

Introduction: Critical Views on Justice, Law, and Ethics

Theories of justice have become an important research line for political, legal, social and moral philosophers and theorists all over the world. Justice, like its counterpart injustice, is a broad concept which is analyzed from many perspectives. In the book, we present our critical analyses of injustice in connection to law and ethics and develop normative alternatives linked to justice. We wish to contribute to discussions on in/justice mainly from the points of view that focus on important disturbing issues of contemporary society. Therefore, while some authors deal with issues of justice only in abstract terms while others focus only on narrow practical sub-problems, together we want to analyze relations between justice, law, and ethics specifically concerning critical research of the new key problems of the current society and human civilization. These problems are either new phenomena or new aspects of the relevant classical issues. In brief, the book covers the problems from social justice to cyber justice. The chapters address issues and concepts which guideline on social movements, transformations inherent in democratizing processes, global conflicts and other interactions, etc. For this reason, we approach these issues not only from the perspectives of political, legal, social and moral philosophy and theory but also of other disciplines and transdisciplinary standpoints.

The book concentrates on a critical examination of conflicts related to injustice, especially social injustice which is considered the underlying source of distortions of quality of living and even of the meaningful self-realization of human beings. The issue is closely dependent on the struggle against technocratic reification and poverty and is related to issues of unconditionality or conditionality of various ways of social provision. It requires analyses of normative preconditions and proposals of such social struggles concerning morality, law, and politics, as well as moral, legal, and political discourses, including moral, legal, and political philosophy and theory. One of the main issues is the position of human rights among morals, law, and politics, from the local to the cosmopolitan level. Such research necessarily touches on the issue of modernity or the plurality of modernities and the secularization of society or societies. Of course, these contemporary analyses also follow

research in the history of ideas, identifying the original inquiries of Kant, Hegel, Mill, and other authors, and the deficits in their theories. In the book, the deficits of the contemporary theories of justice are analyzed mainly in deontological theories, which requires recasting the phenomenological deficit and a new evaluation of the method of normative reconstruction. The ultimate deficit and danger of contemporary society is its escalation to war conflicts, be they conventional wars or new cyberwars. The current hegemonic and authoritarian tendencies can lead to a world war and to its possible resolution by a world state. All these dangers are challenges which authors of the book critically examine from political, legal, social, and moral points of view of justice.

The authors formulate their points of view mainly from the perspective of Critical Theory and critically examine and follow some of the key interpretations of this school of thought (Jürgen Habermas, Axel Honneth, et al.). Some authors deal also with other perspectives as well which allow for the analysis of pragmatic, utilitarian, consequentialist, and feminist approaches.

While the book contains also analyses of authors from Western Europe, namely from Germany and France, the specific contribution of the book is that it allows for the enrichment of global discussions from other perspectives, particularly from Latin America and Central Europe, specifically from Brazil and the Czech Republic. The volume includes chapters from renowned philosophers and social scientists with their extensive research work in their respective fields of knowledge, both in theory and applied ethics and law. The tradition of critical analyses of justice in the respective countries and regions has a longer history, but we would like to particularly emphasize two streams which play an important role with multiple effects in critical thinking.

The International Symposium on Justice, which usually takes place approximately every three years since 1997, has been organized by the interdisciplinary and interinstitutional Research Group Theories of Justice as well as by the Brazilian Center for Research in Democracy at the PUCRS University in Porto Alegre in Brazil. It has developed research in democracy, broadly construed both in theoretical and applied empirical terms, so as to foster social research in philosophy, sociology, legal studies, etc., relating to the vast field of interdisciplinary studies. The symposia have turned out to be the most important international event in theories of justice being held in Latin America. The activities

culminated in the creation of several research groups all over Brazil, contributing decisively to the theoretical discussions on justice and the democratization process in Brazil and other countries. It can be added that, in Latin America, where military coups took place in many countries since World War II, the topic of justice has been decisive for the transition to justice and the consolidation of state institutions and civil society in the 1980s and 1990s.

The colloquia Philosophy and Social Science, which take place in Prague, Czech Republic, have annually gathered together over 100 critical theorists from all over the world since 1993. Originally founded by Jürgen Habermas and Yugoslav colleagues, they pursue critical and explanatory approaches to injustice and creative normative theories and prospects to change the practice. Prague's geopolitical location and its understanding of both East and West have made it a favorite venue for various meetings. The 25th anniversary of the colloquia last year is a testimony to the long-term interest in critical thinking on injustice and other issues. Philosophers and social scientists from many countries, together with local colleagues mainly from the host institution the Centre of Global Studies in the Institute of Philosophy at the Czech Academy of Sciences in Prague, constitute a platform which makes possible such critical interdisciplinary and transdisciplinary research and its discussion. It is supported by the interdisciplinary Research Program "Global Conflicts and Local Interactions" which joins scholars from six institutes of the Czech Academy of Sciences in Prague and many foreign partner institutions, particularly philosophers, sociologists, political scientists, legal scholars, anthropologists, historians, and experts from various fields of study.

