiency, it cannot get out of the repeated cycles of boom and bust, of growth and recession for which those at the bottom of the heap pay the highest price. This challenges the assumption that the self-interests of various actors in the marketplace are inherently complementary. The catastrophic meltdown in 2008 of the financial markets in Wall Street, New York, the Mecca of capitalism, was one more slap-in-the face wake-up call for neo-liberal free-marketeers, who still seem to dominate such markets.

Equitable exchange demands interdependent and equal partners. However, the inevitable and endemic inequalities in society make an evenly balanced exchange difficult and rare, even when it is possible in some instances. It is not necessary that the exchange partners be friends for an exchange to be fair, but if friendship must find or make equals, as Aristotle argues in his Ethics, Book Eight, then so too must fair exchange find or make equal partners. Or else unequal exchange in society inevitably reproduces and skews further the inequalities it starts with. This issue of equality for exchange carries over into and must be addressed at the next level of justice as fairness in distribution.

Justice as Fair Distribution

The distribution principle, to each according to their contribution, is based on the natural and social endowment of persons, and as Karl Marx so perceptively observed long ago, “it tacitly recognizes unequal individual endowment and thus productive capacity as natural privileges. It is, therefore, right of inequality, in its content” (Marx 1970: 320). Where opportunities are equal, this inevitably allows inequalities to accumulate, and these increase rather than decrease with growth. Hence a just distribution must be proportionate, but even more it must be equitable. This was once the stated goal of India’s Five Year Plans, ‘growth with equity’. But this seems to have been displaced by the new imperative: growth now, equity at leisure.

Utilitarian social distribution would maximise collective welfare even at the cost of individuals, while libertarians would minimise restrictions on individual freedoms regardless of the consequences for individuals. For Aristotle the purpose of society was to make men good and just. Hence a just distribution should serve civic life by rewarding the virtues and abilities of citizens who contribute to this ‘good life’ in the *polis*. *Distributive justice* must include all this and more: respect individual dignity and personal freedom, reward personal righteousness and civic virtue, and consider the common good.

Unjust social institutions, like caste or class, race or patriarchy, do not evenly balance costs and benefits for all in society. Such institutions are more concerned

to protect vested interests of the status quo while compromising more vulnerable groups. A fair distribution must consider at least “three conflicting interpretations of justice which may be summarized in three principles: to each according to his rights, to each according to his deserts, to each according to his needs” (Miller 1976: 27). Each affirms an aspect of *distributive justice*. The conundrum is to hold them all together.

Privileging rights and entitlements serves to preserve the status quo, especially when the insistence is on law and order. But when these are unjust or inadequate, they must be challenged and changed in favour of a more just distribution based on other principles. As a minimum a just society must convincingly guarantee fundamental rights for all – such as the right to liberty and life, identity and dignity – and also equal democratic and civil rights – such as free speech and legal redress – for each. Moreover, the effective exercise of these rights depends on the corresponding distribution of resources. For those without adequate resources these remain merely nominal. For when the distribution of resources is skewed, the rights of those with less than the wherewithal to exercise them are inevitably compromised. This is especially so if there is a clash of rights, and comparative priorities between competing rights are set by the more powerful for those less fortunate.

However, rights imply duties, and freedom goes with responsibility, hence fairness will require that this free exercise of rights has corresponding rewards and sanctions according to each one’s deserts. How this desert or merit is defined and by whom, how the measure for comparative selection on this basis is set and enforced, must also be fair, for the consequent distribution to be just. Vested interests in the status quo have often used their interpretation of ‘merit’ to perpetuate their advantage. Outside this charmed circle the opportunity to merit is meaningless without the access to the resources that enable one to merit.

Hence fairness in distribution based on desert demands not just formal equality of opportunity, which is too often a mere legal fiction, but real equality of access to the means necessary to earn such merit. This may well require a redistribution of resources and a restructuring of access in the prevailing status quo to level the

playing field, for only when the game is fair can there be fair outcomes that merit just rewards or sanctions.

