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# The Concept of Injustice

Eric Heinze

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**Eric Heinze**



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# The Concept of Injustice

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*The Concept of Injustice* challenges traditional Western justice theory. Thinkers from Plato and Aristotle through to Kant, Hegel, Marx and Rawls have subordinated the idea of injustice to the idea of justice. Misled by the word's etymology, political theorists have assumed injustice to be the logical opposite of justice. Heinze summons ancient and early modern texts, philosophical and literary, with special attention to Shakespeare, to argue that injustice is not primarily the negation, failure or absence of justice. Injustice is the constant product of regimes and norms of justice. Justice is not always the cure for injustice, and is often its cause.

**Eric Heinze** is Professor of Law and Humanities at Queen Mary, University of London. His most recent publications on legal theory have appeared in the *Oxford Journal of Legal Studies*, *Ratio Juris*, the *International Journal of Law in Context*, *Legal Studies*, *Social & Legal Studies*, *The Canadian Journal of Law and Jurisprudence*, *Law and Critique*, *Law and Literature* and *Law and Humanities*.

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*For István*

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νόμος ὅδ', οὐδὲν ἔρπει  
θνατῶν βιώτῳ πάμπολύ γ' ἐκτὸς ἄτας.\*

Sophocles, *Antigone* 613–14 (Ant [RJ])

- \* '[Y]our law prevails:  
no towering form of greatness  
enters into the lives of mortals  
free and clear of ruin.' Ant 686–89.

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# Sources

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The following is a list of works that require the identification of a standard reference, due to multiple editions.

*The Bible* (references are to IBS-UK, 2009)

Eccl	<i>Ecclesiastes</i>
Ep Rom	<i>Epistle to the Romans</i>
Gen	<i>Genesis</i>
Lvt	<i>Leviticus</i>
Matt	<i>Matthew</i>
NIV-UK	<i>The New International Version, United Kingdom edition</i>

*Sophocles* (references are to Sophocles, 1984, unless otherwise indicated)

Ant	<i>Antigone</i>
Ant [RJ]	<i>Antigone</i> in Sophocles, 1891
Oed	<i>Oedipus Tyrannus</i>

*Herodotus* (references are to Herodotus, 2008)

His	<i>The Histories</i>
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*Plato* (references are to Plato, 1997, unless otherwise indicated)

Alc	<i>Alcibiades</i>
Ap	<i>Apology</i>
Cri	<i>Crito</i>
Euthphr	<i>Euthyphro</i>
Euthphr [HC]	<i>Euthyphro</i> in Plato, 1961
Grg	<i>Gorgias</i>
L	<i>Laws</i>
L [HC]	<i>Laws</i> in Plato, 1961
Lch	<i>Laches</i>
Ltr 7	<i>Seventh Letter</i>
M	<i>Meno</i>
Phd	<i>Phaedo</i>

Phdr	<i>Phaedrus</i>
Prt	<i>Protagoras</i>
R	<i>Republic</i>
R [Bur]	<i>Republic</i> in Plato, 1903
R [HC]	<i>Republic</i> in Plato, 1961
Smp	<i>Symposium</i>
Stm	<i>Statesman</i>
Tht	<i>Theaetetus</i>

*Aristotle* (references are to Aristotle, 1984, unless otherwise indicated)

An Post [Ba]	<i>Posterior Analytics</i> in Aristotle, 1993
De Int	<i>On Interpretation</i>
Meta	<i>Metaphysics</i>
NE	<i>Nicomachean Ethics</i>
NE [By]	<i>Nicomachean Ethics</i> in Aristotle, 1894
NE [Ir]	<i>Nicomachean Ethics</i> in Aristotle, 1999
Pol	<i>Politics</i>
Pol [Re]	<i>Politics</i> in Aristotle, 1998
Pol [Si]	<i>Politics</i> in Aristotle, 1992

*Augustine* (references are to Augustine, 1984)

CD	<i>Civitas Dei (City of God)</i>
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*Aquinas* (references are to Aquinas, 2000)

ST	<i>Summa Theologica</i>
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*Dante* (references are to Alighieri, 2007, unless otherwise indicated)

