



LOOKING FOR JUSTICE: COULD LABOUR LAW HELP TO FIND IT?

DR. MARÍA SALAS PORRAS
LABOUR LAW AND SOCIAL SECURITY DEPARTMENT

LOOKING FOR JUSTICE: COULD HRM HELP TO FIND IT?

DR. JUAN MARTÍN AGUIRRE DE MENA
ORGANIZATIONAL ENTREPRENEURSHIP

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Main issues to deal with

- **1.** What is Justice?
- **2.** Reflections on some human perspectives of Justice
- **3.** Approach to the concept of Social Justice
- **4.** Social Justice and Labour Law: From a protective purpose to an inclusive one

1. What is Justice? (I)

- **Justice** could be defined as a **set of universal principles** which guide people in judging what is **right** and what is **wrong**, no matter what culture and society they live in.

1. What is Justice? (II)

- **Parity** in order to avoid imbalance of power. Consequently, should “parity” be understood as “identity” or as “equality”?
- **Freedom** to choose responsibly our own actions within society. In this case, should freedom have any sort of limit?
- **Distribution** of rights, opportunities and participation, but in an equal way?
- **Consolidation of the good.** However, what is good? Who is entitled to define what is good? What kind of good are we thinking about: the individual good or the common one?

2. Reflections on some human perspectives of Justice (I)

A) Ancient Greece

- **Plato (428 BCE)** (the Republic): “Helping friends and harming enemies”.
- **Aristotle (384 BCE)** (Nicomachean Ethics): “Give everyone his due: in proportion to their contribution to society, their needs and their personal merits”. “Cultivate virtue and reason about the common good “

B) Classic Rome

- **Ulpian (Domitius Ulpianus (198AD))** (Digesto, 1.1.10.1.reg): *“Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere”*. (“The precepts of law are these: to live honestly, not harm others and give everyone his due”)
- **According to these theories, where Justice is done and by whom?**
- **Is it possible to practice Justice out of the human relation?**



2. Reflections on some human perspectives of Justice (II)



C) Middle Ages

Saint Thomas Aquinas (*Summa Theologiae*, 1267): “Justice is the habit by which man gives everyone what is due by a constant and perpetual will. Justice is a virtue by which the person directs their actions toward the good of others and for the common good” He also distinguishes two types of justice:

-**Distributive**, which governs the relationship between the community as a whole and involves an obligation to distribute the assets proportionally according to each person's contribution to society

-**Commutative**, referred to the relationship between people. It implies a right to trade freely and openly possessed property and repair any inflicted damage”.

2. Reflections on some human perspectives of Justice (III)



- **D) AGES XVIII, XIX y XX**
- - **Utilitarianism Theory** (David Hume, Adam Smith, Bentham, Stuart Mill): “The best action is that which procures the greatest happiness of the greatest number. Justice is, therefore maximizing the utility of the collective: "welfarism". **To any price? Because no matter how that satisfaction is distributed, what consideration is given to humans?**
- - **Contractualism Theory** (Thomas Hobbes, John Locke, Rousseau, Kant): “Humans agree to live in an implicit social contract society, giving them certain rights in exchange for abandoning their freedom which was available in an initial "state of nature". Through social contract, men founded a social and civil order that lets apply an authoritarian justice” **Who is entitled to decide what is fair or how to apply Justice?**
- - **Libertarism Theory:** “Justice is to respect the freedom to choose” **Is it possible to build a fair society only by ensuring freedom of choice, without considering where that choice will take us?**

3. Approach to the concept of Social Justice (I)

- **a)** How and why does the term Social Justice appear in our social, political and legal vocabulary?
- **b)** What is the purpose of Social Justice?
- **c)** On what ideas of freedom and equality does it rest?
- **d)** Is it possible that the "era of Social Justice" is nearing extinction?

3. Approach to the concept of Social Justice (II)



A) Mid-nineteenth century

-**Luigi Taparelli d'Azeglio** (Theoretical essay on natural law supported by the facts, 1843): "Social Justice must indeed meet all men with regard to the rights of humanity."

- **Fabians socialists** (1889)

B) Age XX

- Emergence of social constitutionalism, the rule of Welfare, Labour and the Workers Movements around the world.

- **ILO** (Constitution, 1919): "Whereas universal and lasting peace can only be based on social justice..."

-**Pope Pío XI** (Encyclical Quadragesimo anno 1931): "To each his own should be given in the distribution of goods, being necessary to the partition of assets created revoked and conforms to the rules of the common good or social justice, any sensible person sees how serious disorder carries with it the huge current difference between a few laden with fabulous wealth and countless multitude of the needy".

What type of equality supports this emerging concept of Social Justice? Symmetrical positions, quantitatively identical, noticeable from an extrinsic perspective, outside the human being.

