Justice

A: ʿadāla. – G: Gerechtigkeit. – F: justice. –
R: spravedlivost'. – S: justicia. –
C: zhengyi, gongping 正义，公平

I. *Biblical tradition* – The demand for justice is for social movements just as self-evident as it is theoretically contested. In everyday struggles about survival and the quality of life, it is experiences of injustice that prompt humans to engage in resistance. Here, the immediate hopes for reparation, for the eradication of injustice and the restoration of law can form the point of departure for the development of a fuller desire for justice as the quintessence of a new society free from oppression, exploitation and exclusion. Moralists and demagogues, however, also set out from this 'hunger and thirst for justice' (*Mt* 5,6), removing justice from struggles and transforming it into an abstract, 'eternal' value whose realisation is to be awaited from on high. The polemics of **Marx** and **Engels** were aimed above all against such ossification in ideological forms (e.g., *MECW* 6, 143, 193; 23, 377; 25, 18; 35, 94; 37, 337). The question is how such a necessary critique of ideology can communicate with attempts that seek to make fruitful the utopian-critical potential of ideas concerning justice rooted in the experiences of everyday life.

Even though social movements, not only in Europe but in all 'Christianised' parts of the world, have time and again appealed to biblical ideas of justice, it is precisely these ideas which have hardly been analysed in Marxism. **Marx**, despite his critique of Mammon and Moloch recalling those of the prophets, saw no positive starting-point in the biblical tradition with regard to the concept of justice. This may also be connected to his tendency, in the heat of the argument with religious communists such as **Weitling** and **Hess**, to regard references to the religious legacy as an obstacle to an analysis of society without illusions. The possibility of a reflexive relationship to a common tradition of hope was not taken into consideration. However, this is also the case, with concessions, for Ernst **Bloch**, who, in other respects, knew very well how to inherit the biblical writings. He saw perspectives for a concept of justice from below only in the natural law of the sects with their 'social-revolutionary desire for an originary state' (*GA* 6, 42), but not in the *Old Testament*, whose concept of justice he understood, under the influence of **Marcion**, only as despotic and patriarchal (52). Yet even he came close to a biblical understanding of justice when he saw the beginnings of a 'real justice' in the 'images of retaliation of the Last Judgement' which, as a form of justice 'from below', turned against the 'intrinsic injustice' of justice practiced as revenging and dispensing (228 et sqq.).

1. In the Hebrew Bible, justice is one of the foundational themes or even 'the central theme par excellence', 'the centre' (**Dietrich** 1989). 'The fact that the relationship with the divine crosses the relationship with men and coincides with social justice is therefore what epitomizes the entire spirit of the Jewish Bible' (**Levinas** 1998 [1963] 19). The diversity of relationships of the vocabulary of 'justice' and its conceptual milieu refuses precise definitions. The changing formations of social life have left behind numerous traces in the biblical understanding of justice, with different views, demands, experiences of injustice, images of law and ideals of justice. This extends from a tribal ethos to ideas of cosmic justice from ancient oriental kingdoms. The tension between positive law and critical ideas and tendencies of justice has worked in the favour of the poor and their legal positions – even if not always.

In the ancient oriental environment surrounding Israel, law and justice were worshipped as goddesses or gods who gave kings the capacity to govern justly. The name of **Melchizedek** (pre-Israelite king of Jerusalem) highlights this: 'my king is Zedek' (justice as divinity). In Egypt, **Maat**, the

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divine daughter of the sun god **Re**, stood for truth and justice as the very quintessence of an adequate cosmic and social order as well as a personal praxis. Instructions for the implementation of justice by the divine Pharaoh, however, are not found in the legal codices as in Mesopotamia. There, **Shamash**, the sun god, was worshipped as the god of justice as well (**Epsztein** 1986, 4, 18 et sqq.; **von Rad** 1958, 374). The tradition of codification of social laws was effective all over Mesopotamia. The *Codex* of King **Hammurabi** claimed, in the name of Shamash, to establish justice and to destroy wrong-doers so that the strong did not oppress the weak. The laws were supposed to protect the rights of orphans and widows. The same *Codex*, however, divided society into three classes. There were echoes of the Babylonian tradition in the collections of the laws of Israel, but, just as much, important differences that were founded in God's covenant with the people as a whole. Thus, justice was not worshipped as a separate divinity, but was regarded as an attribute of the single God in Heaven who allowed it to become operative upon the earth (e.g. *Ps* 85, 11 et sqq.). **YHWH** (Yaweh), therefore, as the subject of justice, defined not only that which was divine, but also that which was truly just (*Ps* 82).

The Hebrew vocabulary for justice, law and rectitude was related primarily to social justice, just as in the societies surrounding it. An overriding legal interpretation that predominated for a long time, mediated by the Latin translation of 'iustitia', is hardly held anymore in *Old Testament* scholarship. 'The concept of a punishing *tsedaqah* is not supported; it would be a *contradictio in adiecto*' (**von Rad** 1958, 375). Other words were used to talk about judgement, punishment and reward. Justice – as a translation of 'tsedaqah' – regarded a whole scale of relationships in which humans have to prove themselves to be 'just people' in relation to each other, to the world and to the environment and, in all of these, to God. As a relational concept for righteous [*gemeinschaftstreu*] behaviour, 'tsedaqah' included both personal conduct toward others and also the fundamental social relations in which problems of Law were posed concretely. Legal entitlements, particularly of the poor, and legal decisions were accordingly judged with a view to the restoration of community.

In the monarchical period – from **David** to the Exile – this usage of the word was connected to elements of the ancient oriental ideology of kingship and, when necessary, was used for the legitimation of new forms of domination. Justice was regarded in the ancient Orient as the foundation of the kingly throne (**Koch** 1976, 509 et sq.). A similar perspective can be found in some of the *Psalms* and the *Proverbs* of Israel (e.g. *Ps* 89, 15; *Pr* 16, 12). By virtue of the divine gift of justice, the king was supposed to ensure the stability of the law, to protect the poor from exploitation and the weak from violence and thus guarantee a just order (e.g. *Ps* 72, 1 et sqq.; cf. **W. Schottroff** 1999, 5 et sqq.). Therefore, the cosmic order, which was supposed to bestow life and social well-being, was guaranteed by the king. **Marx**'s critique of ideology had, in such a courtly theology, a fertile field – which, of course, the prophets of Israel had long ago ploughed, preventing the deification of the kings of Israel from finding general acceptance. A theo-cosmic understanding of justice here functions without the mediation of earthly rulers (e.g. *Ps* 85) as it was directly and messianically promised to the people.

This is evidence for the fact that ancient oriental ideology of justice must not be assumed to be always on the side of power. If the protection of the poor and liberation from subjugation were formulated as duties of the king (*Ps* 72), criteria for the wielding of power were provided which could also be applied critically. This possibility arose under the conditions of a mode of production founded upon a system of tribute, due to the fact that the community structures from before the institution of the state continued to function on the local level – even if under pressure from the obligation to render tribute – and gave the material basis for an ethos of solidarity not based upon domination. The ethos of the association of tribes from before the state not only continued to be effective in the time of the kings, but also

survived the fall of the monarchy, so that the *Torah* republic after the Exile was able to hark back to it.

An exegesis of the Bible that interprets discussions in the *Old Testament* of justice and law only in the context of a way of thinking which confirms the established order fails to take into account this dimension of resistance. In contrast, the specificity of the case is demonstrated in the critique of injustice of the prophets. On the one hand, they referred back to the tradition of Exodus and the ethos of liberation from before the state; on the other hand, they anticipated the not-yet-realised justice of a coming, universal time of salvation, partly with the help of cosmic representations and images. The social basis for the critique and hope of the prophets was predominantly among the free peasantry, the 'people of the land'. In distinction to the surrounding great kingdoms, here there were forms of the public sphere that enabled the prophets to appeal both to the people – for example, at public meetings – and to the rulers. This democratic dimension was anchored in God's Covenant with the people.

Under the pressure of a rising pauperisation and the enslavement of small farmers by their debts in the time of the kings, there was a massive experience of suffering and injustice. The complaints of the *Psalms* as well as the lamentations of the prophets employed a broad vocabulary which thus also spoke about justice when the matter explicitly treated was judicial and legal measures. It was the prophets, above all, who considered the structural aspects of injustice. The 'woe' over the large landowners who added 'field to field' (*Isaiah* 5, 8) was linked to the 'woe' over the civil servants who wrote unjust decrees (*Isaiah* 510, 1 et sq.). The king who built his palace with 'injustice' and did not pay wages was sued, in opposition to the king who – also this was possible – 'practises justice and righteousness'. 'Is not this to know me?' was God's question to the King in the text (*Jeremiah* 22, 13–17) that became fundamental for Latin-American liberation theology. To the critique of unjust rulers was added – close to a class-based analysis – the critique of the rich, whose houses were full of stolen goods and who lay waiting to ambush the poor (*Ps* 10), alongside a critique of the economically stronger who displaced the weaker (*Ezekiel* 34, 17 et sqq.).

Accordingly, not only the kings were urged to practice justice and righteousness, but all people: 'seek justice, help the oppressed' (*Isaiah* 1, 17 et sq.), do justice to one in a conflict against another, practise no violence against strangers, orphans and widows (*Jer* 7, 5 et sq.). The practice of justice should include all of the fields of endeavour in a mode of living together in solidarity. The traditional ethos of solidarity of the tribal peasantry, falling under increasing pressure, was appealed to for such a practice, as well as justice and the law which had its foundation beyond the reach of the rulers in the divine Creator and Judge of the earth. They will kiss each other, states *Psalm* 85.

A practice of justice in living together and adjudication in the case of conflict required a collective understanding regarding that which was just and unjust. What served these ends in the Bible in particular was the *Torah*, the 'Instruction' (misleadingly translated into Latin with 'lex'). The narrative, which was, for the most part, edited during the Exile, led the escaped slaves through the desert to Mount Sinai, where Moses received the Ten Commandments as guidelines for a free life in the Promised Land. The story is a late theological reconstruction that takes up the negative experiences of the times of the kings and the prophetic critique. The successive collections of commandments and laws reflected sociohistorical developments and conflicts of interests (**Crüsemann** 1992, 13 et sqq., 21 et sqq.). Thus, for example, the first version of the Decalogue did not yet count the 'field' of one's neighbour as one of the objects of forbidden desires (*Ex* 20, 17). A later version took up the prophetic critique of the accumulation of land in the hands of great landowners and added 'field' (*Dt* 5, 21). This experience was also reflected in the legislation for the sabbatical year, which changed this from a year in which the land was left fallow (*Ex* 23, 10 et sq.) to a year of debt cancellation (*Dt* 15, 1 et sqq.). Further developments were reflected in the

later law for the celebration of the fiftieth year (Jubilee), which was supposed to be celebrated as a year of return to one's own land (*Lev* 25 et sqq.; cf. **Veerkamp** 1993, 91 et sqq.).