DM	<i>De Monarchia (On World Government)</i> in Alighieri, 1949
Inf	<i>Inferno</i>
Inf [Ci]	<i>Inferno</i> in Alighieri, 1954
Par	<i>Paradiso</i>
Par [Ci]	<i>Paradiso</i> in Alighieri, 1970
Pur	<i>Purgatorio</i>
Pur [Ci]	<i>Purgatorio</i> in Alighieri, 1957

*Erasmus* (references are to Erasmus, 1997)

ECP	<i>The Education of a Christian Prince</i>
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*Shakespeare* (references are to Wells, 1982, unless otherwise indicated; citation forms follow MLA, 2003)

Ado	<i>Much Ado about Nothing</i>
ARD2	<i>Arden Shakespeare</i> (2nd series) (Ellis-Fermor <i>et al.</i> , eds)
ARD3	<i>Arden Shakespeare</i> (3rd series) (R. Proudfoot <i>et al.</i> , eds)
AWW	<i>All's Well that Ends Well</i>

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CAM4	<i>New Cambridge Shakespeare</i> (P. Brockbank <i>et al.</i> , eds)
Cym	<i>Cymbeline</i>
Err	<i>The Comedy of Errors</i>
1H4	<i>Henry IV, Part One</i>
2H4	<i>Henry IV, Part Two</i>
H5	<i>Henry V</i>
1H6	<i>Henry VI, Part One</i>
H8	<i>Henry VIII</i>
Ham	<i>Hamlet</i>
JC	<i>Julius Caesar</i>
Jn	<i>King John</i>
LLL	<i>Love's Labours Lost</i>
Lr	<i>King Lear</i>
Mac	<i>Macbeth</i>
MM	<i>Measure for Measure</i>
MND	<i>A Midsummernight's Dream</i>
MV	<i>The Merchant of Venice</i>
NOR2	<i>The Norton Shakespeare</i> (2nd edn) (S. Greenblatt <i>et al.</i> , ed.)
Oth	<i>Othello</i>
OXF4	<i>Oxford Shakespeare</i> (individual plays, S. Wells, ed.)
PEN2	<i>New Penguin Shakespeare</i> (T. Spencer, ed.)
Per	<i>Pericles</i>
R2	<i>Richard II</i>
R3	<i>Richard III</i>
Rom	<i>Romeo and Juliet</i>
Shr	<i>The Taming of the Shrew</i>
TGV	<i>Two Gentlemen of Verona</i>
Tim	<i>Timon of Athens</i>
Tit	<i>Titus Andronicus</i>
Tmp	<i>Tempest</i>
TN	<i>Twelfth Night</i>
Tro	<i>Troilus and Cressida</i>
Wiv	<i>The Merry Wives of Windsor</i>
WT	<i>The Winter's Tale</i>

*Hobbes* (references are to Hobbes, 1998)

Lev                    *Leviathan*

*Milton* (references are to Milton, 1991)

PL                    *Paradise Lost*

*Corneille* (references are to Corneille, 1980a–c)

Cid                    *Le Cid*

Cid-1660            *Le Cid* (1660 version)

Cin	<i>Cinna</i>
Méd	<i>Médée</i>
Mél	<i>Mélite</i>
PC-OC	<i>Œuvres complètes de Pierre Corneille</i>

*Racine* (references are to Racine, 1999)

Andr	<i>Andromaque</i>
Brut	<i>Britannicus</i>
JR-OC	<i>Œuvres complètes de Jean Racine</i>

*Locke*

LT	<i>Letter Concerning Toleration</i> (references are to Cahn, 2002)
STCG	<i>Second Treatise of Civil Government</i> (references are to Locke, 1988)

*Voltaire*

DP	<i>Dictionnaire philosophique</i> (references are to Voltaire, 1961)
L14	<i>Le Siècle de Louis XIV</i> (references are to Voltaire, 1958)

*Rousseau* (references are to Rousseau, 1980a–d)

CS	<i>Du Contrat Social (The Social Contract)</i>
EP	<i>Discours sur l'Économie Politique (Discourse on Political Economy)</i>
GP	<i>Considérations sur le gouvernement de Pologne (Considerations on the Government of Poland)</i>
JJR-OC	<i>Œuvres complètes de Jean-Jacques Rousseau</i>
OI	<i>Discours sur l'origine de l'inégalité (Discourse on the origin of inequality)</i>
OI-Gour	<i>Discourse on the origin of inequality</i> , in Rousseau, 1997
SA	<i>Discours sur les sciences et les arts (Discourse on the Sciences and Arts)</i>

