

Social Justice and the Indian Rope Trick

BY THE SAME AUTHOR

The State

Social Contract, Free Ride

Choice, Contract, Consent

Against Politics

Justice and Its Surroundings

Political Economy, Concisely

Political Philosophy, Clearly

Economic Sense and Nonsense



ANTHONY DE JASAY

Social Justice and the Indian Rope Trick

Anthony de Jasay

Edited by

HARTMUT KLIEMT



LIBERTY FUND

Indianapolis

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The cuneiform inscription that serves as our logo and
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written appearance of the word “freedom” (*amagi*), or “liberty.”
It is taken from a clay document written about 2300 B.C.
in the Sumerian city-state of Lagash.

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C 10 9 8 7 6 5 4 3 2 1
P 10 9 8 7 6 5 4 3 2 1

Library of Congress Cataloging-in-Publication Data
De Jasay, Anthony, 1925–
[Essays. Selections.]

Social justice and the Indian rope trick /
Anthony de Jasay; edited by Hartmut Kliemt.
pages cm

([The collected papers of Anthony de Jasay])

Includes bibliographical references and index.

ISBN 978-0-86597-884-3 (hardcover: alk. paper)

ISBN 978-0-86597-885-0 (pbk.: alk. paper)

1. Social justice. 2. Economics—Sociological aspects.

I. Kliemt, Hartmut, 1949– II. Title.

HM671.D38 2015

303.3'72—dc23

2014016131

LIBERTY FUND, INC.
8335 Allison Pointe Trail, Suite 300
Indianapolis, Indiana 46250-1684

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PREFACE

This book is, for better or worse, unusual in more ways than one. It fits into a somewhat unusual personal history. I left my post of economist at Oxford more than half a century ago, ceased publishing learned papers, and disappeared from the intellectual scene. A quarter century later I resurfaced as a political philosopher with *The State*, my first and still the best-known of my books. It marked out my place at a distance from both classical and American liberalism, for reasons that will not be a secret to my readers. I never rejoined a university. I must have been swimming against the tide ever since, hardly progressing, though I hope that I have at least not been drifting with the mainstream. The present volume collects my writings on liberalism over the five years 2008 to 2012 and is a companion to the volume *Economic Sense and Nonsense*, my essays in political economy written over the same period.

The other and rather unusual feature of this book is its sharp focus on a vital but perilously ignored defect of modern political thought, namely the careless use, the misuse, and even the downright abuse of the language. The language directs the thought. Mainstream political thought from Bentham and J. S. Mill to the present is thickly polluted by intellectual fraud, if not altogether defined by it. The fraud is bona fide, for self-deception shelters it from the guilt of bad faith. It is not consciously trying to mislead or profit from passing off fraud for truth. It nonetheless deceives and nonetheless profits from it. The reason is that along the routes, corridors, and sewers of the subconscious, beliefs, including the values carried in our value judgments, are not independent of our existential interests. The argument in turn is not independent of our beliefs much as we might protest against the supposition of being led by ulterior motive. It takes iron discipline to keep matters of truth and falsity separate from matters of belief, and wishful thinking is, of course, often the source of belief.

Intellectual fraud, we are shown incisively, has invaded and come to dominate mainstream thought in shaping and twisting the meaning of some key concepts. Linguistic tricks are the powerful means of

doing so, and are a central concern of the book. Linguistic tricks are the tools that shape concepts. The word “right” in such terms as “right to freedom” and “property rights” implicitly introduces a right-conferring society to which we owe such freedom and such property as it awards to us. The presumptions of freedom and of title are thus denied or ignored. References to social contracts or collective choice rules teach us, by implication, that one part of society, for example a minority, has agreed to submit to the decision of another part, for example a majority, of its own freewill and not in response to superior force. It has nothing to fear, since all decisions to which it must submit are constrained by a benign rule of collective choice or constitution. Should that rule prove to be less than benign as time passes, social choice theory prefers to look the other way.