Latin American and Central European scholars have developed cooperation between East and West and between North and South. They have increased sensitivity concerning the regions beyond the West in order to also analyze the themes of poverty, armed conflict, global injustice, intercultural dialogue, and other issues in today's new period of global capitalism. It is now more evident than ever before that it is impossible to formulate a critical concept of global injustice without the participation of colleagues from all parts of the world.

As mentioned above, the book offers critical views on the relationships between justice, law, and ethics, specifically concerning analyses of the new key problems of contemporary society. It focuses on six current thematic problematic complexes in six chapters of the book. First, it deals with social conflicts and injustice; second, disputes on legal and moral discourses; third, tense relations between moral and political justice; fourth, historical contentions on justice; fifth, phenomenological and deontological deficits of justice; and sixth, justice in world conflicts, particularly in cyberwar. The individual parts of the book include the following chapters.

The first part of the book on *social conflicts and injustice* begins with the text “A critical note on (un)conditionality” written by Josue Pereira da Silva (UNICAMP). The chapter deals with the relationship between unconditionality and conditionality of direct income transfer in the framework of the discussion about justice and recognition. The main idea behind the text is the possibility of a transition from the program of *bolsa família* (the Brazilian conditional social program) to an unconditional basic income program because unconditionality in a universal basic income program is more adequate. The chapter has three steps. First, it compares the problem of conditionality of the *bolsa família* with the problem of the unconditionality of a universal basic income. Second, it analyses the relationship between unconditionality and conditionality in relation to three theoretical models of justice: the theories of David Miller, Axel Honneth, and Alain Caillé. Third, it makes critical final commentaries about justice linked to both unconditionality and conditionality.

In their common chapter, Emil Sobottka (PUCRS/CNPq) and Danilo Streck (UNISINOS) focus their attention on the transition from local participatory budgeting to a participatory system. They analyze these participatory models as intensive kinds of the democratic experience which originally started in the city of Porto Alegre in 1989 and was then transferred to other places, including the level of the Brazilian state of Rio Grande do Sul in 1999. They highlight the various kinds of popular participation and consultation, with their most extensive version being a system of popular and citizen participation. They also bring out the tension between participation as a principle and a strategy, issues of organizational mediations, and the different regional cultures of participation.

The second part of the book is focused on *disputes on moral, legal and secular discourses*, containing chapters by Marco Antonio Azevedo, André L. S. Coelho, and Luiz Repa. Marco Antonio Azevedo (UNISINOS) researches the moral difference between morality and moralism. He understands “moralism” as a specific standpoint misleading people to falsely prefer their own set of duties connected to justice as legitimate. He argues for the moral epistemological standpoint that people can hold true moral beliefs, also on duties. He takes moralism as an interpretation that every action is either a fulfillment or violation of a duty. This leads to the conclusion that there is no modal difference between privileges and duties. One consequence is the full conflation between moralistic duties and other requirements to action which can be considered reasonable. He suggests that we should differentiate duties from so called “practical oughts”.

André Coelho (EURJ) concentrates his chapter on judicial procedure and argumentation, particularly on a scale of discursiveness of the legal discourse. It reformulates Habermas’ analysis of judicial procedure and offers a time diagnosis on current trends in judicial procedure. It applies an idea of facticity and validity both generally to law and also particularly to judicial procedure. It shows several objections to Habermas’ approach, including a deficit of choices for the facticity pole and the external tension with no confrontation of the idealization of judicial procedure with the empirical reality. It focuses on problems on both ends of the tension in judicial procedure.

Then, Luiz Bernardo L. Araujo (UERJ/CNPq) surveys the ongoing debate on democracy, secularism, and the role of religion in politics from the points of view of moral and political philosophy. He compares three concepts written by relevant contemporary political thinkers: Charles Taylor’s idea of secularist regimes related to securing the basic principles of the modern moral order; John Rawls’ idea of the relationship between democracy and religion within his inclusive view of public reason; and Jürgen Habermas’ distinction between knowledge and faith in the public sphere. It deals with an articulation of appropriate forum for the basic political discourse on the secular modern state.

