

CURRENCY OF EQUALITY: A DISCUSSION ON THE MEASURE OF EGALITARIAN JUSTICE****Sergey V. Vinogradov***HSE University, Moscow, Russia***Article info**

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The article analyses the common egalitarian foundations of contemporary liberal theories of social justice in the context of normative political-legal thought. The study aims to confirm the hypothesis that the dominant paradigms of contemporary Anglo-American liberal philosophy – *utilitarianism*, *liberal egalitarianism*, and *libertarianism* – share a commitment to the ideal of fundamental moral equality, despite profound differences in their normative conclusions.

The methodology employed is a combination of conceptual analysis and comparative theory to identify the underlying assumptions of theories of justice and their implications for legal institutions.

The study demonstrates that although these theoretical traditions advocate divergent positions on property rights, taxation, and redistribution, they are united by an appeal to equal concern and respect for all individuals. Utilitarianism justifies redistributive policies on the basis of maximising aggregate welfare, treating everyone's happiness as equally significant. Liberal egalitarianism, rooted in Kantian moral theory, emphasises equal dignity and argues for institutional structures that promote fair equality of opportunity, even at the cost of substantial redistribution. Libertarianism, while opposing redistribution of income and wealth carried out by the state, invokes equality in its defence of individual autonomy, property rights, and self-ownership, rejecting coercive interference as inconsistent with equal moral status. By reconstructing the internal logic of each theory, the article argues that the disagreement among these frameworks centres not on whether equality matters, but on the appropriate "*currency of equality*" – whether justice requires equality of resources, opportunities, welfare, or respect for autonomy, civil rights, and self-ownership. The analysis highlights the implications of these disagreements for constitutional theory, legal policy, and the interpretation of socio-economic rights.

The conclusion affirms the study's hypothesis and emphasizes the necessity of an explicit democratic dialogue about the proper metric of equality in law and policymaking. Rather than relying on implicit or historically contingent legal interpretations, the paper calls for legal scholars and policymakers to engage in principled reasoning about what kind of equality legal institutions ought to embody. Such reflection is essential for designing legal institutions that are not only formally fair but substantively just.

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1. Introduction

Social inequality is one of the central issues facing researchers in various fields of legal thought. The widening gap in the well-being, living standards and opportunities across social groups highlights the need for effective protection of socio-economic rights, their proper constitutional and legal entrenchment, and the development of effective institutional mechanisms for their implementation and protection.

Identifying forms of inequality and designing legal mechanisms to eliminate them requires a more precise understanding of the concept of equality and the ideal of social justice. Contemporary legal theory is based on the values of justice and equality, but faces the problem of the vagueness and ambiguity of these concepts: the literature notes the lack of a systematic approach to equality and the 'lack of a sufficient theoretical and practical basis' for the consistent implementation of equality in different spheres [1, p. 36]. The root of this problem can be assumed to lie in the excessive 'abstractness' of the relevant categories, but the number of legal norms and court decisions detailing the requirements of equality in specific areas is sufficient. The problem is rather the opposite: in normative acts, court decisions and scientific publications, appeals to equality and justice are often heterogeneous in nature and justify opposite conclusions. Researchers discuss different aspects of inequality without offering a unified conceptual framework that could define criteria for evaluating specific decisions from the perspective of equality.

The need to clarify the legal ideals of justice and equality is recognised by researchers in a wide variety of legal fields [2, p. 28–29; 3, p. 93]. A systematic theoretical understanding of these categories could bring order to the approaches that have developed in practice and offer guidelines for resolving specific legal issues. How can we determine the limits of redistributive policies that are consistent with the principles of justice? Which legal institutions of social protection can guarantee equal opportunities for all citizens? The development of

political and legal criteria for comparing different mechanisms of compensation for inequality requires deep reflection on the theoretical aspects of egalitarianism.

Over the past half-century, political philosophy, especially in the Anglo-American tradition, has developed a powerful conceptual apparatus for analysing equality and justice. In the West, mainstream political thought has offered detailed approaches to understanding the ideal of 'equal respect,' which has become the fundamental basis for discussions of justice and equality. The article further analyses the significance of 'fundamental equality' for the development of contemporary normative political and legal thought and demonstrates differences in its understanding using examples of social justice theories proposed by leading strands of mainstream Anglo-American political philosophy, such as utilitarianism, liberal egalitarianism, and libertarianism.