The concept of equality put forward in the book is more complex than ordinary language makes it out to be. In its simplified form, it is regularly juxtaposed to inequality, with the former as an obviously superior feature of the state of the world. As the animals chant in George Orwell’s *Animal Farm*, “Four legs good, Two legs bad.” Relentless repetition goes a long way.

Plain misuse of language, however, is insufficient. Good is self-evidently better than bad and so is just better than unjust, but equal is not self-evidently better than unequal. A more powerful linguistic trick is needed to make it so. Social justice, reaching beyond ordinary justice and its rules, lacks rules of its own, and is empty of content like robes with no tangible body inside them. Linguistic usage effortlessly fills the empty clothes. Social injustice is automatically identified with some inequality, social justice with some equality. Equality is neither morally superior nor inferior to inequality, but it looks superior when it wears the robes of social justice. The word “social” only makes the robes more sumptuous and awesome. Social justice is thus established as a moral imperative, much as the Indian rope in the notorious trick is made to stand up skyward on its own.

“Just” being self-evidently superior to “unjust,” the semantic trick of dressing up equality in the robes of social justice invests it with irresistible moral authority. Underlying the various themes of the present book is the general idea that the whole political order and the legitimacy of collective decisions have a further and perhaps less trans-

parent linguistic trick as their sham ethical foundation. Most political theory is “contractarian” in a wide sense: it claims that there is a social contract of political obedience by which all agree in advance to submit to the decisions of some. Submission is uncoerced because it promotes some good. Contractarian theories are eagerly accepted, because they pander to the smug delusion, worthy of a rope trick, that individuals surrender their autonomy with their eyes wide open, rather than losing it by their own fault and then wishing that they had not. A central essay in the book, “Inadvertent Surrender,” explores the way this is likely to come about. Rare is the resistance to it; as David Hume with his usual shrewd judgment tells us, obedience to government results not from positive consent but from acquiescence.

Anthony de Jasay

PART 1

Is Equal Superior?

1. EQUALITIES, THE CLAIMS OF SOCIAL JUSTICE, AND THE INDIAN ROPE TRICK

DIMENSIONS OF “EGALITARIANISM”

Word pairs like good-bad or just-unjust are hierarchical, the first word being self-evidently superior to the second. The pair equal-unequal is nonhierarchical, and equal is not self-evidently “better” than unequal. Equal shares in a distribution are usually understood as simple equality, “to each, the same.” In relative equality, “to each, according to . . .” the share depends on some variable, e.g., work, and in compound equality, both the shares of a recipient and the whole distribution are a function of several variables, e.g., work, skill, seniority, responsibility, capital, etc. The distribution is deemed equal if it fits the characteristic function reasonably closely. These functions correspond to just deserts. Relative and compound shares must in an orderly pattern of distribution converge to the recipients’ contributions to it. Such an orderly system may well appear as highly inegalitarian by the standard of simple equality. Failing the self-evident top rank of equality, many theories have been advanced to establish its superior value. These theories are either ethical or derived from putative facts of life (e.g., genetic selection). On scrutiny, their arguments are circular, irrational, or based on obsolete facts, and leave the moral or practical superiority of equal over unequal or vice versa at best undecided. Egalitarian thought, however, is triumphant as it tacitly identifies equality with social justice. As justice is superior to injustice, so social justice must be superior to social injustice. In this suggestion, there is a telling parallel with the famous Indian rope trick: the magician throws a rope up in the air; the rope stays upright and bears the weight of the person climbing up on it. Like the consumers of egalitarian theory, the spectators are convinced.

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The Meaning of "Social Justice"

What is social justice? One possible answer is that it is a value judgment passed on a state of affairs or an act. However, any number of value judgments can be passed on the same status quo or act. The same is true of ordinary justice, except that ordinary judgments that do not conform to the set of rules defining justice in a given social order would be thrown out as invalid and would not be enforced. Social judgments cannot be classed as valid or invalid because there is no set of rules of social justice, as distinct from ordinary justice, which they might obey or violate. Like other value judgments, judgments on social justice cannot validly claim to be true or false in the absence of rules defining what is socially unjust.