The following, third part of the book looks into the *tense relationships between moral and political justice*. In the first chapter of this part, Christoph Horn (Universität Bonn) examines the concept of justice in relation to ethics and political philosophy. He challenges J.S. Mill’s

and J. Rawls' views on justice in order to raise objections against those contemporary ethical and political theories which follow these theories with their dominant role to justice. He shows that our idea of justice is a much more specific one. He provides a set of semantic arguments on the meaning of justice and injustice in everyday life because there are only a few analyses of these semantic issues in the philosophical texts on justice from the last four decades.

The second chapter is Fabricio Pontin's (PUCRS) text which analyses issues of shame, identity, and modernity, mainly with their links to the politicization of the subject. It explores two different views on emotional tonalities for the establishment of political identity. By exploring the idea of shame as politically constitutive in Michel Foucault's and Giorgio Agamben's theories, he differentiates a strong immanent perspective and a weaker regional perspective to identity constitution. He points at the necessity of reformulating Foucault's idea of biopolitics in relation to emotional tonalities. It makes possible to understand that it is not only a critique of modernity but also a narrative of the modern subject and state.

In his chapter, Petr Agha (Czech Academy of Sciences, Prague) focuses on self-authored human rights which he analyses as a claim to universality. He explains that human rights presuppose a shared position within a community with a link to shared universal values. They are embedded in nation states but at the same time transgress their borders. This is one of sources of their critical perspective. The basis of human rights is their dependence on recognition within institutional structure which is based on mutual recognition among people. The chapter especially emphasizes the political struggle for recognition and shows human rights as an important place in the political struggle.

Luiz Repa (USP/Cebrap/CNPq) investigates human rights on the boundary of morals and politics, with a special focus on Jürgen Habermas's cosmopolitanism. He shows that the cosmopolitan legal arrangement is not based on a moral concept but on the normative grammar of legal arrangement itself. He also seeks to explain that the need for a European identity, as formulated by Habermas, is on contrast with Habermas' other concepts related to overcoming the national identity. He demonstrates that Habermas' cosmopolitan project is considered a kind of "phasing in". It therefore sticks to the program of the

European Union program and does not analyze other possibilities for cosmopolitan arrangement.

The fourth part of the book concerns *historical contentions on justice*, especially focusing on Georg W. F. Hegel and John Stuart Mill. In the first chapter of this part, Thadeu Weber (PUCRS) inspects justice and liberty in Hegel's writings concerning law and ethics. He aims to explain the concept of justice in Hegel's *Philosophy of Right* and binds it to the concept of liberty in its various kinds of determination. He analyses the idea of "person of right", and identifies the fundamental rights that stem from the articulation of the legal capacity. He stresses that the right of necessity is a right to pursue an exception in favor of itself in order to realize justice. In doing so, he explains how it makes the administration of justice via the law.

Filipe Campello (PNPD-Capes, UFPE) raises the question of whether emotions matter for justice in order to examine an alternative proposal following Hegel. He suggests how Hegel can contribute to a formulation of the role of emotions for a social theory by pointing out the particular emotional component in civil society, specifically the relationship between interests and passions. He connects this phenomenon to Hegel's concept of solidarity as linked to the formation of will and stresses that the concept of social justice is based on both rational guided actions and also on the possibility of a volitional dimension given by an institutional framework which is justified by meeting individual needs and creating the sentiment of cooperation. It has its parallel in the contemporary critical social theory of recognition formulated by Axel Honneth.

In his chapter, Gustavo Hessmann Dalaqua (USP) deals with John Stuart Mill's texts on justice, law, morality and self-development. He investigates how John Stuart Mill understands law and morality and stresses that it be questioned and improved. A creative morality and justice require critical debate in the public sphere, including a possible breaking up with the law, i.e. civil disobedience. Justice needs critical thinking and self-development. In this sense, a person can only care for others if he or she cares for one's self.

The fifth part of the book concentrates on *phenomenological and deontological deficits of justice*. Nythamar de Oliveira (PUCRS/CNPq) focuses on reflective equilibrium and normative reconstruction as he

recasts the phenomenological deficit of Critical Theory. He reflects on the contemporary interdisciplinary analyses in the theories of justice and the cognitive and social sciences, and reformulates the normative requirements of a political constructivism and of a pragmatic reconstruction as examples of a weak constructionism. Within semantic and normative terms, he investigates how social transformations may be considered to pursue universalizable normative requirements justified from an externalist standpoint of reflective equilibrium.