The entire Sabbath legislation anchored in an anticipatory manner the great hope of justice in the weekly rhythm of the working day and the day of rest, on which all were supposed to be equally free and no master or head of the household could demand work from dependent women, children, slaves or strangers. Disrupting the patriarchal framework, the free peasant was told in the commandments that all have the same right to rest, that 'your manservant and your maidservant may rest as well as you' – in remembrance of the liberation from slavery (*Dt* 5, 13–15). Cow, child-slave and stranger should be able 'to breathe a sigh of relief', as God the Creator did on the seventh day (*Ex* 23, 12 and 31, 17; cf. **Wielenga** 1988, 130 et sqq.). – The labour movement has taken up both ideas: that all should work and that all have a right to rest. The protest of the churches and unions against the undermining of Sunday rest can refer back to this common tradition.

The connection of the commandments and laws from the time of the kings and the Exile with the expression of God's Will on Sinai and the form of the liberator **Moses** has a fundamental meaning in terms of ideology-critique. What was called justice and law was therefore not decreed by kings, even if individual kings 'after God's heart', like **Hezekiah** and **Josiah**, played a role in the implementation of reforms to the laws. Established interests have left behind traces, but, against the pressure from above, the right of the poor finds its expression in the commandments and the laws, thanks to the remembrance of God's justice as the event of liberation from slavery which had remained alive 'below' or was newly re-awakened by the prophets. This is the case, for example, for the right to asylum anchored in biblical legislation (cf. **Crüsemann** 1992, 205 et sqq.).

Divine justice was represented 'from below' in Exodus as an empowerment to walk upright proudly: 'And I have broken the bars of your yoke and made you walk erect' (*Lev* 26, 13). This corresponds to the fact that justice did not appear as an abstract norm even in legal practice, but as a liberation from injustice. This was the case for the gods just as for humans (*Ps* 82). In the language of the *Psalms*, 'judge me' is identical with 'save me'. Therefore, humans and the world of Creation rejoiced about the prophesised coming of the divine Judge as about an announcement of liberation (*Ps* 98, 9, and 76, 9 et sq.; cf. **Miranda** 1974, 113). The critique of injustice not only led to instructions in the form of historical narratives, commandments and laws, but also to the articulation of a universal hope for justice. The ancient oriental association of God's Kingdom with justice in the works of Creation (e.g. *Ps* 145) prepared the way for the hope of a coming Kingdom of God bringing justice on earth. An unknown prophet who lived toward the end of the time of the Exile (*Isaiah* 40–55) spoke in lyrical words of the liberating justice of God that would bring salvation to the ends of the earth. The Creator had not determined the world for chaos (*Isaiah* 45, 18 et sq.), and his suffering servant – be it a single prophet or the people – would not be discouraged until justice was established across the whole earth (*Isaiah* 42, 1 et sqq.).

In the '*Torah* republic' (**Veerkamp** 1993, 82 et sqq.) of the post-Exile period, this all-embracing hope fell at first into the background, while life, according to the precepts of the *Torah*, was moved into the centre of the practice of the faith. That this in no way, as has often been claimed from a Christian perspective, must lead to petty moralism or legalism is demonstrated, for example, by the intervention of **Nehemiah**, who – supported by a great assembly of the people – carried through an historically effective liberation from debt-slavery (*Neh* 5). Together with the Wisdom Literature, the *Torah* had, at the same time, an important significance for personal endeavours to prove one's self to be 'just [*tsedaqim*]' and to keep one's distance from evil-doers. While justice was primarily related in this *Torah*-piety to the way of life (*Ps* 1, 119), apocalyptic hopes of justice, developed from the prophetic

tradition by scribes (**Albertz** 1992, Bd. 2, 633 et sqq.) flared up again and again in times of crisis, particularly among the poor strata.

2. Even though the Gospel of the *New Testament* took up the prophetic hope of a reign of God, it is conspicuous that the evangelists – except for **Matthew** – hardly ever use the conceptual vocabulary of justice associated with it. That may be connected to the fact that the vocabulary of justice was possessed by a *Torah*-piety, aimed at cultivating an honest way of living. In the interpretation of the Pharisees, this certainly aimed at the sanctification of the whole people, but, in reality, it was hardly practicable for the poor masses. The movement around the figure of **Jesus** with its predominant orientation to the poor and social outsiders expected a social transformation in the perspective of the Kingdom of God in which the excluded, treated in the meantime as 'sinners', would be given their due.

The scribe-evangelist **Matthew** made it clear that this in no way must mean an under-valuing of the *Torah*, as some Christian interpreters have believed. The announcement of the approaching reign of God was connected to the call to practise the abandonment of debt-slavery which was commanded in the *Torah*, as 'good news for the poor' and as an adequate preparation of the way for the new aeon (**Yoder** 1972, 34 et sqq.). The difference with the Pharisees (which at the time of **Jesus** was necessarily raised in dialogue and only later became unbridgeable) was related to the question of whether both dimensions of justice, the moral and the social, could be simultaneously recognised. The critique went against the tendency to limit oneself to details and to lose sight of the great perspective of justice as an instance of transformation (*Mt* 23, 23). The appeal, 'seek first the kingdom of God and his justice' was not aimed against the Pharisees, but against the servants of the 'unjust Mammon', against the system of injustice that produced endless anxiety (*Mt* 6, 24 et sqq.). The search for the Kingdom should take place in giving, in sharing with the hungry, in clothing the naked, in visiting the sick and the imprisoned (*Mt* 25, 31 et sqq.).

An important reason for the shifting of the perspective of justice lay in the context of the Diaspora. In Galilee, **Jesus** could propose measures for social praxis (like, for example, the release of debts) that could not become effective outside of the region beyond the personal and communal sphere. The scribes endeavoured, as the *Talmud* proves, to develop legal regulations with the changing economic situation in mind also after the fall of Jerusalem (**Arye Ben-David** 1974). However, Synagogue just as Ecclesia were confronted in the Diaspora with the practical dilemma of only being able to answer structural injustice which led to massive amounts of beggary with organised welfare for the poor, but not with laws. 'Doing justice' was even equated in some texts of the *Talmud* and the *New Testament* with 'giving alms'. In this, not only the commanded social attitude of the giver was considered, but also the entitlement of the recipient. Their 'fundamental right to life' should be materially assured (**Kessler** 1995, 85 et sq.). In the absence of any state-financed welfare for the poor, the social application to the begging poor of the commandment to love one's neighbour had a symbolic-critical meaning. The use of the vocabulary of justice moved the practice of love onto the horizon of the expected liberation. 'Love is not love without a passion for justice' (**Miranda** 1974, 62). Despite its limitedness, welfare for the poor proved itself to be a possibility to anchor in actual deeds the ideal of a 'hunger and thirst for justice' (*Mt* 5,6) that had been kept alive by the *Torah*, the prophets and *Psalms* in the Synagogue and Ecclesia, as the Sermon on the Mount demonstrated.

In the 'household rules' of the *New Testament*, of course, it also became clear how life in small diasporic communities, without a basis in the land of Israel, soon produced a tendency of adaptation and limitation to personal morality. This, in turn, contributed to a conception of justice exclusively as righteousness being moved into the centre of concerns, justice as the 'being just' of the pious or as justification of the single sinner

in an unchangeable wicked world. The prophetic and apostolic hope for a socially transforming revelation of God's justice disappeared over the horizon.

That was certainly not the intention of the apostle **Paul**, whose authority was used in the post-Pauline letters to support a conservative social ethos. A predominant mode of reading has interpreted the theology of **Paul** dogmatically and in a depoliticising way on the basis of the 'household rules', until it finally could be used ideologically for the legitimation of the powers and forces against which he had fought (cf. **Elliott** 1994, 3 et sqq.). Among other causes, this is to be traced back to the introduction of new elements into the interpretation of **Paul** by **Luther. Luther** certainly rediscovered the liberatory meaning of the justice of the Pauline God in his stand against the morality of obedience of the cloister, but he limited this to the personal relationship to God and restricted the expectation of salvation to the basis of the justification of the sinner. The Pauline discourse on God's justice, on the other hand, turned back to the prophetic-apocalyptic traditions that had awaited a transformation which was to be cosmic as well as an intervention into the social. As **Käsemann** has shown in his exegesis of the programmatic sentence of the Revelation of God's justice in *Romans* (1, 17), the 'dikaiosúnê toû theoû', the 'justice of God', is not to be understood – in a Greek way – as a legal norm for God and human, and also not as just punishment, but as a forgiving, eschatologically liberating power and gift which was recognised – in Judaism – as 'righteousness in the relationship of the Covenant' in faith. It was a matter of a God 'who brought the world back into the purview of his law' (1974, 22.26). To that corresponded a messianic confrontation with the force and power of sin, described by Paul also as 'adikía', 'injustice' (*Rom* 1, 18; *1 Cor* 15, 24 et sq.).

The theological and political key to understanding **Paul**'s message is the messianic anticipation, the new 'in Christo'. The mode of living together in a new way of the messianic communities was supposed to anticipate the expected overcoming of social conflicts and unjust relations. 'There', that is, in the 'body' of Jesus Christ, 'there is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female' (*Gal* 3, 28). Where this levelling of relationships of domination and their overcoming became to some extent a reality, **Paul** saw the dawning of a new aeon in which God the all-embracing – 'ta pánta' is an apocalyptic keyword in **Paul** (**Taubes** 2004, 36) – will institute his justice (*Rom* 3, 21). In this perspective, the uneducated, the weak and the despised were called upon to 'shame' the powerful, the noble and the great names, as in their meetings 'in Christ Jesus' the wisdom and justice of God was already being realised (*1 Cor* 1, 26-30). The text from *Jeremiah* that is here partly quoted spoke of God as he who 'practises grace, justice, and righteousness on the earth' (*Jer* 9, 23 et sq.). This vision contains the call for a real bodily practice of the struggle for justice: 'Do not yield your members to sin as instruments of wickedness, but [. . .] to God as instruments of justice' (*Rom* 6, 13).

3. *Justice in a feminist perspective* – Jewish and Christian feminist theologians are in agreement that the Bible speaks a patriarchal language, assumes gender relations founded upon domination, often passes over in silence the experiences of suffering of women and approves, directly or indirectly, of women's legal marginalisation – a fact which has been made even worse by patriarchal translations and the thought-paradigms of a male-dominated history of interpretation. While this has prompted some feminists to write the Bible off as irredeemable, others have set themselves the task of making visible the patriarchal reality in the texts of the Bible and in the society from which these texts emerged. At the same time, they have sought to interrogate the entire perspective of liberation and justice in the Bible regarding its meaning for the women of its time and for women today. Elisabeth **Schüssler-Fiorenza** described this mode of reading as a 'hermeneutic of suspicion', with whose help the Bible is to be subjected to a 'dialectical process of critical reading and feminist evaluation' (1988, 13 et sq.). For Luise **Schottroff**, the Bible is the 'most important school of justice', an assessment

which she holds also to be valid for the feminist movement, if current social critique and women's experiences represent the starting-point of interpretation (1994, 11 et sq., 68 et sqq.). Judith **Plaskow** argued that the women's movement could by all means take up the prophetic connection of faith and justice without relinquishing the critical treatment of its militaristic and patriarchal image-world: 'Feminists can affirm our debt to and continuity with prophetic insistence on connecting faith and justice, even while we extend the prophets' social and religious critique beyond anything they themselves envisioned' (1991, 216 et sqq.).

