



By Leanne Ho

SOCIAL JUSTICE – constructions and themes

Different views of social justice emphasise different themes. This article is intended to encourage readers to identify the constructions of social justice that inform government policies, community programs and other initiatives. For example, what construction of social justice is reflected in policies making it more difficult to qualify for the Disability Support Pension? >>

The term 'social justice' is used in contexts where people understand it to be about fairness beyond individual justice.¹

According to Craig et al, 'it is often seen these days as either a relic of the 1970s, or a catch-all used by conservatives and progressives alike'.²

In what Smyth calls 'the neoliberal period', in the context of the fiscal crisis of the 1980s, the idea of social justice became less visible in Australian public life and discourse, 'with all sides of politics trying to distance themselves from what many saw as 'a period of public sector profligacy'.³ According to Smyth, the principle of universal rights was lost in notions of 'user pays' and conditional welfare; the quality of public services lagged behind the private while income support became a site of stigmatisation especially for the unemployed and sole parents.⁴ Baldry also observes the changes that occurred during this period: 'Tertiary education is no longer free, public school education in disadvantaged areas has not been well resourced compared with for example some wealthy private schools, wage equality for women has gone backwards... Aboriginal health and housing have barely progressed.'⁵

OVERVIEW OF THEMES INFORMING SOCIAL JUSTICE CONSTRUCTIONS⁶

Joint responsibility to address systemic/structural poverty and inequality

A social justice concept that focuses on joint responsibility involves creating fair institutions and institutional frameworks; for example, creating a labour market with jobs that are socially inclusive and a system for providing adequate income and other support for those who are unable to work. Many would argue that this is the core of any concept of social justice: it is about making the systems and structure of society more just, rather than seeking justice in individual cases; and assumes the positive intervention of government (and other society leadership) to tackle structural inequalities.

Getting a fair share of resources

The themes discussed below reflect different ideas about what is a fair distribution. One view of what is meant by fair redistribution of resources is a redistribution that creates less of a gap between the rich and the poor. Pro bono work is actually a form of redistribution in this sense – from well-resourced law firms and lawyers to people who do not have the resources to pay for the legal services required to achieve social justice or enforce human rights.

In *The Spirit Level: why more equal societies almost always do better*,⁷ Wilkinson and Pickett provide evidence of the positive effects of greater income equality on all aspects of society. Using mostly UN sources on inequality across affluent nations, they compare each nation's level of income inequality (measured by the size of the gap in income between the wealthiest and poorest in society), with each other nation and with each nation's level of health and social problems. The issues they researched included physical health, education, housing, imprisonment, mental health, drug abuse, obesity, social mobility, trust and violence. The outcomes for the more unequal countries were substantially worse on every count. Australia sits with the UK, Singapore, New Zealand and the USA at the most unequal end of the scale.

Wilkinson and Pickett argue that they have provided evidence for the negative effects that inequality has on societies: eroding trust, increasing anxiety and illness, and encouraging excessive consumption. The authors point out that it is inequality, not poverty, that is crucial to the negative effects in affluent countries. The less the income gap between the rich and poor, the better the nation does for everyone on all social measures.⁸

Critics of redistribution: protection of individual property rights

There are those who disagree with a social justice approach that involves redistributing wealth to close the gap between rich and poor. They argue that the state has no right to redistribute individuals' wealth and see the role of

government as umpiring the market to ensure that property is held by those to whom it rightfully belongs under a system of law.

Examples of an individual property rights approach to social justice for Indigenous Australians are native title claims under property law, and repayment of wages earned by Indigenous people under contract law, rather than challenging the existing systems of law and property ownership. Brennan et al observe that there remains systemic racism in Australia's constitution and legal and governing institutions.⁹

Critics of this emphasis on individual property rights regard attempts to right injustices by working within the existing system of property ownership as a bandaid approach that can never address the underlying cause of the problem. Baldry also argues that it is difficult to identify individual wealth creation that has not been built on natural resources that should be held in common (and in Australia were stolen from Indigenous people), publicly provided resources like road, rail and communications, and from intellectual capital that has been shaped and built by a publicly funded education system.¹⁰

Equal access to opportunities and rights

An emphasis on equal access to opportunities and rights reflects an approach to social justice that focuses on ensuring that people are not excluded from life opportunities and the activities of society (such as healthcare, housing, employment, education) on an unfair basis (such as race, gender, sexual orientation, age). The importance of equal access to opportunities and rights has been recognised in international and Australian domestic human rights and anti-discrimination legislation, which prohibits discrimination against people on the basis of particular immutable traits.