An attempt may be made to escape from this weakness of value judgments by limiting the range of judgments between two absolute extremes. One, Paradise, is as good as can be, and when judged as such, the judgment must have truth value. The other, Hell, is as bad as can be, and if judged as such, the judgment must have truth value. All real-life states of affairs can then be compared according to how close they are to the extremes. Such comparisons would, it is believed, bear a limited but undeniable truth value. This type of reasoning seems to underlie the position taken in modern utility theory in which one welfare judgment can indicate greater value than another because each has sufficient descriptive content to give it truth value. However, this escape route seems to be a cul-de-sac. Every value judgment has some descriptive content which must identify the subject being judged. This obvious fact does not suffice to transform all value judgments into statements of ascertainable facts. They remain subjective assessments that must modestly coexist with rival assessments.

Another possible answer is the one actually and almost instinctively taken by mainstream social justice theory. It cannot be satisfied with everyday language in which social justice is whatever is socially just, as fairness is whatever is fair. It must endow social justice at least with one rule to which it conforms and which injustice would be violating. That rule is equality in distributions. Albeit a coarse and unduly simple concept, it suffices to give social justice a status as a descriptive statement that can be true or false because equality and inequality are descriptive ideas. However, as will be argued presently, "equal" and "unequal"

are not hierarchical, one is not self-evidently superior to the other; their ethical ranking or benign influence is decided by the merits of the case. Yet if equal were sometimes better than unequal and sometimes worse, then equality could not possibly serve as the rule filling social justice with a firm content. It becomes 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.

The search for such a reason is critically surveyed in this essay.

Ultimately the solution of the search problem turns out to be to reverse the order of reasoning: since “equal” signifies socially just and “unequal” socially unjust, and just is superior to unjust, equality must rank above inequality. This is tantamount to the rope being thrown skyward and staying upright.

Several Equalities

This is an essay in the literal sense of the word. It is a *try*, exploring ways of finding answers to questions that are controversial and may even have no definitive answers. Perhaps most important, conventionally agreed answers imputed to them may turn out not to stand up to trial by elementary logic.

The questions revolve around several equalities and the imprecisely yet closely related notions of social justice. They deserve scrutiny not so much for their intrinsic intellectual interest, which is hardly outstanding, but rather due to their being a subject of the most intense preoccupation by society as a whole and serving as a prime mover of political action.

We speak of equal liberties, equal rights, equal opportunities, and of course equal shares in the goods and bads that life and the rules it follows keep distributing among us. Some of these equalities are conceptually loose and open to rival interpretations. Equal opportunity is one such. Some are just confirmations and indeed redundant reiterations of what more basic concepts imply and more basic rules require anyway.

In my view, equal liberties and equal rights fall in this category. They will not be touched upon here. Most of the arguments that follow will deal with the equality of shares to recipients in a distribution of desirable (or undesirable) entities, such as money, property, work, options,

or obligations. The distribution must be quantitatively specified and the set of recipients clearly circumscribed. The entities distributed must have a common denominator and must be sufficiently divisible.

In simple equality, each recipient gets the same share; “to each, the same.” In relative equality, the share of each depends on some variable defining who he is and what he is doing in that capacity. For instance, the recipient may be a hospital nurse and her share will depend only on how many hours she has worked in a week. The dependent variable, her pay, may be a linear function of the independent variable, her hours, or a nonlinear, i.e., degressive or progressive one. Relative equality responds to the order “To each, according to. . .” In compound equality the share of each, as well as the whole distribution, depends on several variables in various ways. The hospital nurse is probably paid according to her qualifications, her seniority, and the hours she works. The hospital, a distributive institution, has a payroll that depends on an even larger number of independent variables including the status of each class of its staff, their qualifications, the responsibilities they bear, the amount of work they do, and perhaps several other, less obvious ones. All such multivariable distributions can conveniently be called “compound.” The economy of a country is the most eloquent example of a compound equality. The compound equality demonstrates that an aggregate displaying a decidedly unequal, and perhaps quite disorderly, pattern distribution in fact conceals within itself a number of simple, relative, and compound equalities that may account for most or all of the aggregate.

