

liberty and broadly benefit average citizens, but that understanding is sadly alien to most federal politicians today.

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### **Social Justice and the Indian Rope Trick**

Anthony de Jasay

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There's a clarity and straightforwardness to Anthony de Jasay's work that's always refreshing—even when I find myself disagreeing with what he's clearly and straightforwardly arguing. Jasay is unapologetic about his beliefs and that sense of purpose has animated his numerous contributions to libertarian thought. Yet, in this collection, that certainty occasionally leads him to offer incomplete arguments that miss their mark.

The essays collected in *Social Justice and the Indian Rope Trick* largely group into three different arguments, all intended in some degree to highlight what Jasay calls a “perilously ignored defect of modern political thought, namely the careless use, the misuse, and even the downright abuse of the language.” The first target is the term “social justice,” which Jasay thinks a pleonasm at best, a dangerous subversion of justice at worst. Then he turns to rights, which he finds conceptually unhelpful, tying us in intellectual knots we could shrug out of if we'd only recognize the primacy of rules. Finally, he addresses the problems of social contract theory and distinguishes it from his own preferred theory of conventions.

Of his three targets, social justice is where I most fear Jasay's arguments don't work. Or, at least, don't quite establish as much as he says they establish. Over the course of several essays, he makes many trenchant observations; he also often argues against concepts that, while familiar to advocates of social justice, won't look like the views they actually claim to hold. He also displays a tendency to get tied up in his own preferred terminology, thus allowing tricks of language to take the place of trenchant criticism.

He begins his critique by noting that a great many concepts exist in binaries with their opposites, and the binaries have value baked in. Thus “good” pairs with “bad,” and we needn't build arguments for why we prefer the former. Good is obviously better than bad, and so

a good result better than a bad one. Likewise with “beautiful-ugly, useful-useless, clever-dumb, adequate-inadequate, just-unjust.” Contrast these with binaries that may have values associated with the sides but which aren’t self-evident: “Big-small, long-short, loose-tight, heavy-light, soft-hard, equal-unequal.” It’s this last—equal-unequal—that sits at the heart of social justice, Jasay says, and so is the seed of its incoherence.

Jasay argues that, to make any sense at all, social justice must pair with social injustice, but it’s not obvious what such injustice entails. “Judgments on social justice cannot validly claim to be true or false in the absence of rules defining what is socially unjust.” Jasay’s claims that to fill in the meaning of these terms, advocates basically substitute another binary, equal-unequal. Thus we can find social justice by looking for equality, and identify social injustice wherever we see inequality. But notice that equal-unequal is of that second kind of binary, where the value judgments aren’t inherent to the terms themselves. Just as we might prefer big to small but also, in different circumstances, small to big, we might also sometimes prefer equal and at other times prefer unequal. This makes it “necessary to find at least a conclusive reason why equality must in all circumstances rank above inequality and thus give a lasting content to social justice.”

Jasay believes attempts to provide a reason for the absolute primacy of equality must fail. Within the libertarian theory of distributive justice he prefers, distributions may—and often will—be unequal, but that inequality is just—and often desirable—when it results from basic principles of acquisition and transfer. So long as individuals exchange legitimate property voluntarily, it would be absurd to label the resulting distribution unjust. Jasay also believes “social justice” a pleonasm. If it’s legitimately a kind of justice, then why not just call it “justice?” If it’s not, then it’s not, and sticking “social” before the word won’t make it so. I fear both somewhat miss the point. His first prong appears to beg the question and his second ignores potentially fertile ground for discussion by way of insisting on rather narrow—and contested—definitions.

Any society must have a method by which goods are distributed. Jasay is right when he criticizes many philosophers for forgetting that most goods must also first be produced, and that our distributive principles will impact production. But that doesn’t settle the question of how distribution, once we have goods, will work. We can, as Jasay prefers, focus our talk on individual transactions occurring within that

distributive framework. But it doesn't seem entirely illogical to also discuss the overall distribution. Nor is it on-its-face illogical to ask if that resulting distribution is good or bad, helpful or harmful, perhaps even just or unjust. Jasay's fairly typical libertarian theory of distributive justice holds that the only principles that matter in such talk are private property and free exchange, and that any distribution resulting from people following those rules is *ipso facto* moral and/or just. Fair enough—and I'm inclined to agree with him. But there are alternative theories, articulated at length and part of a vast literature on the subject, and they're not so obviously incoherent as Jasay asserts. (Though he does a rather terrific job of poking holes in naive claims about the virtue of perfect distributional equality.)