Yet, even when the field is levelled, a game is only as fair as its rules and regulations. However, even when the rules are fair and refereed impartially, any game will have winners and losers. Where such outcomes are based on training and effort, they could well be fair. But many outcomes on the playing field and in society may not be due to such commitments. Natural ability and talent, even accidental circumstances and luck, can play a deciding role. There can hardly be real personal merit or desert in this, for talent is inherited and luck is arbitrary. Tall players have the advantage in basketball, and in cricket, test match are sometimes decided by the weather.

Even the qualities of character for developing my talents and making the most of my luck, is contingent on accidents of birth, over which I have no control, such as the family I was born into and place I grew up in. These social circumstances cannot be merited by me. I have no personal responsibility for them nor can I claim personal credit for them, yet for better or worse their consequences affect me. Distribution on the basis of such 'unearned merit' can only result in 'undeserved rewards'. Yet it is extremely difficulty to distinguish and separate what is meritoriously earned and what undeservedly rewarded.

Whether because of some disability, inherited or acquired, or a lack of natural talent and adequate access to resources, or some abuse of their rights, people are often disadvantaged though no fault of their own. In fairness such people should not be penalised, but rather compensated for, and enabled to overcome these adversities not of their own making. No one would require able bodied and disabled persons to compete in the same sport.

However, meeting diverse kinds and degrees of need demands different types and levels of assistance. Needs are not similar or equal, they are specific to persons and situations, as also are the social resources required to meet them. Needs are a matter of greater or lesser necessity and hence a question of justice: the greater the need the greater the injustice when it is neglected. Moreover, since resources are not unlimited, a just distribution on the basis of needs must

still set priorities in allocating resources to individual and collective needs, which requires a further fine-tuning.

Meeting basic needs is the minimum necessary for a dignified human life. As a matter of justice this must have the same priority as fundamental rights (Baxi 1987) and the first priority over other needs, even the non-basic needs of others. Depending on the availability of resources and the urgency of the need, other needs too become matter for *distributive justice*. But how these are assessed and resources allocated to meet them must also be fair for the distribution to be just. Further, we must distinguish need as a matter of necessity, from desires, which concern a level of comfort beyond this, and also from greed, which involves satiation beyond even comfort. Obviously fulfilling desires in a comfort zone cannot be as urgent a matter for *distributive justice* as unmet basic needs, and indulging greed is more often the cause of real injustice.

Even though they may seem to be at odds with each other, each of the three criteria of distribution – rights, desert, and need – answers to an aspect of a just society that must be considered for *distributive justice*. But when one is overemphasised the others get unduly displaced and the distribution is truncated and skewed. Thus at one extreme are neo-liberal free-marketeters, who insist that the right to free choice be respected, and people who make choices be held responsible for them, regardless of how the outcomes are distributed. Only justice in initial holdings and in transfers is to be considered (Nozick 1974: 207). But in conditions of social inequality, this formal justice inevitably gets decided by the more powerful, just as official history is always written by the victor.

At the other extreme are Marxists, disregarding democratic rights and civil liberties with their distributive principle: from each according to his ability, to each according to his need (Marx 1970: 5). In between and leaning to the right, a liberal democracy favours a distribution according to deserts and emphasises fair equality of opportunity to make this just; while leaning to the left a social democracy privileges social equality – even restricting free choice – and social welfare – even risking unwarranted dependencies on the state. Liberals would allow “equal opportunity to become unequal” (Barry 2005: viii) in the exercise of

freedom, as socialists would impose an equality through redistribution restricting freedom.

The anarchist, Mikhail Bakunin, expressed this dilemma in his famous dictum: “We are convinced that freedom without Socialism is privilege and injustice, and that Socialism without freedom is slavery and brutality” (Maximov, ed. 1953: 269). Rawls seeks the middle ground with his ‘difference principle’ that modifies his second fundamental principle of fairness referred to earlier thus: “Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit to the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity” (Rawls 1999: 72). Since for Rawls only “undeserved inequalities call for redress”, this is not a “principle of redress. It does not require society to even out handicaps as if all are expected to compete on a fair basis in the same race” (ibid. 86).