Equality in the ordinary language of common and also of political discourse is almost exclusively intended to mean simple equality. The literature of political philosophy likewise tends to ignore relative or functional equality and focuses on simple equality, as if simple equality were alone politically relevant and ethically normal, as if its status as the norm were established.

Some of the arguments against simple equality also speak against relative equality, but not all do. Separate treatment of the two should mitigate the risk of confusion from this source.

SIMPLE EQUALITY: TO EACH THE SAME

Is Equality Self-evidently Superior?

Good-bad, satisfactory-unsatisfactory, abundant-scarce, healthy-sick, strong-weak, adequate-insufficient, true-false, honest-dishonest, etc., etc., . . .

In each of these pairs, the first member ranks self-evidently above the second. This is so in both individual and social preference orderings (if one allows that the latter sort exist in some sensible format), as well as in evaluations by the “impartial observer.” If morality is to be thought of as independent of preferences, one should also say that the first members of these pairs are morally superior to the second. Self-evidence makes all further argument in support of the ranking redundant and out of place. It is simply idiotic to ask whether “good” is better than “bad,” “adequate” better than “insufficient.”

Is equal-unequal a pair like the ones above? Asked why “equal” is better few people would regard the question as simply idiotic. Clearly, it is not, though some of the answers offered may well be thought to be so. Many ordinary people would confidently affirm that equal is *just*, unequal *unjust*, as if *this* were self-evident, hence an answer neither requiring nor leaving room for argument. The stratagem of simply identifying the non-self-evidently better “equal” with the self-evidently better “just” and leaving the matter at that is hardly adopted knowingly, but is all the more effective for that, as are many other beliefs whose only support is that they are sincerely held.

Many egalitarian academics spoil this effect to some extent by constructing theories of justice that are mostly elaborate arguments meant to serve as bridges from equality to justice or vice versa. But attempts to prove a metaphysical belief do not serve them well.

What egalitarian theories demonstrate is that “equality,” not being self-evidently better than “inequality,” needs *reasons* for so regarding it. Arguments are ever contentious, always potential victims of counter-arguments. Arguments that are devoid of empirical propositions, much as they may attract our sympathy or our disdain, remain indecisive to the end, rolling along in a debate that only boredom and a sense of irrelevance could terminate. Overcoming this fatality would

require some miraculous demonstration that “equal” is self-evidently better than “unequal.”

None of this is generally recognized. Current usage in both everyday speech and academic discourse persists in employing “inequality” as a pejorative word, unwittingly implying self-evidence of the underlying evaluation. Those who so employ it would on reflection quite likely concede that it is silly to put “unequal” on a par with “bad,” but sloppy thinking, passion, and habit bar the way to reflection.

Thus, the accelerated globalization of the last quarter century is commented upon by many reputable economists as a prime cause of unprecedented growth in world output (which it is), but also as a cause of the shift of factor shares in favor of capital and to the detriment of labor, of rising inequality between rich and poor (which is contestable but which the skillful deployment of statistics can “show to be true”). Greater output is good, greater inequality of its distribution is bad, and globalization is good or bad according to the balance between the good and the bad which it brings about. The dialectic exercise rests upon an unspoken affirmation of self-evidence; one does not have to argue that inequality is bad. It is enough to call it by its name. Since the point is simply subsumed and not at all labored, it is widely accepted as something that goes without saying.

Recent and current debates about proposals for the reform of higher education take the same dialectic form. The proposals promise positive effects on university government, the dropout rate, staff selection and incentives, grade inflation, and so forth. They have the promotion of excellence, hence of inequality, as one of their objectives, and so are invariably diagnosed as enhancing inequality and condemned. No one feels the need to ask why “inequality” in this context, or indeed in any other, is treated as an obvious, recognized negative whose badness goes without saying. Other examples of the question-begging practice of using “inequality” as a pejorative word accepted as such by all could be listed but do not seem to me to make a strong case any stronger.

