On Justice in the Current Arab Context

Azmi Bishara | September 2013

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Abstract

This paper[*] explores the deep-rooted, transcultural history of justice and fairness, which has fluctuated and evolved into the contemporary concept of justice, which is linked to citizenship through the concept of rights after a long separation between the two. In this paper, justice and its evolutionary path are thus traced to Plato, Aristotle, Zeno, Cicero, and Roman law; then to the Torah, Christian teachings, and the ideal Islamic conception of rule; and, finally, to the revolution of modern thought. Exploring justice, in the context of modernity, reveals the notion of "rights," upon which justice has been founded in the modern era.

This essay further examines the expansion of the concept of justice to include social equality, in addition to natural equality, and to take "freedom" into account as one of the components of justice. Starting off with John Rawls and Amartya Sen, the paper moves on to discuss the Arab's encounter with Western modernity—especially through Egyptian intellectual Rifaa al-Tahtawi—and the current challenges confronting Arab thought with regards to what constitutes "justice" in terms of the rights related to equal citizenship, social justice, and civic and political freedoms. The paper argues that transitional phases, such as the one currently witnessed in the Arab world, represent an opportunity to broach the subject of justice and to make theoretical and practical propositions around this question.

Central to this paper is also the question of identity, a notion that is key to the building of a modern state. Identity is even more crucial in the context of the Arab world, where the phenomenon of the politicization of sub-identities within the state emerges as part of the struggle against despotism. To the author, all these challenges must be dealt with from an enlightened perspective; in search of a theory that not only organizes the relationship between the principles of equality and freedom, but also explores the concept of "justice" as inclusive of all identity groups, though not at the expense of freedom and equality.

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Introduction

When approaching the question of justice, one is often tempted to take the easy path that leads to an explanation of justice through its opposite, a method of definition that is called "the negative definition". This has been the familiar interpretation of justice since the days of Hammurabi: justice as the prevention of the evil that accompanies injustice, which is imposed through prescribed rules, whether contractual or punitive. Therefore, justice is seen as the application of these rules, whether they were customs or laws.

If one were to go beyond this notion toward a positive definition, it would be easier to begin with the etymological meaning of justice as a term, prior to it becoming a concept crystallized through intricate theories. Etymologically speaking, the meaning of *adalah* (justice) in Arabic falls at the intersection of several signifiers, such as "equality," "equal treatment," "parity," "straightforwardness," and other associated meanings contained within the Arabic term. The term *adel* (to be just) in Arabic means "to resemble," "to be equal to," or "to balance"; the verb *addala* means "to rectify something," which explains why the Caliph Omar's famous statement linked the notion of "rectifying deviousness" to that of justice: "If you see any deviousness in me, rectify it". Thus, right and just are opposed to biased, excessive, crooked, undue, and other synonyms relating to the unjust in Arabic. Justice is also often mentioned in opposition to aberration and to whims and passions: a just man is expected not to be driven by whims and not to be biased when ruling between two adversaries, or when enforcing the social rules that prevent evil.

Similarly, the verb to be just in Arabic is frequently used in the sense of "abandoning a certain action" or "backtracking from a decision" (i.e., thinking and pondering on an action to the point of abstaining from committing it). In the historical Arabic dictionary, *Lisan al-Arab*, Ibn Mandhur says: "Justice is what is believed to be upright and correct". In Arabic, the opposite of justice is *jawr* (oppression) and *thulm* (injustice) and not simply "injustice" as in English. *Lisan al-Arab* classifies the Quranic usages of the term justice as follows; justice in rule: "And if you judge between people, do so with justice."[2] In this sense, justice implies justice in judging between people, not in terms of ruling or having authority over people. The term justice is also mentioned in the Quran

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[2] *The Holy Qur'an*, "Surat al-Nisa," verse 58.

in the sense of speaking truth: "And when you speak, be just;"[3] in the sense of compensation: "and no compensation will be accepted from it:"[4] and in the sense of *ishrak* (equality in non-belief): "Yet those who don't believe hold others as equal with their Lord."[5] Moreover, the Quran mentions the notion of justice when making reservations toward polygamy because of the impossibility of a man justly treating numerous wives, despite it being legally permitted: "You will never be able to treat your wives with equal fairness, however much you desire to do so".

Some may view these terminological comments as marginal since concepts are not merely a philological interpretation of terms; nevertheless, we are dealing with a term that has a history of morphing into a "concept," even in the original Greek language— the concept of "Dike".

This old and transcultural history of the concept of justice is part of the contemporary acceptation of the concept, particularly if examined from the perspective of the history of ideas, where terms evolve and travel—partially or fully—between cultures in an incredibly complex process. On this front, authors may differ in their definitions not only because they adopt different methodologies, but also because they carry different values and normative standards. Therefore, it is our right, and even more so our duty, to take the Arabic term seriously if one wishes to deal with the question of justice in the Arab context.

The history of the term in the Arab context began with the emergence of Islamic Law which became the main source of laws and rules. Justice was used to indicate the necessity of equal treatment, from Hammurabi's "eye for an eye" formulation to the classical Arabic saying "to give each his rightful share," which also implies the sense of equal treatment.

It may be difficult to marry the sense of equality and parity that is contained in the term justice with the hierarchical notion of justice that existed in previous eras, just as it remains difficult to conciliate the privileges and the deprivations that exist in hierarchical social and political systems. Until the early modern age, in the West, the term justice

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[3] Ibid., "Surat al-Anam," verse 152.

[4] Ibid., "Surat al-Baqara," verse 123.

[5] Ibid., "Surat al-Inam," verse 1.

did not imply the equality of citizens in terms of rights and duties. The notion of "rights" that is linked to citizenship is, in itself, a modern concept that was not shaped in one fell swoop, but over long stages of historical evolution. Therefore, justice was not a founding principle, but a concept that was continuously reshaped throughout the course of its historical evolution.

Even when the European aristocracy posed the question of rights in its relationship with the king, as happened with the *Magna Carta*, for instance, the reference was actually not to rights but to the lords' privileges. Citizenship is not a modern concept, except in its modern context, nor is justice. The link between the concepts of justice and citizenship through the notion of "rights," however, is a modern innovation of justice. Herein lies the essence of the revolution of the modern age in terms of re-imagining the relationship between the citizen and the state.

Pre-modern regimes were based on hierarchy and birthright as the pillar of privileges or the lack thereof. This system was best represented by the French feudal system with its complex hierarchies and system of privileges. From this regime emerged the system of hierarchical rights and social privileges that was dialectically negated in the absolute monarchy of the *Ancien Regime* that preceded the French Revolution. The French Revolution flared against these; ultimately, the French Revolution was a revolt against an entire feudal system already included in the absolute monarchy.

Most often, justice signified the rightful and proportional distribution of benefits and goods[6] to the various classes and groups. The same applies to regional privileges, such as managing regions, a task often accorded to the baron, the prince, or the governor chosen to administer public affairs in their region or field. The same applies to punitive measures, which were designed to fit the social standing of the individual and his class. However, justice did not legitimate arbitrary differences; there was a controlled system that distributed shares in wealth, influence, power, and loyalty. There is no doubt that, at the time, the difference between the existence and absence of justice centered on the extent of the commitment to the rules that manage the differences between these different classes or social groups. Justice, here, means a reasonable management of hierarchy, as well as the prevalence of some sort of equality and parity among people who belong to the same referential group: social class, sect, occupation, and so forth.

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[6] "Goods" in this sense does not mean material goods, but a "share" in society's wealth and sources of benefits, a definition that varies by society.

A researcher can select an angle through which he or she can trace the historical evolution of justice through the development, expansion, or shrinking of one of these social categories: free citizens, citizens, the people, the nation, and the state. The same task can be undertaken by tracing the retreat of the notion of privileges and the expansion of the definition of the groups that are covered by the notion of justice, until we reach the idea of equal rights and obligations in the modern state.