In terms of social history, it can be assumed that women in biblical times were marginalised most strongly in official religion, legislation and politics. This is also expressed in the texts which relate to these fields of social endeavour. On the level of the subsistence economy and of the large family, the men certainly exercised their leadership, but the position of women appeared socially and economically in no way to be so marginal as it is often assumed (cf. e.g. *Pr* 31 and the remarks of **Schwantes** in **Tamez** 1987, 89 et sqq.). The weakness of women is most clearly formulated in the fate of widows, whose protection is time and again demanded in the biblical justice commandments. **Crüsemann** (1992, 291 et sqq.) has pointed to a gradual improvement in the legal position of women, because public jurisdiction limited patriarchal rights and brought about greater legal equality.

In terms of exegesis, a question would be to what extent, how and on the basis of what social foundation women have insisted upon such improvement in the name of the postulates of justice proclaimed by the prophets and the *Torah*. In fact, there are biblical texts which suggest that women succeeded in articulating their critique also inside the biblical canon and to add feminist criteria to the reading of the Bible. Klara **Butting** showed with the help of later writings such as *Ruth, Esther, Ecclesiastes* and the *Song of Solomon* how 'women enter from the margins in the history of the Covenant of the Divinity of Israel' and testify that faith in God and the 'mistrustful examination of all texts with regard to their patriarchal function [. . .] are not mutually exclusive' (1994, 182 et sqq.). For the *New Testament*, Brigitte **Kahl** brought out how the androcentric version of the Christian origins in **Luke** can not only be retrospectively analysed from the viewpoint of a modern feminism, but also on the basis of the opening chapter of St **Luke**'s Gospel itself (*Lk* 1), in which the intervention of women provides the hermeneutic key for the entire text: the messianic song of liberation of Mary (*Lk* 1, 55 et sqq.) undermines the patriarchal 'codes' of the text. '*Luke* 1 binds the Gospel for the poor and the Gospel of/for women "genetically" [. . .] together. An "archetype" is established that should be used as permanent criterion and criticism of what follows' (1994, 237).

4. *Ecological justice*. – The pressure of the ecological crises and the charge which makes the biblical 'dominium terrae' of *Genesis* 1 responsible for the readiness to destroy nature has strengthened the perception that the biblical understanding of justice as righteousness [*Gemeinschaftstreue*] in accordance with the Covenant also included relationships with non-human nature. Actually, the Bible emphasises the particular role of humans, but this is in the sense that this role makes them responsible for the protection of creation, or, if they do not fulfill their role, condemns them for the destruction of the relationships of Creation. Rhetoric of human 'dominion' over the earth and animals (*Gen* 1, 28) meant, in that context, agriculture, irrigation and the breeding of livestock, and was complemented by reference to 'tilling and keeping' the garden (*Gen* 2, 15). With the animals and the trees, 'Adam' belonged to 'adamah', to the 'earth' from which he was taken (*Gen* 2, 7 and 9). An act of misconduct, which did not do justice to these relationships, was judged to be a breaking of the Covenant, leading to the pollution and the withering away of the earth (*Isaiah* 24, 5).

This apocalyptic text is related to **Noah**'s Covenant from pre-historical times, described as a Covenant with the earth and all living creatures (*Gen* 9, 9-16). The preceeding paradigmatic flood-saga, which is also found,

with different conclusions, in other ancient oriental cultures, presented the catastrophe of the flood as a consequence of the violence spreading across the earth. **Noah** as 'a righteous man' (*Gen* 6, 9), that is, as a non-participant in the destruction and violence, made possible the survival of humans and animals with the help of the Ark, which can be regarded as a type of life-saving technology. Jewish commentators saw **Noah**'s justice in his dealing with the different types of animals, only together with whom humanity can survive.

The wide perspective of justice that reveals the connection of social injustice and ecologically damaging behaviour was based upon the declaration of faith in the oneness of God as the Creator and Liberator. This appeared in the conception of justice of the Sabbath-economy, which as an economy of 'sufficiency' and of just sharing made allowances for both ecological and social needs and functioned as an alternative to an economy of an uninterrupted accumulation. The commandment of rest on the seventh day included livestock. The reason for this day of rest was given as, on the one hand, the creation (*Ex* 20, 9-11), and on the other, the liberation from slavery (*Dt* 5, 14 et sqq.). The seventh Sabbath year was celebrated both as a year in which the land was left fallow and as a year for the cancellation of debts. The fallow period was supposed to stand the land in good stead just as much as the poor and game (*Ex* 20, 10 et sqq.). And, if the Sermon on the Mount articulated the desire for justice (*Mt* 5, 1 and 6; 6, 33), it referred for encouragement to the birds and lilies as an alternative to the orientation toward **Solomon**, who was regarded in the Bible as the prototype of rapacious accumulation (6, 28 et sqq.).

5. The Bible is neither anthropocentric nor theocentric nor ecocentric, because it is concerned with the covenant between God, humans and all life. Its wish for justice examines human claims to domination and at the same time posits the rights to life of the poor and the weak in the centre of discussion. This main feature divides the biblical tradition from all conceptions prepared to sacrifice the weak for the survival of the human species. God as the Creator of the human species cannot be separated from God the Liberator of the Hebrew slaves and Protector of the right of the poor, orphans and widows.

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Bastiaan Wielenga

Translated by Peter Thomas

Armut/Reichtum, Aufstand, Ausbeutung, Bauernkrieg, Befreiung, Christen für den Sozialismus, Christlicher Sozialismus, Eingedenken, feministische Theologie, Gemeinde christliche, Geschlechterverhältnisse, Gewissen, Glauben, Gott, Göttin, materialistische Bibellektüre, Messianismus, Naturrecht, Naturschutz, religiöse Revolutionsbewegungen, religiöser Sozialismus, Revolution, Urchristentum, utopischer Sozialismus.

Christians for socialism, Christian socialism, congregation/parish, conscience, exploitation, faith, feminist theology, gender relations, God, goddess, insurrection/uprising, liberation, materialist reading of the Bible, messianism, natural law, peasant war, poverty/wealth, primitive Christianity, protection of nature, religious revolutionary movements, religious socialism, reminiscence, revolution, utopian socialism.

II. *Justice/Injustice* – 'Justice', 'just' and 'law' (Greek: *dikaiosúnê, díkaios, díkê*; Latin: *iustitia, iustus, ius*) are among the most popular words in speech and writing and, at the same time, among the most contested concepts. Constituting the valid measure for the assessment of patterns of behaviours and relations, 'justice' and 'just' as well as 'injustice' and 'unjust' are words of everday, political and scientific language, particularly of theologians, philosophers, sociologists and lawyers. – With the concepts 'justice' or 'injustice', the relations between at least two actions or conditions together with their authors are assessed, which then serves as a standard for other actions and conditions. Thus, for example, the concrete behaviour of a human or their general mode of behaviour, the judgement of a court, the law or the bill before parliament, the war of a state, the practice of the police, the property relations and the hierarchies in a society, the relation of ethnic groups and of the genders to each others and of the state to them, the death penalty, racism, the censorship of a teacher, income tax, the privilege of education and even fate, the way of the world or the characteristics of real, imaginary or made-up beings, are assessed as just (or unjust). Such an assessment means also either a positive or negative judgement, either an approval or disapproval, appreciation or a condemnation. A standard gauge for the judgment of a behaviour as just or unjust can be both really existing and also merely imagined relations in the form of conceptions, goals or ideals. Negative judgement implies the demand to suppress unjust behaviour and to replace unjust relations with just ones.

Justice and injustice are mobilising concepts: in emancipatory movements for political, social, cultural, ethnic, national, and international or gender justice, they motivate the excluded, the exploited, the underprivileged and the oppressed to reform or revolutionise the social relations which are held to be unjust. With the help of demands for justice, however, also counter-revolutions and wars can also be incited. The use and misuse of versions of justice are at times difficult to differentiate.

1. The views of humans regarding what is just and what is unjust are embedded in their individually and socially conditioned structure of interests which reflect such views and upon which they at the same time exert an influence. Therefore a binary code of humanity of 'justice/injustice' is only able to be universally accepted at the price of its lack of content. However, there is a timeless valid measure of correct, that is, just, behaviour of all and for all in the kingdom of utopias and illusions. No definition of justice, but above all, no criterion of justice has yet proved to be immune to contradictions or even refutation. **Hegel**'s verdict is valid for many ideas of justice: 'This

grandiose talk of the best of humanity [. . .] such ideal essence and goals collapse as empty words which edify the heart and leave reason empty. They uplift [*erbauen*] but do not build [*aufbauen*]' (*PS*, §390). **Brecht**, coming to terms with experiences, noted that 'There are states in which justice is highly praised. In such states, one can suppose, it is particularly difficult to practise justice' (*GA* 18, 53).

Nonetheless, demands for justice as means for the critique of social relations which are judged to be unjust have always worked to mobilise, to demand progress, and also occasionally to hinder progress. Justice has helped to keep alive a critical distance between reality and ideality, between legality and legitimacy, between is and ought, between that which has been achieved and that which can be achieved. **Aristotle** had already registered that justice, just as equality, was demanded above all by the weaker (*Pol* 1318b). Just as justice without law proved to be powerless, so law without justice proved to be tyrannical.

2. Theories of justice in Europe can only be spoken of since **Democritus, Plato** and **Aristotle**. More than a thousand years previously in the most important legal document of oriental antiquity, the Babylonian king **Hammurapi** (1728–1686 B.C.E.) had claimed to have been called by the Gods 'to win recognition in the land for justice'. In the Hebrew Bible (8th to 2nd centuries B.C.E.) the word justice [*sadaqa*], appearing 523 times, had described in the most comprehensive way the world and human order ordained by God (**Monz** 1995, 63 et sqq.). In **Homer**'s and **Hesiod**'s epics, justice was not distinguished from law, the goddess of law and order, Themis and Dike, or the decisions of the rulers acting according to divine decree (*Odyssey* 3, 133; *Iliad* 2, 206; *Works and Days* 248–85). And a stronger accusation of the ruling injustice is hardly more imaginable than **Hesiod**'s, which exposed it as the injustice of the rulers, for which he introduced the concept of the 'devourers of gifts', the 'dôrophágoi'.