The debate between equality and inequality could be decisively ended in favor of equality only if the argument were to show that the *reason why* the latter is preferable or in some other sense superior is itself a self-evident one. It would not suffice to argue, as has been done, that because factors making for inequality are “morally arbitrary,” they

should have no weight in deciding a distribution that would be just because unanimously agreed to be equal. In this chain of reasoning, the equal distribution is just because it is agreed, but the *reason why* this happens depends on the arbitrary assumption that inequality is the product of moral arbitrariness and that fair-minded parties to a negotiated distribution would refuse to take into account morally arbitrary factors. There is no self-evident reason why all should be fair-minded, or why, if they were, moral arbitrariness (rather than immorality, a breach of self-evident moral rules) should in their eyes disqualify a distribution and move them to choose another.

Moral arbitrariness seems to be rejected on one of two grounds. One is that arbitrariness is ipso facto bad. With a little good will, this could be accepted as a plausible axiom. The other ground is that it is unfair, a judgment reached by defining “fairness” as the property of a distribution purged of moral arbitrariness (achieved by John Rawls in creating his Original Position by the device of the veil of ignorance). This reasoning is patently circular. Other, less convoluted arguments also tend to try and establish the superiority of equality on some metaphysical ground. Accordingly, they can always be countered by other metaphysical arguments without either side creating a presumption let alone a conclusion in its favor. However, efforts both with and without recourse to some prior reason continue to assert the dominant rank of equality.

Do Ethical Judgments Favor Equality?

Failing self-evidence of equality’s superior rank, the second line of its defense is metaphysical. An ethical judgment must be made about the ranking of distributions. Though such judgments have no claim to be true or false and a judgment favoring equality is no more valid than one favoring inequality, there are well-known arguments in favor of the former that aim to render the egalitarian judgment more plausible than its opposite.

A radically simple version of these is the blank assertion that equality is fair, inequality unfair. Since “fairness” lacks an accepted definition independent of equality itself, the statement “equality is fair” will under pressure become “equality is equal” and be rightly dismissed as an ill-concealed tautology.

Equality is fair because it is not morally arbitrary, moral arbitrariness being unfair—the defense of the ethical judgment—is reduced to a mere circularity. A more traditional approach to influencing ethical judgment in favor of equality is broadly utilitarian. It is of two kinds. One appeals to the perceptions of the judge as he observes the “pain and pleasure” the recipients in a distribution receive from it. He is relying on empathy. The other kind appeals to the preferences of the recipients themselves, the judge having no role except to take note of what the recipients declare they prefer. In the first kind of persuasive approach, the judge, an Impartial Observer, finds that rich people derive less of whatever they seek from a unit of the good distributed than do poor people. The entity they all seek, whether identified as satisfaction, happiness, or well-being, is to be unified and labeled as “utility,” a metaphysical construct. The fact that the rich man derives less utility from one unit of the good than the poor man may mean that the utility of the rich rises by a smaller proportion of itself than that of the poor; the former may have his utility increased by one millionth, the poor by one tenth. However, much as this may influence the judge in favor of changing the distribution in favor of the poor, he cannot honestly say that the one-millionth increase in the rich man’s “utils” is smaller than the one-tenth rise in the “utils” of the poor man, let alone by how much. The two cannot be added to or subtracted from each other. Neither level nor difference comparisons make sense unless the “utils” of the two persons are commensurate. They are rendered commensurate by, in effect, assuming that they are, for as Bentham once ruefully remarked, otherwise “all practical reasoning is at an end” and the Impartial Observer cannot say that one distribution is better than another without giving up his impartiality.