The notion of rights is ultimately a modern one, and even more recent was the founding of the principle of justice upon this notion of rights in modern political literature, something which could not have been conceivable to a classical philosopher, such as Plato. For Plato, the concept of justice is based on an "essence" that is present in any ethical conception of justice: a sense of harmony, moderation, and parity—all of which are terms that are etymologically related to the meaning of equality and resemblance. The notion of justice, according to Plato, exists in the universe in different forms; however, it did not at that time imply equality in rights and obligations. To Plato, justice consists of each individual performing their function in accordance with their competencies and abilities, which are borne out of their mental and physical constitution, rather than equality in rights or opportunities. Here, justice is the form of harmony that is achieved through people performing their duties in accordance with their specific competencies and rank, leading to a state of harmony and alignment between the logic of the universe, the structure of the human self, and the organization of the state.

In *The Republic*, Plato posed the majority of the questions and problems that are still busying philosophers regarding justice to this day: is justice related to the concept of the good? What is its relation to the concept of power, authority, and the law? Through Plato's dialogues, one can detect those early notions that constitute the roots of the ongoing contemporary debate over the question of justice in the age of modernity. Firstly, we find the beginnings of a utilitarian theory formulated by Socrates, which includes a type of exchange or equal treatment between those belonging to the same social group; justice as an expression of the dominant power relations in society, which was the view of the Sophists (i.e., justice as a discursive concept, to use a post-modern term); the claim that justice is not a natural given, but a social arrangement designed to restrict the natural urges of people, consisting in this way of people obeying the system that they agreed upon; and that injustice stems from disobedience. Here, we find the roots of the "social contract" in the history of political ideas that are based on the concept of law.

For Aristotle, justice has a meaning in the context of the same social/political class, or within a specific frame of reference. Justice, for instance, is equality between free male citizens; to Aristotle and his contemporaries, there is no justice in establishing equality between men and women, between freemen and slaves, or between the residents of one city-state and another. In this sense, justice means disparity rather than equality. This notion applies to all pre-modern civilizations, and the traces of this conception of justice are still evident in today. Ultimately, the world has not witnessed the emergence of a universal justice system because the various frames of reference defining justice around the world have not been unified in practice.

Nevertheless, within the nation-state at least, the frame of reference for the concept of justice has been unified. The more the frame of reference that defines the concept of justice is unified, the more its content becomes reduced; when the "content" of justice is thus shrunk, the weight of procedures and rules becomes heavier. In a nation-state, the definitions and practices of justice become more and more procedural in nature. The historical process has diluted the unified "content" of justice, increasing reliance on (formal) procedures, such as "just legal practices," but lacking in content. With the passage of time, certain normative principles of justice have taken root that are principles and values able to be translated into procedures. Without understanding this mechanism, it is impossible to understand the historical evolution that leads to justice in the context of the democratic system.

It is no longer possible to imagine a form of justice that does not translate into some form of equality between citizens, be it political equality, equality of economic opportunity, equality in capacities, or, at least, equality before the law, or all the above types of equality. However, until our present day, justice does not imply equality between states, nor equality between peoples, except through a highly diluted relation of exchange that, in reality, is not guaranteed by laws. The freedom of trade and the international organizations that were built for this purpose were also incapable of enacting justice and ensuring the North and South obtain equal benefits from the global economic system. Instead, the international economy is based on an unjust system of privileges that creates "winners" and "losers," according to the neo-liberal concept of justice, and "oppressors" and "oppressed," exploiters and exploited, superior and inferior, mainstream and margin, and center and periphery to the critique of the neo-liberal logic. Moreover, justice fails in most countries when it comes to the disparity between citizens and non-citizens and, sometimes, even among different groups within the same country. Furthermore, the correctional, penal, or punitive justice, which is

often applied in a similar manner to citizens and non-citizens within the same state is yet to be enacted between states, and any such project remains a political dream, or an ideology, that is not compatible with reality.

Aristotle divided justice, in the sense of equity in dividing shares due to individuals, into two forms: the justice of distribution and the justice of correction. A "just" share that is due a certain individual is not necessarily an equal share to that of others, as the distribution of shares should be decided in accordance to the ranks of the people involved in the process. If these individuals were not naturally equal, it would only be just for their shares to vary. In "Nicomachean Ethics," Aristotle writes: "this is the origin of quarrels and complaints—when either equals have and are awarded unequal shares, or unequal equal shares[7] [...] all men agree that what is just in distribution must be according to merit in some sense, though they do not all specify the same sort of merit, but democrats identify it with the status of freeman, supporters of oligarchy with wealth (or with noble birth), and supporters of aristocracy with excellence."[8] Aristotle does not attempt to evaluate these standards; however, he insists on the principle of proportionality that directs the equal or unequal relationship between man and things, as explained above. "The just is the proportional, the unjust is what violates the proportion."[9] In other terms, if goods and their opposite—burdens and responsibilities—were to be distributed, this should take place in a manner proportional to the contributions provided by the individuals; injustice, which would violate this principle of justice, takes place when commitment to the principle of proportionality is lost.

Justice as a form of correction, is, in fact, a judiciary justice that corrects disproportionality. It is an intermediary form of justice in that it seeks a middle ground between two unequal agents, with one deserving a larger share and the other a smaller one. It also seeks equality in distributive justice, which is based on voluntary relations of exchange, or what we term, in our age, contracts and the civil code. Here, justice

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[7] Aristotle speaks of a relationship between things (goods, shares, benefits) and people. People can be equal, or unequal, according to a specific standard, or unequal, and the same applies to material items. This has led to four potential types of relationships between them, two of which lead to conflict.

[8] Aristotle, "The Nicomachean Ethics," Book V, 1131a, in: Aristotle, *The Complete Works of Aristotle: The Revised Oxford Translation*, Edited by Jonathan Barnes, Bollingen Series; 71:2, 2 vols., 6th ed. (Princeton, NJ: Princeton University Press, [1995]), vol. 2, p. 1785.

[9] Ibid., 1131b, p.1786.

seeks a middle ground in order to cleanse it from excesses and insufficiencies; thus, the judge represents an intermediary. Involuntary relations of exchange which violate what we call in our modern age "public rights," such as theft, deception, and murder, do not take into account the principle of proportional equality, but are based on an absolute equality in absolute, value-laden matters, such as fraud, theft, and adultery. In such instances, wrongs should be righted regardless of the person of the perpetrator and the victim and the value of their social contribution if the victim is of the same social rank.

Despite the fact that the idea of justice is applicable to any type of relations between relatively equal persons, the most important arena for the question of justice is that of politics.[10] Aristotle wrote:

> For justice exists only between men whose mutual relations are governed by law; and law exists for men between whom there is injustice; for legal justice is the discrimination of the just and the unjust. And between men between whom there is injustice there is also unjust action (though there is not injustice between all between whom there is unjust action), and this is assigning too much to oneself of things good in themselves and too little of things evil in themselves. This is why we do not allow a *man* to rule, but law, because a man behaves thus in his own interests and becomes a tyrant.[11]

Aristotle divides what is politically just into two types: what is just by its own nature and what is just by custom (or law). The most common interpretation of Aristotle's idea of "the just by nature" is influenced by Stoic and Christian ideas, as well as the modern conception of natural law. Each of these groups deals with natural law as a perpetual, stable, and comprehensive standard that allows man to evaluate the extent of the justice of legal texts. In truth, this was not Aristotle's intention; what is "just by nature" for Aristotle is different from the evolution of this concept in the Stoic, Christian and, later, modern theories understanding of the social contract. Since the emergence of Stoic philosophy, the notion of natural justice, and its fulcrum divine justice, has played a critical role in the evolution of political and social thought.

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[10] See: Johnston, *A Brief History*, 2011.

[11] Aristotle, "The Nicomachean Ethics," 1134a, p. 1790.

However, Aristotle argued that what is just by nature is subject to change just as what is just by custom or by law. The difference between what is "just by nature" and what is "just by custom" is that the former is not dependent upon the shifting ideas and passions of people. Aristotle's goal was to make a distinction between justice and the standard rules of behavior whose violation is often seen as a breach of justice. What is "just by nature" refers to the codes that we respect even in the absence of laws and customs. These principles change and evolve just like natural objects do; however, they do not change simply because people agree on a different set of rules, or because the passions and interests of these people have changed.

