

Honorarium Speech
THE IDEA OF JUSTICE: FROM IDEA TO ACTION

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When young Gautama, later known as Buddha left his princely home in the foothills of the Himalayas in search of enlightenment, twenty-five hundred years ago, he was moved by the sight of mortality, morbidity and disability. He was also distressed by the ignorance he saw around him. When, as a young boy, I first read about this much-recollected history, I remember being immensely moved and also energized. Indeed, Buddha's concerns and his knowledge-centred approach to confronting difficult problems have been among the major sources of inspiration throughout my life. I should explain that I am not religious, and therefore I am not a Buddhist, or a follower of any other religion. But it is possible to benefit greatly from understanding the sources of Gautama Buddha's agony, particularly the deprivations and insecurities of human life, even if we have no great inclination to try to follow Buddha's lead in exploring the ultimate nature of the universe. I am concerned, rather, with them, in following Buddha's ideas, at a more worldly level.

Indeed, as I have tried to argue in an earlier paper, called "Buddha and the Modern World" (it was first read at a conference in Singapore and later published there), it is easier to draw on Buddha's ideas than that of many religious leaders because the story of his life makes him look as if he is quite close to us. The ideas that moved him - fear of mortality, the tragedy of old age and disability, the terrible impact of diseases on human life - move us too, no matter what religious beliefs we may have or intend to pursue. And we too see the dangers of ignorance and of badly organized societies, to which Buddha would give much thought as his own enlightenment proceeded. But no matter at which level we confront these adversities, the focus on knowledge and understanding, and on reasoning and enlightenment, remains as important in our vastly different world today as it was in Buddha's own time two and half millennia ago.

What has all this got to do with justice and injustice in the world today? I would argue, a great deal. As we consider the challenges of dealing with the colossal problems of human insecurity and social injustice in the contemporary world, the importance of seeking an enlightened approach, informed by reasoning with oneself and with others, remains deeply relevant. Before I move on to discuss the idea of justice, which is the chosen topic for discussion today, let me point briefly to three features of what we can see - in secular terms - as a critical approach derived from Buddha's reasoning, which would be particularly relevant to the engagement with the

idea of justice. It is not my claim that these are the most important features of Buddha's thinking - indeed my claim is nothing at all as grand as that - but that these features, present in Buddha's approach, still remain important in thinking, even in completely secular terms, of right and wrong, and of justice and injustice.

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The first of the features I want to discuss relates to Buddha's concern with life and living, and not just with institutions and social arrangements. I shall call this a "life-centred approach." It may appear very odd that I am attributing a life-centred understanding of the engagement of reasoning to someone whose priorities are often thought of as being life-denying. But we have to remember that Buddha was motivated to undertake his long search precisely by the agonies and infirmities of human life, and in different ways he was still dealing with human deprivations even when he explored the nature of good life and the goodness of the world. He was concerned about mortality, about morbidity, about disability.

This is in sharp contrast with so many approaches to justice that can be described, in terms of what ultimately counts, as life-denying. Consider, for example, the approach to the idea of the right and the just, as articulated by Ferdinand 1, the Holy Roman Emperor, in the sixteenth century. He famously claimed in the sixteenth century: "Fiat justitia, et pereat mundus," which can be translated as: "Let justice be done, though the world perish." The Holy Roman Emperor's indifference to suffering of living creatures, as the world perishes, focusing instead on some abstract idea of rightness, could not have been endorsed by Buddha's reasoning. I note here in passing, since this meeting is concerned with national health, that the life-centred approach to understanding the claims of justice gives an immediate entry into problems of ill-health and the need for social engagement to confront this. I shall come back to this connection later on in this talk.

A second striking feature of the approach that emerges from Buddha's line of thinking is its inclusiveness, and I shall call this "inclusive approach." There are no exclusions in this approach. If the first feature has a special relevance to Thailand given its deep commitment to enhancing people's health through informed and reasoned public policy, the second feature relates to issues of divisiveness within the society that has plagued Thailand a great deal in recent years. I am aware that some commentators would find it puzzling that I am including Thai Buddhism as a part of a universalist tradition, since it is often presumed that since Buddhism in Thailand is mainly of the Theravada kind, as opposed the broader Mahayana tradition, there cannot be universalism in Thai Buddhism. This, I believe, would be a mistake since universalism in the social sense I am invoking it here is a basic feature of Buddhism in general, which includes the Theravada, and the differences between Theravada and Mahayana lie in the more theological territory of salvation, with which I am not particularly concerned in this talk.