*Kant* (references are to Kant, 1968a–d)

EF	<i>Zum ewigen Frieden (Perpetual Peace)</i>
GMS	<i>Grundlegung zur Metaphysik der Sitten (Groundwork for the Metaphysics of Morals)</i>
KpV	<i>Kritik der praktischen Vernunft (Critique of practical reason)</i>
MS	<i>Die Metaphysik der Sitten (The Metaphysics of Morals)</i>

*Schiller* (references are to Schiller, 2003)

WT	<i>Wilhelm Tell</i>
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*Hegel* (references are to Hegel, 1970a–c)

Äs	<i>Vorlesung über die Ästhetik (Introductory Lectures on Aesthetics)</i>
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- GPR *Grundlinien der Philosophie des Rechts (Elements of the Philosophy of Right)*
- PhG *Phänomenologie des Geistes (Phenomenology of Mind)*
- Bentham* (references are to Bentham, 1843)
- CE *A Critical Examination of the Declaration of Rights*
- Mill*
- Lib *On Liberty* (references are to Mill, 1982)
- Ut *Utilitarianism* (references are to Mill, 1957)
- Marx and Engels* (references are to Marx and Engels (MEW), 1956c)
- JF *Zur Judenfrage (On the Jewish Question)*
- Kap *Das Kapital (Capital)*
- KGP *Kritik des Gothaer Programms (Critique of the Gotha Programme)*
- KHR *Zur Kritik der Hegelschen Rechtsphilosophie (Critique of Hegel's Philosophy of Right)*
- MkP *Manifest der kommunistischen Partei (The Communist Manifesto)*
- ÖpM-1 *Ökonomisch-philosophische Manuskripte (1844), Erstes Manuskript (Economic-philosophical manuscripts (1844), First Manuscript)*
- ÖpM-3 *Ökonomisch-philosophische Manuskripte (1844), Drittes Manuskript (Economic-philosophical manuscripts (1844), Third Manuscript)*
- Nietzsche* (references are to Nietzsche, 1999)
- AsZ *Also sprach Zarathustra (Thus Spoke Zarathustra)*
- Freud* (references are to Freud, 1999a, 1999b)
- MIA *Massenpsychologie und Ich-Analyse (Mass psychology and Ego-Analysis)*
- UK *Das Unbehagen in der Kultur (Civilisation and its Discontents)*

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# Nietzsche's echo

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οὐ γὰρ τὸ ποιεῖν τὰ ἄδिका ἀλλὰ τὸ πάσχειν φοβούμενοι ὀνειδίζουσιν οἱ ὀνειδίζοντες τὴν ἀδικίαν. οὕτως, ὦ Σώκρατες, καὶ ἰσχυρότερον καὶ ἐλευθεριώτερον καὶ δεσποτικώτερον ἀδικία δικαιοσύνης ἐστὶν ἱκανῶς γιγνομένη.<sup>1</sup>

### I.1 Introduction

The quote above, from Plato's *Republic*, translates as follows: 'Those who reproach injustice do so because they are afraid not of doing it but of suffering it. So, Socrates, injustice, if it is on a large enough scale, is stronger, freer, and more masterly than justice.'<sup>2</sup> That proclamation sounds as impudent today as it did over two millennia ago when Plato placed it in the mouth of the sophist Thrasymachus. The *Republic* still stands as Plato's peremptory reply to the question, 'What is justice?'<sup>3</sup> Generations of readers have witnessed one of Western philosophy's great showdowns: the pugnacious Thrasymachus sings the praises of injustice, as Socrates strains to shoot down his arguments one by one. Power or wealth, Socrates' proto-Nietzschean<sup>4</sup> nemesis urges, are handily acquired through unjust actions. The select few, the clever and the daring, ought not to toil when they can prosper<sup>5</sup> through force or stealth. Law and justice are risible weapons, forged by a mediocre, cowardly multitude, the weak and the meek, who, at the hands of the powerful, merit not justice but disdain.<sup>6</sup>

