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# The Concept of Injustice

Eric Heinze

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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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**Eric Heinze**

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*For István*

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νόμος ὅδ', οὐδὲν ἔρπει  
θνατῶν βιότῳ πάμπολύ γ' ἐκτὸς ἄταξ.\*

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>
Brt	<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*)

# Nietzsche's echo

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οὐ γὰρ τὸ ποιεῖν τὰ ἄδικοα 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>

### 1.1 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 mediated 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, Qaddafi 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.

Insofar as Socrates deems justice superior to injustice, it is precisely because the one term is assumed to negate the other that Thrasymachus can construct, in symmetrical opposition, his argument that injustice is better than justice. If 'unhappy' is the opposite of 'happy', if 'untrue' is the opposite of 'true', then, in the same way, 'injustice' and 'justice', must be mutually defined opposites. When Aristotle writes, 'if the unjust is unfair (ἀδίκον ἄνισον), the just is fair (δίκαιον ἴσον)', he deems that observation to be 'true to everyone without argument'.<sup>28</sup>

What would it mean if there were something incorrect about that seemingly obvious, seemingly necessary, assumption? On the one hand, it is easy enough to note that terms can function as mutually exclusive without sharing an etymological link, such as terms like 'good' and 'bad', or 'right' and 'wrong'. On the other hand, and more importantly, as I shall argue, it is far from obvious that an etymology of logical opposition strictly corresponds to mutually exclusive realities. A long tradition has emerged in the West, embodying what can be called the 'classical model' of justice. That binary model relentlessly mirrors the etymology which renders 'injustice' a sheer negation of justice. A hallmark of programmatic theorists, from Plato and Aristotle through to Aquinas, Locke, Rousseau, Hegel, Mill, Marx, or Rawls, is that they explain injustice by assuming that some model of justice must be identified, such that injustice becomes, by definition, that which opposes or negates all, or some necessary part, of the model: '[L]aws that accord with the correct constitutions must be just, and those that accord with the deviant constitutions not just.'<sup>29</sup>

A common approach for those theorists – whom I shall call 'classical' solely to denote their shared assumption of that strict, binary relationship between the concepts of 'justice' and 'injustice' – is to turn one part of their efforts towards condemning historical or existing injustices, and then another, towards elaborating an alternative programme, designed to foster justice. They attempt to spell out the conditions of a just society in step-by-step detail, on the assumption that injustice is, or results from, the absence or negation of those conditions.<sup>30</sup> In this book, I shall refer to 'programmatic' theorists to denote writers, often landmark figures in Western thought, who do not contemplate justice only in essayistic or impressionistic ways – although those can certainly be incisive, as countless authors from Montaigne and Voltaire to Benjamin and Arendt remind us – but who propose frameworks for restructuring much or all of society. The West's first programmatic justice theory is Plato's *Republic*.<sup>31</sup>

28 NE [Ir] 5.3.1131<sup>a</sup>13–14. Cf. Prt 331a–b.

29 Pol [Re] 3.11.1282<sup>b</sup>12–13. Cf. Aristotle's distinction between 'true' or 'correct' and 'perverted' or 'deviant' constitutional orders. Pol 4.2.1289<sup>a</sup>26–30, and, generally, Pol 3.7.

30 Cf. Shklar, 1990, pp. 15–17.

31 Although some observers have deemed the *Republic* to be a parody, it is not the case that Aristotle or most scholars since have viewed its core arguments that way. See, e.g., NE 2.2–5. See also, e.g., Rice, 1998, pp. 123–25.

The tradition continues through to John Rawls's *A Theory of Justice* (1999), and is still pursued.

