

IN SEARCH OF SOCIAL JUSTICE

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Some years ago Hans Kelsen, regarded as one of the most important legal philosophers of the twentieth century, in his farewell lecture at the University of California, Berkeley addressed the question that had occupied his mind for over half a century: What is Justice? That lecture was subsequently published in: *What is Justice? Justice, Law and Politics, Collected Essays by Hans Kelsen* (University of California Press, 1957).

"No other question has been discussed so passionately, no other question has caused so much precious blood and so many bitter tears to be shed; no other question has been the object of so much intensive thinking by the most illustrious thinkers from Plato to Kant; and yet, this question is today as unanswered as it ever was. It seems that it is one of those questions to which the resigned wisdom applies that we cannot find a definitive answer, but can only try to improve the question."

To the question: What is Social Justice? The message of Kelsen is even more relevant. For many, social justice is equated with distributive justice. To achieve a more just society, and in particular to achieve a more just economy, it is simply a matter of distributing income and wealth in a manner that is deemed to be equitable, if not just.

THE MEANING OF SOCIAL JUSTICE

Two social philosophers, both regarded as among the most brilliant of our age, have attempted to give an answer to the meaning of social justice. John Rawls in *A Theory of Justice* (published in 1971) argued that social justice requires an equal distribution of social primary goods--liberty and opportunity, income and wealth, and the bases of self-respect--unless an unequal distribution is to the advantage of the least favored. Note: In his 1999 revised definition, he changed "to the advantage of the least favored" to "the overall benefit of all." With either definition, social justice in Rawls terms is "distributive justice."

However, Rawls went far beyond distributive justice to discuss the nature of the institutions in our society and our economy where individuals attempt to achieve their "happiness" or "utility" or "well-being." It is in those institutions where we hope to have the freedom to pursue our goals to the greatest extent of our efforts and abilities, but many encounter ceilings, segregation, lack of equal opportunities and so on that limit equal opportunities and suppress our freedom of choice. In doing so Rawls moves far closer to a concept of social justice.

Rawls bases his argument on a traditional enlightenment concept of "natural state" and "social compact theory." It is an idealized model assuming extreme rationality on the part of all actors, and ignores the reality that all human beings do not act in a rational manner to maximize their happiness or utility or well-being. Nor do the institutions that Rawls argues are necessary to achieve his view of social justice attainable in reality. It is an idealized model that ignores human history and human behavior.

Robert Nozick, a colleague of Rawls at the Department of Philosophy at Harvard University, disagreed. He wrote in *Anarchy, State and Utopia* (1974) that one must consider the history of actual human behavior in defining social justice. If the distribution of income and wealth, along with all the social primary goods identified by Rawls, are distributed by rules and laws that are judged fair and just regarding freedom of choice, then government acting upon principles of social justice should not redistribute any social primary goods.

Thus was set off the debate that continues to this day. Liberals embraced Rawls and conservatives adopted Nozick. The result has been to create tension in the debate over the meaning of social justice. Also, both Nozick and Rawls argue from an intellectual base of enlightenment rational thought and Western social philosophy.

The third major thinker of our age to significantly improve on the question of social justice is Amartya Sen, winner of the Nobel Prize in Economics in 1998. Sen was born in India and studied philosophy as well as economics, particularly Eastern philosophy, in India before pursuing the study of economics at Cambridge. In his most important work on social justice, *The Idea of Justice* (The Belknap Press of Harvard University Press, 2009), he places both Rawls and Nozick in what he terms "transcendental institutionalism" school of thought. This school, so Sen argues, is grounded in the rationality of Western enlightenment idealism, idealized models of institutional behavior, and a western reading of history and philosophy. Drawing upon Sanskrit literature on ethics and jurisprudence, Sen develops a concept of social justice that he entitles: "realization-focused comparison." (pages 1-27)

The Sen model of social justice builds upon the economic work of Kenneth Arrow (winner of the Nobel Prize in Economics, 1972) regarding social choice theory. Sen strongly embraces freedom as the essential value necessary for social justice. And he draws upon Eastern social philosophy regarding the nature of the whole (meaning that we must think beyond individualism to unity). Quoting Sen on the essence of his concept of social justice:

"It is important to emphasize that if social realizations are assessed in terms of capabilities that people actually have, rather than in terms of their utilities or happiness, then some very significant departures are brought about. First, human lives are then seen inclusively, taking note of the substantive freedoms that people enjoy, rather than ignoring ever thing other than the pleasures or utilities they end up having. There is also a second significant aspect of freedom: it makes us accountable for what we do. Freedom to choose gives us the opportunity to decide what we should do, but with that opportunity comes the responsibility for what we do--to the extent that they are chosen actions." (Sen, page 19)

Sen makes several other very significant contributions to our search for social justice.

One: The question of needs vs. values. "Certainly, people do have needs, but they also have values and, in particular, cherish their ability to reason, appraise, choose, participate and act. Seeing people only in terms of their needs may give us a rather meager view of humanity." (Sen, page 250) Note: Rawls argues in terms of needs, i.e. the just distribution of social goods. Sen recognizes the necessity of needs, particularly when it comes to the needs of the poor and less-fortunate in society. But meeting those essential needs is not sufficient for social justice.

We must ensure that the values of our society ensure the freedoms we all need to realize our potential as human beings.

