

CULTURAL JUSTICE

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Summary

“Justice” is the principle guiding questions of entitlements. Justice is conventionally conceived under three headings: as distributive, retributive, and restorative (or corrective). Distributive justice refers to the just distribution of (material or non-material) goods, resources, and so on. Retributive justice refers to the proper way of punishing wrongdoing. Restorative or corrective justice addresses the issues of what compensation (if any) is required for those who have suffered a wrong and what sacrifice (if any) is required of those who have perpetrated a wrong or sustained a benefit not shared by others.

“Culture” has specialist uses in various disciplines (e.g. anthropology, archaeology, cultural studies, literary studies). Its most common meaning is the totality of associated material artifacts, symbols, stories, traditions, and other bodies of knowledge, belief systems, and values distinctive to a people, developed and transmitted from one generation to the next. As such, cultures are key life-support systems for the fulfillment of human needs.

“Cultural justice” may be interpreted in various ways. It may refer to culturally specific conceptions of what is just. Alternatively, it may refer to deciding what constitutes justice between members of different cultural groups. Recently, much academic debate has revolved around a more specific question, namely, how the state should act justly

towards minority cultures within multicultural societies where the institutions of the state reflect the culture of the majority. A further possible demarcation is between instances where culture is the marker of distinct groups who face injustice on issues such as access to resources or discrimination. They may also experience situations where culture itself is the subject of injustice, such as when their culture's beliefs, values, or practices are suppressed by the members (or dominant institutions) of another culture, whether or not that suppression goes along with other kinds of injustice.

1. Justice as Cultural

In the most basic sense, all conceptions of justice are cultural: our culture is the source of values, beliefs, traditions, and other bodies of knowledge from which we draw our views as to what is just. Members of a culture may, of course, dissent from their culture's dominant traditions and formulate alternative visions of justice, but they still draw on their culture's (and perhaps other cultures') intellectual resources to do so. Cultures tend to endorse notions (perhaps numerous and competing) of what sources are appropriate in forming a conception of justice. For example, some cultures, and some strands within some cultures, may suggest that the best source of information about what is just is the revealed will of God. Other cultures, or other strands within a culture, might hold that the secular operation of human reason is a more reliable method. Both are equally "cultural" notions.

The observation that one's notions of justice are intimately related to one's culture is sometimes attacked as "cultural relativism": the belief that all cultures, or cultural norms, are morally equivalent. But one can make the observation that notions of justice are grounded in culture without embracing relativism: some cultures' notions of justice may be right and others wrong. However, any attempt to persuade others of a judgment about the rightness or wrongness of a particular cultural notion of justice implies first persuading them of the validity of the criteria on which the judgment is made. For example, imagine someone who believes that we know what is just by divine revelation. Imagine that she also believes herself to have a clear understanding of what divinely ordained justice entails. Imagine she meets another who shares her general theological views, both about the nature of divine revelation and about its appropriateness as the source for knowledge about what is just, but whose particular theological commitments lead him to a different conception of justice. Their argument will be about how they arrive at their respective interpretations of the content of divine revelation as regards knowing what is just. But if either of those two sets out to persuade a person who not only has a different conception of justice but who believes that we know what is just by the secular operation of human reason, they will argue over both the substance of what is just and the appropriate methods and criteria for reaching a valid conclusion about what is just.

Much philosophical writing on justice has consequently been concerned with the quest for an extracultural "Archimedean point" from which universally applicable judgments can be made. The most influential recent effort is John Rawls' conception of "justice as fairness," which derives liberal values from a thought experiment asking what principles the founders of a society, blind to their eventual social status and condition, could rationally endorse. Others, notably the school of political philosophers known as

“communitarians,” reject liberalism’s universalizing tendencies. Communitarians such as Michael Walzer contend that, beyond a minimal consensus rejecting practices such as genocide and gross cruelty, there is no neutral way to judge one culturally specific notion of justice against another (see *Survival, Society and Ethics in Human Evolution and Society, Ethics, and the Anthropologist*).

2. Justice between Cultures

Given the difficulties just outlined, there is no straightforward way of resolving questions of just relations between different cultures. To take a familiar delineation, distributive justice might be held to entail the impartial application of one of at least four possible criteria, namely, equality, merit, need, or desert. Equality would require that all cultural groups receive equal (or at least equitable) proportions of whatever (material or non-material) goods are in question. Alternatively, just allocation might mean distributing goods preferentially to cultural groups who have earned them according to some standard of value or achievement. Need would be likely to entail quite unequal distribution but with the aim of more equal outcomes. Desert allows for past wrongs or benefits, as well as questions of need, merit, and present inequalities, to enter the calculations. Of these categories, at least merit and desert obviously imply some extra-cultural standard for deciding which cultures are “worth” more, or “deserve” more, than others. In practice, equality and need are also likely to entail culturally specific judgments: what items one counts as requiring equal distribution would itself be culturally specific, as would any determination of what “needs” are.

Frequently, however, pleas for “cultural justice” reflect the fact that members of minority or oppressed cultural groups are denied justice even in the terms accepted by members of majority or oppressor cultural groups. Consequently, considerable progress towards more just relations between cultural groups is possible, even before resolving the vexed question of an extra-cultural standard of justice: treating members of other cultural groups by the same standard that governs treatment of members of one’s own cultural group is often a significant advance.

Claims about justice between cultures (as opposed to between individuals, or between individuals and the state, as justice is more usually conceived in liberal political theory) raise a series of questions. Can cultural groups as such have rights or claim entitlements? Is justice towards a culture distinct from justice towards its members as individuals? Can membership in a certain cultural group confer special rights or needs not shared by members of other cultural groups? A considerable amount of recent scholarship has addressed each of these questions (see *Cultural Relativism and Communitarian Values*).