Formally (though not in substance) the argument can be sustained by imagining a version of utility that is commensurate, permitting “practical reasoning,” i.e., both level and difference comparisons. Commensurate utility may exist only in the imagination but, rather like the winged horse or the magic potion, it enables a seductive story to be told to its foreordained end. Given all these somewhat extravagant assumptions, the judge judges that by depriving a person having a large share in the distribution of one unit of the good being shared out, and giving it to one having a smaller share, the total of commensurate utility is increased.

surate “utils” in the distribution will rise. All rich-to-poor transfers will have this effect. Obviously, the aggregate “utils” will reach a maximum when no inequalities in shares remain and no further “util”-enhancing transfers can be made.

In the other type of ethical judgment, it is the participants who by their behavior demonstrate that they want an equal distribution. However—an important and usually only implicit proviso—they must want this unanimously unless a separate ethical judgment decrees that minorities agree to submit to majorities without threat of force.

The recipients would all decline a bet on the even chance of winning and losing a sum of money. In a thought experiment, they are confronted with an equal probability of living in any one of the “social slots”—“slots” for the rich, the poor, and the in-between—that make up a society. Since they decline even-chance bets, they also decline an even chance of a rich and a poor “slot,” and judge that they prefer a society of equality where all the “slots” are the same.

In a slightly different version starting with an unequal distribution, those with a share below the mean prefer a redistribution which raises their share toward the mean. Counterintuitively, those with a share above the mean also want the same redistribution, pushing down their share toward the mean. The putative reason is that they see the future shrouded in a “veil of uncertainty” and believe (oddly enough, we must remark) that without a redistribution, their future share would be as likely to be below as above the mean.

It is perhaps worth noting that it seems irrational for the rich to believe that stepping behind the “veil of uncertainty” they will have lost awareness of all the endowments, legacies, talents, and characters that have made them rich to start with, and have no better than an even chance of staying rich. However, this result would seem less irrational, or at any rate less implausible, if it was supposed that beyond the veil people are in the “Original Position” and ignore the endowments they possess. The scenario would be even more painfully contrived, but at least seem more sensible.

Without sometimes only implicit reliance on extreme assumptions—commensurate “utils,” universally declining marginal utility, very acute empathy, universal “risk aversion,” veils of uncertainty and ignorance—the notion that ethical judgments are bound to lean in

favor of equal utility is untenable. We simply cannot prejudge and predict which way logically less ill-supported judgments would lean.

Does Evolution Select Equality?

It is sometimes suggested that a propensity for equal sharing is implanted in man's genes. It disposes us to seek equal distributions not only when equality is reached by getting something from others, the commonplace motive for calling for equality, but also when we must give them something of ours. There is an underlying supposition that in the natural course of events we take turns taking and giving so that gains and losses tend to even out, and that the result is better for all concerned than if they did not share and share alike.

The propensity to share is supposed to be "hardwired" into human nature and got there by genetic selection when man was a hunter-gatherer wandering about in very small groups. In this existence, the availability of food depended on a constant, the prowess and experience of the man who was hunting the aurochs and of the woman who was finding the berries and the mushrooms, and a number of variables including luck, the weather, the abundance or scarcity of game, fish and vegetal edibles, the state of health of the hunters and the gatherers, and perhaps others less obvious and harder to think of. As the variables changed, the group would pass through phases of satiety and hunger in a largely unpredictable sequence. In conditions of scarcity, the dictates of genetic survival would induce the dominant male or matriarch to distribute the available food unequally, by favoring the next of kin over the more distant kin. In fact, the distant kin might have to be allowed to die if not actually aided to die.

Equal distribution might, however, prevail over the unequal one if there was a tacit understanding with other groups that were hunting and gathering within walking distance of the first group. The groups that happened to have surplus food would invite the ones deficient in food to a feast, a "potlatch," or let them have food in whatever other manner would save the faces of the recipients. Theoretically at least, share-and-share-alike, a pooling of resources, and their distribution in equal portions could be the result. Pooling would not help the participants if all they had to pool was their common misery because, for