Thailand's record of inclusiveness in its health coverage is excellent - indeed I would say exceptional: there is an inclusiveness here that even the United States with its private insurance system does not have. And yet the possibility of inclusive dialogue that unite rather than divide people has been deeply elusive in this otherwise wonderful nation, and this remains a problem in the contemporary political scenario. That is an issue of political importance in Thailand today, but let me first address the more general principle of universal inclusiveness in the tradition of Buddhist understanding of social interaction.

I should mention here how pioneering the approach of those inspired by Buddha was very early in the history of the world. Some of the earliest open general meetings aimed specifically at settling disputes between different points of view, on social and religious matters, took place in India in the so-called Buddhist "councils," where adherents of different points of view got together to argue out their differences, beginning in the sixth century BC. The first of these councils met in Rajagriha (now called Rajgir) shortly after Gautama Buddha's death, and the second was held, about a hundred years later, in Vaisali. The last one happened in the second century AD in Kashmir.

Emperor Ashoka, who hosted the largest Buddhist Council in the third century BC in Patna (then called Pataliputra), which was the capital city of his empire over India, also tried to codify and propagate what were among the earliest formulations of rules for public discussion (some kind of an early version of the nineteenth century "Robert's rules of order"). To choose another historical example, in early seventh century Japan, the Buddhist Prince Shotoku, who was Regent to his mother, Empress Suiko, produced the so-called "constitution of seventeen articles," in 604 AD. The constitution insisted, much in the spirit of the Magna Carta to be signed six centuries later in 1215 AD: "Decisions on important matters should not be made by one person alone. They should be discussed with many."¹ Some commentators have seen in this seventh-century Buddhism-inspired constitution, Japan's "first step of gradual development toward democracy." The Constitution of Seventeen Articles went on to explain: "Nor let us be resentful when others differ from us. For all men have hearts, and each heart has its own leanings. Their right is our wrong, and our right is their wrong."

A third feature that is worth identifying is the focus on universal responsibility in this line of thinking, which goes much beyond the narrowly conditional and contingent cooperation that the popular approach of "social contract" theory has made very central to contemporary theories of justice. I shall call this aspect of Buddha's approach as "responsibility of power," something I have discussed in some detail in my book, The Idea of Justice². The perspective of non-contractual obligation of people's power and capability is presented powerfully by Gautama Buddha in Sutta Nipata. Buddha argues there that we have responsibility to animals precisely because of the asymmetry between us, not because of any symmetry that takes us to the need for cooperation. He argues instead that since we are enormously more powerful than the other species, we have some responsibility towards other species that connects exactly with this asymmetry of power.

Buddha goes on to illustrate the point by an analogy with the responsibility of the mother towards her child, not because she has given birth to the child (that connection is not invoked in this particular argument - there is room for it elsewhere), but because she can do things to influence the child's life that the child itself cannot do. The mother's reason for helping the child, in this line of thinking, is not guided by the rewards of cooperation, but precisely from her recognition that she can,

¹ For a fuller discussion of these traditions, with the references to the source material, see my The Argumentative Indian (2005).

² The Idea of Justice (London: Penguin, and Cambridge, MA: Harvard University Press, 2009).

asymmetrically, do things for the child that will make a huge difference to the child's life and which the child itself cannot do. The mother does not have to seek any mutual benefit - real or imagined - nor seek any "as if" contract to understand her obligation to the child. That is the point that Gautama was making. And it is strikingly different from the Hobbesian contractual line of thinking on obligations towards each other that has come to dominate contemporary theories of justice.

