

## Introduction

### Can the state rule without justice?

A friend of mine returned from the People's Republic of China several years before the market orientation began with an account of the situation there that on balance was favorable. On the negative side, she was put off by the close supervision of her activities by the officials. But there was an overriding positive side to things; she was convinced that the society's institutions encouraged the pursuit of justice. This she thought differentiated it from society in the United States, where it is not the pursuit of justice but the pursuit of economic power that is encouraged.

Her comparison stuck with me like a pebble in my shoe. It was not that I wanted to reverse the comparison by saying that in the United States the fundamental goal is justice whereas in China it is power. Moreover, what annoyed me was not that her comparison took sides, for I too was ready to grant that the Chinese Revolution had led to gains for the majority of the people of China along the dimension of basic needs. And I was also ready to consider the necessity of a better order for the United States. I was annoyed because I could not fit the comparison with what I had come to think about justice itself, which was that no stable state can rule without encouraging a pattern of justice. How had I come to this view?

#### 1. Setting limits

It might be said that some nations fail to pursue justice because there is only one true justice and different nations pursue different things. Perhaps, then, a society has the choice of pursuing or not pursuing this true justice through its state institutions. If so, surely something predisposes one group of people to take it upon themselves to actualize this pattern of justice, whereas another group of people lack what it takes to be predisposed to it.

This line of reasoning lands us in a difficulty since it leads us to

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ask an unanswerable question: What explains the fact that only some peoples pursue genuine justice? We might attempt to answer that they pursue justice in virtue of their intrinsic nature. They are intrinsically better than peoples who reject justice. There is, though, no reason to hold that the Chinese are intrinsically better people than North Americans or that, conversely, we are any better than they are.

This talk of an intrinsic predisposition to justice ignores history, and in the case of the Chinese it ignores that part of their history that was the Chinese Revolution. Perhaps, then, the answer to our question is that a people's peculiar history of domination and struggle against it determines whether or not they will pursue the one correct pattern of justice. The landlords and the big merchants had dominated the masses of poor peasants and the urban workers in China, and this order of things was ended only with the victory of the revolution in 1949. The context for the pursuit of justice was provided by the struggle against and ultimate destruction of the old order. In general, it is not intrinsic differences between peoples so much as differences in the struggles imposed on them that determine whether they are in pursuit of justice. The Chinese set up a new state that would try to realize the true pattern of justice revealed to them as a result of their domination by and struggle against the old order in a revolution that lasted a quarter of a century. In contrast, the alleged failure to pursue justice in the United States is explained by the fact that in the United States the struggle against the old order is weaker.

The fallback from intrinsic natures to historical struggles has its own problems. This is because there are both just and unjust revolutions. The former pursue the true pattern of justice, and the latter do not. The revolution itself gives no guarantees of justice. But if a favorable outcome for a just revolution were a matter of pure chance, then those who want justice would have no reason to fight in a revolution. To make a just revolution likely, we have to return to the original answer that some peoples are intrinsically better than others. It is thus a predisposition to pursue justice on the part of a noble people that is crucial to their making a new order just. We had, though, already rejected this answer.

Perhaps it is wrong to focus not on the role of justice but on its content. Yet we focus on its content when we insist on a particular pattern of justice – the true one – as a necessary condition for the pursuit of justice. The role of a pattern of justice is to set limits so

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that a floor is put under the losses people can be expected to sustain and a cap is put over the benefits they can hope to win. To be in pursuit of justice is to try to set limits, whether or not they are true, correct, or genuine.

There is of course room for criticism of a particular set of limits. Such criticism will have support from groups that suffer from those limits. A new set of limits – a radical pattern of justice – will be implicit in such criticism. The Chinese revolutionaries had a glimpse of a just society when they rejected as inadequate the limits set by the old society. Everyone who struggles against the entrenched and arbitrary power of an existing order has a glimpse of justice. But to say this is not to say that the Chinese revolutionaries glimpsed true justice. They had found a pattern of justice that responded to the inadequacies of the prerevolutionary pattern in the circumstances of China at that time.

The pattern of justice the Chinese glimpsed was a program of land use and of industrial production that promised to end the abuses and suffering that had affected the vast majority. It was not a program that could be adapted to all circumstances. In particular, it was not a program that would meet the expectations of economic and political equality that are frequently articulated in advanced industrial democracies within the official trade union movements. Expectations of economic equality would be disappointed by the fact that in the People's Republic the range from top to bottom pay in many sectors and occupations remained as wide as or wider than in various industrialized capitalist countries.<sup>1</sup> And expectations of political equality would be disappointed by the fact that mass organizations were actually transmission belts from the Communist Party to the masses rather than vehicles by which the masses formulated policy.<sup>2</sup>

The pursuit of justice is not restricted to revolutionary situations. In the United States, for example, limits on losses and benefits are widely acknowledged, often enforced, and sometimes strengthened. They may not be true justice, but they are important because they originated when unrequited interest boiled over in outrage. Outrage alone did not set the limits because they had to wait for struggles and negotiations with conflicting parties. The compromises made in this process led to limits that were weaker than those who had been outraged would have liked. Still, they have the role of a pattern of justice, and insisting on these limits is the way the U.S. government pursues justice.