However, rather than ignore the distribution of “natural talents” and “common assets” “the basic structure can be arranged so that these contingencies work of the common good” (ibid. 87). For Rawls “the difference principle expresses a conception of reciprocity. It is a principle of mutual benefit” (ibid. 88), and hence “it provides an interpretation of fraternity” (ibid. 90). Certainly, the principle of difference is John Rawls’ most significant contribution to *A Theory of Justice* (1999). But it is still based on self-interest, albeit mutual and reciprocal, as will also be the ‘fraternity’ it provides and the solidarity premised on this.

If an interchange is required to be mutually beneficial to both partners, then the worst off, the most unequal, the severely handicapped, or any others who have too little to offer in such an exchange are excluded, for “we live in a world in which it is simply not true that cooperating with others on fair terms will be advantageous to all” (Nussbaum 2007: 273). The inclusion of the worst off in such an exchange would not be a matter of justice based on right, but one of largesse based on generosity. This is a serious limitation on Rawls’s difference principle.

As implied in the earlier discussion on equitable exchange, a just society must steer between the oppressive inequality of the free market on the one hand, and the repressive restrictions of an authoritarian regime on the other. But the dilemma

itself cannot be wished away. It comes back to haunt most understandings of justice: liberal and socialist. For the distribution on any of the criteria involved – rights, deserts, and needs – is not made on an initial equality of access to them, except in the imaginary “original position” behind a “veil of ignorance” as posited by Rawls (1999: 11). Moreover, given the qualitative difference between them, these criteria are not congruent. A proportional allocation on one cannot by itself result in an equitable distribution in regard to the others.

This creates a conundrum at the very heart of our understanding of just a society. Equitable exchange demands free and equal partners, which, even if possible, might well lead to unequal results. Thus an exchange that may begin with equality may not necessarily end with it. These inequalities in exchange must then be addressed by *distributive justice*. However, a proportionate distribution that begins with equal access to the criterion applied, which, even if probable, does not end up with equal outcomes even on the very one used, especially when free choice is exercised. Moreover, no single criterion of distribution will yield equal results on other equally valid and necessary ones.

Achieving some accommodation between multiple criteria of distribution and addressing their uneven results is not just a matter of the distributive principles but the social structures involved as well. The “affirmative action debate is an instance of the application of the distributive paradigm of justice. ... and fails to bring into question issues of institutional organization and decision making power” (Young 1990: 193). This carries over into and must be addressed by the next level of social institutions.

Justice as Social Structure

The criteria for social distribution define the distributive paradigm for a society. Social institutions are the means through which this is done. But even when the criteria are fair, for a distribution to be just both the prior and consequent institutional structures must also be just. For *social justice* concerns the institutional structures in a society, as *distributive justice* involves its criteria of distribution. The two are distinct but not quite separate, though the terms have been used

interchangeably, as has been pointed out by some political philosophers (Miller 1999: 2).

Thus for Rawls: “underwriting an agreement on the proper distributive shares... are the principles of *social justice*; they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social co-operation” (Rawls 1999: 4). This does not discriminate between structures that pattern and assign rights and duties in society, and criteria which determine the distribution of benefits and burdens. Thus, though he grants that the “primary subject of justice is the basic structure of society” (Rawls 1999: 10), he does not distinguish the structural aspect of justice in society from its distributive paradigm (Miller 1999: 269, nt 1).

An authoritarian society is unjust not because of improper distributive shares, but because it excludes and disempowers its members. Plato’s Republic in 350 BC is one of the earliest examples of this. Hierarchical and patriarchal, casteist and racist societies are structured to exclude people on the basis ascribed status, and so are unjust regardless of the distributive paradigm they enforce. There is an obvious correlation between institutional structures and distributive criteria in any society, but they cannot be identified and must be distinguished.

Social institutions are collectively constructed and so justice demands they be collectively mediated. Hence “*social justice* includes all aspects of institutional rules and relations insofar as they are subject to potential collective decisions” (Young 1990: 16). Who decides and how, is prior to, not consequent on, the distribution of goods and services in society, whatever the criteria used.