Democritus, the democrat amongst the classical Greek philosophers, thought justice as a horizontal relationship between citizens of the polis. Politics and the art of living well were combined in a justice that was practised. This made **Democritus**, the teacher of chance and the founder of atomism, at the same time the first theoretician of conscience. Like **Socrates** (cf. *Grg, Crito*), **Democritus** could therefore say: 'Who commits injustice is worse for having done it/unhappier than who suffers justice' – 'ho adikôn toû adikouménou kakodaimonésteros' (Frg 45). – In the context of his socially conservative idea (not a utopia!) of a state divided into three classes with a rigid division of labour in addition to slavery, **Plato**, the arch-enemy of the democratic materialist, characterised justice with the formula 'tà autoû práttein', which obliged each to fulfil their class-specific function and not to interfere in anything which was not their business. It is just when each has their own and does their own thing (*Republic*, 433a) as well as receives relatively the same (*Laws*, 757). This trinitary formula of justice as a measure of having, doing and receiving is subordinated to a conception of a state whose ruler certainly wisely obeyed the law (*Laws*, 715), but who was allowed to use lies and deception for the benefit of those who were ruled (*Republic*, 459).

The theory of justice of antiquity with the most consequences was that of **Aristotle**. Justice was 'political' in the sense of 'being appropriate for the polis', 'he dè dikaiosúnê politikón', because justice [*díkê*] was the order [*táxsis*] of the political community and judgement [*krísis*] about the just (*Pol* I, 1253a38). Humans were political beings living in accordance with nature in community; they had a share in the distinction of the useful/the harmful [*sumphéron/blaberón*] and of the just/the unjust [*díkaion/ádikon*] (*Pol* I, 1253 a18). 'Justice' was 'expressed in many different ways [*pleonachôs légesthai*]' (*EN* V, 1129a23–31): on the one hand, 'justice' was called 'the perfected virtue/competence in relation to others', 'aretê teleía pròs héteron' (1129b26 et sq., in a similar vein, 1130a4), that is, it is the social deployment of all attitudes to be gained by experience and education and all attitudes prescribed by the law [*nómos*] (1129b19–27; similarly, 1130 b25 et sqq.). In addition to this comprehensive meaning of justice, in

the fifth book of the *Nicomachean Ethics* **Aristotle** gave a presentation *en mérei*, that is, a presentation of different partial forms of justice (1130b16), whose definition he developed from the injustices which were remedied or avoided by these partial justices: the 'equal [*íson*]' as a balancing of the 'unequal [*ánison*]' was the predominant determination (1130b7). 'Equal', however, is not to be understood in egalitarian terms, but, rather, in the context of a hierarchy; it is not the persons but, rather, their inequality, which has a claim to equality: that which is fitting to a person had to correspond to their 'dignity'. Among these are two differentiated concepts of justice specific to their field: the first, the concept of a 'justice of distribution [*dianemêtikón* or *nemêtikòn díkaion*, 1132b24]' oriented to the distribution of honours, offices and goods [*dianomaîs timês ê chrêmâtôn*, 1130b31] and that justice which ordered contractual intercourse, 'en toîs sunallágmasi diorthôtikón' (1131a1; 1132b24f). The latter divided, in its turn, into two further concepts: the first, that of the justice of exchange, regulated by 'voluntary' transactions, precisely, market dealings of all types; the other, that of the repayment of injuries which compensated the consequences of 'involuntary' transactions in the form of reparation or vengeance [*talion*] (1131a1–9), that is, such actions which in the modern state are covered by criminal law.

Common to all these partial justices is that their centre, in accordance with the Democritean formula, is a middle point between a 'too much' and a 'too little', a type of equality in the sense of equilibrium. In the justice of distribution, it was a matter of a 'geometrical' equality, for the offices and honours of the *polis* should be awarded to the members of the *polis* in proportion to their competence and education. In the justice of exchange, on the other hand, it was superficially a matter of a numerical, arithmetical equality; though, even here, proportionality had to be established (**Haacke** 1994, 44). The commodities which were exchanged for each other were as different as the competence and with that also the rank of their producers; a bed and a house, for example, are not commensurable, 'súmmetra' (*EN* V, 1133b19). Only need/necessity [*chreía*] justified the introduction of an artificial [*ex hupothéseôs*] means as a measure in order to make commodities for exchange equivalent [*íson*] (b20 et sq). Without exchange, however, no community [*koinônía*] was possible (b17). The means which here put things right was money, *nómisma* (b21). An orientation toward use-value and the establishment of community were for **Aristotle** the measure of just exchange and trade in accordance with nature (*Pol* I, 1257a16). The deployment of money for its increase, however, be it by means of profit-oriented trade or by the payment of interest, which allowed 'money [to come forth] from money', was regarded by him to be unnatural (1257b28–58a10).

It was, among other elements, the realisation that commodities must first be made commensurable in order to be exchangeable which caused **Marx** to praise the genius of **Aristotle**, because he had discovered a relation of equality in the expression of value of commodities, even if he was not able to read out from the commodity-form the fact that it is human labours which are expressed in it as equally valid. **Marx** explained that this limitation of knowledge was due to the fact that Greek society was founded upon slave labour, that is, upon the inequality of humans and their labour-powers (*MECW* 35, 69; regarding *EN*, 1133b). – Actually, for **Aristotle**, there was a legal relation between slaves and their masters only in a metaphorical way [*katà metaphorán*]. He named this legal relation 'díkaioin despotikón' and compared it to the law of the rational [*lógon échon*] part of the soul [*psychê*] opposed to the irrational or speechless [*álogon*] part (*EN* V, 1138b5–9). To the extent that the slave was a human and had a share in law [*nómos*] and contract [*sunthêkê*], there could be justice and also friendship for him; to the extent that he was a slave, that is, a mere tool [*órganon*], there was not (*EN* VIII, 1161b2–6). Even his foot had no right compared to the master (*Magna moralia*, 1194b). The law between man and woman followed from the aristocratic principle of 'kat' aretên': to each of them was given that which was appropriate to them, 'tò harmózon hekástô' (*EN* VIII, 1161a23–5). It was just that, in the marital

relation, the man ruled over the women. The reverse would be against nature for **Aristotle** (*Pol*, 1259b1–3).

The understanding of justice which had already appeared in **Plato** (*Republic*, 331; *Laws*, 757) and **Aristotle** (*EN*, 1131a–b), and which occupied the position which for the Romans was assigned to the principle of 'suum cuique', 'to each their own', reached its final form, via **Cicero** (*De legibus* I, 6, 19), in the version which the jurist **Ulpian** (circa 170–223) gave to it. This occurred in the work of codification under the Eastern Roman Caesar **Justinian** (compiled between 527 and 534, and since 1583 denoted with *Corpus iuris civilis*). From this work has been handed down a quotation which even today continues to be used often, though, of course, often misunderstood: 'Iustitia est constans et perpetua voluntas ius suum tribunes' (Initial sentence of the *Institutions*, also called the *Digests*, 1, 1, 10: 'Justice is the unwavering and enduring will to give to each their right'), a conservative legal norm which guarantees the existing property relations. **Cicero**'s presentation (*De officiis* II, 21, 73) logically follows: in the first instance, one who manages the community would have to see that each one would maintain their level of property and a reduction in the wealth of private persons, not through the intervention of the state, would be brought about.

It was **Epicurus** who removed justice from a transcendent perspective. He continued the contract theory that had been developed in the milieu of **Protagoras** (believed by some to have been a student of **Democritus**). There is no justice in itself, only as a contract [*sunthêkê, súmbolon*] between humans living together. In order to define the fundamental principle of such a contract as 'just by nature', 'tês phúseôs díkaion' (*Ratae sententiae*, 33), he chose the proven formula 'not to harm [each other] and not to allow each other to be harmed', 'mê bláptein mêdè bláptesthai' (*Rs* 33, excerpted by **Marx** in MEGA IV.1, 16, 603). By conceiving natural law as a law appropriate to human nature in place [*tópos*] and time, **Epicurus** freed justice from being a canon of virtue predetermined by God or dressed-up in any other mystical way. If the community of members of the *polis* recognised what was useful to them and what harmed them, they would be obliged to the corresponding commandments and proscriptions. A law that became unjust to the needs of the community would not have the nature of law and would therefore lack the validity of law. With that, the concept of justice was materialised, relativised and historicised. The birthplace of justice was not in the hereafter, but in the here and now, in the needs of humans, changing in time and with place.

The adherents of the Stoa who argued against **Epicurus** transferred the versions of justice tailor-made to the *polis*, the ancient Greek city-state, to a conception of justice which was aimed at the *cosmopolis*, at a world order. From that emerged the triad which was typical for the **Stoics** and which exerts an effect right up to the present day: human law – natural law – world law. The 'lex humana' was overlaid by a 'lex naturalis' and this, in its turn, was overlaid by a 'lex aeterna' (**Chrysippos**, *De lege aeterna*, 325; **Cicero**, *De re publica*, III, 22). What was just and unjust derived not from the satisfaction or non-satisfaction of earthly needs, but from the obedience to or revolt against an order of things pretending to be divine. The monopoly on definition and interpretation of the rulers ensured that such a conception of justice reflected their interests.

3. The **Patristics** and **Scholastics** less systematised the many and diverse and also contradictory ideas of justice of the *Old* and *New Testaments* than integrated these ideas, including the Aristotelian world-view, into an understanding suited to the papal church, the state and world domination. The great phrase of **Augustine**, 'What are kingdoms if they are lacking justice than great bands of robbers?' (**De civitate dei**, IV, 4: *Remota itaque justitia, quid sunt regna, nisi magna latrocinia*?), together with his other maxim, 'There is only true justice in the community whose founder and ruler is Jesus Christ' (II, 21), took a turn which was also oriented toward both internal and external sanctions.

The reversal of **Protagoras**'s saying, 'man is the measure of all things, of their being how they are, of their not being how they are not' (qtd in **Plato**, *Tht*, 151 et sq.), into the opposed formula of **Plato** according to

which God is the measure of all things (*Laws* IV, 716c) (which passed into Latin as 'non sub homine, sed sub Deo et sub lege!'), belonged to the intellectual preconditions of the Christian mode of deriving the relation between the divine, the natural and human law, of 'lex divina', 'lex naturalis' and 'lex humana'. Following that was the law which was valued more highly at the time of the standard of justice for the inferior law. Each 'lex lata' just as each 'lex ferenda' was subject to the standard of judgement, and thus also to a standard of condemnation, of a natural law derived from the order of the Creation. Its content had been equated with the regulations of the *Old* and the *New Testaments* by the *Decretum Gratiani* (circa 1140), eventually the first part of the later *Corpus iuris canonici* (official since 1580) (I, 1: *Ius naturale est quod in lege et in Evangelio continetur*). **St. Thomas of Aquinas** denied a self-legitimation of right and law: Any 'lex humana' which did not agree with 'lex naturalis' (which, for its part, had its ground of validity in 'lex divina') is no law, but, rather, a 'legis corruptio' (*Summa theologica*, II–I, qu. 95, 2).