The justification here takes the form of arguing that if some action that can be freely undertaken is open to a person (thereby making it feasible), and if the person assesses that the undertaking of that action will create a more just situation in the world (thereby making it justice-enhancing), then that is argument enough for the person to consider seriously what he or she should do in view of these recognitions. There can, of course, be many actions that individually satisfy these dual conditions. We may not, however, be able to undertake all those actions. The reasoning here is, therefore, not a demand for immediate and unconditional action whenever the two conditions are met, but an argument for acknowledging the obligation to consider the case for action. The mother's sense of obligation to the infant child not only satisfies the dual condition, but it comes to enjoy a priority over other things that the mother may have reason to do, if she were free to undertake them. While it is possible to bring in some social-contract based reasoning in an extended form - given its ingenuity - to work out a case for the mother to consider helping her child, it would be a much more round about way of getting to a conclusion that reasoning from the obligation of power can directly yield.

The basic point to recognise here is the existence of different approaches to the pursuit of reasonable behaviour not all of which need be parasitic on the advantage-based reasoning of mutually beneficial cooperation. Indeed, cooperative advantage is only one of many reasons for doing things for others in this broader perspective, and the totality of reasons takes us well beyond the limited approach of the social contract theory.

3

In my recent book on justice - it is called The Idea of Justice - I have argued for recognising the need for a fundamental departure in the understanding of the concept of justice: a departure not merely from the mainstream theories of justice in contemporary political philosophy, but also from the long tradition, going over several centuries, of situating the analysis of justice in the framework of a so-called "social contract." The social contract approach was pioneered by Thomas Hobbes in the seventeenth century, and it has been the strongest influence in the analysis of justice from the eighteenth century to our own time. The departure I have proposed demands some fairly radical change of focus in the mainstream theories of justice that are dominant at the present time. It also demands, I would argue, some variation in the way we think about our contemporary challenges of public policy - global as well as national.

Is there a connection with Buddha's approach in my theory? Indeed, there is, as I have discussed in the book, but it is not the only intellectual ancestry of the understanding of the idea of justice that I am trying to advance. There are other traditions too from across the world on which I draw, but the three particular features of the approach derived from Buddha's thoughts, which I have been outlining here, do fit squarely with the idea of justice I have been exploring.

The line of reasoning based on the idea of the "social contract" concentrates on identifying perfectly just social arrangements, taking the characterization of "just

institutions" to be the principal - and often the only identified - task of the theory of justice. This way of seeing justice is woven in different ways around the idea of an imagined social contract - a hypothetical contract that the population of a sovereign state are supposed to be a party to. Major contributions were made in this line of thinking by Thomas Hobbes, John Locke, Jean-Jacques Rousseau and Immanuel Kant, among others. The contractarian approach has become the dominant influence in contemporary political philosophy, led by the most prominent political philosopher of our time, John Rawls, whose classic book, A Theory of Justice published in 1971, presents a definitive statement on the social contract approach to justice. The principal theories of justice in contemporary political philosophy (coming not only from Rawls but also from Nozick, Dworkin, Gauthier and others), though different from each other in specific content, draw in general on the social contract approach, and concentrate on the search for ideal social institutions.

In contrast, a number of other Enlightenment theorists (beginning with Adam Smith, the Marquis de Condorcet and Mary Wollstonecraft, and extending later to Karl Marx and John Stuart Mill, among others) took a variety of approaches that differed in many respects from each other, but shared a common interest in making comparisons between different ways in which people's lives may go, jointly influenced by the working of institutions, people's actual behaviour, their social interactions, and other factors that significantly impact on what actually happens. Instead of relying on some hypothetical contract to which everyone involved is taken to be - or imagined to be - a party, the alternative approach can concentrate on what agreements can emerge on the basis of public reasoning about how justice can be enhanced. The idea of justice I have been exploring draws on the dialogic method that was a very prominent part of the priorities of the European Enlightenment, just as it does on Buddha's reason-based exploration of ethical obligations that individuals and society have to recognise.