2. The egalitarian nature of contemporary theories of justice

The early 1970s are commonly associated with a revival of interest in normative political and legal philosophy in academia [4, p. 11]. The period of clear dominance of positivist methodology, focused on empirical research and the 'purification' of the social sciences from judgements about values, was followed by a renewed focus among philosophers and social theorists on the search for and justification of moral guidelines in public policy.

In jurisprudence, this trend is reflected in the development of the concept of human dignity and the doctrine of human rights, in the emergence of new influential natural law theories or, more broadly, theories of 'normative anti-positivism'. Lawyers became actively engaged in studying the moral requirements of the legal system, issues of justice and legitimacy of legal institutions, and problems of legal policy. In political philosophy, the revival of normative theories is associated with the 1971 publication of *A Theory of Justice* by the American political philosopher John Rawls and the

resulting surge of interest in the problem of the just organisation of political institutions in society [5, p. 27].

Justice, traditionally one of the central concepts in debates about the nature and purpose of law, has become a core topic in normative political discussions about democracy, social inequality, and market freedoms. The emergence of numerous theories of justice since the early 1970s can be seen as building intellectual bridges between normative political philosophy and jurisprudence. This connection provides lawyers with a solid theoretical basis for critically evaluating legal institutions, systematising principles of law, and selecting legal policy objectives.

But what can serve as a guide for navigating the wide variety of contemporary theories of justice? Political philosophers have traditionally proposed different values as central elements of social justice theory: the common good, liberty, equality, desert, responsibility, and so on. Depending on what was the key criterion for evaluating social and political organisation, it was possible to classify the spectrum of political theories: right-wing liberals valued liberty above all else, while left-wing socialists valued equality.

However, by the end of the 20th century, this simplified understanding of the political landscape had largely lost its relevance for the purposes of analysing Western political and legal thought. Contemporary authors seek not so much to substantiate a 'monistic' theory of justice, which subordinates the entire legal order to a single political value, but rather to create an integrative theory that offers a set of criteria for resolving conflicts between different ideals [5, p. 17–19]. The theorists, who are polar opposites in their political views, turned out to be extremely similar in this endeavour, and their desire to reconcile different political ideals led them to the most general, basic ideas of post-Enlightenment political thought. First and foremost, to the egalitarian ideal.

As economist and philosopher Amartya Sen noted: 'every normative theory of social justice that has received support and advocacy in recent times seems to demand equality of something – something

that is regarded as particularly important in that theory' [6, p. 12]. Equality is not opposed to liberty [7, p. 25–44] or responsibility for choice¹ as a competing value that must be balanced—it is assumed to be a higher-level ideal that supports all other intuitions and arguments. This is 'fundamental' equality, in John Rawls' words — 'equality as it applies to the respect which is owed to persons irrespective of their social position' [9, p. 511]². The recognition that the interests of all members of the community should be given equal weight in a just legal order — an 'abstract egalitarian thesis', in the words of American legal philosopher Ronald Dworkin — forms the basic plateau for rational political discussion about justice [11, p. 24–25]. The idea of equal treatment of citizens by public authorities — equal respect for all and equal concern for the interests of each — has become commonplace in the vast majority of contemporary theories.

It is not surprising that compliance with this ideal of equal respect has become the most important criterion for the critical comparison of different theories of justice and the evaluation of the legal institutions they propose³. For the most part, the Anglo-American debate on social justice at the end of the 20th century can be reduced to a dispute over the correct understanding of fundamental equality that ensures the proper political and legal structure of society. This is a dispute about the appropriate 'currency of

¹ An entire theoretical branch of mainstream political philosophy has developed around the justification of the role of personal responsibility in egalitarian theory of justice — luck egalitarianism [8].

² Ronald Dworkin transferred this political-philosophical idea of Rawls into the philosophy of law [10, p. 248].

³ As Ronald Dworkin noted: 'Government, we say, has an abstract responsibility to treat each citizen's fate as equally important. Rival conceptions or theories of equality are rival answers to the question of what system of property would meet that standard' [12, p. 398–399]. Thus, the debate over legal policy (the establishment of specific institutions, the guarantee of rights and the setting of their limits, etc.) must be resolved on the basis of the interpretation of the principle of equal respect and its proper interpretation.

equality'⁴: whether institutions must represent formal equality of rights or equality of real opportunities to protect those rights? Equality of income or equality of cumulative wealth? Equality of initial resources or equality of final welfare? Equality of occupational prestige or equality of opportunities for career success? Consider the following examples.