The earthly consequences of the above conception of justice derived from the participation of humans in the unfathomable will of God were marked by the power/powerlessness structure of feudal society and the claim of the Roman Church, with its head as *Vicarius Dei* on earth, to interpret divine right in the last instance. With the principle of justice of 'to each their own', **St Thomas** justified slavery and serfdom (*S.th.*, I, qu. 21; II–II, 57), and he gave the argument of equality as a reason for why heretics should be excommunicated and burnt as believers in falsity (II–II, 11: *non solum ab ecclesia per excommunicationem separari, sed etiam per mortem a mundo excludi*), just as the authorities also justly killed the counterfeiter. With his Bull *Divino amore* of the 18 June 1452, Pope **Nicholas V** enabled the King of Portugal to conquer the lands of the non-believers and to force their inhabitants into eternal servitude [*in perpetuum servitutem*]. And with his Bull *Regnans in excelsis* of the 25 February 1570, Pope **Pius V** dismissed Queen **Elizabeth** of England, at the same time releasing her subjects from her oath of allegiance on the grounds that there is no salvation of the soul outside of the Roman Catholic Church [*unam sanctam catholicam et Apostolicam ecclesiam, extra quam nulla est salus*].

4. Christianity has thus certainly been increasingly instrumentalised by the rulers since the time of **Constantine I** (from 306 Roman Caesar in Byzantium). But Christian belief is innately no invention of those in power to justify their exercise of violence both internally and externally, no purposive invention of the ruling against the oppressed social classes. The early Christian verses on justice cannot fairly be understood as an ideology designed for the legitimation of war and colonisation, even if they were used as such for hundreds of years. With their help established legality has been legitimated, yet has also been delegitimated. With Christian verses about justice and injustice, the disciplining of the lower orders by the higher has certainly been further entrenched in the course of history. For example, the following sentences of **Paul**: 'Let every soul be subject unto the higher powers. For there is no power but of God' (*Rom* 13, 1); 'Servants, be obedient to them that are your masters [. . .] with fear and trembling' (*Eph* 6, 5); 'Wives, submit yourselves unto your own husbands, as unto the Lord' (5, 22).

At the same time, the reigning power/powerlessness structure was undermined by verses concerning justice in the *New Testament* whose content can be interpreted in an opposed direction. For example: 'Who believes in Christ is just' (*Rom* 10, 4); 'Bear ye one another's burdens, and so fulfill the law of Christ' (*Gal* 6, 2); 'If any would not work, neither should they eat' (*2 Thess* 3, 10); 'He hath put down the mighty from their seats, and exalted them of low degree' (*Lk* 1, 52). From its origins onward, Christianity, like other religions, has also reflected the longings and visions of the simple people, their illusory happiness (*MECW* 1, 149; *MECW* 3, 175).

It has been made manifest time and time again that opposed interests can hide behind the representations of justice of the biblical books – thus, in the sixteenth century, the pamphlets of the rebelling peasants partly

used the same biblical passages as the sermonising priests of their opponents well disposed to the nobility (**Laube/Seiffert** 1978, 26, 316). *Acts of the Apostles* 4, 32 was tortured out of Thomas **Müntzer** as a confession under duress (508): 'And the multitude of them that believed were of one heart and of one soul: neither said any of them that ought of the things which he possessed was his own; but they had all things common' (In the *Vulgate*: 'multitudinis autem credentium erat cor et anima una, nec quisquam eorum, quae possidebant, aliquid suum esse dicebat, sed erant illis omnia communia'). Just ten years before, the pious Thomas **More** had written in the first book of his *Utopia* that private property and justice exclude each other: 'I don't see how you can ever get any real justice, so long as there's private property' (65). In England's revolution of the seventeenth century, the eloquent Gerrard **Winstanley** published his pamphlets, among them *The New Law of Righteousness* (London 1649), with which he called to take away the monopoly of access to God from the priests, the land from the landowner, the law from the lawyers and the authority of the state from those who possessed it. His maxim, the 'Law of Righteousnesse in the pure light of Reason', was based exclusively on quotations from the Bible. In France's revolution of the eighteenth century, it was two priests, the abbot Henri **Grégoire** and the curate Jacques **Roux**, who were among the sharpest critics of feudal society, but also, already, of bourgeois society. **Roux** expressly equated justice with the rights of man, but declared that freedom, just as equality, was an empty delusion so long as one class of humans could starve out another (147, 173). In the Germany of the nineteenth century, Wilhelm **Weitling** regarded 'to be rich' to be a synonym for 'to be unjust' (*Die Menschheit, wie sie ist und wie sie sein sollte*, qtd in **Kowalski** 1962, 212). In *The Poor Sinner's Gospel* of 1845, he compared justice with the community of property and opposed it to private property with reference to *Lk* 14, 33 ('whosoever he be of you that forsaketh not all that he hath, he cannot be my disciple') and a dozen further quotations from the Bible (86 et sqq.).

5. It was the great service of the European Enlightenment from **Hobbes**, to **Rousseau**, to **Hegel**, to have initiated the universalisation of a rationally worked-out terrestrial understanding of justice. Since the laws of this world were not made in an otherworldly realm, justice also, as a measure of correspondence between the actually valid and the really required law (between existence and reality), was to be found nowhere else than in the here and now. Not the revelation of a God, but the reason of humans was the means of argumentation; human rights were invoked as a measure of law from heaven at the most metaphorically.

Hobbes, explicitly repudiating **Aristotle, Thomas** and **Suárez**, and turning instead to the tradition of the materialists **Epicurus** (*Ratae sententiae*, 31–8) and **Bacon** (*Treatise on Universal Justice*, Aph. 1–7), revolutionised the traditional connection of derivation of 'pseudo-philosophical' scholasticism between natural law legitimated by divine law and the law of humans by turning it the right way up. Natural law [*das Naturrecht*, *ius naturale*] is nothing other than the original freedom of every human, their own power to act according to their wishes, which must therefore be overcome. Otherwise the life of humans remains 'solitary, poor, nasty, brutish, and short'. Only when humans recognise their interests by means of their reason could there emerge a legal system suitable for civil society [*bürgerliche Gesellschaft*] that would be the opposite of a war 'of every man against every man' (*Leviathan*, Ch. XIII). – John **Locke** held that it was impossible that the rulers of the earth could derive even the least shadow of authority out of that which they were wont to regard, by means of biblically handed-down revelation, as the source of their power. Justice, that is, assumed that an elected parliament decided according to publicly stated laws and by means of authorised judges on the rights of subjects, since these had, after all, only united in a society in order to protect themselves and their property (*Of Government*, II, 136–9). – David **Hume** declared: 'justice takes its rise from human conventions' (*Of Human Nature*, III, 2). Justice, just like property, had its origin exclusively in general utility.

The emancipation of the legal system from a Christian/ecclesiastical standard was a part of the process of self-clarification of all anti-feudal classes concerning their interests and their opponents. Against the influence of the three Christian churches on the social and legal system, **von Pufendorf** insisted that there was just as little a Christian natural law as a Christian surgery (*Eris scandica*). **Kant** allowed neither religion nor morality to assume the throne of critique, but only autonomous human Reason purified by self-critique. He did not approve, however, of the 'uncouth appeal to supposedly conflicting experience' which would not even exist if one had judged at the appropriate time according to reasonable ideas (*WA* 3, 324; 11, 129).

The rejection of God as the source of justice, however, was not supposed to result, for example, in the declaration of justice as trivial, or free manoeuvre being given to human arbitrariness. To claim that there was no right or wrong except that which the laws ordered or forbade was, for **Montesquieu**, tantamount to the claim that the radii would not have been the same before the first circle was drawn (*De l'Esprit des Lois*, I, 1). It was much more a case of the objectivity of a criterion of justice. **Hegel** radicalised the problem by denying any scientific meaning to former modes of treating natural right, the apriori as well as the empirical, and by refusing to concede the possibility of existence of a perfect legal system with total justice (*W* 2, 437, 485 et sqq.). On the one hand, hundred years' old law justly went down if the basis which was the condition of its existence was no longer valid (*W* 4, 508), and, on the other hand, that which was only supposed to be, without actually being, had absolutely no truth (*W* 3, 192).

The philosophers of the Enlightenment did not content themselves with disqualifying traditional law as unjust by a verdict of critical reason. Their actual concern was a society in which law and justice tended to coincide. How that was to be managed was a matter of dispute among them. **Montesquieu** hoped for a constitution of freedom and justice in which the three types of ways in which the state exercised power (*la puissance législative, exécutrice, de juger*) would be exercised by co-ordinated mutually interdependent controlling organs (*De l'Esprit des Lois*, XI, 6). **Rousseau**, on the other hand, favoured the identity of the governing and the governed, which excluded unjust laws because nobody could be unjust toward themself (*Du contrat social*, II, 6). For his part, **Kant** put the touchstone for the justice of a law in the idea of reason of obliging 'every law giver that they so write their laws as if they could arise from the united will of the entire people' (*On the Proverbial Saying*, *WA* 11, 153). All of that was, at least, thought in an anti-feudal sense and in the direction of a civil society [*bürgerliche Gesellschaft*]. **Hegel**, of course, undermined their claims to absoluteness with his theory that this 'civil society [*bürgerliche Gesellschaft*]', by the contradiction immanent to it between an excess of wealth on the one side and poverty on the other, would 'be driven beyond itself' (PR, § 246; cf. *MECW* 6, 504, where bourgeois relations of production 'outstrip themselves').

In the development of versions of justice tending toward socialism before **Marx** and **Engels**, the question of property played a central role. **Rousseau**, certainly no socialist, was absolutely clear that inequalities and conflicts of interests were among the inevitable effects of property (*Discours sur l'inégalité*, 209). This was the reason why he counted among the preconditions of civic freedom not only equality before the law, but also equality of wealth, at least to the extent that nobody should be so rich as to be able to buy another person, and nobody so poor, as to have to sell themselves (*Du contrat social*, II, 11). The feminist Mary **Wollstonecraft** saw in freedom a beautiful idea never realised, because 'the demon of property has ever been at hand, to encroach [upon] the sacred rights of men, and to fence round with awful pomp that war with justice' (1790, 14). William **Godwin** (1793) indeed characterised reason as an important instrument of justice, but did not overlook the fact that the rich had a monopoly of state violence and transformed the legal system into an instrument of oppression over the poor, thus hindering justice (1976, 91 and 790).

At the same time the murmuring tendencies which had been around for centuries of

a 'Christianity from below' began to be amplified. Thus **Saint-Simon** demanded in his dialogue *New Christianity* to arrange society according to the principle of neighbourly love (*Rom* 13, 9; cf. already *Lev* 14, 18) and to turn proletarians into partners enjoying equal rights (400 et sqq.). Étienne **Cabet** radicalised his understanding of Christianity in the form of a *Communist Confession of Faith* (in **Höppner**, Vol. 2, 392–407). **Weitling** wrote in a manuscript (published for the first time in 1929!) with the title *Justice* that, among all established principles, only the Christian led to a 'satisfying definition of the concept of justice' (123). Karl **Schapper**, member of the *League of the Proscribed*, later of the *League of the Just* (!), saw in community property that which Christ had actually wanted, and was of the opinion – at any rate, in 1838 – that one 'could draw the most for our principles from, and have the best effect on the people with, Christ's teachings' (qtd in **Förder**, 105).