It could be argued that Plato does indeed respond to Thrasymachus's challenge, not through this or that argument, but through the entirety of the *Republic*; and that only in contemplation of the complete work can any response emerge. Leaving aside one obvious problem with that reply, namely that it would almost require a review of the whole of Platonic philosophy before we could decide whether Thrasymachus's challenge has been met, it also overlooks a more basic point. Book I of the *Republic* mirrors the style of Plato's more typically 'Socratic' dialogues. A 'What is X?' question is posed, 'What is justice?', and various replies are considered and debated, with no clear solution yet reached. The remainder of the *Republic* is different, prompting some scholars to surmise that Plato added Books II–X later.<sup>32</sup> By the end of Book II, the open-ended debate is progressively vanishing. Socrates now acts less in his peremptorily 'Socratic' role of challenging others' beliefs, and more as a mouthpiece for Plato's ideas, with little airing of serious challenges or contrary views. Gone is the Socrates who unveils others' ignorance while proclaiming his own. It is in that philosophical moment of uncertainty, as Socrates pursues not justice within his own theories but injustice within others', that systematic western justice theory, if not all of Western ethical and political philosophy, is born. Once Plato then turns ethical and political philosophy towards programmatic justice theory, that Socratic moment goes missing. The following 25 centuries will be dominated by programmatic theories that collapse the concept of injustice into a derivative of this or that particular justice theory, a straightforward negation of this or that particular concept of justice.

In questioning the relationship of mutual exclusion between the concepts of justice and injustice, my aim will not be to swing to the opposite extreme, towards a nihilist view that justice and injustice are meaningless or wholly relative concepts. I shall ask only whether the relationship between the two involves greater complexity. I shall certainly acknowledge everyday senses in which the binarism seems to work well enough. Moreover, as my interest in this book is in grasping injustice, I shall not propose anything more constructive than that workaday binarism, as any greater task would fall under the domain of justice theory, and not of injustice theory. I shall argue, however, that the traditional binarism tells us less about injustice than either our institutional practices or our programmatic theories have generally assumed. We overlook the reach and the complexity of injustice, we impoverish our understanding of it, when we instinctively obey the arbitrary dictates of etymology, theorising injustice as a sheer negation of something else.

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32 See, e.g., Annas, 1981, pp. 16–18; Zehnpfennig, 2001, p. 29; Pappas, 2003, pp. 27–30. It is later editors, and not Plato, who divided the dialogue into books.

I shall challenge the classical binarism by arguing that injustice must primarily be seen as a product, not a negation, of criteria generally deemed necessary to justice. My aim is not to argue, as do the traditional approaches, expressly or by implication, that injustice arises because criteria generally thought necessary to justice have been misapprehended. In other words, I shall not argue, along the lines of the classical binarism, either that we have identified the wrong criteria for justice, and must instead adopt other criteria, or that we have identified the right criteria, but have applied them wrongly, and must instead apply them in some other way. I shall instead argue that injustice arises primarily from criteria that we generally deem to be necessary to justice *as they are*, and which are applied in ways that we all deem equally necessary *as they are*. Those criteria are mostly of two types. Above all, and particularly in modernity, they are criteria of *measurement*. However, on some alternative theories, such as Platonic or indeed Marxist ones, those criteria may, in either sweeping or at least in partial attempts to transcend the plagues of measurement *über alles*, instead emphasise criteria of socio-political *unity*. I shall argue that it is not merely this or that criterion of unity or of measurement, but rather unity and measurement as such, under any conception, which, simultaneously, are indispensable to justice, yet necessarily – that is, not merely through being ‘negations’ or ‘failures’ of such justice<sup>33</sup> – generate injustice.

The task of understanding injustice is not fundamentally about ‘replacing’ either or both of those criteria, which would entail the destruction of justice altogether. Nor can this book explain everything that injustice is or can be, nor examine its many manifestations in detail. My argument in this book will be limited to the suggestion that one condition, a necessary even if not a sufficient one, for understanding injustice, is to abandon the age-old assumption of its straightforward relationship of mutual exclusion with some conceptually prior notion of justice. Despite 2,500 years of theorists beaver away under the binarist assumption, any such notion remains as hazy today as when Plato first staged a Socrates and a Thrasymachus trying, and failing, to hash out the matter. Thrasymachus is Socrates’ shadow, not his nemesis. Plato’s Socrates cannot solve the problem of justice, as the classical binarism would in principle do, by erasing Thrasymachus or what he stands for. On the surface, it may well be that Socrates advocates justice and Thrasymachus advocates injustice, each in pristine, polar opposition to the other. More fundamentally, however, Thrasymachus is not only a partisan of injustice, but also a creation of justice, of the very thing that Socrates pursues and Plato so fervently wishes to implement.