3. Approach to the concept of Social Justice (III)



C) Ages XX y XXI

- **John Rawls, Martha Nussbaum:** Distribution of goods, material and cultural resources and **capabilities** in response to equality, the need and merit.
- **Collins, Fraser and Honneth:** Recognition and **cultural respect for all**. From the integrative approach can meet the requirements of justice for all.
- **Young and Miller:** **Participation in making decisions** that affect the lives of people living in the society.

3. Approach to the concept of Social Justice (a new idea of Justice: Relational Justice)

Márquez Prieto: Relational Justice (Morphogenesis of justice takes place through **bilateral dynamics around two axes** or fields of the relation:

Relational axe: structural and organisational elements (norms, institutions, agreements, rights and obligations);

Reciprocity axe: ideal part, free dynamic of interaction and cooperation (according to principles and orientations of justice and legal goods).

There is a **third element**, called **sociality: the field in which the emergent effect of justice or injustice is produced**, from bilateral dynamics around the two first elements, the relation which is continuously doing itself, the network of relations (relational environment, good –justice- or bad –injustice-).

In these new perceptions of Justice seems a **RESIZE or EXTENSION** of the concepts of equality and freedom, that, from being assessed on purely quantitative terms, have been measured from a qualitative dimension. Respect and participation -which must logically be a consequence-, are aimed at promoting equality and freedom within the human relationship. An overrun occurs. Justice can not be only freedom and equality in the abstract, but also the achievement of freedom and equality in and through the inter-relationship.

3. Approach to the concept of Social Justice.

Conclusions

- It is a **complex** and **dynamic** concept whose meaning has evolved over time
- With a **multidimensional** and **multidisciplinary** character
- At its core beats the idea of **sharing**, the equitable distribution of material goods, environmental resources, etc. taking as a starting point a **quantitative idea of equality and liberty** (How am I equal, how much do I have?)
- The emergence of other human needs related to **the lack of respect and recognition of dignity as human beings possess**, leads us to look back on the **interpersonal relationship** and, especially, in the **search for justice in human relationship itself**. Thus, nowadays, the concept of Social Justice will also cover the objectives of recognition and respect for the human being by humans, and their involvement in the relationship and the network of relationships that shapes society. Thus, **the construction of "we", possible from the recognition of the dignity of human beings and respect, allow real participation of the individual in society he inhabits**. Therefore, the Social Justice is necessarily Relational Justice (Marquez Prieto, 2008), that means, contemplate and realize it in and from the complexity of the relationship. Only in this way the recognition and respect, equal sharing and participation would lead to universal inclusion can be guaranteed.
- What **role** has **Labour Law** in order to achieve these new goals contained in the renewed concept of **Relational Social Justice**?

4. Social Justice and Labour Law: From a protective purpose to an inclusive one (I)

- The **Right** is the legal science that, informed by the very idea of Justice, necessarily must strive towards it.
- Specifically, **Labour Law** is a part of legislation aimed at responding to the clear need for **ordering behavior of workers and employers**, guarantee a minimum of **coexistence, survival, peace and social justice within the productive schemes**.
- **Is** the current configuration of Labour Law **oriented** towards **achieving justice** in the relationship as the concept of Social Justice is currently would set? To answer this question we must look at the **"labour we"**, that is not in the contract, but **at the elements of the juridical relationship** created through it. And to do so, a starting point may be to approach briefly the basic rule of management of the employment relationship: the code or statute of workers.

4. Social Justice and Labour Law: From a protective purpose to an inclusive one (II)

- **What assumptions takes as a starting point?** Among the defining principles of Labour Law should be highlighted the **protective function**. This one seek for the **respect of the dignity of –and between- the parts** involved in it, despite the productive context of subordination in which they are immersed.
- **What consideration Labour Law grants to the parts in the relationship?** Recognizing the existence of subjects with **legitimated different interests and different positions** in the economic sphere, Labor Law, -based on the consensus model-, tries to place them in a **position of parity** within the relationship, which should be directed to Justice from its initial stages. Hence the expected presence of the contractual **GOOD FAITH** in both, the conduct and the interactive demeanour of the parts.
- **What are the goals? Guide** the behavior of workers and employers towards COOPERATION with **JUSTICE**, while members of the ALL that is the society. And to do so, even being legally established the itinerary that must be follow, Labour Law, **leaves ample leeway to FREE AND INDEPENDENT CONSENSUS**. Thus is expected to be a true record of social inclusion that allow the inhabitants of society to **actively participate in its construction and take responsibility** for the future project that is considered valid for the common good.
- **HAS LABOUR LAW GOT IT?**

**THANKS A LOT FOR YOUR
ATTENTION!!**