Finally, 'the rights of man', as they had been catalogued in different versions in France's Great Revolution as foundations of the Constitution (cf. **Klenner** 1982, 226–41), had served as a criterion for judgement and condemnation of the social relations which were to be revolutionised. In Article 4 of her *Declaration of the Rights of Woman and the Female Citizen* of 1791, Olympe **De Gouges** had regarded as a consequence of 'justice' that women were given back their 'natural right' to equal rights (qtd in **Schröder**, 37). Mary **Wollstonecraft** denied the existence of a 'divine right of husbands' no less than that of a 'divine right of kings' (1790, 122). 'Inequality and oppression are synonymous', **Babeuf** and **Buonarroti** had both recognised (qtd in **Höppner**, Bd. 2, 97). From the *Société des droits de l'homme* to the *Society of the Rights of Man* and the *League of the Proscribed*, to the *League of the Just* (according to its statutes: the *League of Justice*!), the forerunner of the *League of the Communists*, the realisation of the rights of man and of the citizen was named as the political goal of the illegal organisations inclined toward communism as well as the labour movement (cf. **Ramm**, 6; **Klenner**, 257; **Förder**, 93). That corresponded to the view of Georg Büchner that 'in social things [one must] depart from an absolute legal principle' (*Werke*, 435). The *Hessische Landbote* (*Hessian Land Herald*) of 1834 that he helped to write had characterised the judiciary [*die Justiz*] as a 'whore of the German princes'. Simultaneously, it had stated that the people had been robbed of the rights of man and citizen, and ended with the yearning for a 'kingdom of justice. Amen' (365).

6. Probably the earliest use of the word justice in the *oeuvre* of **Marx** and **Engels** (except for excerpts) comes from **Engels** in October 1843: 'Show them that real liberty and real equality will be only possible under community arrangements, show them that justice demands such arrangements, and then you will have them all on your side' (*MECW* 3, 397). The most likely last use of the word justice is also by **Engels**, who, in 1891, ironically characterised the kingdom of God on earth, translated into philosophical terms, as a place 'where the eternal truth and justice is realised or should be realised' (*MECW* 27, 191). In a letter of June 1879, he criticised the ethical socialism of Karl **Höchberg** and 'his programme of the "Zukunft", according to which socialism was to arise out of the concept of "justice". Such a programme directly excluded from the outset all those who ultimately regarded socialism, not as the logical outcome of any idea or principle such as justice, etc., but as the ideal product of a material-economic process, of the social process of production at a given stage' (*MECW* 45, 362 et sqq.).

With these three selected remarks, the range of the versions of justice of **Marx** and **Engels** becomes immediately clear. Initially, the doubled identification of justice with real freedom and equality, on the one hand, but also, on the other hand, the identification of German philosophy, which via detours has finally arrived at communism, with the concerns of French, English and German socialists from **Babeuf** to **Proudhon** to Weitling (MEGA I.3, 495 et sqq.). In a final move, justice was declared to be unsuitable for helping to found a programme for socialism.

In the complex understanding of justice of **Marx** and **Engels** at least five aspects can be differentiated:

6.1. As dialecticians, **Marx** and **Engels** refused to elevate the historical explanation for the coming into being of a situation into the standard of a justification for the continuance of this situation, as **Savigny** and his historical school of law had done (*MECW* 1, 203; *MECW* 3, 177). As historical materialists, besides an empirically pre-determined, self-legitimating legality, they also rejected an apriori ascertainable, eternal justice shaping (or which was supposed to shape) all humans at all times and in all situations. Particularly in his conflicts with **Proudhon, Marx** conducted a vitriolic polemic against all attempts to derive revolutionary demands from considerations of justice. The 'inspiration of eternal justice' (*Poverty of Philosophy*, *MECW* 6, 193), according to **Marx**, reflected civil society [*bürgerliche Gesellschaft*] itself as an ideal, which was the reason why it was hopeless 'to want to reconstitute society on the basis of what is merely an embellished shadow of the actual world' (*MECW* 6, 144, trans. modified; commentated on by **Engels** in *MECW* 26, 283). **Proudhon** drew 'his ideal of justice, of *justice éternelle*, from the legal relations which correspond to commodity production, as a result of which [. . .] the proof which is for all petit bourgeois so comforting is also provided, namely, that the form of commodity production is just as eternal as justice. [. . .] Does one know anything more of, for example, usury, if one says, it contradicts "*justice éternelle*" [. . .]?' (*MECW* 35, 94 et sqq.; trans. modified). To destroy the normative aura of an eternal justice together with its metaphysical basis was a life-long element of **Marx**'s and **Engels**'s ideology-critical *modus operandi*. Intuition provided them with no certainty of judgement. To judge or condemn something without having comprehended it was anathema for them (*MECW* 35, 503).

6.2. Even if **Marx** and **Engels** radically rejected the existence of an ahistorical and transcendental – that is, absolute – justice, they nevertheless acknowledged the historical (that is, temporary) inevitability of ideas of justice as well as the necessity of uncovering the material basis of these ideas. The ideal of 'eternal justice' was, for **Engels**, 'the ideologised, glorified expression of the existing economic relations, at times from the conservative side, at times from the revolutionary side' (*MECW* 23, 359). Thus the philosophers of the Enlightenment had announced that they wanted to liberate all of humanity from the former social states of superstition and oppression, and to introduce a kingdom of reason in which would reign, beside the eternal truth and the inalienable rights of man, also 'eternal justice'. This had, then, of course, turned out to be 'the idealised kingdom of the bourgeoisie', with bourgeois justice, equality at the most before (but not under) the law and private property as a human right (*AD*, *MECW* 25, 19). As it turned out that the opposition of exploiter and exploited, of rich idlers and working poor had remained, communist utopians would have wanted in their turn to free immediately all of humanity and to introduce the 'kingdom of reason and eternal justice', an 'eclectic average socialism' as an expression of 'absolute truth, reason and justice' (19 et sqq.). Also here ideas of justice were regarded as necessary, even if illusory reflections of historical events, particularly in the consciousness of everyday life.

6.3. In a polemic with the English banker and economist James **Gilbart**, who had named the profit-seeking of those who loaned money a 'self-evident principle of natural justice' (*MECW* 37, 337), **Marx** declared that the assumption of a 'natural justice' in this context was 'nonsense' (ibid.). However, **Engels** differentiated between 'what is morally fair, what is even fair in law' from what is 'socially fair' (*MECW* 24, 376). By 'fair in law' he understood a behaviour or relation corresponding to the currently valid juridical laws, which was thus legally just. By 'socially fair' (*MECW* 24, 376) he understood a behaviour or relation corresponding to the current mode of production, which was thus economically just. He therefore suggested replacing the long-standing slogan of the English labour movement, 'A fair day's wages for a fair day's work!' with 'Possession of the means of work by the working people themselves!' (*MECW* 24, 378). And Marx held legal contracts about economic transactions as actions freely entered into by the participants

to be just, provided that they corresponded to the current mode of production, and held them to be unjust as soon as they were inadequate for the mode of production; slavery, on the basis of the capitalist mode of production, was therefore as unjust, according to **Marx**, as the falsification of commodities (*MECW* 37, 337 et sqq.). In the *Critique of the Gotha Programme*, he provocatively claimed that the wage of the worker, which in bourgeois society 'can in no way be calculated from justice' is the result of the 'only "just" distribution on the basis of the present-day mode of production' (*MECW* 24, 84 et sq., trans. modified). Also the capitalist profited as a 'necessary functionary of capitalist production [. . .] with every right, i.e. such right as corresponds to this mode of production' (*Randglossen*, *MECW* 24, 535). **Marx** was not happy that he was obliged to adopt 'truth, morality and justice' in the preamble of the *Rules of the International Workingmen's Association* (*MECW* 20, 14; 23, 4), 'but these are placed in such a way that they can do no harm' (*MECW* 42, 11).

6.4. The radical rejection of the derivation of political-revolutionary demands from an abstract concept of justice, since ideas had always disgraced themselves as long as they were differentiated from interests (*HF*, *MECW* 4, 85), meant for **Marx** and **Engels** in no way a lack of criticism in relation to the given mode of production together with its law and a justice appropriate to it. Since they understood bourgeois society as an historical process (i.e. as having become, as developing and temporary), they certainly acknowledged no natural justice. However, they did acknowledge, next to a juridical justice (what is fair in law) and a social justice (social fairness), also an historical justice. By this, they understood the degree of agreement of the behaviours and relations of humans with the objective requirements of social, progressive development. In this sense, they spoke of 'historical justification' (*AD*, *MECW* 25, 269), of a 'legitimate tendency' (*MECW* 20, 188), of an 'historical inevitability', that is, the 'historical legitimacy' of determinant social conditions (*MECW* 26, 597 et sqq.), occasionally also directly of 'historically justified' relations of production (*MECW* 37, 762) or 'historical justice' (*MECW* 16, 395). The general course of history thus appeared as the judge of that which was historically just or unjust. The enforcer of the judgement was, however, the proletariat (*MECW* 14, 656).

6.5 Since **Marx** and **Engels** refused to advocate 'the requirements of truth' (one could also say: of justice) instead of 'true' requirements (one could also say: just) and 'the interests of Human Nature, of Man in general' instead of 'the interests of the proletariat' (*Manifesto*, *MECW* 4, 511), they derived their communistic demands from the (according to them) empirically perceptible collapse of the capitalist mode of production, not from a moral [*sittlich*] feeling or feeling of justice (*MECW* 26, 285). While the *League of the Just* still gave as its goal in Article 3 of its statutes of 1838 the 'realisation of the principles which are contained in the rights of man and the citizen' (qtd in **Förder**, 93), Article 1 of the 1847 *Rules of the Communist League* (on which **Marx** and **Engels** worked) stated that its goal was 'the overthrow of the bourgeoisie, the rule of the proletariat, the abolition of the old bourgeois society which rests on the antagonism of classes, and the foundation of a new society without classes and without private property' (*MECW* 6, 633). This 'new society' was defined in the *Manifesto* as an 'association, in which the free development of each is the condition for the free development of all' (*MECW* 6, 506).

With this characterisation, which was also proposed by the late **Engels** almost fifty years later as the foundational idea of the coming socialist epoch (*MECW* 50, 256), both a standard for judgement, but also for condemnation of behaviour and relations, is provided. Something similar is the case for the demand, already proposed by the young **Marx** in the form of a categorical imperative, to throw down all relations in which man is an enslaved being (*MECW* 3, 182); and also for the necessary transition of the previously merely partial emancipation of man to a universal, really human emancipation (*MECW* 3, 151, 155, 184); and also for the principle of socialism or communism formulated by the late **Marx** following

Saint-Simon (c.f. **Ramm**, 89) of 'from each according to their ability, to each according to their work' or 'from each according to their ability, to each according to their needs' (*Gotha*, *MECW* 24, 85 et sqq.). Even **Marx**'s insight that no society as a totality, no nation and not even all contemporaneous societies taken together are 'owners of the globe', but only its 'usufructuaries' who have 'to leave their property improved upon to the following generations' (*MECW* 37, 762; trans. modified) contains criteria, if not verbatim then certainly in its conceptual content, for the assessment of the ecological politics of the state as either just or unjust.