Someone more egalitarian than Jasay could argue, for instance, that voluntary transfers of legitimate property can be just in and of themselves, but that the resulting distribution can be so lopsided, or so harmful to some individuals or groups, that we have to judge the rules themselves as creating an emergent injustice. We might think of this as a variation of Derek Parfit's "Harmless Torturers" thought experiment, where millions of torturers each remotely inflict an imperceptible amount of harm on a person, so imperceptible that it fails to rise to the level of an injustice. But the aggregate of those just acts is the injustice of excruciating torture. In the market, one might say, millions of individually just transactions may do no perceptible harm, but the aggregate effect might be so bad that we have to judge the system itself as unjust. Perhaps everyone refuses to trade with a small minority and refuses to let members of that minority traverse their property. They'd effectively drive that minority to destitution or death, but all through just—according to this libertarian conception of distributive justice—actions. If minor modifications to rules of property acquisition or transfer would prevent this outcome while resulting in vanishingly small injustices, perhaps that's a desirable world, and one that justice-with-a-capital-J demands.

I join Jasay in responding "no" to that suggestion—in part because I believe the hypothetical depends on several mistaken or unrealistic assumptions. But showing *why* takes more than saying, "But the rules of justice are what I say the rules of justice are" or "Justice only means what I say it means." There's nothing magical about the term "justice" itself. It's merely a word we use to talk about a certain set of morals and principles we attach a certain sort of huge importance to. The advocates of nonlibertarian distributive justice think their

concerns fit within that. Jasay doesn't. That's an important debate to have, and it's one with which Jasay fails to directly engage.

Jasay's take on rights is that we shouldn't talk about them because they're an unnecessary appendage on the more important and foundational concept of right and wrong. As he's argued at greater length elsewhere, we derive the rules of right and wrong from whatever is to our mutual advantage. Thus, "under the conventional rule, wrong is what obstructs or destroys mutual advantage." This includes killing, but also most torts, such as violating "respect for property and the keeping of promises," as well as weaker "rules against nuisances and incivilities." Anything that isn't wrong is, by definition, right. This leaves little room or need for "rights" as a feature of humanity or the world. "If something is defined as *wrong*, it must not be done. It is nonsensical to claim a right that it should not be done to you or anyone who has this right, since we have also said that it must not be done anyway, right or wrong."

One might approach this a number of ways, including voicing skepticism about mere convention, even if mutually agreed upon, as the best source for all rules of right and wrong. But what stands out to me is that Jasay's idea—that wrong action is just any action that violates a rule and that the concept of rights contributes nothing to the discussion—gives us an inadequate reason for not behaving in what we might call rights-violating ways. Moral motivation matters, which is, for instance, one of the many reasons why consequentialism proves so dissatisfying as a moral theory. It's wrong for me to kill you not because it makes the world a worse place or because I've violated some conventional rule, but because it's wrong for me to kill *you*. The idea of rights recognizes this. Rights are a fact about people, something morally significant in their nature. Rights operationalize a basic respect for the humanity of the people we share the planet with. Respecting them is about respecting that humanity. Respecting conventional rules that benefit us, and respecting them *because* of that personal benefit, isn't good enough. Even if we might prefer it on grounds of conceptual parsimony. There's more to rights than telling us what's wrong.

Ultimately, judging the effectiveness of *Social Justice and the Indian Rope Trick* depends on who's going to read it. An academic audience is likely to find Jasay's argument against social justice unconvincing, but only because so few of them will subscribe to the crude, radical egalitarianism he's addressing. But nonacademics, who

aren't familiar with the literature on distributive justice, will likely get a good deal more out of it. I fear many people new to thinking about politics from a philosophical perspective will naturally drift toward precisely the confused theory Jasay eviscerates. His clarity and directness will serve that audience well, and he has quite a lot to teach them.

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### **This Nonviolent Stuff'll Get You Killed: How Guns Made the Civil Rights Movement Possible**

Charles E. Cobb Jr.

New York: Basic Books, 2014, 293 pp.

Charles Cobb's excellent book *This Nonviolent Stuff'll Get You Killed: How Guns Made the Civil Rights Movement Possible* teaches two important lessons that will make some people uncomfortable. The first lesson is summarized in the subtitle: the exercise of Second Amendment rights was a sine qua non for the survival and success of the Civil Rights Movement in the South during the 1960s. The second uncomfortable lesson, for some people, is that community organizing is vital to democracy. *This Nonviolent Stuff* is not the first book about armed self-defense in the Civil Rights Movement, but it does make a vital and unique contribution.

Nicholas Johnson's *Negroes and the Gun: The Black Tradition of Arms* (Prometheus, 2014) surveyed the long history of self-defense by black people in America—from Frederick Douglass advising how to resist slave-catchers, to Otis McDonald winning his Supreme Court case in 2010. This survey includes a long chapter about the Civil Rights Movement, and it is the best introduction to the subject. As a law professor, Johnson pays careful attention to the national leaders of the civil rights organizations and their formally expressed views.

The other major, prior book on the subject is *The Deacons for Defense: Armed Resistance and the Civil Rights Movement* by Lance Hill (University of North Carolina Press, 2004). This overlooked gem tells the history of the Deacons for Defense and Justice, an armed community defense organization founded in southeastern Louisiana in 1965. Especially in the Louisiana panhandle and in southwestern