2.1. Rights for Groups, or Only for Individuals?

2.1.1. Group Rights and Affirmative Action

Arguments about the possibility of group rights have been a constant theme in political philosophy particularly since the issue was brought to public attention in the United States by a series of executive orders and court cases in the 1960s and 1970s. President

John F. Kennedy's 1961 Executive Order 10925 and President Lyndon Johnson's 1965 Executive Order 11246 require federal contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin." The implementation of these orders, and subsequent court cases, notably *De Funis vs Odegaard* 416 U.S. 312 (1974) and *Regents of the University of California vs Bakke* 438 U.S. 265 (1978), kept the question of "group rights" on the public agenda.

For example, between 1971 and 1980, successive volumes of the philosophy journal *Analysis* carried arguments and counterarguments about the justice of affirmative action programs (especially in such matters as employment and university admissions) for members of some ethnic groups. The arguments put by the various participants in the decade-long debate are typical of many ways of interpreting the relationship between affirmative action and justice from within the framework of liberal theory. Examining the main lines of argument advanced in the *Analysis* exchanges therefore offers a good way to see how the concept of cultural justice developed in a philosophical tradition profoundly shaped by liberal assumptions.

Some contributors to the *Analysis* debates held that affirmative action is fair compensation to members of a group (usually an ethnic group) for wrongs sustained in the past by the entire group. Others maintained that, on the contrary, affirmative action programs amount to "reverse discrimination," replacing one injustice (towards members of previously marginalized ethnic groups) with another (towards members of ethnic groups that have not suffered systematic racism or other kinds of collective disadvantage, but who are disadvantaged by preferential treatment offered to those perceived to have suffered past wrongs). Many of the protagonists in the *Analysis* debate followed their initial contributions with replies and refinements of their positions. Despite often elaborate dances of argument and counterargument, however, by the end of the decade few seemed to have shifted their ground in any substantial way. The debate reveals, rather, a series of increasingly detailed restatements of various established positions, leaving the impression that, rather than engaging with one another's views, the various protagonists tend to "argue past" each other.

An arguably more far-reaching disagreement is never made explicit. Cutting across the various positions about the rightness or wrongness of affirmative action is a fault line dividing the protagonists according to different assumptions about what it is to be a member of a group. This area of underlying, unresolved tension helps to explain why, after nine years, the respective disputants were left with closing contributions essentially restating the positions that they had championed at the beginning.

Crucial to the understanding of "groups" is a particular view, shared by almost all the *Analysis* writers on affirmative action, about the nature and significance of disadvantage. Critics of affirmative action move from seeing *disadvantage* as the necessary defining feature of a group to arguing that affirmative action will unfairly *advantage* its beneficiaries, without taking what would appear to be the parallel step of seeing those who benefited from the original discriminatory policies as a group whose advantage can be regarded as unfair. Targets of racism and sexism are created as groups by their marginalization and material disadvantage. Once that creation has taken place,

they can also benefit collectively (for example, under an affirmative action program). White men, by contrast, have no collective identity in the initial state of affairs in which groups such as women and blacks are disadvantaged (because no one is targeting them for any disadvantage). Consequently, according to the logic of the *Analysis* affirmative action critics, white men cannot be regarded as undeserving beneficiaries of anything. Instead, they are created as a group by any system that targets them as the bearers of sacrifice for affirmative action. Blacks and women, with group identities ready-made by marginalization, can be either disadvantaged or advantaged in their group identity; and to either advantage or disadvantage someone because of their group identity is wrong. But white men, lacking any group identity until affirmative action creates one for them, can be understood only in terms of collective disadvantage, not collective benefit; so, for proponents of this kind of argument, no group-based critique of the position they enjoy before the introduction of affirmative action policies will hold water.

The relationship between culture and group membership is thus a key issue for debates about group rights when they are couched in terms of affirmative action. For defenders of affirmative action in the *Analysis* tradition, groups, including cultural groups, may have collective rights, but the rights are not conferred as a result of group membership per se. Rather, group entitlements exist because of the group's members having suffered collective, systematic disadvantage. In practice, affirmative action arguments often see membership of a cultural group as exceptional, and related to disadvantage, rather than seeing cultural groups as a human universal. In part this is because affirmative action policies are ultimately assimilationist: they aim to pull those from historically marginalized ethnic or cultural groups into the "mainstream" and make their participation and success in, say, employment or higher education, indistinguishable from the patterns of participation and success of those from ethnic or cultural groups that are not historically marginalized.

A second reason for affirmative action's critics—and, often, its defenders'—tendency to see membership of a cultural group as exceptional rather than as a human universal is that affirmative action policies, although framed in terms of group membership, are implemented at the level of individuals: individual applicants for jobs or university places, not cultures as a whole, fill in application forms, face interview panels, attend classes, and submit theses. Their membership of a cultural group is relevant to their possible systematic exclusion from a process that, once they have entered it, treats participants (in theory) strictly as individuals rather than on the basis of supposed group attributes. Consequently, those already in the system look, in the system's own terms, more like culture-free individuals than like members of cultural groups.

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Biographical Sketch

Marion Maddox has completed a Ph.D. in theology from University of Flinders, Australia (1992), and a second Ph.D. in political philosophy from the University of New South Wales, Australia (2000). She has published widely on the intersections of religion and politics, including *For God and Country: Religious Dynamics in Australian Federal Politics* (2001). Dr. Maddox is currently senior lecturer in religious studies at Victoria University, Wellington, New Zealand.