In summary: **Marx** and **Engels** operated with both an ideology-critique concept of justice and also a normative concept of justice. They preferred the reflexive compared with the constitutive properties of justice, the reflection of historical events in ideas of justice compared with their repercussions on the course of history. Fixated above all on the (in their opinion) imminent revolution in which capitalist relations of production would 'shed their skin' to reveal socialist relations of production (*MECW* 37, 762), they undervalued the reforming potency of demands for justice within the existing social formation.

7. Since the middle of the twentieth century, there has been a tendential inflation of literature concerning justice. In times of crisis, the need for an ambiguous vocabulary of concealment increases. In the programmes of all parties, the vocabulary of justice makes an appearance. Nobody holds themselves and their own concerns to be unjust. It is always only others who are unjust. Even every war is fought by both sides for 'justice'. According to Article 2.3 of the *UN Charter* of 1945, the members of the UN have committed themselves to settle their disputes peacefully, so that 'peace, security and justice' are not endangered. What 'justice' is supposed to mean in this context is not stated by the *UN Charter*. The number of the wars that were conducted in the second half of the twentieth century certainly exceeded those of the first half of the century. Even though, according to the report of the International Court of Justice of July 1996, not only the use but even the threat of atomic bombs is unlawful (and thus also unjust), NATO did not feel obliged to pacify its concepts of war and to refrain from its war-practices. Apart from gnoseological, axiological, logical or sociological treatments and remarks of a meta-theoretical type about conceptions of justice of others, three types of theories of modern justice can be distinguished. They are, to be precise, agnostic and – following a classification of Max **Weber** (*Rechtssoziologie*, 243) – material and formal theories.

7.1. According to the agnostics, the fact that something is just can be just as little proved scientifically as the beauty of a gothic cathedral or a symphony of Beethoven (**Ehrlich** 1913/89, 163). To the scientist, justice is suspect as a rather political or religious concept (**Dürrenmatt** 1969, 18). Justice is incompatible with objectivity (**Weber**, *WL*, 505, 600). It could be an object of confessions of faith [*von Bekenntnissen*], but not of knowledges [*von Erkenntnissen*]. It is an irrational ideal, based upon arbitrary values (**Perelman** 1967, 82). It is a game with tautological concepts, burdened by no content, but ready to take up any and every content, that is, it is an empty formula, a concept smuggled in for disguising stereotyped compromises. Or: justice [*Gerechtigkeit*] has nothing in common with the law [*Recht*] except etymology. Viewed scientifically, the contents of all theories of justice are immediately valid, that is, indifferent. The six volumed *Handwörterbuch der Rechtswissenschaft* (Berlin-Leipzig 1926–37) includes not a single lemma on justice! All postulates of justice which have been previously put forward with claims of absoluteness (e.g. give to each their own; that which you do not want someone else to do to you . . .; an eye for an eye . . .; categorical imperative; to each according to their contribution) are tautological (**Kelsen** 1967, 350 et sqq.). The consequence: 'I do not know what justice is' (1957, 39).

7.2. The material theories of justice develop principles and criteria which, according to their own claims, allow an assessment to be made regarding content of modes of

behaviour and relations as just or unjust. With their help it is supposed to be able to be established whether a valid or planned law [*lex lata* or *lex ferenda*], a war which has occurred or one which is being planned, the actual or planed distribution of property in society, gender relations etc. are to be judged as just or as unjust. Particularly after the end of WWII, as the crimes committed throughout Germany's Third Reich became apparent for all to see, the moral and legal philosophical controversies about the theory and practice of its brutal reign led to an episodic justice-renaissance, before legal positivism once more triumphed. Gustav **Radbruch** had still in 1932 named the *sacrificium intellectus*, 'only to ask what is legal and never, if it is also just' (84), as a professional obligation of the judge. In 1946, however, he stated that 'turning away from the idea of justice' was responsible for the fact that jurists had become defenceless against the criminal laws of the Nazis (196, 209).

Then there emerged theories of justice on Catholic (**Auer**, **Messner**, **Utz**) and evangelical (**Brunner**, **Wolf**, **Weinkauff**) foundations as well as value and existential philosophical arguments (**Coing**, **Heydte**, **Fechner**) of quite different content, in which assertions were rather rarely covered by proofs; 'intuitive vision', 'belief in the triune God' and a 'metaphysical order of being' replaced rational argumentation (cf. **Maihofer** 1966, 39, 195, 213). With the claim that justice could not be learnt but only experienced, not thought, but only observed, irrationalities were indulged and along with it an ideology antithetical to democracy – because it is not that the people want a law which makes it just.

Moreover, the overdue conflicts were for the most part carried out at a level of abstraction that allowed an approach to reality, above all to its contradictions, to be neglected. The return to a concept of justice valid for one and all times and all peoples was also partly used to avoid an analysis of the actual conditions of emergence and efficacy of the legal and illegal state terrorism from 1933 to 1945. Outdated hierarchies were also declared to be inviolable with the argument that they belonged to the 'cornerstones of Christian European culture'. Thus, for example, the family is an 'order for living together' of the sexes 'adequate to the Creation', established by God and unable to be broken by the earthly law giver, in which, despite the equal rights of man and woman guaranteed by the constitution, the latter safeguards the inner structure of the family, whose survival and future the man has to ensure, representing the 'head' of the family to the external society (*Bundesgerichtshof*, cf. **Maihofer**, 572 et sqq.).

7.3. Legal-positivist and procedural approaches are numbered among the formal theories of justice. In the praxis of everyday life, especially that of the jurist, the view which predominates is that justice is, casually stated, an automatic consequence of law and order or, expressed in a highbrow way, the 'adequate complexity of the legal system', in which the complexity of a legal system is adequate 'if and in so far as it is still compatible with consistent decisions in the system' (**Luhmann** 1981, 388, 390).

Procedural theories have dominated for quite some time in the more detached thought practices. Currently, more than 30 different versions have been represented in monographs (cf. **Tschentscher** 2000, 143 et sqq.). Here it is a case of theories that are indifferent to content, which restrict themselves to a justice of procedure, in distinction to the material theories which strive for a justice of the outcome.

Thus, for example, John **Rawls** caused a stir with the following thought-experiment: a rational individual equipped with a healthy self-esteem, chosen at random like in a lottery, should imagine itself to be in an originary situation with the task of developing principles of justice. There, hidden under a 'veil of ignorance', the individual should decide 'what sort of society it would consider to be just if it had to live in it', in ignorance, of course, about what sex, age, nationality, social standing, work and income it would have in the just society which they conceived. **Rawls** then claimed that this individual would establish two fundamental principles with the status of **Kant**'s categorical imperative, namely: 'Everyone has the same right to the most substantial total system of equal fundamental freedoms which is

possible for everyone', and: 'Social and economic inequalities must be such that: (a) they must [. . .] bring the least favoured the greatest possible advantage, and (b) they must be connected with offices and positions which are open to all in accordance with fair equality of chances' (1999, 325). In this construct, in which freedom is granted priority before equality and neither private property nor monogamy are 'subject of political bargaining', values are radically delinked from interests. Nevertheless, the categories of the welfare state, even if subordinated to those of the state founded upon the rule of law, become discussable and the justice-content of contemporary society is able to be analysed, at least in an academic context. Precisely for this reason, **Rawls** has already been exposed to a growing critique by neoliberals, according to whom the compensation by the state for natural inequalities transforms the state into a 'machinery for egalitarian redistribution' (cf. **Kersting** 2000, 161, 299, 392).

According to Jürgen **Habermas**'s procedural theory of justice, all political power should be derived from the communicative power of citizens, which is why a legal system is just to the extent it uniformly ensures the equally originary autonomy of its citizens. Fundamental principles and norms which embody interests that can be generalised must be sought in a 'communicative arrangement' (1992, 109, 166). Justice is thus a consequence of discourses relieved of the necessity of activity and unconstrained by experience.

For the proceduralists, the justice of a law or of a social relation should, therefore, not be dependent upon whether their content is just, but whether they were produced in a just way. Thus the legitimacy of a claim should also not depend upon the truth of that which is claimed. Rather, the truth of that which is claimed depends upon the legitimacy of the claim. Certainly, just as for the truth, the way and not merely the result also belongs to justice. Nevertheless, all theories of justice which limit themselves to the realm of procedure conceal the fact that a future, more just, distribution of power can only be discussed and decided upon under the structural conditions of a present distribution of power/powerlessness which, for its part, is certainly not the result of a discourse concerning justice. Consequently, the discourse concerning justice is burdened exclusively on those who have an interest in the transformation of society, while those who feel at ease in and affirmed by the society as it is have no obligation to justify themselves.

8. Even if **Marx** and **Engels** have left behind no theory of justice, their influences on the ideas of justice of the thinkers who have followed in their footsteps (and even of their opponents) are of a many and diverse nature. However, up until now, they have only led to an independent, genuinely Marxist theory of justice in the case of Ernst **Bloch**.

In so far as **Kautsky, Lenin, Luxemburg, Liebknecht, Renner, Bukharin, Korsch, Benjamin, Pashukanis** and **Stuchka** have spoken about justice at all, they have concentrated – just as did **Marx** and **Engels** – on the characteristic of ideas of justice to reflect material interests and relations at the same time as they obscure them (**Klenner** 1998, 70 et sqq.). In the lands of 'really existing socialism', one restricted oneself in the main to an identification of socialist law with justice or to an unreflective rendition, for the most part one-sidedly, of selected comments by **Marx** and **Engels** on justice (exceptions include, for example, **Szabó** 1973, 156; **Peschka** 1974, 129; **Klenner** 1982, 147).

Gramsci, in the context of his conception of civil society, offered sporadic comments which began from the janus-faced nature of natural law and proposed to introduce '"right" as it is understood by the people' (*Q* 27, § 2), that is, their representations of justice, into the process of the continuous, by no means only revolutionary, transformations of society. In this, he understood the state as a rational 'teacher' and the law as a repressive and awarding activity of civilisation (*Q* 13, §11).