Legal justice is what people agree upon as the law or as a custom; natural justice, on the other hand, is more akin to practices that are borne out of ethical rules that reject vice, offenses, and crimes, and contribute to the happiness of people. Customary justice is not necessarily just by nature; a law is "just" because we agree on viewing the product of the legislation as just. However, a law is truly just only when it is formulated with care, skill, and thoughtfulness. Contradictions between law and justice appear when the political system lacks its fundamental quality: coexistence between free and relatively equal individuals that is in accordance with an agreed-upon standard. Justice represents the necessary rules for a shared life that joins together free and equal individuals. Without this fundamental rule, justice, as a life system, means nothing aside from its basic etymological connotations.

Aristotle stresses that only the act of a free man can be considered a just or an unjust act; the acts of men who are not free agents, however, cannot be classified as just or unjust, except in an incidental or contingent manner.

This paper argues that the elements explained above remain stable as the framework for political justice. What changes with time is the expansion of the category of people to whom that definition applies, or the expansion of the definition itself, meaning the definition of the individuals who fall under that definition; in other words, individuals from the category of "free men" who are ruled by law expands to a larger category, such as that of "citizens," and then male and female citizens in the context of the nation-state.

In Aristotle's *Politics*, the Greek philosopher discusses Plato's opinion in *The Republic* to the effect that rule should always be the purview of a specific group, like with other

functions in society, in a manner similar to the distribution of functions among the organs of the human body. Aristotle approaches the idea of politics as a public affair, establishing the theoretical pillars for this notion though his most notable contribution was that he built this idea on the principle of reciprocity that he discussed in *Ethics*:

> That is why the principle of reciprocity, as I have already remarked in *Ethics,* is the salvation of states. Even among freemen and equals this is a principle which must be maintained, for they cannot all rule together, but must change at the end of a year or some other period of time or in some order of succession [...] it is clear that while there should be continuance of the same persons in power where this is possible, yet where this is not possible by reason of the natural equality of the citizens, and at the same time it is just that all should share in the government (whether to govern be a good thing or a bad)—in these cases this is imitated. Thus the one party rules and the others are ruled in turn, as if they were no longer the same persons. In like manner when they hold office there is a variety in the offices held.[12]

The passage above does not to argue in favor of the devolution of power, but rejects the notion that governance is exclusive to one group over others. Aristotle also wanted to stress that the rulers can become the ruled; that the ruled can become rulers; that politics, in its essence, is a public matter; and that people (free male citizens of the polis) are generally equal, while differences among them are changeable, which necessitates the periodic shifting of rulers. Rulers, Aristotle argues, should not remain in their posts as if governance were a natural trait to certain individuals, in opposition to others whose natural place is that of the ruled.

Perceiving social differences as natural differences is the philosophical basis for aristocratic hierarchical systems, which, in my opinion, developed into racist concepts throughout the ages. Aristocratic thought, which was based on familial genealogies, has deviated after long centuries of practice to morph into a natural, racial explanation for the differences between humans. Similarly, the intellectual elitism that was used to justify the rule of the aristocratic minority has given way to theories of natural selection during the 19th and 20th centuries.

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[12] Aristotle, "Politics II," p. 2001.

Aristotle proposes his theory on justice in the context of his theorization for human virtues. For Aristotle, the concept of justice is dependent on fairness in the distribution of goods and burdens among individuals, as well as reciprocity. Reciprocity, then, is the method that should govern the justice of distribution and the justice of correction.[13] On the other hand, reciprocity is not equivalent to justice; for instance, dealings between an official and a citizen cannot be managed through violence and reciprocal violence by either of the two parties. In the presence of an unjust hierarchical reality, justice is not in reciprocity; instead, the idea of reciprocity, which is at the heart of Aristotle's theory of justice, should be discussed based on the correlation between "rights and obligations" in the environment of a citizen, their social stature, and the class to which they belong. Reciprocity is not the exchange of items of equal value; rather, it is dependent on the existing inequality between individuals: an exchange is just if the items that are being exchanged fit the capacities or competencies of those involved in the process (i.e., the relative contribution of the parties to this exchange). The essential and unconditional concept of justice can only apply to proportional relations of exchange between relatively equal individuals.[14]

Does this mean that justice equals disparity, leading to the complete loss of the word's meaning and turning into a mere expression of the unequal relationship between the dominant powers in a certain society? If this were to be the case, there would be no difference between justice and injustice, which some believe to be true. This is an old nihilistic thesis that can be found in the words of one of the discussants in Plato's *Republic*; the same notion was recast by Nietzsche in his *On the Genealogy of Morals* and *Beyond Good and Evil*, in an expression of the crises of modernity. Here, justice becomes the mere reflection of the existing power relations in society. In other literatures, legal justice before communism was a "superstructure" and tool to justify and edify the existing political or class system—the concept of ideology for Karl Marx. From this perspective, justice is either impossible in the context of critiquing modernity, or possible, if class divisions were abolished along with the division of work in a different line of critique, leading to absolute and complete equality, and with it, freedom.

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[13] Ibid., p. 88.

[14] Johnston, *A Brief History*, p. 76.

This interpretation, however, is not correct. Justice is not disparity, nor is it the annulment of disparities; instead, justice exists within disparity, or, according to a more modern understanding it is the ability of man to sense justice even in regimes that include disparities, so that the historical process becomes a perpetual struggle against the elements of injustice in these existing disparities. Historically, it was possible to speak of justice within disparity because disparity includes a certain equivalency between individuals belonging to the same group; similarly, justice within disparity refers to a certain system of unequal relations, though they are well-defined when it comes to dealings between unequal agents. Initially, justice existed not only through this equivalency between equals, and disparity between various parties, but also through a system that establishes a standard of predictable reciprocity. Nevertheless, from this standpoint, the notion of justice evolved toward wider horizons.

Thus, justice does not lose its meaning; instead, it begins with equality between equals. If one were to say that there is no equality between freemen and slaves, it would signify that justice is absent—by the standards of our time—though it would not mean that the notion of justice was absent from this context. Rather, such a state of affairs denotes that the connotation of justice in that age was different from ours. The complete absence of justice would signify the absence of equality among freemen and among slaves. The historical context that we are investigating defines justice as equality among freemen and among slaves, not equality between freemen and slaves. Looking at the administration of public affairs in Athenian democracy, for instance, citizens were equal among each other, which meant equality in the political membership to the group (i.e., the category of citizens); this was the Athenian notion of justice. However, from a contemporary perspective, the very definition of a citizen was not just, an issue that Athenians could not even contemplate. The truth is that the notion of the citizen at the time meant something completely different from our modern conceptualization of the citizen; in old Athens, the citizen was not an individual affiliated with a state, but a member of a group/community, from which the member's rights and obligations stemmed. There were no inherent rights and duties attached to every individual born within a political entity; instead, one's privileges and obligations/duties stemmed from their belonging to a specific community: a tribe, a class, citizens of a city, and so forth.

With time, the concept of the citizen became more and more individualized and inclusive, stressing the political rights and obligations of the individual as an individual,

and not necessarily derived from his affiliation to a community; the category of "citizens" expanded to include people who were hitherto not seen as full citizens, which caused a change in concept as well: the category of "citizens" in classical Greece did not include women, residents who do not own property, or slaves.

There is, then, a deeper meaning that distinguishes justice, and which makes it possible to "feel" and "sense" the existence of justice and its absence. It is not merely a reflection of the power balance, as Nietzsche and, after him, a string of post-modern intellectuals, argued. Power balances control the practice of justice and its inclusiveness, but justice is not an ideology or a superstructure that merely reflects the economic structure of society. Throughout its historical evolution, justice has always carried within it the idea of equality and parity, despite the historical shifts and the successive expansion and narrowing the meaning of the concept. Otherwise, the notion of justice would be no different from the notion of injustice or oppression. Justice carries within it connotations of equality, parity, moderation, and straightforwardness, but it is not an absolute ideal, or an abstract model that can be applied in all societies without taking account of human nature like a universal plan; instead, justice is an ethical judgment that emerges from a certain theory of justice and affects the political and social system.