3. The currency of equality in the dispute over justice

The academic debate on inequality and social justice, which began after the publication of John Rawls's *A Theory of Justice* in 1971, includes a vast number of controversies, theories, and arguments⁵. To demonstrate the common egalitarian nature of this debate, let us consider several major trends that, according to Will Kymlicka, reflect the mainstream of contemporary political philosophy. The core of the discourse on social justice consists of arguments from three main schools of thought that 'have come to define the language of political debate in Anglo-American liberal democracies': utilitarianism, egalitarian liberalism, and libertarianism⁶ [5, p. 13].

(a) Utilitarianism

Utilitarianism is the most influential tradition of normative justification in ethics and political thought — by the second half of the 20th century, this doctrine had achieved a dominant position in Anglo-American academic discourse⁷. The view of classical

utilitarians on the problem of social justice can be characterised as derived from their central principle of utility: a political and legal system that maximises the total utility in society — the overall level of happiness and well-being of its members — is recognised as morally necessary [16, p. 9–11]. Such a redistribution of resources, which can increase the current level of utility (and will not destroy it in the long term), should be recognised not only as necessary from the point of view of rational public policy, but also as socially just [17, p. 229–231].

It would seem that utilitarian discourse on resource distribution focuses on the issue of economic efficiency (choosing appropriate metrics of well-being and effective ways to maximise it) and leaves the issue of equality on the periphery. However, from the moment it emerged, the utilitarian project was deeply egalitarian. Utilitarians advocated for active legal and social reform of English society and the fight against inequality as an obstacle to the common good⁸. The key ambition of the utilitarian tradition — to create a universal ethical metric that allows the happiness of every person to be taken into account equally, regardless of their social status — places the principle of equal attention to the interests of everyone at the centre of the entire normative project, placing it at the foundation of social justice.

By the second half of the 20th century, utilitarianism had changed significantly from its classical form: authors began to define themselves more often within the broader framework of consequentialism, and there was a shift in emphasis towards comparing the utility of institutions (rights, rules, etc.) rather than specific actions or decisions [18]. Nevertheless, the principle of marginal utility, which underlies the utilitarian approach to the problem of wealth inequality, has retained its significance in contemporary theories [19, p. 27]. Since the marginal utility of resources for individuals decreases as their quantity increases (each

views, was the founder of English legal positivism. For more details, see, for example: [15].

⁸ For example, I. Bentham considered a project to reform the property system, which would allow for a more equal distribution of wealth [15, p. 184–185].

⁴ That pretty accurate term was used by Gerald Cohen in a debate with Ronald Dworkin and Richard Arneson [13].

⁵ Published in 1982 (just 11 years after the publication of *A Theory of Justice*), the annotated bibliography *John Rawls and His Critics* already included a list of more than 2,500 books and articles about Rawls [14].

⁶ It should be noted separately that the division into these areas is largely arbitrary: authors often resort to arguments characteristic of different traditions, may hold borderline views, etc.

⁷ Throughout its history, utilitarianism has been closely linked to the Anglo-American tradition of legal positivism, which has been the mainstream philosophy of law. Thus, the founder of utilitarianism, lawyer and philosopher Jeremy Bentham, was the author of a number of influential ideas on analytical jurisprudence, and his friend and colleague, lawyer John Austin, who shared utilitarian

additional unit increases happiness less and less), institutions that redistribute resources in favour of less well-off groups are not simply a way of helping those in need, but a rational way of increasing overall utility. This argument can be seen as a reflection of the egalitarian maxim attributed by John Stuart Mill to the founder of utilitarianism, Jeremy Bentham: 'everybody to count for one, nobody for more than one' [17, p. 231].

(b) Liberal egalitarianism

In contemporary normative discussions about justice, liberal egalitarianism is clearly one of the most influential approaches. This strand of liberal thought gained its status as part of the academic mainstream thanks to the works of John Rawls and Ronald Dworkin, who actively criticised utilitarianism and proposed a theoretical basis for an alternative approach to social justice based on the Kantian contractarian tradition.