The analytical - and rather mathematical - discipline of "social choice theory", which had its origin in the works of French mathematicians in the eighteenth century, in particular the Marquis de Condorcet but also others like Jean-Charles de Borda, and which has been revived and reformulated in our times by Kenneth Arrow, belongs robustly to this alternative line of investigation - different from the social contract theory. I must confess that I have been very involved myself in the development and use of social choice theory. I have focused particularly on the exploration of the constructive possibilities of the approach (differing in that respect from Kenneth Arrow's focus on generating impossibility results),

and I have been involved over some decades in the derivation and elucidation of the demands of justice, with the help of mathematic social choice theory, supplemented by general - and largely non-mathematical - political and moral reasoning.

There are three principal departures in the theory of justice I have tried to present in contrast with the social contract approach. First, rather than beginning with asking what is "perfect justice" (a question in the answer to which there could be substantial differences even among very reasonable people), I argue for following Condorcet and Adam Smith in asking about the identification of clear cases of injustice on which agreement could emerge on the basis of reasoning. In arguing, for example, for the abolition of slavery in the 18th-century world, as the Marquis de Condorcet, Adam Smith and Mary Wollstonecraft did, they did not have to seek an agreement on the nature of the perfectly just society. In fact, debates on the utopia of

the perfectly just world can have very distracting and diverting effects on the pursuit of justice, in particular reduction of injustice, here and now.

Second, our focus need not be only on institutions. In contrast with the social contract approach, which is interested primarily on the identification of "just institutions," we can examine instead the nature of lives that people are actually able to lead. In this way of understanding the problem, the idea of justice has to be realization-based and people-centred, rather than institution-centred.

Third, unlike the social contract approach which, by construction, must be confined to the people of a particular sovereign state, the alternative approach can involve people from anywhere in the world, since the focus here is on reasoned agreement, rather than on state-based social contract. The departure makes reasoning on "global justice" possible, which is essential for addressing such problems as global economic crises, or global warming, or prevention and management of global pandemics (such as the AIDS epidemic).

In contrast with the old social contract approach to justice which has so far dominated professional philosophical investigation of justice, we get in this alternative approach a focus on people's lives rather than only on institutions, and a concentration on reasoned agreement about how to advance justice, rather than searching for some imagined contract to establish a set of perfectly just institutions. In a suitably broad formulation, this can be the basis of global reasoning, rather than nationally separated pursuit of justice in sequestered ways.

4

In understanding the contrast between an arrangement-focused and a realization-focused view of justice, it is useful to invoke an old distinction from the Sanskrit literature on ethics and jurisprudence. Consider two different words - "niti" and "nyaya" - both of which stand for justice in classical Sanskrit. Among the principal uses of the term niti are organizational propriety and behavioural correctness. In contrast with niti, the term nyaya stands for a comprehensive concept of realized justice. In that line of vision, the roles of institutions, rules and organization, important as they are, have to be assessed in the broader and more inclusive perspective of nyaya, which is inescapably linked with the world that actually emerges, not just the institutions or rules we happen to have.

To consider a particular application, early Indian legal theorists talked disparagingly of what they called matsyanyaya, "justice in the world of fish," where a big fish can freely devour a small fish. We are warned that avoiding matsyanyaya must be an essential part of justice, and it is crucial to make sure that the "justice of fish" is not allowed to invade the world of human beings. The central recognition here is that the realization of justice in the sense of nyaya is not just a matter of judging institutions and rules, but of judging the societies themselves. No matter how proper the established organizations might be, if a big fish could still devour a small fish at will, then that must be a patent violation of human justice as nyaya.

A realization-focused perspective also makes it easier to understand the importance of the prevention of manifest injustice in the world, rather than seeking "the perfectly just." As the example of matsyanyaya makes clear, the subject of justice is not merely about trying to achieve - or dreaming about achieving - some perfectly just society or social arrangements, but about preventing manifestly severe injustice (such as avoiding the dreadful state of matsyanyaya). For example, when people agitated for the abolition of slavery in the eighteenth and nineteenth centuries, they were not labouring under the illusion that the abolition of slavery would make the

world perfectly just. It was their claim, rather, that a society with slavery was totally unjust. It was the diagnosis of an intolerable injustice in slavery that made abolition an overwhelming priority, and this did not require the search for a consensus on what a perfectly just society would look like. Those who think, reasonably enough, that the American civil war which led to the abolition of slavery was a big strike for justice in America would have to be reconciled to the fact that not much can be said in the perspective of the old "social contract" theory about the enhancement of justice through the abolition of slavery. We need a comparative approach that can identify the benefits from the removal of a particular injustice even though the world after that removal would still not be, in any obvious sense, perfectly just.