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**2. Stable rule**

That may not seem controversial, but what I am about to say will surely seem so. The role of justice in a state is to set limits, but could a state decide to pursue no limits on losses and benefits? Is the role of justice optional for a state? Every state depends on force to rule, and some depend on it more than others. No state, though, can rely on force to such a degree that meaningful limits on benefits and losses are eradicated. Such a state would damage its ability to reproduce its society and would then lose the support it needs for stable rule. Every state that does not indulge a self-destructive impulse attempts to realize a pattern of justice.

In assessing this claim, it is well to keep three things in mind. First, the pattern of justice a state adopts will be one that serves its needs for stability in relation to the pressures it faces. If its justice is less strict than that of some other state, this is no reason for saying that it has no pattern of justice. Second, as we shall see in Part Two, a state's pattern of justice is more than the pattern of practices of its courts. Justice in the broad sense goes beyond the judiciary. A state's pattern of justice will also include the administering of distribution through executive agencies. Third, a pattern of justice may disarm dissent without eliminating dissatisfaction. So a pattern of justice may be seen as grudging and narrow even by those it makes governable.

Though required by the state, justice sets the state at odds with itself. Pursuing justice is one side of the state, but the other side is supporting a social order with its component economy. Of themselves, most economies place no limits on the way they benefit the dominant group within them. There is then a potential conflict between pursuing justice and supporting an economy. This conflict is the basis for the numerous ways in which the state is pulled in opposite directions. Through its pursuit of justice the state gains a normative dimension that coexists uncomfortably with its economic functioning. Familiar forms of materialist reductionism overlook the way the state is restricted from within by a normative conception of justice.

This normative dimension of a state is to be made sense of in terms of its citizens' social, economic, and political circumstances. We need only consider the fact that to be ruled a people needs a certain degree of cohesiveness made possible by limits on the behavior of conflicting subunits. Through the efforts of unifiers, these limits come to function as social or political norms. State rule by

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itself calls for limits on the degree to which a dominant minority can reduce the economic and political power of the majority. Without these limits, the state loses its legitimacy in the eyes of the majority and becomes vulnerable to insurrectionary efforts. (In addition to limits coming from pressures by dominated groups, there are also limits that unify factions within a dominant group and those that restrict actions on dominated groups among themselves.)

Why then is the normative dimension of the state not reducible to a material base? If a state's norms of justice help it to rule, then since the state functions to keep the social organism healthy, justice helps the state to function as it should. Suppose that the pre-eminent task in keeping the social organism healthy is that of keeping the society's characteristic economy flourishing. Then it will be tempting to conclude that rules of justice are no more than moral translations of economic laws.<sup>3</sup> Yet this is the kind of materialist reduction that I said fails to explain the normative dimension of the state. It fails because of the potential for conflict between the limits imposed by a pattern of justice that successfully legitimates the state's rule and the inequalities – of goods and of rights – that allow the economy to flourish. It is always an open question whether the pattern of justice needed to avoid ungovernability will conform to the requirements of keeping the economy flourishing.

To illustrate the idea that ruling requires justice, consider the hypothetical case of a society of purely self-interested individuals. A state for such a society cannot play a large role without trammeling individual self-interest. But it would not be respected at all if it failed to insure that the fewest possible obstacles to the pursuit of individual self-interest are allowed. The state's pattern of justice is then a pattern of limiting interference with self-interest. This state pursues the realization of a pattern of justice conforming to the libertarian ideal. The core of this pattern is equal liberty, since benefits and losses are limited only by the stricture that they not result from trammeling liberty.

The pattern of justice in contemporary Western society is, of course, more complex. The universal pursuit of individual self-interest is modified by the interests of organizations; the interests of enterprises and institutions become a basis for an acceptable subordination of individual self-interest. Still, limits are needed on how far organizations can subordinate individual interests. The state has the job of applying those limits if its rule is to be recognized as legitimate.

A pattern of justice emerges here that, on the one hand, allocates

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decision-making power to those with demonstrated ability to build enterprises and institutions and to show loyalty to them.<sup>4</sup> There is no call for a devolution of decision-making power to the masses of the people. The same pattern, on the other hand, puts limits on the losses people are to suffer from enterprises and institutions. There is to be a safety net for those laid off by companies, for those hurt at work, and for those whose wages give them nothing for retirement. Together these factors constitute the elitist welfarism characteristic of the pattern of justice of many contemporary Western states.