Liberal egalitarians justify the principles of proper institutional organisation of society by referring to equality as a central category. It is not surprising that this idea occupies a key place in their theories, since the entire tradition stems from the thesis of the moral equality of subjects: the conviction that every person, by virtue of rational autonomy, possesses equal intrinsic value and dignity. Fundamental moral equality requires the elimination of arbitrary distinctions in the treatment of people and an impartial approach to the choice of principles of social organisation⁹.

Just as the concept of dignity in legal philosophy became the basis for the development of the system of human rights and liberties [20, p. 99–101], in political philosophy the equality of citizens' dignity led to significant conclusions regarding democracy and social inequality. The idea of dignity gives rise to the need for democratic equality—the equality of basic rights and liberties for all citizens—as declared

by liberal egalitarians¹⁰. In the socio-economic sphere, the idea of equal dignity gives rise to egalitarians' intolerance of property inequality. Can the existing legal regulation of property and the norms of contract law be considered impartial — institutional conditions that are equally respectful of every citizen — if they create deliberately unequal conditions for competition and chances for social success depending on morally arbitrary factors such as parental wealth, innate talents or health?

According to John Rawls' principle of difference, inequality in primary goods is considered acceptable from the point of view of justice only to the extent that it improves the situation of the worst-off citizens, demonstrating equal institutional respect for them [9, p. 66, 88, 160]. Ronald Dworkin attempted to make egalitarian justice more sensitive to citizens' personal responsibility for their actions, emphasising the unequal initial distribution of internal resources and the need to create equal conditions for achieving success through one's own efforts¹¹. But despite differences in the normative assessment of natural inequality in talent, health, and other internal resources, the common driving force for both authors was the desire to incorporate the ideal of fundamental moral equality into their political philosophy.

(c) Libertarianism

Libertarianism, usually viewed as a critique of liberal egalitarianism 'from the right,' is assessed by Will Kymlicka as one of the main options for justifying liberal democracy [5, p. 13]. This assessment is fair insofar as it reflects the tendency of contemporary libertarian theories to appeal to their liberal roots in the theories of J. Locke and A. Smith, positioning themselves as an updated

¹⁰ In Rawls' theory, this egalitarian requirement is embodied in the first principle of justice—the principle of equal liberty: 'each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others'. This principle should be the primary standard for the constitutional assembly in order to ensure the fairness of the political process. See: [9, p. 66, 180].

¹¹ For a detailed account of the arguments in favour of resource equality and the need to compensate only brute luck, see: [21; 22].

⁹ John Rawls illustrates his theory of justice as fairness with the metaphor of a 'veil of ignorance' that hides from participants negotiating principles of justice knowledge about their position in society. Public institutions must comply with principles that could be accepted by citizens under conditions of equality in their negotiating position. See: [9, p. 127–131].

version of 'classical liberalism'¹². Robert Nozick's theory, which is at the centre of W. Kymlicka's analysis and undoubtedly offering the most famous libertarian response to John Rawls' egalitarian theory of justice, can reasonably be attributed to this 'minarchist' branch of libertarianism, which defends the idea of a minimal state and the institutions of liberal democracy.

At the same time, libertarianism should not be reduced entirely to the right-wing, pro-market version of liberal democracy — a significant number of libertarians, who can be roughly classified as belonging to the 'anarcho-capitalist' branch of the tradition, take a much more radical view of the democratic institutions of the state and sharply distance themselves from liberalism¹³. Supporters of these views often hold radical positions on equality, but (largely for this reason) are not part of the academic mainstream¹⁴ — therefore, in the rest of this article, libertarianism will be understood as the 'moderate' school of thought that Kymlicka considers to be at the core of contemporary political discourse.

This tradition considers social justice through the prism of protecting individual rights and liberties, with particular emphasis on the inviolability of private property. Libertarians argue that redistribution through taxes and other social protection mechanisms promoted by the welfare state undermine the essence of legal protection of property and violate the autonomy of individuals [23, p. 193–213]. This opposition to state policies aimed at combating wealth inequality is often interpreted as a rejection of the idea of equality.