It is often those who have the greatest need to access or enforce rights who do not have the resources (such as knowledge, confidence or money) to obtain remedies under the

human rights or anti-discrimination law. Therefore justice on a systemic or structural level is necessary to enable individuals to access, assert and enforce their rights.

Fair system of law and due process

Equality of access to opportunities and rights cannot be achieved without a fair process of decision-making in a society. Procedural justice concerns the fairness and transparency of the processes by which decisions in a society are made.

While a fair process on its own does not guarantee a socially just outcome, a fair system of law and due process are important to social justice because they provide the mechanism by which everyone in society (including governments, non-government organisations and individuals) applies the requirements of social justice to particular cases, which is particularly important for those who have less power in society.

Ability to take up opportunities and exercise rights

A focus on the ability to take up opportunities and exercise rights is embodied in Sen's idea that poverty has less to do with the absence of income than with people's lack of resources to be able to choose the life they value. According to this approach, the state or system has a responsibility to build individual's ability to take up opportunities and exercise rights; for example, by ensuring a minimum level of literacy and numeracy, computer skills and other skills.

In a capability approach, for the investment to be effective it would have to be directed as much at people's health and wellbeing as their ability to join the paid workforce. According to the Brotherhood of St Laurence, the focus needs to be less on a basic subsistence income, and more on investing in people's capacity to negotiate the various challenges of the typical life course, identifying four key stages of the life course: early years, school to work, the working years, and retirement and ageing.¹¹ According to this approach, social spending would not be conceived simply as a passive

system of insurance against life's risks, but as a system of positive investments so that we can all realise our individual potential and contribute fully to the development of our society.¹²

Support and protection of vulnerable and disadvantaged people

This element of social justice involves recognition that there will always be some people in society who will need a lot of support and assistance, no matter how much education, training, encouragement or coercion is provided. This includes many people with a mental illness, disabilities, literacy problems and other learning difficulties.

Individual responsibility

Getting what you deserve because of your status

This view emphasises a person's status in society as determining the share of resources they deserve, and rationalises giving less to those of lower social status. An unequal distribution should be made based on inherited status – factors that a person is born with such as their sex, race, ethnic group and family background, rather than their achievements. (Status can also be gained during a person's lifetime as a result of their efforts to exercise their abilities through education, occupation, and even marital status. This type of status will be dealt with in the following section on individual capability.)

Morrison observes that feminism, multiculturalism and other social movements have persistently called for greater attention to the unjust social and cultural status-determining processes that are integral to the unjust distribution of material resources.¹³ An example of unequal distribution by status is the undervaluing of work done by women and minority ethnic groups, which are seen as having lower status in society.¹⁴

Getting what you deserve because of your morals and workforce participation

An emphasis on the moral responsibility of individuals for their situation implies that those who

are poor, disadvantaged or socially excluded are different from people in the mainstream of society, and deserve their situation due to their behaviour. According to this view, individuals stereotyped as single mothers and 'dole bludgers' need to be encouraged or disciplined to get off welfare. Work for the Dole has been described as a punitive program designed to stigmatise by designating income support recipients as requiring remedial action 'to maintain work ethic and work habits and improve their contact with the local community'.¹⁵

The Australian Council of Social Services has released a paper challenging myths about 'typical' unemployed people, disability support pensioners and sole parents on income support, which found that the stereotypes that formed the basis of moral judgements about these groups were not supported by facts.¹⁶

An emphasis on workforce participation as the only legitimate way to contribute to society and be socially included implies that a fair distribution is an equal distribution to those of equal productivity. This view is reflected in the social integrationist discourse (SID) of social inclusion, which narrows the definition of social inclusion to participation in paid work.

The move towards this view in Australia started in the early 1990s, when voluntary activation programs >>

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were introduced for sole parents and people with disabilities – two groups who were previously seen as legitimately sitting outside the paid workforce.

Critics of this approach express concern that, like the moral underclass discourse, it ignores the structural causes of disadvantage. As non-participation in the paid workforce is not seen as legitimate, unpaid work is not valued. Cook's paper on social exclusion discourse and welfare reform concluded that: 'The portrayal of paid work as the only legitimate route out of poverty has allowed governments to abrogate their responsibility to give serious and urgent consideration to the levels of income support in Australia with the result that large numbers of people remain in poverty.'¹⁷

Individual responsibility and individual capability

An emphasis on individual capability focuses on the personal characteristics that enable people to take advantage of opportunities and implies that there should be equal distribution to those of equal merit. It places the responsibility on the individual to improve their own capabilities, rather than on the state or system to build the capability of individuals.