Thus *social justice* requires that participation and inclusion in the structure and process of social institutions is both equal and equitable. However, to be effective these must be functional. This implies a ‘division of labour’, where roles are differentiated rather than equal. Everyone cannot be doing everything and deciding on everything. Even in very simple societies, different roles are specified for men and women, for chiefs and tribesmen. No urban-industrial social order is possible without a high degree of functional specialisation. But specialised roles necessarily imply different kinds and degrees of participation.

These differences in participation in a society across such roles and statuses often reinforce each other. To prevent advantages and disadvantages from aggregating into a “cumulative inequality” (Dahl 1961: 85-6), will require a restructuring of social roles and statuses. Hence, justice in a complex society requires a correspondingly “complex equality”, i.e., “a diversity of distributive criteria that mirrors the diversity of social goods” (Walzer 1983: 18), so that advantages and disadvantages neutralise and not reinforce each other.

If it is to respect responsibility and freedom, any division of labour presents a dilemma between equal participation in society and the functional allocation of roles in it. Forcing inclusion in doing a task that one is not competent for would be as unfair as choosing exclusion from bearing a burden that one is responsible for. Equitable inclusion must respect rights and duties to be responsible and free. This is the dilemma of equal and functional, free and responsible social inclusion. The institutional structures and public policies that address these dilemmas are precisely the domain of *social justice*.

But libertarians, like Fredrick Hayek, the Nobel laureate in economics, would leave market forces to resolve such dilemmas and dismiss *The Mirage of Social Justice* (Hayek 1976). For Karl Marx “the division of labour and private property are, after all, identical expressions” (Marx 1976: 52) and in the communist utopia both would be abolished so that one would be able “to hunt in the morning, fish in the afternoon, rear cattle in the evening, criticise after dinner, just as I have a mind to” (ibid. : 53).

Stable social interactions in society create enduring interrelationships. Social structure represents the pattern of such interrelationships fashioned by the interactions underlying them. But interaction between humans is not just dictated by interests, they also are premised on moral values. These get embedded in social structures and institutionalised social processes. Thus the structures of hierarchical societies preserve the status quo of established privileges and obligations; democratic ones are founded on a regime of rights prioritise liberty, equality and solidarity. These are the substantive values on which *social justice* must be premised and critiqued. Certainly, a minimum consensus on these values must first be negotiated before they are made operational through just

structures in due processes, but a just society would require that all three values be balanced and integrated in the commonweal for the common good of all.

This substantive justice – as liberty, equality, solidarity – is somewhat different and more nuanced than Rawls’s “justice as fairness”, where the free-standing consensus rests on the principles that are rationally interest-driven, not ethically value-premised. Such a model of justice based on “a hypothetical ‘social contract’” can be traced back to “the ‘contractarian’ mode of thinking that Thomas Hobbes had initiated, and which was further pursued by John Locke, Jean-Jacques Rousseau and Immanuel Kant” (Sen 2009: 6). More recently “Rawls has pursued the implications of the contract idea more rigorously and completely, perhaps, than any thinker yet” (Nussbaum 2007: 11).

John Rawls (1971) in his *Theory of Justice* has very incisively articulated an understanding of “justice as fairness” that has become the defining point of reference in the liberal discourse. There is an inevitable tension in the liberal understanding of justice between equality and freedom and where Rawls succeeds in establishing a delicate and viable balance, there are still those who will contest him on the right, refusing to compromise freedom regardless of the inequalities that might result, and those on the left, emphasising the necessity of equality even at the cost freedom.

What Rawls seems to come up against, unintentionally perhaps, are the limits to which liberal justice can be pushed. For it still leaves unresolved in practice some of the more fundamental cultural and structural contradictions in our society: differences with regard to basic values and vital institutions, human rights and social duties, to mention but a few by way of illustration. Indeed, it seems that these cannot be adequately addressed with a liberal perspective.

A comprehensive *theory of justice* must be culturally contextualised and religiously sensitive. Tolerance cannot substitute for justice, nor can dialogue remedy or wish away injustice, and yet they both can draw on cultural and religious resources that bring forgiveness and reconciliation to make justice not punitive or retributive, but healing and restorative. In the end it seems apparent

that the liberal cannot, and perhaps does not; intend to go beyond fairness to compassion. This must be left to tolerance and dialogue.