Cinara Nahra (UFRGN/CNPq) then investigates deontological-utilitarian overlaps. She seeks to solve the problem of standard responses of the majority of people to moral dilemmas (which are linked to life and death) by the philosophical “utilitarian-deontological model”. When people make moral judgements, they combine deontological and utilitarian approaches. It is primarily deontological when they think that killing innocent people is not appropriate. Nevertheless, when faced with the problem of killing someone in order to save more people, they usually state that this is correct if death is necessary or in catastrophic moments. However, they often return to deontology if faced with blackmail.

Marina Velasco (PPGLM/UFRJ) examines the tensions between basic rights and balancing within the deontological reasoning of judges. She investigates balancing judgments which are often applied to judicial decisions, especially in supranational courts on human rights. In contrast to Robert Alexy, she shows that the need to balance is not dependent on the understanding of basic rights as principles but from the understanding that principles are optimization requirements. She defends that balancing in law is not the most adequate approach to deal with conflicts between principles. She recommends rather a deontological perspective which should be abandoned by judges in cases of conflicts of basic rights.

The sixth and last part of the book *focusing on justice in world conflicts in cyberwar* contains four chapters. In the first chapter, Marek Hrubec (Czech Academy of Sciences, Prague) offers moral, political, and legal analyses of justice in relation to conflicts and dangers of hegemony, authoritarianism, and possible world war. The main focus is on the negative and positive possibilities of the global arrangement. Since historical development does not unfold evenly, there is a need to deal with potential global reversals in the form of planetary hegemonization and

supranational authoritarian tendencies which can lead to a world war, and to formulate possible normative solutions of a just and peaceful arrangement to these. The chapter explains the bases for a critical theory of recognition of the global arrangement connected with the global state with the ambivalences of technological development.

In his chapter, Josef Velek (Czech Academy of Science, Prague) presents his chapter on a defensive just war and the supreme emergency. The text deals with the concept of supreme emergency which is one of the most interesting and provocative problems of the theory of just and unjust wars. In this context, the chapter analyses Walzer's understanding of the concept of "dirty hands". It shows that there exist three basic ways of evaluating the legitimacy of treating intentionally threatening behavior. This can be justified only in connection to a concept of the supreme emergency, a connection to the concept of civil obedience against the background of some conception of global justice, global constitutionalism, and global governance.

In the next chapter, Klaus-Gerd Giesen (Université d'Auvergne, Clermont-Ferrand) deals with justice in cyberwar. He explains that new technology has deeply transformed our reality: war drones, genetic cloning, and the enormous rise of the Internet all challenge our views on justice and its application to society. The sudden presence of new technologies has caused confusion among people as well as a moral crisis, also connected to the problem of still maintaining the war-peace dichotomy. He explores justice in a technological sphere of cyberwar. He applies the theory of justice in order to articulate a *regulation* of the developing cyber warfare.

The fourth chapter of this part of the book, written by Marcelo de Araujo (UFRJ/UERJ/CNPq), researches the important issue of cyberwar in relation to political realism and a global state. He investigates the question of whether cyberwar needs a new theory of just war or if traditional theories will be adequate. He shows that the unprecedented technological progress since the end of WWII has made classical theories useless, especially since the main problem is no longer an application of the principles of justice within the system of states. The main challenge is to develop an alternative to the system of states, i.e. a system which would be more appropriate to the reality we face. This is required for analyses of cyber-attack and nuclear conflict which must be solved in relation to the challenges of supranational institutions and the world state.

All the parts of this book contribute to the critical analyses of injustice in relation to law and ethics, as was indicated in the beginning of this introduction. It is our hope that these six disturbing topics of contemporary society and human civilization will have created, for its readers, highly relevant thematic complexes in six book chapters which address issues ranging from social justice to cyber justice.



In the end, we would like to thank all the contributors for their friendly and professional cooperation as well as our many other colleagues for their fruitful discussions which helped us analyze the issues in our book. Our thanks also go to our institutions, mainly the Brazilian Center for Research in Democracy (established in 2009) in the Catholic University in Porto Alegre, and the Centre of Global Studies (established in 2006) in the Institute of Philosophy at the Czech Academy of Sciences in Prague. We are grateful for the research support, particularly the decisive support for the Research Group “Theories of Justice” provided by the Brazilian federal research agencies Capes and CNPq, and the support for the Research Program “Global Conflicts and Local Interactions” by the Academy AV21 in the Czech Republic. Last but not least, we are obliged to the administrative staff of PUCRS and the Publishing House Filosofia. We hope that all the support and our work will contribute to developing analyses of the book’s themes, and, in doing so, to helping bring about justice in practice as well.

Editors of the book