For **Brecht**, who, as both poet and thinker, often and suddenly expressed his views on problems of law and justice (cf. **Klenner** 1984, 210 et sqq.), justice was a 'question of production' (*GA* 18, 152). And a question of struggle: 'Whoever does not insist upon their

just demands deals indecently [*unsittlich*]' (*GA* 14, 179). As a materialist, he added cunningly that one could only struggle for justice when one struggled for one's own interests; there is only a 'justice for whom' (*GA* 21, 399). For the oppressed, it was not that oppression should cease and then there would be justice, but that there should be justice, and then oppression would cease; the oppressed are not selfless, just people (*GA* 18, 53, 153). Opposed to the universalism of the justice-form of ideas, **Brecht** stated regarding the famous verse from the Bible, 'You should love your neighbour as you love yourself' (*Lev* 19, 18; *Mt* 22, 39), that 'If the workers did that they will never abolish a situation in which one can only love his neighbour when one does not love one's self' (*GA* 18, 152). **Brecht** extended **Kant**'s categorical imperative (*WA* 7, 51) in the sentence: 'Create a situation in which your action can be the maxim for the action of everyone' (*GA* 22, 279; a very similar idea appears in **Gramsci**, *Q* 11, § 58). **Brecht** was among the strongest critics of a substitution of values for interests which was appearing now and again even among those on the Left.

Ernst **Bloch**'s influential conception of natural law is at the same time a conception of justice. In agreement with **Engels**, who described natural law as a 'an image of the conservative or revolutionary tendencies of his [Dühring's] day' (*AD, MECW* 25, 89), but also with Max **Weber**, who named it a form of legitimacy of forces which had been created in revolution but which had also historically become authoritarian (*RS*, 317 et sqq.), **Bloch** opposed to 'justice from on high' (1961, 50 et sqq.) a 'justice, but from below' (227 et sqq.). The 'eye of the laws' (206) on the face of the ruling class would not be endangered by the Sunday ideal of a justice from on high, but by the 'radical, subjective natural law and its demand: from each according to their abilities, to each according to their needs', to which corresponded 'the radical objective natural law: solidarity' (269; cf. 252). This natural law from below is not innate; for Marxism 'the *humanum*' was valid 'as an historical goal, not as an apriori principle of deduction' (219). The more suprahistorically natural law was traded, the more quickly it degenerated into hypocrisy (226). As a 'necessary evil', justice from below would also function as a 'revolutionary tribunal', 'enduring only so long as is possible', because: 'No democracy without socialism, no socialism without democracy, that is the formula of an interaction which decides upon the future' (231 et sqq.).

9. In modernity, 'justice' has also served a series of declarations concerning human rights and other laws as a word of intention without resonance on the legal terrain. The opening sentence of the *Universal Declaration of Human Rights* of the UNO of 1948 (presented as a 'common standard of achievement', that is, not bound to the laws of any particular people) declares that the recognition of human rights is 'the foundation of freedom, justice and peace in the world'. This claim is repeated literally in the double catalogue of human rights of December 1966, *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*. Indeed, it appears in the opening sentences of both documents that have in the meantime become binding in international law for the great majority of the world's states. It is the same in the *Preamble of the European Convention for the Protection of Human Rights and Fundamental Freedoms* of 1950 and the *Fundamental Laws of the Federal Republic of Germany* (*Grundgesetz für die Bundesrepublik Deutschland*) of 1949 (Art. 1.2). Judges in Germany have to swear that they serve only truth and justice (*Richtergesetz* of 1972, § 38). The German *Sozialgesetzbuch* of 1975 gives as its goal that it should contribute to 'social justice' (I, §1).

The more the vocabulary of justice is used in theoretical, programmatic and legal texts in a way which is empty of content, the greater is the danger that justice only serves injustice as window dressing (**Bloch** 11), instead of mobilising against this injustice. Whenever 'justice' is spoken of, one must always be mindful of whose interests are appealed to. Using the vocabulary of justice, the media of the powerful are advertising for a penetration of the forms of capital into the global society by suggesting to those without power the possibility of the generalisation of interests that cannot be generalised. Should one, therefore, renounce completely

the code of justice/injustice, since it is constantly misused as a façade of legitimation? Who ever gives up the uncovering of the power/powerlessness structure of society, whose mode of being is causal for the injustice of the powerful against the powerless, would only encourage those who do not shrink from draping a coat of moralistic-juridical non-conditionality and non-evasion around the money-making policies of the rich and the monopoly of violence of the ruling class.

In June of 1953 **Brecht** wrote of justice as the 'bread of the people' which, to be sure, must be baked by the people themselves (*GA* 15, 269).

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Hermann Klenner

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Anerkennung, Armut/Reichtum, Bürgerrechte, Emanzipation, Ethik, falsches Bewusstsein, feministische Rechtskritik, Freiheit, Gegenmacht, gerechter Lohn, gerechter Krieg, Geschlechtervertrag,

Gesellschaftsvertrag, Gewissen, Gleichheit, Interesse, Juristen-Sozialismus, juristische Weltanschauung, Klassenjustiz, Konsens, Legalität, Menschenrechte, Moral, moralische Ökonomie, Naturrecht, Normen, Phrase, Recht, Rechtsstaat, Sozialstaat, Toleranz, Tyrannei, Universalismus, Utopie, Werte.

civil rights, class justice, conscience, consensus, counterpower, emancipation, empty phrase, equality, ethics, fair wages, false consciousness, feminist legal critique, freedom, gender contract, human rights, interest, juridical socialism, juridical *Weltanschauung*, just war, law, legality, morality, moral economy, natural law, norms, poverty/wealth, *Rechtsstaat*, recognition, social contract, tolerance, tyranny, universalism, utopia, values, welfare state.

III. After the collapse of administrative socialism and the triumph march of neoliberalism, there was a sudden increase of publications on the problem of justice in which neoliberal and post-Keynesian positions came into conflict. – The neoliberal positions worked on a conceptual decoupling of justice and equality. Justice was articulated as 'suum cuique [to each their due]', and the classical conception of 'proportional justice' was combined with one of the leading concepts of neoliberalism: 'Every person should is entitled to the rights, respect, consideration and participation upon which they are able to make a claim on the basis of who they are and what they have achieved' (**Frankfurt** 2000, 42). A 'minimal welfare state' was pleaded for (**Kersting**), which was oriented to the so-called sufficiency-principle: 'To own less is in the end compatible with owning much, and doing less well than others does not imply that one is doing badly. [. . .] There is no necessary connection between life on the bottom rung of society and poverty in the sense that poverty is a serious and morally unacceptable obstacle to a good life' (**Frankfurt** 2000, 40). It is the task of the state to guard the material interest of citizen as much as is necessary in order to keep them 'ready for the market' (**Kersting** 2000, 392). Similar to the political terrain, here, in the first instance, conceptions oriented to a Keynesian notion of redistribution are attacked. The opponents of the anti-egalitarians who are most discussed are Ronald **Dworkin** and John **Rawls. Rawls** spoke out, with **Keynes**, for the 'priority of justice over and above the ability to perform and greater sum total of profit' (1999, 324).

While the neoliberal 'new interpretation of the social question', as Birgit **Mahnkopf** (2000) demonstrated, became established in the political objectives of social democracy thanks to the formula of 'justice through inequality', its critique has remained for the most part trapped in a helpless rhetoric of 'values'. The articulation of justice as value has proved to be itself a method, even when it remains linked to 'equality', by means of which the renunciation of emancipatory politics becomes hegemonic or at least capable of exercising hegemony. Anthony **Giddens** formulated this affirmatively: 'In the absence of a model of liberation the self-description of "left-wing" actually becomes in the first instance a question of values' (2000, 45 et sqq.). Herlinde **Pauer-Studer** (2000) answered the social-philosophical 'anti-egalitarianism' with the construction of a universe of values in which equality as an 'extrinsic, instrumental value' arbitrated over 'freedom' as extrinsic value 'in itself', and the 'intrinsic value' of universal respect was assigned an admittedly subordinate but secure place. While the dispute about justice was centred on the question of whether 'equality' was an intrinsic or merely derived value (**Pauer-Studer** 2000; **Frankfurt** 2000; **Krebs** 2000), the social problematic disappeared over the horizon.

The so-called abilities-approach of Amartya **Sen** and Martha **Nussbaum**, supposedly serving 'equality and justice' (**Nussbaum** 1999, 63), was oriented, in contrast, much more strongly to praxis and needs. 'What must finally be in the foreground' argued **Sen**, 'is the life which we lead: that which we are able or are not able to do, that which we can or cannot be' (1987, 36). In opposition to the sufficiency-principle, **Sen** defined the standard of living necessary for the development of determinant abilities from the socially average level of reproduction. Significantly absent in this conception, however, are the practically active, social individuals who articulate their interests. That it concerns conceptions 'from above' which strive to fix what humans are and are

not entitled to becomes particularly clear in **Nussbaum**'s 'Aristotelian social democratism'. In order to concretise **Aristotle**'s concept of the good life, she undertook to present a list of fundamental needs and abilities that should give an answer to the 'question of what seems to belong to a life which we accept as a human life' (199, 190). Nevertheless this 'we' has a dehumanising reverse-side: the handicapped – and also, in a problematic case, youth fallen on hard times – are regarded as examples of a life which 'is so impoverished that it cannot be rightfully called a human life' (198). The philosophical classification of human/inhuman has here taken the place of the question concerning the possibilities of the appropriation and shaping of one's own conditions of life.

Nancy **Fraser**'s contribution to the debate about justice distinguished itself by departing from the politics of the social movements. In the 'post-socialist situation' she observed a shift in the articulation-forms of the social movements: 'Cultural domination supplants exploitation as the fundamental injustice. And cultural recognition displaces socio-economic redistribution as the remedy for injustice and the goal of political struggle' (1997, 11). For **Fraser**, 'justice today requires both redistribution and recognition' (12). She developed a perspective against paternalistic social policy and exclusivist identity politics which combined 'the socioeconomic politics of socialist feminism with the cultural politics of deconstructive feminism' (29). The socialist component aimed at a 'transformative redistribution' which included a 'deep restructuring of the relations of production' (27). The deconstructive component was an 'opponent of the sort of sedimentation or congealing of gender difference that occurs in an unjustly gendered political economy' (30). With the formula 'recognition and redistribution' **Fraser** joined together the cultural and socio-economic dimensions of socialist politics in a purely additive way and detached from any real policies. Nevertheless, it became clear in her study that justice throws up questions of social transformation. Not whether the concept of justice can and should be connected with the concept of equality, but, rather, to what extent justice is linked to demands and proposals regarding the dismantlement of the domination of humans over humans, therefore moves into the centre of the debate. From a Marxist perspective, it is this question of the critique of domination which constitutes the centre of discourses concerning justice; and it is this horizon in which **Derrida**'s Benjaminian-Heideggerean claim gains its meaning: the 'absolute and non-anticipatable singularity of that which is-to-come as justice' is an 'irrenunciable distinguishing mark of the Marxian legacy' (50).

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Anerkennung, Distribution, Feminismus, Gleichheit, Keynesianismus, Leistung, Neoliberalismus, Sozialdemokratie, Sozialfürsorge, Sozialpolitik, Sozialstaat.

achievement, distribution, equality, feminism, Keynesianism, neoliberalism, recognition, social democracy, social politics, social welfare, welfare state.