Two millennia of philosophy have constantly delivered theories aiming to exhaust the concept of justice, to pin down its essence or core, with some concomitant theory of injustice explained or implied as its negation. The

33 Cf. Shklar, 1990, p. 22.

West's long train of justice theories has nevertheless left us not with the one theory upon which we generally agree, but with each theory inadvertently doing little more than to set limits to the others, each time rendering all the more conspicuous the illusion of a distinct theory of injustice as the manifest opposite of justice. My reply to the question 'What is injustice?' will not be: 'Injustice is *not* the opposite of justice', although it will come close. Rather, my reply will be: 'Injustice is not *solely* the opposite of justice, even if it is merely and simply the opposite in certain conventional senses.'

No study of injustice can be exhaustive. Everything ever spoken or written on any ethical or political topic in some sense concerns injustice, whether it be religious or secular, expository or artistic, tragic or comic, sociological or psychological, programmatic or essayistic, speculative or empirical. *Innombrables sont les récits du monde*<sup>34</sup> – innumerable are the narratives of the world, and innumerable are our accounts of injustice. Every cry about power, abuse, deceit, conquest, exclusion, hierarchy, brutality, domination, subordination, or corruption is about injustice, be it only, with Thrasymachus or Nietzsche, as a celebration. Any writer on the topic is, therefore, in a bind. On the one hand, if only small numbers of prior writers are included, one or another reader will wonder at the exclusion of others; on the other, to try to include every writer whom some reader somewhere may deem germane to the problem of justice would be like insisting that the grains of sand on the beach are not to be estimated, but must instead be counted individually.

What applies across that breadth of sources applies to many thinkers in detail. There is scarcely a work by Plato, for example, which does not underscore the primacy of justice as an object of enquiry,<sup>35</sup> even where the immediate topic at hand appears remote from politics in the ordinary sense.<sup>36</sup> Similar observations pertain to figures from Augustine or Aquinas to Rousseau or Marx. Even if the same cannot so obviously be said about figures like Locke, Kant or Mill, whose epistemological works are presented as facially distinct from ethics, nevertheless the intricacy of all such writers' views on political, social or legal matters far surpasses what can be encompassed in this book.

Today's neo-Aristotelians, neo-Thomists, neo-Kantians, neo-Hegelians, neo-Marxists, or latter-day students of other classic writers or traditions, have largely shed various orthodoxies originally associated with those intellectual figureheads. Those disciples have often distilled and updated what they see as their philosophies' crucial contributions, in ways that would require closer study if this book's aim were to sketch an overview, let alone to assess the strengths and weaknesses, of classical justice theories. The writers examined in this book are chosen not for purposes of evaluating the ultimate merits of

34 Barthes, 1977, p. 7.

35 See Cairns, 1942, p. 359.

36 See, e.g., Phdr 247d; Smp 209a; Tht 167c, 172a–73d, 175b–76e.

their ideas – and even less for pondering various revisions of those ideas, as if this book were searching for yet another justice theory – but only insofar as they shed light on the classical binary model. For the most part, I shall draw upon two kinds of writers. I shall examine programmatic theories for insight into how their binarist assumptions lead them to theorise injustice; and I shall examine some early modern literary texts for evidence about how their authors problematise the binary view precisely at a stage in Western history when many of today's dominant notions of justice make an unmistakable appearance.

This book puts one central question to each of the various programmatic theorists: 'To what extent do your theory's core principles necessarily generate injustice?' That question seems, at first, rhetorical. Each theorist would presumably provide the same reply, namely, that the theory proposed promises the least possible injustice, less than any rival theory. If I then ask, 'But what, in your model society, is the cause even of that residual injustice?' (which I suspect to be more than merely residual), each would presumably point back to the traditional binarism, assuming injustice to be a mere negation of justice. 'Even the best justice theory', they would reply, 'cannot be perfect. Injustice therefore arises to the extent that justice, in one or another area, fails to operate as entailed by the theory.' A problem with our 2,500 years of programmatic justice theorists is that they see injustice only as an accident or a privation, and not as a substantive product of justice as *they* conceive it.