When it comes to the enactment of justice in societies, it is often seen as the opposite of injustice and oppression, and it is enforced because injustice represents a breach to the agreed upon customs or under the pretext of natural justice[15] or divine will (an extremely important argument during times when religious thought was dominant), which was replaced by the notion of the "natural right" in modern thought. In my opinion, the notion of the natural right represents a "secularization" of the idea of the "divine right," with both theories presuming the existence of an idea of justice that exists beyond reality or prior to experience. The essence of this notion of justice is to use the state of nature as a standard to define the state of equality and justice that is "engraved" into the nature of man. This is the crux of Rousseau's concept of justice, as well as the source of the famous quotation by the Second Caliph, Omar Bin al-Khattab: "When did you begin to subjugate people, while their mothers have given birth to them as free people?" Al-Khattab's pronouncement was forward looking for the early Middle

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[15] Natural justice here is based on identifying the "correct" human behavior, regardless of whether a law or a custom exists to legitimate it.

Ages, and went beyond the current notions of justice at the time. As a matter of course, according to Omar, there is no relation between this "natural freedom" that people are born into and the concept of freedom as a value, for man, in my opinion, is not born free. The freedom that is being referred to, and which will later be included in the conceptualization of justice, is not born with the person; rather, it is a need for freedom that is acquired through awareness, and is applicable in the social and political fields, though it is not practiced "naturally" by living beings. Literary metaphors aside, just as a bird is not born free, neither is man; Caliph Omar's quotation is but a metaphor, or a normative hypothesis similar to the hypotheses of the "state of nature" in the theories of the social contract.

The problem with two of the modern conceptualizations, Nietzschean and post-modern, on the one hand, and Marxist, on the other, is that they did not seriously consider justice to have, in its origins, a given objective (natural or divine) that relies on the existence of a moral sense of justice among, at least, a portion of the population who can be termed as "free" and who are repelled by injustice. Contemporary theorists of these two traditions posit a notion of "natural justice," but they limit it to their own formulation and perceive it in isolation of their ethical conceptualization of their selves and their subjectivity. It is because of that that I still argue that the lack of a "science of ethics" in a school of thought prevents it from turning into a veritable political philosophy.

From a historical perspective, it appears that this "science of ethics" may have been the main motive of the *Mutazila* school of thought in the early Abbasid age. The *Mutazila,* who called themselves "the people of justice and monotheism," defended the equivalency between God and the Right, and between God and justice, since the latter is a great divine value. This distinction is unrelated to the question of the regime of rule, or to the identification of just regimes and despotic ones. In Islamic civilization, justice was not a question of governance or regime types, or a specific form of rule; it was a quality that could be found in the behavior of the rulers and the ruled, or which could be absent, remaining unrelated to a specific system of rule. Here, ethics appear as a subjective behavioral quality that is separate from the political regime or ruling system and manifested in the person and behavior of the ruler and the ruled.

This concept was further edified, as a signifier and as a value at once, in the "ideal" Islamic experience of the just Muslim rule, which is summarized in the famous Islamic

sayings: "justice is the foundation of rule" and "if [the seat of power] had remained perpetually in the hands of others; it would not have reached you." There is no doubt that justice is the ultimate value in the ideal Islamic perspective on rule, to the extent where another famous Islamic quotation views "equality in injustice" as a form of justice because of the lack of a positive definition of justice; instead, justice is seen as related to honesty, equality, and the enforcement of the right, without having a positive, definition of the concept of "rights".

Justice, then, is a divine substance. God is justice. Among humans, justice is an ethical value that is premised on the condition of freedom, for God is just by His nature and essence, not because He is incapable of being unjust, but because He is the ultimate manifestation of justice. Humankind, however, is not just by nature, but as a result of having choices, and the capability of being unjust, which creates the right to make individuals accountable for their behavior. The fact that unity and justice are pre-posited and concomitant in the divine nature makes the human concept of freedom inapplicable to God. It is the possibility of injustice, which contradicts the nature of God, that allows us to see man as a free agent capable of making decisions and choosing between justice and injustice.

There is no doubt that at the heart of the debates between the different Islamic schools (first between the *Qadriya, Jabriya,* and *Murjia*, and then between the *Mutazila, Hanbali*, and *Ashariya*) was a political difference. Philosophically speaking, the difference was over the definition of certain key terms: the Hanbalite notion of God's limitless powers made them excommunicate those who dared to argue that God was not capable of pushing men to commit injustice because no injustice can result from God. Perceiving God as all-powerful and all-just prevented such questions from being broached; the Mutazila were later able to shift the debate from the domain of metaphysics and theology to that of ethics.

This ethical concern was not limited to the Mutazila school as many Sunni predecessors also stressed the value of justice, arguing that where justice dominates, that's where God's law is, to quote the religious scholar Ibn Qayyim al-Jawziyyah. A similar argument was made by the theologian Ibn Taymiyyah, who was extremely progressive both for his time and ours: "Justice is a duty for everyone in any circumstance, and injustice is

prohibited categorically, and it cannot be made permissible under any circumstance."[16] Ibn Taymiyyah does not limit this rule to the application of the Islamic Sharia, adding: "The affairs of people are best managed in this world in the presence of justice, even when mixed with a degree of sin, as opposed to injustice in the distribution of rights, even in the absence of sinfulness." Based on these principles, he made his famous pronouncement: "Allah aids the just state, even if it were an infidel one, and He does not aid the unjust state, even if it were Muslim."

Another famous quote from this Islamic tradition argues that "life can continue in the presence of justice and non-belief, but it cannot continue in the presence of injustice even under Islam... the Prophet Muhammad (PBUH) also said: There is no sin in this world that is punished quicker than oppression and the abandonment of the kin; thus, the oppressor is to be punished in this life, even if he were to be forgiven and granted mercy in the afterlife. In this way, justice is the order of all things. If the world was managed through justice, it would function correctly, even if the ruler is to be judged harshly in the afterlife. Conversely, when the world is not managed through justice, its affairs will not straighten, even if the ruler was a faithful man who is to be rewarded in the afterlife.[17]"

From this perspective, a notion emerged to the effect that rule can be successful and lasting despite its lack of faith, but it can never succeed in the existence of injustice. To this day, the famous anecdote featuring Tamerlane and the reference to favoring a just infidel ruler to that of an oppressive Muslim ruler, is often echoed. The essence of this lies in the fact that justice achieves one of the most important aspect of religion's goals and its ultimate ideals, which happen to overlap with the best interest of society. This hypothesis reflects a proto-*Maqasidi* interpretation of the Sharia—an interpretation that takes into account the social and wholesome goals of the Sharia rather than its literal rulings—even before *Maqasidi* thought was to be officially formulated through the Maqasidi school, especially among its most brilliant advocate, al-Shatibi. However, devoid of modern connotations, the Maqasidi perspective remains plagued with its limitations and contradictions. In the classical Islamic narratives of Islamic history, the

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[16] Ibn Taimiya al-Harrani, *The Full Collection of Fatwas*, p. 68.

[17] Ibid.

justice of the caliph or the ruler is always presented as a higher value and as an example of morality, playing a crucial role in the assessment of the legacy of said ruler.

Ibn Taymiyyah argued that justice in the world is possible in the shadow of a non-Islamic government; under a just government, even a non-Muslim one, the affairs of people will be better managed than under an oppressive government, even a Muslim one. Justice, even divine justice, is more present in the first case than in the second; as for faith, it is not sufficient to establish justice in the world, and religious people cannot be called just unless they are just in deed and action, a quality that non-religious people may earn. The religious person is, however, to be rewarded for their faith in the afterlife.

The form of justice that Ibn Taymiyyah referred to was the justice mentioned in the following verse: "God commands you [people] to return things entrusted to you to their rightful owners, and, if you judge between people, to do so with justice. God's instructions to you are excellent, for He hears and sees."[18] I argue that Ibn Taymiyyah was closest to one of two concepts of justice: an ethical one and a procedural one, since for Ibn Taymiyyah there was no "essential" content Islamic state aside from the rule of the Sharia. The Muslim scholar argued that justice is possible with a non-Muslim ruler (i.e., in the absence of the Sharia). Essentially, this means that the application of justice does not necessarily require the application of the Sharia; thus, one can state that Ibn Taymiyyah does not present a unified and stable definition of justice. Justice for Ibn Taymiyyah is not equivalent to equality; otherwise, this position would contradict his insistence on rejecting any form of equality for the *dhimmis* (non-Muslims living under the protection of the Muslim state), arguing that they should be prevented from publicizing their faith, and viewing their humiliation as compatible with justice. He quotes the Second Caliph, Omar Bin al-Khattab, when he says: "humiliate them but do not be unjust to them."[19] In fact, justice here requires inequality between Muslims and non-Muslims, a view echoed throughout Ibn Taymiyyah's chapter on "religious policy" in his collection of fatwas.