This view was reflected in the Howard government's welfare policies which imposed increasing participation requirements on people who were having difficulty with finding a job, with little or no investment in training.

According to Barnett & Spoehr, 'under the previous government there was little training provided through the Job Seeker Account and there were financial and non-financial disincentives for parents and people with a partial capacity to work to undertake training'.¹⁸

Welfare reforms since 2000 emanate from the McClure report that specifically endorsed the 'principle' of expecting people on income support to help themselves and contribute to society through increased social and economic participation in a framework of 'Mutual Obligation'.¹⁹

Recognition of human value and wellbeing

A view of social justice which emphasises recognition (that is, a reciprocal respect for both the unique and equal status of all others²⁰) is concerned with human value beyond a person's social status and economic productivity. This approach is consistent with the redistributive discourse (RED) of social inclusion which addresses social, cultural and political participation as well as economic participation.

Recognising human value and wellbeing leads to a distribution of resources that is unequal, as it is based on an individual's needs or requirements. As Morrison explains: 'If we are to truly appreciate the Other, through recognising their uniqueness, their worth, and their ways of being in the world, we cannot justify or

tolerate their suffering... Human dignity requires both due recognition, and adequate redistribution, and social inclusion requires nothing less and, perhaps, nothing more.'²¹ It also has the potential to valorise unpaid work as a legitimate contributor to society.

EXAMPLE: THEMES OF SOCIAL JUSTICE IN MENTAL HEALTH POLICIES

Mental health is one of the example areas of disadvantage that can illustrate the themes identified above. In 2007, approximately one in five Australian adults had a mental illness.²² A report on the legal needs of people with a mental illness emphasised that many of them face great social and financial disadvantage.²³

Recent welfare reforms in Australia have made it more and more difficult to fulfil the criteria to prove that a person with a mental illness qualifies for disability support pension. As a result of these changes, many people with a disability who were previously seen as legitimately sitting outside the paid workforce, due to their medical condition, are now expected to join the paid workforce.²⁴

There is increasing recognition internationally that a lack of social justice affects, and perhaps even causes, mental health problems. Wilkinson and Pickett's 2009 study found that a much higher percentage of the population suffers from mental illness in more unequal countries.²⁵

Theme	Policy example
JOINT RESPONSIBILITY	Recognition of the societal causes of mental illness and prevention of mental illness by reducing inequality, discrimination, and exclusion.
• Getting a fair share of resources	Reform of social security law to allocate resources in a way that recognises the difficulties involved in undertaking paid work for people experiencing mental illness (eg, advocating for amendment of the qualification criteria for Disability Support Pension so it is available to people with a mental illness who need income support).
• Equal access to opportunities and rights	Free legal assistance to people with a mental illness (eg, through The Mental Health Legal Centre in Victoria) including assistance with Centrelink appeals, criminal matters, issues relating to dealings with DoCS or discrimination matters.
• Ability to take up opportunities and exercise rights	Community legal education to raise awareness of the rights of people with mental illness and how to enforce those rights. (This can be for people with mental illness and also for the wider community, particularly those who may engage with people with a mental illness such as health workers.)

Theme	Policy example
INDIVIDUAL RESPONSIBILITY	Welfare reforms making the qualification criteria for Disability Support Pension more restrictive, and making it more difficult for people with a mental illness to meet the criteria. (This means that more of the cost associated with having a mental illness is borne as a private expense.)
• Getting what you deserve	
o Status	Past institutionalisation of people with a mental illness, based on the idea that the greater good took priority over the rights of people with a mental illness who were perceived to be less deserving due to native defect. ²⁶ (The legacy of this view is still reflected in the over-representation of mentally ill people in the Australian prison population. ²⁷)
o Moral responsibility	Punitive measures for failure to meet compliance requirements resulting in income support payments being cut off for a period of time or indefinitely.
o Workforce participation	Ineligibility of many people with mental illness to receive disability support pension. (Many people who used to be eligible for disability support pension, which is paid at the higher pension rate, are now assessed as having partial capacity to work and receive the lower working age payment rate.)
• Individual capability	Increase in the welfare participation requirements for many people with a mental illness who were previously exempt, reflecting a perception that they have the capability to undertake paid work.
RECOGNITION OF HUMAN VALUE AND WELLBEING	Education about mental illness to reduce stigma, discrimination and isolation. Privacy law reform to prevent vilification of Disability Support Pensioners in the media (following the release by Centrelink to the media of surveillance footage used in social security fraud prosecution cases). ²⁸