Many of us, like Socrates, disagree. We assume justice to be better than injustice. We assume that 'doing what's unjust is actually the worst thing there is'.<sup>7</sup> Countless children grow up with some version of that lesson. For us

1 R [Bur] 1.344c.

2 R 1.344c.

3 R 1.331b–c.

4 See, e.g., Zehnpfennig, 2001, p. 50; Annas, 1981, p. 37.

5 Cf. e.g., Grg 491e–92c.

6 Cf. Grg 483b–c, 488b–d. Cf. also Annas, 1981, pp. 48–49; Shklar, 1990, pp. 33–35; Klosko, 2006, pp. 3–4.

7 Grg 469b. Cf. Grg 477e.

## 2 The Concept of Injustice

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adults, it is too obvious for discussion.<sup>8</sup> Our mediatised political and ethical debates never ask what justice and injustice 'are'. They focus on particular issues. Is it just or unjust to go to war? To lower taxes? To prohibit addictive substances? To open marriage and child rearing to same-sex partners? Lurching towards pragmatism, our hunch seems to be that such questions can be decided without our having to examine concepts of justice and injustice more broadly. We often believe that, by attending to the specific, concrete problems, one by one, we can work progressively towards justice throughout society as a whole, towards overall justice *someday*.

If justice is nevertheless so conspicuously superior to injustice, in the eyes of adults and children alike, we would certainly expect one who does take the time to ponder it in abstraction – Plato, the founder of systematic ethical and political theory in the Western canon – to have little difficulty demonstrating the point. After a few volleys, Socrates does seem to prevail: '[A] just person (δίκαιος) has turned out to be good and clever, and an unjust one (ἀδίκος) ignorant and bad.'<sup>9</sup> On closer reading, however, what leaps out is how unpersuasive Socrates' replies to Thrasymachus are. One interlocutor, Plato's brother Glaucon, notes that Socrates has left crucial points of Thrasymachus's challenge unanswered. Perhaps all that matters for injustice to prevail is for unjust people to *appear* just.<sup>10</sup> Glaucon tells the legend of a poor shepherd who had found a magic ring. It enabled him to turn invisible while he committed unjust acts. He 'seduced the king's wife, attacked the king with her help, killed him, and took over the kingdom'.<sup>11</sup> At that point of achieving absolute power, the shepherd no longer needs to fear justice. In becoming king, he effectively becomes the law. He becomes law's source, power and authority. He becomes the arbiter of justice. It is he who will now decide what is and is not just.<sup>12</sup>

Glaucon, still playing devil's advocate, suggests to Socrates that we would not hesitate to do injustice if we knew with certainty that no harm, and indeed great personal good, would come to us as a result of doing it.

Now, no one, it seems, would be so incorruptible that he would stay on the path of justice or stay away from other people's property, when he could take whatever he wanted from the marketplace with impunity, go into people's houses and have sex with anyone he wished, kill or release from prison anyone he wished, and do all the other things that would make him like a god among humans. [. . .] This, some would say, is a great proof that one is never just willingly but only when compelled to

8 Cf. Alc 113d.

9 R 1.350c.

10 R 2.361a–b.

11 R 2.360a–b.

12 Cf. R 1.340e–41a.

be. [. . .] [W]herever [a] person thinks he can do injustice with impunity, he does it. Indeed, every man believes that injustice is far more profitable to himself than justice.<sup>13</sup>

No enterprise becomes more desperate or more suspicious in Plato's writings than his hundreds of pages of mind-numbing acrobatics to establish what we mostly take to be trivially obvious, namely, that justice is better than injustice. Children will readily agree<sup>14</sup> that justice is better because it is fairer, making society happier, more prosperous, more peaceful. The more Plato tries to defend justice on those or any other grounds, however, the less convincing his arguments become. Plato claims, for example, that any perpetrator of injustice, even Glaucon's shepherd, always ends up more miserable than the victim. '[A] just person is happy, and an unjust one wretched',<sup>15</sup> even if the unjust person has gained great power or wealth by inflicting, with impunity, horrendous brutality upon those who are just. Socrates insists that individuals who commit injustice must ultimately end up more miserable than their victims. Any unjust agent, be it an individual or a group, always becomes tormented,<sup>16</sup> 'miserable',<sup>17</sup> 'an enemy to itself'.<sup>18</sup> Neither through argument nor example, however, does Socrates show that unjust people do in fact suffer much despair at all, let alone pangs sharper than those suffered by their victims. Nor can we, looking back on a further 2,500 years of history, do much to bolster Socrates' view. Hitler, Stalin, Pol Pot, Ceaucescu, Kim Il Sung, Saddam, Qadafi or Kim Jong-Il may have faced bad ends – and some of them suffered not even that – but, for the most part, not terribly protracted ones, compared to what they inflicted,<sup>19</sup> and compared to their decades of relishing power, wealth, and often glory.<sup>20</sup> '[C]urrent events quite suffice', Socrates is reminded in another exchange, to show 'that many people who behave unjustly are happy'.<sup>21</sup>