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[18] *The Holy Quran*, "Surat al-Nisa," verse 58.

[19] Ibn Taimiya al-Harrani, *The Full Collection of Fatwas*, "al-Siyasa al-Shariya," p. 286.

This subject can be discussed infinitely, and citing all existent quotations will not help us understand the difference in stances regarding justice. There is an essential difference between someone believing in the value of an ethically-defined justice—arguing that when justice rules, the Law of God equally rules—and believing in a specific interpretation of the Divine Law, and that when this interpretation rules, justice exists, without an ethical definition of the concept that is separate from the Sharia. These two positions represent essentially different philosophical stances that cannot be resolved through debate. I do not believe that Ibn Taymiyyah was attempting to formulate normative definitions of justice, or to create a general theory of justice.

The revolution that was brought about through modern thought, since the theories of the social contract centered firstly on the rejection of the notion supporting the existence of a natural form of inequality between men that alone, justifies the discrepancy between the rulers and the ruled. This position was first expressed in classical Greek thought through Aristotle. Secondly, it was based on the idea that equality takes place between two different agents, not only between equals. Third, it was centered around the ability to see the notion of "man" as the reference point for the idea of justice in the sense that men are equal by nature, and that the natural differences between men do not justify making some of them free and the others slaves. This line of thought is not present with Aristotle, but begins with the Stoic School of philosophy, which premised humanity on the idea of universal ethics, which was manifested in Zeno's saying four centuries before the appearance of Christianity: "Men are brothers in humanity." The same idea was to be later perpetuated through Christianity.

Historically, the idea of a natural equality between men overlapped with the notion of freedom and the founding of a civic society in which everyone is politically equal (or a citizen). However, this interaction was not given sufficient attention because the idea of equality appeared to conflict with the idea of freedom in many modern ideologies. Freedom in the classical sense, however, is the opposite of slavery, or the opposite of inequality among men. Natural equality between men means that nature does not justify that one man should be a slave and the other a master. The struggle against oppression throughout history turned justice from a mere virtue into codified rights. Similarly, freedom shifted from being an abstract idea opposing slavery, in the sense

that a free man is a man who is not owned by another,[20] to a positive form of freedom that went beyond the abolishment of slavery among citizens in the Middle Ages, and was followed by contractual freedom with the emergence of wages, market rules, and, later, by political and civil liberties that were seen as a right for men and women in the contemporary conception of citizenship.

If the notion of "natural" rulers and ruled was rejected by Aristotle, imagining a natural equality among humans is also not a completely modern notion, nor is it a secular idea that emerged with the theories of the social contract; instead, it is the secularization of a religious idea that posits the equality of believers before God. This conception emerged with the rise of Christianity in the context of conflict with the old Hebraic theology, and it prevails strongly in Islam.

Even this theological notion of "man as man" was not a purely theological one, but the end-result of a protracted historical evolution. Justice in the *Torah* (or *The Old Testament*, as Christians refer to it meaning, the old testament between God and its people) is not too different from the concept of justice in the context of ancient societies: justice applies to a people, whether an ethnicity, a religious sect, or otherwise. As for relations with other peoples, as collectivities and individuals, justice, or even ethical treatment, ceases to be in effect; instead, primacy is given to conflict and the law of war, along with the treacheries and deceptions that are generally permitted in wars. The Islamic notion of "the Abode of War" (as opposed to the "Abode of Islam"), in reference to the laws of war that apply to "others," is but an extension of the Biblical laws on the treatment of non-Jews, among the Canaanites, Philistines, and Amalekites. At this point, there is no need to cite biblical sayings that justify the extermination of peoples as a "divine order," even the execution of those who refuse to partake in such murders from among the very people of "Jehovah".

In the Mediterranean context, this position began to change with Zeno, the founder of the Stoic school of philosophy, and then with the expansionist ambitions of the Roman Empire, represented by the theorizations of Cicero, who made the definition of the human being inclusive for all humans since they are distinguished from animals through the gift of reason and their ability to use logical thinking and deduction, though they are

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[20] Debates on freedom and liberation were, for a very long time, limited to men. Thus, it is not a coincidence that "man" is used here instead of "human".

not equal in this respect. For Cicero, the same applied to the concept of virtue. This meant, however, that the natural equality between humankind does not translate into equality in their aptitude for reason and virtue, which places some of them at a higher position than others, as with Aristotle.

Even so, as Cicero affirms, "there is no person of any nation who cannot reach virtue with the aid of a guide"[21] in other words, education can help people surpass the inequities in reason and virtue. This was said many centuries before the European Age of Enlightenment, and according to that formula, justice is directly related to our dealings with other humans because all humans (not only citizens) are capable of acquiring the notion of justice. Cicero says: "we are obliged by nature to be just in our dealings with others, regardless of whether we share a bond of political connection or nationality with them, and in turn are similarly obliged to be just toward us."[22] This represents an imperial Roman line of thought that surpasses the limits of the city-state and, naturally, opposes the notion of "God's chosen people," as well as the thoughts of Aristotle and Zeno. After all, justice for Zeno, and in the Stoic school of thought in general, existed within the bounds of the city-state.

Roman law was influenced by this transnational imperial point of view, later overlapping with the teachings of Christ related to man as a human, and were liberated from Judaism. We find this influence especially in the compilation of the Roman laws (the *Corpus Juris Civilis*) that was written during the reign of the Roman Emperor Justinian in the 6th century. On this front, the Christian church can be seen as the inheritor of the Roman Empire in its religious quest for universal salvation, seen as the fate of every person, regardless of their identity or social class. This philosophy focuses on the poor and outcasts in particular. This is the main source for the concept of universal justice in modern political thought. There is, however, no necessary correlation between the idea that justice is natural and the universality of justice for all humans; in Christianity, like Islam, the universality of justice emanates from a divine justice, and not from nature. Similarly, equality between humans in Christianity and Islam is of a divine source because God has chosen to create people in his image and likeness. At any rate, the notions of "natural rights" and divine justice were equivocal among the early

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[21] Johnston, *A Brief History*, p. 122.

[22] Ibid., p. 95.

enlightenment thinkers, including John Locke. Ironically, in order to be able to colonize and keep a universal human concept of justice, people in the colonies had to be treated as subhuman or as ethically and mentally disabled and thus unable to recognize their own interests and act accordingly.

Justice in the Age of Modernity

In early modern thought, Hobbes premises nature on the idea of equality between an individual and any other individual, and that a social contract cannot be possible unless each individual was ready to admit that all people are equal to him by nature, thus recognizing that they are equal to him in their ability to harm and cause pain. Hobbes here directly criticizes Aristotle, who believed that the ability to reason and speak is common among all humans, but that differences between them in aptitudes and mental capacities were so large that they justified the existence of a slave "by nature" and a master "by nature". This argument was made by Aristotle, the same philosopher who rejected the idea that a ruler should be a ruler by nature, and that the ruled should be subjects by nature. For that reason, Hobbes saw Aristotle's theorization as contradictory to Aristotle's own philosophy, as well as direct experience: there are no stark differences among humans to justify that some of them cannot but belong to the category of the "ruled," while other, more endowed, individuals have been destined to be "rulers".[23]

Theories of the social contract emanate from the idea that humans are relatively equal by nature, reason, and ability, and that this equality permits them to exist together in a state of war or a state of peace, according to the angle adopted by the thinker in

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[23] Hobbes, *Leviathan*, p. 123. In the beginning of the chapter on the natural state of humans, Hobbes says: "Nature hath made men so equal, in the faculties of body and mind as that though there be found one man sometimes manifestly stronger in body, or of quicker mind then another; yet when all is reckoned together, the difference between man, and man, is not so considerable, as that one man can thereupon claim to himself any benefit, to which another may not pretend, as well as he." See: Thomas Hobbes, *Leviathan, or the Matter, Forme, and Power of a Common-Wealth Ecclesiastical and Civil*, chapter VIII.

question; these theories hold that this leads them to enter into a contractual state in order to prevent war as a constant rule of life in the state of nature – according to Hobbes for instance. For Hobbes, this can be achieved through the establishment of a state with absolute powers according to the social contract, or, for Locke, by making the state of war into an "exception" under the shadow of a state that emerges as a result of a social contract.