At the same time, viewing libertarians solely as advocates of liberty as opposed to equality would be a gross oversimplification. The appeal to equality occupies a central place in libertarian argumentation — state intervention in the market economy is

criticised as 'unfair and inegalitarian' [23, p. 200]. Taxation as a form of redistribution is considered 'on a par with forced labour' [26, p. 216] and as reflecting the unequal treatment by state institutions of citizens' personal conceptions of well-being: 'Why should we treat the man whose happiness requires certain material goods or services differently from the man whose preferences and desires make such goods unnecessary for his happiness? Why should the man who prefers seeing a movie (and who has to earn money for a ticket) be open to the required call to aid the needy, while the person who prefers looking at a sunset (and hence need earn no extra money) is not?' [26, p. 218] Coercive redistribution through taxation is seen as an infringement on human dignity and the autonomy of citizens, and respect for equality is cited in defence of rejecting broad redistribution programmes.

Respect for the fundamental equality of people is also expressed in the concept of self-ownership, the basis of Robert Nozick's historical principles of distributive justice [26, p. 194–198, 222–232]. The idea that every person, according to natural law, owns themselves and their abilities implies respect for the moral autonomy of other people and requires equal rights for everyone to acquire resources that are not initially owned by anyone. Moreover, Nozick requires compliance with the so-called 'Lockean proviso' in the initial appropriation — the need to leave 'enough and as good' for the common use of others [27, p. 192–193]. The Lockean proviso has a long tradition of interpretation, and the very problem of common ownership of land and the conditions for fair initial appropriation leads some left-wing libertarians to argue for the need for significant institutional redistribution in order to equalise the benefits of natural resource use [28; 29, p. 199–203].

Thus, despite its criticism of liberal egalitarianism, libertarianism does not reject the ideal of equality per se. The concept of fundamental equality is expressed through the defence of autonomy, equal opportunities for primary appropriation, and respect for the dignity of each individual. The ideal of equal respect, central to

¹² A concise but informative summary of the arguments concerning the transformation of the term 'liberalism' in the 20th century and the political necessity for supporters of the free market to invent a new label can be found in David Boaz's work [23, p. 33–38].

¹³ For more information on the radical roots of modern libertarianism, see: [24].

¹⁴ For the reasons for this 'rejection' of radical libertarian theories by the academic community, see [25].

mainstream political thought, permeates the libertarian view of justice, but leads defenders of liberty and property to opposite conclusions regarding the specific institutional solutions that would realise the egalitarian ideal.

4. Conclusion

Every political and legal system is based on a certain understanding of justice, which, even if not directly codified in legislation, is implicitly present in the constitutional norms that define the basic political and economic institutions of society. The theory of justice underlying a particular legal order has a significant impact on the entire legal system: it shapes key constitutional principles and institutional arrangements, permitted forms of ownership, and the extent of state involvement in social policy.

One of the central categories underlying contemporary theories of justice is the concept of equality. Through the prism of society's understanding of equality, the permissible limits of state redistribution of wealth, social guarantees and institutions of legal protection, and conditions for the realisation of civil rights are determined. Equality serves as an essential measure of the effectiveness and legitimacy of political and legal institutions—a key metric in setting legal policy. Studying the concept of equality provides an important theoretical guide for legislators, helping them to develop recommendations *de lege ferenda* and formulate appropriate legal policy.

It must be noted that the question of the appropriate 'currency' for measuring equality is one of the most significant and controversial issues in contemporary political and legal thought. Egalitarian theories of justice, which have developed within the framework of contemporary Western analytical tradition, attempt to offer a normatively grounded answer to the fundamental question: in what respect and to what extent is equality a criterion for evaluating the institutions of a just society? The complexity of this problem is that agreement on the basic role of 'fundamental equality' does not in itself resolve disputes about the correct implications of the principle of equal respect for constitutional theory and legal policy.

At the same time, the problem of choosing a 'currency of equality' cannot be circumvented by simply appealing to historically established legal institutions of interpreting justice. Professor Jennifer Nedelsky is right in saying that the model of constitutional protection of socio-economic rights within the framework of judicial control and supervision cannot in itself guarantee the realisation of justice and equality — it is necessary to identify democratic mechanisms for dialogue between various government institutions and individual members of civil society on the meaning of equality [30, p. 97]. This dialogue cannot be reduced to reproducing the views on justice held by the majority of citizens through the mechanisms of representative democracy — it must include active public discussion, explication and normative assessment of the basic principles of equal treatment that form the basis of existing legal institutions in the socio-economic sphere. Within the framework of this discussion, recourse to the ideal of 'equal respect' by the legal community can be an important guideline in the development of practical mechanisms for combating social inequality.

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