Notes: **1** Eileen Baldry & Ruth McCausland, *Social Justice in Development*, unpublished paper, 2008, **7** **2** Craig, Burchardt & Gordon, 'Social justice and public policy' in Zoë Morrison, *On Dignity: Social inclusion and the politics of recognition*, (Working Paper No. 12, Research and Policy Centre, Brotherhood of St Laurence & Centre for Public Policy, the University of Melbourne, 2010) 3. **3** Paul Smyth, *In or Out: Building an Inclusive Nation* (2010) 24. **4** *Ibid.* **5** Eileen Baldry, 'The Revival of Social Justice' (Speech delivered at the Marg Barry Memorial Lecture, Alexandria Town Hall, 16 September 2010), 5. **6** The full paper of which this article is an extract provides a summary of the historical development of the concept, including the theories of John Rawls and Amartya Sen, and explains the difference between social justice and 'human rights', and between social justice and 'social inclusion'. **7** Richard Wilkinson & Kate Pickett, *The Spirit Level: Why Equality is Better for Everyone* (2009) 17. **8** Baldry, see note 5 above, 15-16. **9** Sean Brennan, Larissa Behrendt, Lisa Strelein, & George Williams, *Treaty* (2005). **10** Baldry, see note 5 above, 9. **11** Rosanna Scutella & Paul Smyth, 'The Brotherhood's Social Barometer: Monitoring children's chances' (Social Barometer Series, Brotherhood of St Laurence 2005). **12** Smyth, see note 3 above, 26. **13** Zoë Morrison, *On Dignity: Social inclusion and the politics of recognition*, (Working Paper No. 12, Research and Policy Centre, Brotherhood of St Laurence & Centre for Public Policy, the University of Melbourne, 2010) 6. **14** *Australian Municipal, Administrative, Clerical and Services Union and others*, [2011] FWA 7000 ('*Equal Remuneration*

Case'). **15** Beth Cook, 'The Social Exclusion Discourse and Welfare Reform', (Paper presented at the Australian Social Policy Conference, Sydney, 8-10 July 2009) 5; Department of Social Security, DSS Annual Report 1996-1997, AGPS 112. **16** Australian Council of Social Service, 'Beyond Stereotypes: Myths and facts about people of working age who receive social security' (*ACOSS Paper 175* 2011). **17** Cook, see note 15 above, 8. **18** Kate Barnett & John Spoehr 'Complex not simple: The vocational education and training pathway from welfare to work' in Cook, see note 15 above, 7. **19** Reference Group on Welfare Reform 'participation support for a more equitable society – final report' in Cook, note 15 above, 5. **20** Axel Honneth 'Recognition or redistribution?: Changing perspectives on the moral order of society' in Morrison, see note 13 above, 3. **21** Morrison, see note 13 above, 20. **22** Tim Slade, Amy Johnston, Maree Teesson, Harvey Whiteford, Phillip Burgess, Jane Pirkis & Suzy Saw, *The Mental Health of Australians 2: Report on the 2007 National Survey of Mental Health and Wellbeing* (Department of Health and Aging 2009) 1. **23** Maria Karras, Emily McCarron, Abigail Gray & Sam Ardasinski, (2006) *On the Edge of Justice: the legal needs of people with a mental illness in NSW*, Law and Justice Foundation of NSW. **24** Cook, see note 15 above, 1. **25** Wilkinson & Pickett, see note 7 above, Figure 5.1 66-67. **26** Bernadette Mary Ibell, *An analysis of mental health care in Australia from a social justice and human rights perspective, with special reference to the influences of England and the United States of America: 1800-2004*, (D Phil Thesis, Australian

Catholic University, 2004). **27** For example, the 12-month prevalence of psychiatric disorders in the NSW inmate population is substantially higher than in the general community, at 74 per cent vs 22 per cent (Tony Butler and Stephen Allnut, *Mental Illness among New South Wales Prisoners* (NSW Corrections Health Service, 2003) 2.) **28** Sue Dunlevy & Milanda Rout 'Centrelink spy videos fed to media', *The Australian* (Sydney) 27 July 2011.

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