Two: The importance of the value of freedom. For Sen freedom of choice is critical. But what does he mean by freedom of choice? "Freedom is valuable for at least two different reasons. First, more freedom gives us more opportunity to pursue our objectives--those things that we value. It helps, for example, in our ability to decide to live as we would like and to promote the ends that we may want to advance. This aspect of freedom is concerned with our ability to achieve what we value, no matter what the process is through which that achievement comes about. Second, we may attach importance to the process of itself. We may, for example, want to make sure that we are not being forced into some state because of constraints imposed by others." (such as slavery, discrimination, glass ceilings, etc.) (Sen, page 228)

Three: The concept of "realized justice." Drawing upon Sanskrit ethics and jurisprudence (both grounded in Eastern philosophical thought), Sen argues: "The (Sanskrit) term *nyaya* stands for a comprehensive concept of realized justice. In that line of vision, the roles of institutions, rules and organization, important as they are, have to be assessed in the broader and more inclusive perspective of *nyaya*, which is inescapably linked with the world that actually emerges, not just the institutions or rules we happen to have." (Sen, page 10)

In sum, Sen gives us a concept or model of social justice that is: (1) Strongly value based, particularly on the value of freedom of choice and of opportunity. (2) Freedom, broadly defined, is the basis for defining human rights. Those rights, however they may be incorporated into a given society via constitutions, laws, institutions and other means, must ensure the freedom of individuals to realize their rights to life and liberty and to have equal opportunities to achieve their individual happiness where happiness is not measured simply in terms of income, wealth or consumption but through indicators of "quality of life" and "well-being." (3) Demands of all individuals a sense of responsibility for our actions (along with freedom goes responsibility); (4) That focuses on the outcome of existing rules and institutions as creating injustices that must be addressed, rather than attempting to define an idealized state of desired social justice or desired distribution of all social goods; (5) That is inclusive of all, that is recognizes that social justice can only be obtained when we think more inclusive of the entire social, political, economic and physical environment in which we live.

Given these conditions, we can add several more from Rawls and Nozick to give us a more complete set of conditions for advancing the search for social justice: (5) The distribution of social primary goods (which includes income and wealth) is critical to social justice. Whether that distribution must be equal unless an unequal distribution is to the benefit of all as Rawls argues can be debated. But it is clear that current extremes in the distribution is detrimental to social justice. There is some medium between great inequality and absolute equality in distribution that is acceptable to society as just and fair, but also rewards individuals for hard work and investment in education, training and their businesses. (7) The experience of history (Nozick) is important in understanding not only how a given distribution of social primary goods has occurred and been modified by past actions, but in clarifying the injustices that must be addressed in the future. (8) Finally, any form of social justice must be built upon the most important value given voice by Enlightenment social philosophers, particularly by John Locke.

That value is the inherent worth and equality of all human beings. Until the era of enlightenment, the value of human life was not recognized. Human beings were largely viewed as mere chattel--a slave, serf, peasant--subject to will of the ruling power (king, lord, master). Locke stated loud and clear that people have certain fundamental rights that included the right to life and to liberty. This right was given voice in our Declaration of Independence and ever since has stood as the moral compass by which to measure all of our laws and institutions. It is from these eight concepts and principles that we must continue to improve upon the meaning and importance of social justice. It is a never ending search.

CURRENT CHALLENGES TO SOCIAL JUSTICE

Our continuing search for the meaning of social justice is being challenged by what we might term the "anti-Enlightenment" school. It is a school found in both the popular press and the academic community. The argument is put forth that the Enlightenment era values and principles along with all of the social philosophers and social scientists and others who have built upon those values and principles (including all the above), are naive and idealistic. The assumptions of rationality, of embracement of fundamental values regarding the inherent worth and equality of all human beings, the search for more just social, political and economic institutions, even the concept of values itself is misleading. The world is driven by power and self-interest and self-preservation. It is a world of nihilism--the rejection of all religious and moral principles. God is dead. Inalienable rights are a figment of our imagination. Social justice is a myth.

It is a school that embraces Friedrich Nietzsche (1844-1900) as their principle source of social philosophy and the meaning of existence. His views of the "true" nature of human behavior and the "will to power" by those seeking to assume and maintain power is being reflected in much of our current experience--the rise of Putin and Trump along with others driven by a seemingly different set of values than those we have discussed. An era of rage and racism. A time of great political and social upheaval. A crises in our democracy and our economic system of capitalism. This is not a hopeful view of the world in which we find ourselves. But for those who embrace the anti-Enlightenment school of thought, it is the reality of the world in which we are now living. All the more reason to embrace the values so well stated in the code of ethics of the social welfare profession, the values on which we have built our nation, the values that underpin our search for social justice.

IMPROVING THE QUESTION

Clearly, defining social justice is difficult. For those who think social justice is an important value, if not the most important value on which we must build our nation and our society, the search will continue. For those who are engaged in social welfare and social work as a profession, the search is a given. But each of us must define our own understanding of social justice. We must attempt to improve the question of what is social justice in our individual lives, in our professional work, and most important as civic-minded citizens. I have done so in my writing and teaching.

Social justice is the realization of the worth and dignity of the individual human being, living in an inclusive and supportive community, a fair and just economy, and a safe and sustainable environment.

I have built this meaning into the Idea of America Network which I have founded and direct, a nationwide program to advance the debate and discussion of the values that have shaped our nation in the past and will shape our nation in the future. It is embedded into the Premise of the Idea of America Network:

The premise of the Idea of America Network is that America is unique in being founded on enlightenment values that proclaim the inherent equality of all human beings, that values the life and well-being of all human beings, that promotes education and cultivation of individual and civic responsibility as the means by which we as individuals can attain our happiness, and that the source of our unity as a nation is our embracement of these values.