It should be apparent that no understanding of tolerance can be premised on injustice, and the no practice of dialogue can be based on inequality. This must be the necessary basis of any constructive tolerance, of all creative dialogue.

Justice as Capability

The *Idea of Justice* must be authenticated by “going well beyond the limited – and limiting – frame of the social contract” (Sen 2009: xi), for “we limit our pursuit of it too much when we think of it as the outcome of a contract for mutual advantage, however morally constructed and constrained” (Nussbaum 2007: 90). For *social justice* is more than a question of individual virtue, or the fair exchange and just distribution. Rather a just society is defined by its core values and the efficacy with which these impact its institutional structures and public policies.

Amartya Sen proposes a way of relating the values of justice to its structural implementation. His ‘capability approach’ in labour economics was developed into the predominant paradigm for human development which inspired the United Nation’s Human Development Index in 1990. He used the same approach in *Development as Freedom* (Sen 1999) and articulated it further, not as a “transcendental institutionalism, that seeks a comprehensive approach to justice, but a “realization-focused comparison”, a comparative approach that pursues a more just, or rather a less unjust society (Sen 2009: 7) on the basis of the rational choices people make, as elaborated in “social choice theory” (Sen 2009: 91-). What the UN’s Development Index does for developmental comparisons across countries, Sen’s *Idea of Justice* (2009) attempts to do for *social justice*. Martha Nussbaum’s *Frontier’s of Justice* takes this further in regard to Disability, Nationality, Species Membership (2007).

In Sen’s somewhat awkward terminology, ‘capability’ represents “the alternative combinations of things a person is able to do or be – the various ‘functionings’ he or she can achieve” (Sen 1993: 30). More simply “since a capability is the power to

do something, the accountability that emanates from that ability – that power – is a part of the capability perspective, and this can make room for demands of duty” (Sen 2009: 19). How a person is able, and chooses to function actualises one’s capabilities, and hence one’s duties follow from this. Entitling someone to choose does not make one able to, but even one able to choose must be allowed freedom of choice. People must have both “Voice and Choice” (Sen 2009; 87-). This is critical in assessing real equality of opportunity for disadvantaged people in society.

Justice in this approach then requires equitable access to enabling resources and freedom in choosing among these. Hence premising justice on such a “capabilities approach denies that principles of justice have to secure mutual advantage ... It is always very nice if one can show that justice is compatible with mutual advantage, but the argument for principles of justice should not rest on this hope” (Nussbaum 2007 : 89). This is crucial to the discussion on affirmative action and minority rights.

Moreover, Nussbaum includes even the severely disabled and disadvantaged within the *Frontiers of Justice* (2009), arguing that

“the capabilities approach is able to include benevolent sentiments from the start in its account of people’s relation to their good. This is so because its political conception of the person includes the ideas of a fundamental sociability and of people’s ends as including shared ends... Prominent among the moral sentiments of people so placed will be compassion, which I conceive as including the judgement that the good of others is an important part of one’s own scheme of goals and ends.” (Nussbaum 2007: 91)

Extending this, in a *Reanalysis of Our Social Responsibilities*, Robert E. Goodin, the philosopher, argues to our obligation of *Protecting the Vulnerable* (1985). He grounds the duties of parents to their children not merely on affinity and affection, or even parental responsibility for their children’s birth but rather on the enormous significance that parents have in their children’s lives. This creates dependencies of children on their parents, which they have an obligation to meet, for “defending one’s own is the rule even before justice becomes an issue” (Bok 1978: 147). Thus

“duty, even more than charity, begins at home” (ibid.: 8). But this must be extended generally to interdependencies in society that also create obligations that must be met, for “both sorts of duties derive from the same moral conditions” (ibid.: 11).

Goodin then specifies the dependencies at the level of individual and groups, and across these levels as well. The priority of the corresponding obligation is then contingent on the depth of the dependency. What this means in practice is preventing exploitable vulnerabilities in society, i.e., no one should be forced into dependencies that are one-sided, as for instance, exclusive discretionary control over resources does. This demands protective rights for such vulnerable groups; making groups less vulnerable requires affirmative action in their favour.