5

What are the consequences of changing the focus of attention from searching for just institutions to seeking the removal of injustice in the lives that people are actually able to lead? The question that immediately arises is how to understand the richness and poverty of human lives. The approach I have tried to pursue has largely focused on the freedoms that people actually enjoy, and this is one way of understanding the "life-centred approach," which remains broadly in the tradition of Buddha's own line of thinking. This differs sharply from many other approaches to assessing the demands of justice, for example, looking for the fulfilment of certain formal rights that people have, whether or not these rights can be actually exercised (as institutional libertarianism tends to do). Many of these rights can have an instrumental role in sustaining acceptable social lives, but the pursuit of justice cannot stop there. It also demands positive help from the state and from the society in general to make substantive individual freedom a central social commitment.

An approach based on substantive freedom must insist that we scrutinize and assess - different features of human lives - and their combinations - that a person has the opportunity to consider and choose from. This takes us, naturally enough, beyond the domain of formal rights that the institutional perspective of libertarian philosophy tends to highlight, which can be, to a great extent, described as "freedom as permission" rather than as "freedom as facilitation." When it comes to health care, for example, the libertarian concern with whether we are prevented from getting health care can be important in some special contexts, but the bigger issue is the need for social support - indeed state support - for what health care people can afford and actually have.

If the freedom-based, life-centred approach has to take us well beyond the limited reach of freedom as permission, it must also take us beyond the rights, including those for help from the state, that people may in principle possess without being able to exercise these rights easily. So one of the implications of this approach is to focus on what people can actually do, including what health care people can actually get, irrespective of location (rural as well as urban), class (poorer people as well as the more affluent), gender (women as well as men), and so on. It is just not good enough to concentrate on the rights for state help that the rules may identify - we have to look at who is getting what kind of health care, compared with what people respectively need and what the state and society can afford to provide them.

This takes us naturally to the demand of inclusiveness. The Thai system of health care certainly has a strong inclination in that direction. I don't know enough about the details of Thai health care to be able to pronounce any view on whether the system of state and social support for health care does have, in effect, the extent of

inclusiveness that would be needed for a society without the injustice of avoidable exclusion. But it is surely an issue to which particular attention has to be paid.

A third concern is the agency of health delivery and the responsibility that goes with specific roles. A country with much difference between the rich and the poor, as we see in most countries in the world, including of course my own country India, or this country Thailand, has to ask questions on this constantly. Are the affluent doing enough, given their power and ability, compared with what would be needed to remove the identifiable injustices that characterize most health care system? I am posing the question, rather than giving any answer, mainly because I do not know what the answer would be. But I would certainly like to know more about what the answer is, and how any deficiency, in this respect, can be addressed and remedied.

I have raised a few questions here, but a close study of the idea of justice I am trying to present have many other implications, and may other invitations to ask more questions. Given the time I do not have the opportunity to pursue this issue further here, but I hope this will be a continuous dialogue to which we should be able to come back in the future. The basic commitment, as I see it, is to use social dialogue to pursue the demands of justice in a life-centred, inclusive, and widely responsible perspective.

It has been a great privilege for me to be able to speak at the public forum arranged by the National Health Commission. I end with emphasizing the centrality of public discussions of this kind. I was very impressed yesterday to attend the Thai Health Assembly. Indeed, one of the central points I have tried to present in my book, The Idea of Justice, is the absolute necessity of public reasoning in advancing the cause of justice. Even the idea of objectivity in political philosophy relates to the ability of a proposed idea - or a proposed strategy of action - to survive in public debates, since public confrontation cannot but be an essential part of overcoming the subjectivity that people tend to be influenced by, connected with class, gender, location, and other divisions of the society. It has been an enormous honour and opportunity for me to have been able to speak at this forum this morning. I am most grateful, and end with expressing my deep appreciation.