Here, the idea of justice is still separate from rights. It is "just," for example, to end the perpetual state of war that existed in nature before the emergence of the civil state, and results from the equality of abilities and needs among people and their desire to fulfill their needs without taking others into consideration, which results in a state of war. It is only rational in this case to agree on a state that establishes peace (social contract). Justice here entails that everyone is to equally abdicate their natural rights for the interest of the state, which becomes the source of rights, and the judge of what is permissible and prohibited from that moment on. Justice, here, refers to the acquiescence of the people to the agreed-upon social contract; injustice, conversely, is the violation of this contract in which they gave up their rights.

Philosophical schools have differed over the question of justice, between the line of thought based on Hume and developed by Bentham, which deals with justice from the perspective of garnering happiness for the largest number of people, such as a utilitarian ideal, and the line of thought expressed by Kant, who argued that the notions of utility or the pursuit of happiness are not fit to be a basis for ethics, and, therefore, not for justice. Kant believed that the basis of morality is freedom, upon which the notion of an "ethical duty" can be built. This is the same idea of justice, based on man's obedience to a law that he participated in making, that we find in Hobbes' theory of the social contract, with the difference being that the free ethical person, according to Kant, acts as if he creates a rule for society as a whole, which would also prevent the state of war and the oppression of the absolutist state. Freedom in Kant's terms is self-legislation in this sense of responsibility to society as a whole.

It took time for the idea of justice to become crystallized into a set of rights and obligations that constitute an intersection, or a balance to be more exact, between utility and freedom as expressed in the American Declaration of Independence and then in the Declaration of the Rights of Man emanating from the early years of the French Revolution.

One can also speak of another historical shift that expanded the concept of justice to be based on social equality, and not only natural equality: the concept of social justice. This, in turn, is divided into several types of justice, most notably: the distribution of material goods in accordance with need; the distribution of material goods in accordance with merit, which is measured through competencies and qualifications and the contribution toward the general good, and the distribution of goods in a system that combines both through taxation and welfare policies.

Finally, and to use a broad and abstract view, the 20th century can be seen as an arena of struggle that led to the abandonment of the two aforementioned ideas that were steeped in the ideologies of the 19th century, including communism, in favor of the values upon which these ideologies rested: social justice. It is no longer possible, in our day and age, to discuss justice in isolation from the idea of social justice, which is based on narrowing the gap between rich and poor through the equality of opportunity. Moreover, social justice requires the rectification of the social gaps through a better distributive policy on the part of the state and through human development, which permits different groups in society to move forward from a relatively equal point of departure based on the freedom of choices, abilities, and opportunities and on allowing people to make their own choices. It was in this context that the famous saying "development is freedom" was cast.

It is also possible to trace a different tradition in the evolution of the concept of justice: the extent of the role of freedom as one of the components of justice, even though the original meaning of the term has no relation to freedom, except in terms of the context and implementation of justice in a society of free men (i.e., non-slaves). There is a clear semantic difference between the concept of justice and the concept of freedom, which does not mean that they are contradictory, but that aspiring for equality, from a historical perspective, did not always include a conscious aspiration for freedom—that is, despite the fact that both ideas are connected in the historical root that freedom originally is the opposite of the extreme lack of equality: slavery. From that period on, every struggle that was waged in search of equality included the notion of freedom; at the same time, all egalitarian ideologies have tended to repress freedom once in power, not because they were egalitarian, but because they saw the state apparatus as a tool to implement an ideological vision. This reality soon turned into a new source for the idea of freedom.

Regarding the complex relationship between equality and freedom during the 19th and 20th centuries, the Left put forth the principle of equality while liberalism stressed the notion of freedom. At the same time, there were differences within each camp regarding the value and stature of freedom or equality within their propositions. The traditional Right had consistently attempted to curtail these two components of justice in favor of a more hierarchical notion of justice where equality and freedom do not apply to everyone. However, with time, even the notion of the "right" has shifted, leading to a "liberal right" and even a "socialist right," a subject that falls outside the purview of this essay.

A major philosophical challenge centered on reaching the optimal formula that combines freedom and equality, and that can be applied in modern society through equity in the distribution of goods and benefits, remains. It has been proven that economic liberalism, when not circumscribed through political justice (i.e., the justice of the state), creates inequality, and may even lead to the limiting of freedom, as the ruling elites attempt to preserve and defend the liberal economic system that produces disparities and social gaps. At the same time, state socialism has also demonstrated that, by banning freedoms, it also leads to inequality and, in other cases, to equality in poverty. This explains why Western thought began to focus on critiquing the domination of the state by any specific ideological or religious hegemony, turning the state into a tool to impose an ideological vision upon society in contravention to the principle of individual freedom.

Among the attempts to find a balance between equality and freedom we find the important writings of John Rawls in his critique of utilitarianism and his philosophical throwback to Kant in establishing justice as a moral principle that becomes the basis for political justice. Rawls tried to formulate a theoretical framework for political justice in the democratic state in his book, *A Theory of Justice*, published in 1971, and then in *Justice as Fairness: A Restatement*, published in 2001. In the latter book, he defines the two principles of justice as such: firstly, the right of each person to equal and adequate basic freedoms in the framework of a system of freedoms; secondly, limiting the notion of social and economic inequalities to two conditions: access to employment and professional positions, which should be remedied by permitting equal opportunity of access to everyone and the notion that manifestations of inequality should provide the greatest benefit to the lowest classes of society in accordance with the standard of

inequality in question, such as income. This means that, among the potential "mathematical models" that simulate the process of distribution, the state should select the model that achieves the most benefit to the weakest groups, but without affecting society's capacity to develop, so that that the total amount of goods and benefits available for distribution can increase.[24]

At this point, it is useful to examine the acclaims and the critique of Rawls by Amartya Sen and others. This critique challenges Rawls' notion of social justice—the distribution of primary goods or benefits, such as rights and freedoms, income, and the social conditions necessary to maintain human dignity and self-respect—by stressing the need for equality in capacities and abilities, not only in opportunity, and respect for the individual's freedom of choice to pursue what one believes to be vital for his or her life. Equality in opportunity is not very useful if the capacities to exploit these opportunities were not equal as well, thus permitting the narrowing of the gap between rich and poor and strong and weak; equal opportunities mean little without the right to choose as well.[25]

From the notion of equality in capacities emerges the concept of human development as one of the main functions of the modern just state. Freedom and political rights are also among the main domains where equality in capacities should be established as a foundation for justice. Amartya Sen argues for the pursuit of social justice through the abandonment of the constraints within classical economic theory based on a holistic balance, viewing self-interest as an individuals' main motivation in their behavior, and the acknowledgment of a greater role for ethics in economic theory and economic policies.[26]

Generally-speaking, Rawls' theory rested on an ethical foundation. He begins his theoretical endeavor from the assumption that the state is a society of free, equal individuals who are engaged in social cooperation. Justice, in this case, is fairness in the distribution of benefits among these people; in other words, it is a form of justice that is

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[24] Rawls, *A Theory of Justice*, p. 42-43.

[25] See: Sen, *The Idea of Justice*, 2009. Sen published this book in 2009 and dedicated it to the memory of Rawls—his teacher.