Solely in passing, as it is not this book's focus, I would add that the consequences of nuancing the traditional binarism may be of some interest for theories of justice within the Mosaic monotheisms – Judaism, Christianity or Islam. That is not an urgently important, but is a particularly evident, consequence of the thesis that justice necessarily produces injustice. If this book's thesis holds, we shall have to say to all three of them: either you can do law, or you can do justice, but you can never do both. Whatever your theodicy may be, you necessarily turn God into a deliberate and systematic doer of injustice by persisting in the idea that your concept of justice can be implemented programmatically as law while remaining justice. You can certainly pursue justice in aspirational terms ('God wills us all to pursue justice', 'God's justice is mysterious', 'God performs justice through love', etc.). But you can never implement your ideas of justice in codified form, because any such form of justice necessarily and actively – and not merely by 'human imperfection' – generates injustice, which a perfectly just God can never will, not even to 'test us' or to 'teach us lessons' or to 'improve us in the long run'.

A perfectly just God can perhaps will a justice that we do not understand (if it makes sense to talk about God's 'will' in such prosaic terms), but cannot, on any non-contradictory notion of 'perfection', specifically will us to undertake systemic injustice, and therefore cannot ordain justice in the kind of programmatic form that must inevitably have that result. You must therefore renounce programmatic law, if you wish only justice; or you must renounce justice, if you either practice or desire programmatic law. You can certainly

render justice in individual cases, applying, for example, ‘Thou shalt not murder’. Injustice, however, must inhere in your justice theory as it inheres in any other theory *qua* programmatic justice theory.

My thesis in this book might have come as no surprise, then, to those Greeks who were laconic about the suggestion that gods can do unjust things,<sup>37</sup> or to Confucians, Taoists, Buddhists or Shintoists amenable to the idea of injustice as inherent in a world order in ways not crucially linked to divinities who have a supernatural and overarching will or plan for human beings.<sup>38</sup> Nor ought it to come as a surprise to those Jews, Christians or Muslims who have long understood that justice, as a spiritual concept, can never translate into conclusively and comprehensively codified regimes. But, as I say, questions of religious law as such will not be central to this book.

### 1.3 Plan of this book

This book divides into two parts. The task of Part 1, entitled ‘Classical understandings’, will be to examine ways in which Western thought has grasped injustice solely as a negation of justice. I begin, in Chapter 2, by considering how the word’s fateful etymology sets the stage for our longstanding assumption of mutual exclusion between justice and injustice. I acknowledge that, in many everyday contexts, for purposes of expedient problem solving, the traditional binarism appears to be accurate. I argue that the standard binarism works only insofar as justice and injustice are theorised or applied in institutional or intellectual abstraction from the systemic contexts of ethics and politics. As mentioned, while rejecting the dogma that justice and injustice are, by definition, co-extensive opposites, each always just the flip side of the other, I equally reject the view at the opposite extreme, that justice and injustice are altogether meaningless or relative. I describe the two concepts instead as ‘partially commensurable’, partially binary, up to the point that straightforward mutual exclusion does accurately account for their relationship; but also, therefore, as ‘partially incommensurable’, partially non-binary, insofar as their relationship surpasses that point. By understanding the limits of the two concepts’ commensurability, we can set the stage for considering, in Part 2, injustice as something not merely derivative of a theory of justice, but as requiring a theoretical approach of its own, to the extent of its incommensurability, its non-binary relationship, with the concept of justice. Key to those two concepts’ incommensurability is what I shall identify as the systemic, as opposed to the isolated, contexts within which they must be analysed.

In Chapters 3 and 4, I further argue that, despite the variety of justice theories, Plato and Aristotle already correctly identify two defining features

37 See, e.g., Ant 671, 695–98. Cf. R 2.379e–80a.

38 See, e.g., Hsi and Tsu-Ch’ien, 1967, pp. 5–34.