## 3. Rationalism

What good, though, is the pursuit of justice if it is not true justice? The role of justice is to set limits, but we are interested in correct limits. My friend must have been saying that China was pursuing something closer to the true standard of justice. There are several points to be made about this. First, the method of pursuing true justice is fraught with familiar pitfalls. Second, the pursuit of justice can be quite important even if we lack the knowledge that it is true justice.

On the first point, which is about method, we note that national patterns of justice, such as those of China and the United States, can be discovered in the behavior of those nations. We can quarrel over what details belong to those patterns of justice, but we have some idea of where to go to try to settle these disputes. We simply look at the arrangements controlling political power and the distribution of resources. When it comes to true justice, however, we can only appeal to something philosophers have called reason. When there are disputes about this true standard, such as the dispute between Plato and Aristotle over justice, rational reflection is the only recourse. Certainly, we want to think straight about justice, and in this sense there is a need to be rational in disputes about justice and what it is. The rationalist, though, is making the stronger claim that reason can give us an assurance that a conception of justice – which may have historical roots in a concrete social situation – can be projected as the true standard.

An appeal to reason of this sort is akin to the kind of appeal to reason in the sciences that has long since been abandoned. Consider, for example, Kant's rationalism. He quite consistently fitted out the mind with an ability to know the basic principles of physics quite apart from confirmation in experience at the same time that he gave it an ability to know the basic principles of morality quite

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apart from confirmation in experience. Subsequent revolutions in science made it inappropriate to hold an apriorism in regard to physics. Yet the view of mind that makes apriorism appropriate for a given subject matter tends to make it appropriate for any other subject matter not fundamentally distinguished from it. Surely, it will be said, morals and physics are basically different. The problem is, though, that recent trends in moral theory point to the difficulty of distinguishing morality fundamentally from physics by any of the standard marks – subjectivity, unconfirmability, non-descriptivity, and egocentricity.<sup>5</sup> So once the rationalist method is abandoned in physics there is no firm basis for continuing to support it in morality.

Attempts have nonetheless been made to save the idea of a true justice by modifying rationalism. Rawls, for example, thinks that a back-and-forth process between critical reflection and our intuitive sense of what is right will lead us to an equilibrium in which we are satisfied that we have hit upon the universal principles of justice.<sup>6</sup> Even this modified rationalism is dubious. How do we show that there is but a *single* equilibrium point? A lot will depend on where – in terms of nation, culture, and class – we start. Each starting point will have an aura of assumptions that will not be removed by critical reflection in moving to equilibrium. If we start with the intuitions associated with a North American pattern of justice, it seems unlikely that equilibrium will be reached with a revolutionary Chinese sense of justice. So there is really no alternative to reverting to the dubious, unmodified rationalism if what we want is a single overarching standard of justice.

On the point about the importance of limits, we note that the rationalist expresses the connection between justice and the state by noting that most states are not pursuing a just order, that is, *the* just order. In the rationalist view, states as they actually exist generally have little to do with justice, for it is only the ideal state, or a state tending toward it, that pursues justice. An uncrossable gulf thus opens up in political ethics between justice and actual states. Pursuing justice becomes too tall an order for an institution that merely helps concentrate the power of a minority. However, if we do not insist on the rationalist view of justice, the gulf between actual states and justice closes up. Justice becomes an important aspect of any state. Each state can then be seen as an institution that organizes society along lines that set limits to the losses and benefits allowed to any group within it. This limit-setting feature of states is realized, in one form or another, in states of all epochs.



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The focus of this book will be the form it takes only among contemporary states.

There is more, though, to the importance of justice than its being an aspect of the state. It is also the residue of struggles to end domination, and it is thus important as a partial fulfillment of the demands of the dominated. In addition to this official justice, there is also a radical justice based on unfulfilled interests. Radical justice is espoused by those who are unwilling to let popular demands go unmet simply to preserve stable rule. Official justice can be criticized from the perspective of radical justice even when the latter cannot claim to be true justice on a rationalist basis. Radical justice, then, serves a vital role quite independently of whether it is true justice. (Only in Part Five will my main focus be on radical justice.)

The view that justice is a set of limits serving governability is merely schematic. It tells us justice is a set of limits without specifying a specific set. Rationalist accounts strive for more specificity than is desirable here, where we want to identify the quite different sets of limits on benefits and losses enforced by distinct states as constituting so many patterns of justice. Furthermore, in the schematic view, there are no specific restrictions on the range of limits within which justice is to hold the benefits of the fortunate and the losses of the hapless. Instead, there is the general restriction that the limits on benefits and losses are to fall within a range that promotes governability in the circumstances in question. This restriction does, though, mark my view of justice as political rather than merely social. Even radical justice is political since it not only advances the interests of the dominated but does so in a way that limits the losses of other groups in order to promote stable rule.