[26] See: Sen, *On Ethics and Economics*, pp. 29-57.

directly related to the basic political structure of the state. The condition for this entire system is the assumption that free individuals have two moral qualities: "First, that the equal political liberties and freedom of thought enable citizens to develop and to exercise these powers in judging the justice of the basic structure of society and its social policies; and second, that liberty of conscience and freedom of association enable citizens to develop and exercise their moral powers in forming and revising and in rationally pursuing (individually or, more often, in association with others) their conceptions of the good."[27]

Throughout people's historical struggle against injustice, it has been proven that freedom is one of the conditions of justice, and that the people's concept of justice changes through knowledge and practice. Theoretically, freedom has become an issue that cannot be ignored when discussing justice for three reasons: the limiting of freedom may be the clearest manifestation of inequality in rights; this limiting of freedom can engender, by itself, an inequality in rights, and, therefore, a lack of justice, especially the type of justice that attempts to impose a notion of happiness held by its proponents; and, lastly, because freedom has become—on the intellectual level and in terms of people's needs, expectations, and aspirations—one of the social and national goods and the mandatory to establishment of a fair distribution of freedom. Political freedom has become a human need. Freedom here is not abstract or simply of poetic value, but an ethical value that directs basic civic and political liberties, which citizens must enjoy in order for justice to be achieved.

Though this paper is not meant to demonstrate the value of freedom in democratic and liberal thought, it is important to note that when this debate raged, the correlations between justice and political freedom did not exist in Arab-Islamic thought until the 19th century. For this reason, we find that, in one of the first Arab encounters with Western modernity, Rifaa al-Tahtawi's notion of Western "freedom," was based on the centrality of the idea of justice. Al-Tahtawi was surprised to find that the French used the term "freedom" to refer to "political freedom," which is related to the regime of rule. Since, for al-Tahtawi, the principal value in legitimate politics (as with other Islamic texts, such as al-Mawardi's *al-Adab al-Sultaniya*[28]) is justice, and since freedom in France is

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[27] Rawls, *Justice as Fairness*, pp. 112-113.

[28] "The Ordinances of Government," Al-Ahkam al-Sultaniyya wa al-Wilayat al-Diniyya. Editor's note: Al-Mawardi's book is on Islamic statecraft and the Islamic laws of governance.

perceived as a central value related to rights and best governance, he concluded the following: "What they call "freedom" and aspire to is the same that we term justice and fairness in our lands because ruling through freedom means the establishment of equality in front of laws and rules, so that no governor can oppress an individual; rather, it is the laws that judge and rule."[29]

Thus, what attracted al-Tahtawi to the Western notion of freedom was the equitability in laws and provisions, which he termed "justice and equity". In his world, the term "freedom" was still used as the opposite of slavery, with the free man being the opposite of the slave. In this regard, al-Tahtawi attempted to combine freedom with theological rules or, to use modern terms, with what is permitted within the law: "If freedom is based on sound and just rules, it becomes a great medium for the well-being of kingdoms and the happiness of their peoples; it leads (the people) to love their homeland. To speak in general terms, the freedom of each kingdom's population consists in them having the right to do what is religiously permissible, and not to be forced to commit what is religiously forbidden."[30] Freedom here is still a negative form of freedom; it previously referred to the absence of slavery, and now refers to everything that is not regulated by mandatory laws (the Islamic Sharia in this case). This concept is close, but not identical, to the concept of political freedoms because the latter are edified in the very laws of the realm. Al-Tahtawi believed that freedom is the domain of what is not regulated by the law while law itself is seen as an expression of the freedom that embodies it and protects it in the modern democratic liberal tradition.

Current Challenges Facing Arab Thought

There are three components of justice in contemporary thought:

- The relative equality in rights and obligations in accordance with varied ideological systems that differ in their definition, along with a changing understanding of the concept of "obligations," and the fact that equality in obligations should not be strictly linked to equality in rights.

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[29] al-Tahtawi, *Takhlees al-Ibreez*, p. 86.

[30] al-Tahtawi, *al-Murshid al-Ameen*, pp. 128-129.

- The notion of social justice, according to different definitions, as an alternative to absolute equality. Social justice aims to prevent the widening of the social gap between rich and poor, and work toward narrowing this gap with various tax measures and policies that empower the weaker groups.

- The legislation and codification of civic and political liberties.

We remain in dire need to edify these components and enshrine them in Arab political, economic, and constitutional thought as indispensable elements for a just system of rule, not merely as the personal qualities of a "just ruler" who manifests these qualities through his behavior in governance, as it used to be in the past. Just rule is translated through a just system of governance, the same way as the justice of the judiciary in our times is based on just laws, an independent judicial institution, and honest judges, instead of "a just judge".

These components have historically evolved from a time when justice simply meant "reciprocity of treatment". Nobody should shy away from the notion that these principles are, in fact, philosophical ideas that may be incompatible with reality, forcing politicians to adjust them; even so, these principles do not mean much as long as they remain philosophical ideas. The intellectuals' mission in political and intellectual action is to formulate the systems and policies that can take these principles to the level of social application and practice. These questions, however, have already been expounded on by many thinkers; it would only be fitting in this regard to review the multitude of intellectual writings that are related to the evolution of the concept of justice.

Here, I must express my deep regret for the near-total absence of intellectual, philosophical, historical, and legal investigations into the concept and applications of "justice" in Arab academia today, not to ignore the publication of some useful works on the concept of justice in Islam and a recent increase in the translation of Western works on justice, including those of Rawls, Sen, and Johnston.

The best imaginable occasion to discuss this subject and propose theoretical and practical visions of justice in the political, legal, and social contexts are the great transitional phases. This is the situation of the Arab world today because the Arab revolutions have broken out against injustice and despotism—for justice in its negative sense, which is the rejection of injustice and oppression. More importantly, the young generation (together with all the supporting masses) that has carried out these

revolutions has been liberated from the chains of narrow ideologies with one-dimensional notions of justice. Thus, the revolutions were not propelled by a specific ideological concept of "justice," and the space remains open for broad formulations that are not pre-constrained by a specific ideology; rather, the revolutions demonstrated a combination of various moral principles and social theories, as Rawls did when he married liberal thought with social justice, as well as Amartya Sen, who made a similar theoretical attempt in the economic sphere.

It is the duty of researchers who are committed to a social agenda to engage in creating visions of justice, which were recently shaken by the latest events, that can serve as an alternative to the exiting despotic regimes in the Arab world, beginning with the enshrining of the values upon which revolutions were based. In the political arena, the applied models of justice do not emerge spontaneously as values that express themselves through a sense of justice and rejection of injustice. This is where the role of political philosophy becomes pivotal in its intersection with the disciplines of economics, law, and political science.

As explained above, until one formulates models that fit an analysis of the various Arab cases, the elaboration of the concept of justice in the Arab context is the duty of political philosophy at this stage. There are multiple reasons that support this notion: firstly, there has been no spontaneous emergence of justice as a system or theory throughout the course of history, and the chances of this happening are extremely slim. Secondly, there are concrete immediate challenges concerning the management of the state in complex circumstances, and such a mission cannot be approached in the absence of alternative visions that pertain to civic rights, social justice, and liberties. These are questions that cannot be left to the "spontaneity" of the popular movement. Nevertheless, it is possible to formulate and crystallize the values upon which these popular movements emerged, and this is the only useful "spontaneous" dimension that can be of service when the time comes to crystallize a concept of justice in the post-revolutionary age. It is the spontaneity that stirred the sense of justice among the peoples and the revolutionaries; everything else, however, should be decided based on a deep knowledge and examination of the concrete conditions in each country, and after debating these elements and their significance, benefiting from the experiences of other populations.

The concept of justice in contemporary thought, as argued above, is now composed of three components (with varied proportions), without which the notion of justice cannot be imagined. These components are: the rights relating to equal citizenship, social justice, and civic and political liberties. It would also be fitting to add a fourth question that cannot be neglected by any concept of justice in the context of the building of the modern state: the question of identity. The concept of justice has evolved in terms of equality in front of the law, confronting societal and political injustice, and, more recently (during the last two centuries), it has evolved within the trajectory of freedom and civic freedoms. The discussion, however, has always been centered on justice within the confines of the state, which means in our age the nation-state as a referential framework. We should remember that John Rawls, for instance, not only limited his theory on justice to the framework of the state, refusing to include other entities within or outside the state, but went even further by limiting his theory to a well-ordered society within the confines of a democratic state.[31]

From this tradition emerged a concept of justice that organizes relations within the state rather than among states, in addition to questions relating to citizenship as a condition for the individual benefiting from the concept of justice, whether there is a direct relationship between the individual and the implementation of justice by the state, and whether this process passes through other entities. The reference here is to social entities that impose themselves as a form of belonging for the individual, "identities" to use the language of our modern world, including sectarian, communitarian, regional, and ethnic affiliations that act as points of reference and so forth. Identity consists of establishing equality among members of the same group, not with outside groups. For that reason, struggles seeking to affirm identity have always included an egalitarian trend, at least within the identity group, if not between different identity groups. Therefore, the assertion of identity has always included a dimension relating to equality within the identity group.