Plato does sometimes add afterlife myths about divine or ultimate justice.<sup>22</sup> But those tales scarcely reassure us. His other brother, Adeimantus, reminds Socrates that, in ancient Athens as today, any supernatural order that will reward the just or punish the unjust remains shrouded in doubt. Perhaps 'the

13 R 2.360b–d. Cf. R 2.359a. The point is made not only allegorically, but also with references accepted by the interlocutors as historically accurate, at Grg 470d–71d.

14 Cf. Alc 110c.

15 R 1.354a.

16 Cf. Grg 492e–508c.

17 Grg 508b.

18 R 1.352e.

19 On brutality and torture practiced with impunity under positive law, see, e.g., Grg 473b–c.

20 Cf. Grg 471a–d. Cf. also 479a, e.

21 Grg 470d (the young immoralist Polus speaking).

22 R 10.614a–21d; Grg 523a–27e; Phd 81c–82c, 107d–14c; L 927a.

gods don't exist or don't concern themselves with human affairs'.<sup>23</sup> Christianity will later hail divine justice to urge us that 'it is not the kind of suffering but the kind of person who suffers that is important'.<sup>24</sup> But why would we believe that Christianity's divine order exists?

Countless Western thinkers, in their various ways, will rush to the defence of justice, from Aristotle, Augustine and Aquinas through to Locke, Rousseau, Kant, Hegel, Mill or Marx, and many more in our own day. It remains questionable whether they can defeat Thrasymachus's views any more convincingly than Plato does. Little in their work tackles Thrasymachus's challenge head-on. To be fair, Socrates does add other arguments. He claims, for example, that persons united by 'a common unjust purpose' – we need only recall a long line of Mafia films – inevitably render themselves unable to attain it. They become wracked not only by the internal psychological divisions of each unjust person, but by inter-personal strife.<sup>25</sup> Once again, however, history often suggests otherwise, scarcely showing that high-minded projects inevitably prosper better than despotic ones. The Weimar Republic hardly flourished better than the Third Reich. Elevating justice above injustice, and even clearly distinguishing them, remains a complicated business.

## 1.2 A mutual exclusion?

For all their differences, Socrates and Thrasymachus share a crucial assumption. Most of us share it with them. Without it they would have no disagreement at all. They both presuppose that justice and injustice form a mutually exclusive pair, not merely as a matter of empirical observation, but as a tautology. Injustice by definition negates justice; justice by definition negates injustice. In Aristotle's words, 'the just will be both the lawful and what is fair, and the unjust will be both the lawless and the unfair'.<sup>26</sup>

The justice or injustice of some acts is, of course, debatable. Consider the age-old controversies about whether it is ever justified to sacrifice one person to save many; or the debates concerning how much force counts as 'reasonable' to ward off a physical attack. Consider also complex factual scenarios, including armed conflict or natural calamities, in which a web of human actions, variously just or unjust, may become impossible to disentangle. For Plato and most of his successors, Aristotle or Aquinas, Kant or Hegel, Mill or Marx, Rawls or Dworkin, the fact that some scenarios are ethically complex in no way means that justice becomes inscrutable.<sup>27</sup> The binarism therefore remains intact.

23 R 2.365d.

24 CD 1:8.

25 R 1.351c.

26 NE [Ir] 5.1.1129<sup>b</sup>1.

27 See, for example, Aristotle's discussion of legal and ethical complexity in the context of equity at NE 5.10.