Limits on losses and benefits are genuine norms. So our non-rationalist view allows us to preserve the normative element in classical rationalist theories of the state. Empirical political theory came to think it necessary to abandon the normative element, since this element suggested either the rationalist theory of the ideal state or a subjectivist view of political ethics. Thus an anti-normative tradition began that either, in the manner of behavioral science, adopted a positivist approach to the actions of the state or else, in the manner of structuralist Marxists, undertook to derive the state's actions from a limited list of relations within it while leaving little room for the agency of popular movements. In each case the normative component was effectively abandoned. But it is



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not necessary to abandon the normative element in order to steer clear of both rationalism and subjectivism.

#### 4. Beyond group interest

Do we really need a normative dimension to avoid a one-sided view of the state? Let me recall a few truisms about ruling. They are truisms that ruling groups have twisted in order to entrench their domination. But it is dangerous to forget them when we think about the state. (These truisms should be interpreted in light of the materialist political theory of Part One.)

One of the things that qualify a group for ruling is its willingness to take an interest in the society as a whole. This calls for an effort to cross lines of conflict to win acceptance for a uniform set of limits on the benefits and losses of all conflicting parties. This effort leads to granting rights to a multiplicity of social tendencies and thus leads beyond an unrestricted class egoism. An adjustment of the various parts of the whole society into a recognizable order results from the application of such a set of limits.<sup>7</sup> The attempt to rule without setting such limits would give those who are deprived no hope of avoiding greater deprivation and would thus create a breeding ground for militant dissent. The normative dimension of the state – the pattern of justice it pursues – is a set of obligatory limits on benefits and losses that adjust the various parts of the society in the direction of cohesiveness.

From Aristotle came this idea that political stability is the reason the state is linked with justice. A political constitution that considers the common interest was for him a genuine constitution since it establishes a share – though not necessarily an equal share – in the goods of the society for members of all groups. Constitutions that consider only the personal interests of the rulers were for him perversions incapable of sustaining a stable rule.<sup>8</sup>

From Gramsci came the related idea that, outside exceptional circumstances, a group could not become a ruling group in the first place if its program were blatantly a self-interested one. To become a ruling group, a group cannot appeal to the nation simply to rally around its economic interests when it happens to be an economically dominant group, or to rally around its interest in religious authority when it happens to be a dominant priestly caste. It must present itself as a group concerned with the cohesion of society as a whole, without of course undercutting its own parochial interests

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while it sets the limits for benefits and losses needed to realize this cohesion. A group that can be seen by the society as advancing this cohesion is what Gramsci called a hegemonic group. There was for Gramsci a qualitative difference between a dominant group's interests considered by themselves and those same interests coordinated with a subordinate group's interests under the hegemony of the dominant group.<sup>9</sup> A hegemonic group curbs its interests within the pattern of justice it has adopted. And this qualitative difference is reflected in the difference between being merely a dominant group in the society – masters over slaves, priests over flocks, owners over workers – and being a ruling group.

We reach the conclusion that a normative dimension is not optional for states. A pattern of justice is inherent in states since they need a mechanism of stability and a ruling group to run them. The examination of the patterns of justice of states in regard to the general conditions in which they arise and are applied – their relation to the functions of states and to the conflicts of groups – I shall call *political ethics*. Any theory of the state that is not hopelessly one-sided will have political ethics as a component. Moreover, a political ethics cannot be developed without developing the other elements of a theory of the state, since one is led to these other elements from the general conditions of patterns of justice. Political ethics is then one route to a theory of the state, and it is the route I choose here.

Despite all this, the tendency remains to think of only the exceptional, the admirable, or the model state in terms of justice. U.S. defense secretary Caspar Weinberger put it bluntly in a debate in 1984 with British disarmament activist E. P. Thompson before the Oxford Union.<sup>10</sup> He said the Soviet Union makes a travesty of morality by identifying morality with Soviet power, whereas the United States distinguishes power from principle and operates in the world on the basis of principle. The comparison suffers from the same one-sidedness as that between China and the United States. It involves that one-sided view of states that results from considering them apart from their constitutive requirement for attempting cohesion. In the USSR no less than in the United States, ruling, at home and abroad, calls for putting limits on losses and benefits. (Weinberger's self-serving comparison reminds us that, at least in an age of imperialism, a state's pattern of justice will involve not just the coordination of domestic interests but also, as discussed in Part Four, the coordination of global interests, through setting limits on losses and benefits.) It is understandable that Weinberger's