Since in any society there are interdependencies, these must create mutual obligations and corresponding duties and rights that will apply to all four levels of justice: personal, interpersonal, distributive and social. Thus besides such sentiments of benevolence and compassion, especially in diverse and complex societies, social interdependencies create corresponding binding obligations that are imperative for an inclusive solidarity,

To ground justice as capability, the comparative approach lists human capabilities based on “a conception of the dignity of human beings, and of a life that is worthy of that dignity” (Nussbaum 2007: 74). A compelling foundation for this human dignity is Kant’s uncompromising principle: “Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end” (Kant 1964: 429). For Kant, the dignity of the human person cannot be compromised.

A life worthy of this will require basic human capabilities. Beginning with a consensus based on people’s rational and free choice, lists of such capabilities can then be arrived at. Such lists will have to be open-ended, accommodating various points of view and revised periodically to include new ones.

Nussbaum’s list “reflects changes made after my discussions with people in India” (Nussbaum 2000 :78, nt 82). Her elaborated list of *The Central Human Capabilities* (Nussbaum 2007: 78-81) includes the following: life; health and bodily integrity;

use of senses, imagination, and thought; emotions; practical reason; affiliation – living with others with self-respect; living with other species; play; control over ones environment – political, material. Some items here, like life and bodily integrity, reason and affiliation are more basic than others, like emotions and play. Though they are “*separate components*”, with each “a *distinctive* good is sighted” (Nussbaum 2000: 81). Taken together the list represents an overlapping consensus that has found wide acceptance on human dignity and a life worthy of it.

However, “the capabilities approach is not intended to provide a complete account of justice” (Nussbaum 2007: 75). Rather it focuses on realised outcomes not practical procedures, as so often happens when a criminal trial in court proceeds according to due legal process but still returns an unjust outcome. These realised outcomes are intended to bridge the ‘justice-gap’ (Samaddar 2009: 16) between comprehensive justice and a realisable one, where social structures and institutional norms must be designed and arranged to facilitate “voice and choice” for each person, for at least an effective minimum to live a decent and dignified life.

The Just Society

Beyond the inevitable limitations of justice based on social contract, a credible understanding of *social justice* must be premised on an integration of the social values, among which liberty, equality, solidarity are definitive as necessary conditions for a just society. This goes beyond the righteousness of persons and fairness in society, whether in exchange or distribution, to provide a structural framework for fundamental rights and basic needs as essential entitlements for human identity and dignity. For basic needs represent the minimum required to live with some dignity, and fundamental rights underwrite the human agency needed to affirm one’s identity. Both these must be guaranteed and extended in a just society.

All too often the injustices in a society are the unintended and unanticipated consequences of ill-adapted institutional structures and consequently a skewed

implementation of justice. However, intended or not, untoward outcomes must be addressed if not in anticipation at least in retrospect. For implementing an *idea of justice* that eventually brings injustice in practice is a cruel contradiction. A stable and sustainable justice must carry over from the ideal to actual.

Liberty, equality and solidarity are three essential dimensions in an integral understanding of justice, and it applies to all the four levels of justice articulated earlier: personal virtue of individuals, equitable exchange in transactions, fair distribution through institutions and structural equity in society. These dimensions and levels of justice are complementary and so must be integrated and balanced in a society to be just. This demands a justice premised on liberty, critiqued by equality and affirmed in solidarity, so that an inclusive solidarity provides the context for social equality that is respectful of civic liberties and democratic rights. In other words a fraternal solidarity that is a co-responsibility for each other in a commitment to a life of dignity and identity for all. But this is still a vision for a just society, not a blue-print for its social structures.

A just society attempts to steer the difficult course past libertarians, socialists and communitarians, who privilege one or the other dimension of justice at the cost of the others. For “justice is our critic, not our mirror” that calls us to “always ask of some settled institutional scheme whether it is fair” (Dworkin 1985: 219). For a vision of justice is not meant to mirror back to us the way we are, but to critique it and challenge and us to be the way we ought. This cannot be decided by majoritarian opinion or even by majority vote, for then might would become right, whereas justice must speak truth to power, in the public domain.

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