This fourth question has emerged forcefully in the Arab world through the process of the politicization of sub-identities within the state as part of the struggle against despotism, turning these popular demands into demands for these specific identity groups. Revolutions have weakened the state's grip, showing that despotism was

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[31] Rawls, *Justice as Fairness*.

covering societal and identity cleavages with repression rather than through social solidarity or nation-building. As a result, these identities appeared in the open as solidarity groups, and as political identities in some cases, demanding justice and an end to oppression through collective rights that they believe they are due, not only through citizenship rights. In some cases, these collective rights served as a substitute for, and came at the expense of, rights of citizenship.

In terms of identity, different approaches can be put forward regarding the practice of justice as a mechanism of equality between citizens that abolishes their other affiliations, such as cultural, religious, linguistic, and regional belongings. There are, here, a variety of ways regimes deal with sub-national identities, ranging from regimes that do not take these identities into account, either by neutralizing them without fighting them, or by going further and opposing such affiliations and imposing their own version of identity through top-down measures. On the other hand, there is a different approach that is premised on the notion that sub-identities represent legitimate social entities that are entitled certain rights. If the second approach were to be adopted, admitting the existence of other legal entities within the state beside citizenship, such as confessions, national groups, or cultures, it would be fitting to ask: is there a theory of justice for the management of reciprocity between these groups, between each group and the individuals belonging to it, and between the identity group and the state in which it exists? Do these groups have the right to exercise authority over citizens? Could their rights trump the right of the citizen to choose his affiliation and identity?

At this point, it is important to note that when discussing justice in the context of the social contract, the narrative of the birth of political entities and states was told in the same manner that one would recount a cautionary tale or describe a metaphorical theoretical model that helps us understand the *raison d'être* of the state from a modern perspective. The state itself is not born amid a social contract struck among citizens. The social contract is, at best, a theory in understanding the state; it justifies a certain vision of the state and its powers and the concept of justice within it. The social contract theory is not a historical narrative of the birth of states. Historically, states emerge from social groups and entities, not from individuals; in other words, this perspective on justice does not narrate the historical emergence of the state.

One cannot imagine the emergence of organized political communities without the various forms of tribalism or clanism, or social solidarity systems, such as the *assabiyah,*

and the *esprit de corps*, that were at the center of the process. This sense of belonging, no doubt, had a historical primacy over the concept of the individual, in the modern sense, and the process of establishing citizenship took place prior to the molding of the concept of the citizen.[32] Just as the theory of the social contract does not constitute a historical narrative of the state, but a theory in the understanding of the state, our understanding of citizenship as a basis for belonging is, similarly, the result of a modern conception of identity within the modern state, and not an attempt to undercut the historical role of religious, linguistic, or ethnic groups. The community is not born out of an individual choice, but modern theorists premise the affiliation to an identity group on the notion of individual choice, in order for identity to be based on the concepts of citizenship and the rights of the citizen instead of at the expense of these principles. These are assumptions upon which we institute the modern concept of citizenship; despite the rationality of these assumptions, they do not reflect scientific and historical truths; rather, they are theoretical assumptions whose formulation was impacted by specific visions that represent certain moral values and social interests and other motives for human action.

It is no longer possible to imagine a concept of justice that does not regulate the relationship between the two principles of equality and freedom. We must seek a concept of justice, or theory if preferred, that includes affiliation groups, or identity groups, without these being at the expense of freedom and equality, but on the basis of freedom and equality. Still, there are some key questions that require answering before engaging in a discussion on the model of justice desired, which takes the question of identity into consideration.

First, we should agree on the fact that assimilation on the level of identity is no longer possible through coercion, even if there were "successful" European attempts to forcefully impose cultural and linguistic identity in the past. France, for instance, has

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[32] This is why the critique of liberal philosophy began with the critique of the assumption of the individual as the premise (whether a theoretical or a historical premise). The individual cannot be understood in isolation from the community and the existing social traditions, from which ethical principles also spring forward, including the concept of justice as an ethical concept. The best representative of this line of critique is that made by Scottish ethics philosopher, Alasdair MacIntyre, who specializes in the study of Aristotle, in his famous books *After Virtue* (1981) and *Whose Justice? Which Rationality?* (1988).

forcibly made its linguistic and ethnic groups into "Frenchmen"; at the same time, as a colonial power, France sought to turn minorities in our lands into "nations".

If we agree that the question of rights is related to citizens and citizenship, and not to the identity group to which the individual belongs, the question of having sub-national entities that are acknowledged and endowed with rights amid the process of managing justice, becomes a minor one. Even if such entities were to be recognized after the acknowledgment of equality among citizens, and the inalienable rights of citizens, an individual's affiliation to a group would become one of the rights of the citizen (i.e., his imagined right to choose a cultural or religious identity in addition to citizenship). These affiliations can be acknowledged by the state, which might contribute to institutionalizing these groups or helping them organize themselves (as explained above, this describes a "theoretical right" and not describing a historical process). This is a domain that requires further theoretical development in the field of political philosophy. Many theorists have already broached the subject, which demonstrates our need to use reason in order to formulate theoretical models that are based on universal values, encased within an analytical perspective of the Arab reality. The question remains: do these entities have collective rights? What is the nature of their relationship to the state, on the one hand, and to the individual, on the other?

This sort of discussion cannot take place in the Arab context, in a constructive and useful manner, without first deciding on these essential questions, so that one knows whether the dialogue is on the basis of shared fundamental values with differences over how to implement them, or whether those engaging in the dialogue have essential differences in terms of values. Dialogue alone cannot establish an agreement between those who believe that equal citizenship is the basis for rights and the practice of justice and those who do not acknowledge the principle of equality among citizens because the parties to such a discussion would be basing themselves on different values and premises. If the citizen's right to justice on the basis of equality in freedoms and basic political rights is not agreed upon, there is no way to speak of a unified political framework for justice, of collective rights for different groups within this framework, or of a concord of entities and communities and so forth. In fact, any discussion of such collective rights would become a project of secession or a project of civil war because these sub-national belongings would not be assimilated within a unified framework on justice.

Even if the concepts were agreed upon, it would hold little meaning unless these ideas were translated into practical programs, such as policies. These cannot be exclusively related to identity, but also to the social and economic bases that feed into sectarian and regional cleavages. It must be noted that the Arab national state was incapable of providing the suitable economic and societal conditions to narrow the gaps in the levels of livelihood, education, and health services in a manner that contributes to the processes of social integration and the building of the nation-state, let alone the provision of freedoms and political rights which give citizenship its true meaning.

There is, then, a correlation between the components of justice, in its modern acceptation in the modern state and the mechanisms of social integration. The problem is that if the state fails in instituting social integration as a solid base for the nation-building, different societal points of reference may emerge in order to implement justice, threatening to create multiple political entities. I have already explained that the domain of justice is the state, and the same concepts of justice can only be theoretically applied to what is inside and outside the state. This does not necessarily imply, however, that the implementation of different concepts of justice leads to the creation of different entities. These entities may coexist, but this coexistence is, by definition, a coexistence between parties that may become enemies at any point in time, a coexistence that manages enmity and enshrines it at the same time. "Coexistence" between different communities that is devoid of equality in citizenship (i.e., devoid of the common basis upon which these differences can be managed) is but a different name for a cold civil war that risks turning violent at any moment. Thus, the relationship between social integration and justice is not a question of luxury, but an essential challenge that modern states, especially democratic ones, cannot avoid. Let us then, once again, resort to dialogue.

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