2 Philosophical Conceptions of Justice

In this chapter I intend to discuss, primarily, those theories of justice referred to in the last chapter as liberal, libertarian and socialist. This is because these are the prime modern examples of what, towards the end of the last chapter, I characterized as rationalistic theories. As one would expect, these also happen to be the theories whose main preoccupation in the context of justice is what, in Chapter 1, I called the narrow sense of ‘social justice’, dealing primarily with questions of fair distribution of economic and political goods in society. As a useful prelude to the discussion of these theories, however, I include a brief reference to Aristotle. This is only partly because his views on justice can be safely regarded as of the rationalistic type, appealing as they do, not to any transcendental reality but to common-sense or human reason in decisions concerning questions of justice. This might have been enough of a reason for the inclusion of Aristotle here. But there are also two additional, but related, reasons. One of them is that it is to Aristotle that we owe some of our very important technical vocabulary and maxims relating to justice. But secondly, and more importantly, some of his distinctions and maxims, although formulated a long time ago, still have relevance, even if only as starting points; and references to Aristotle even by modern theorists of justice are not infrequent.

ARISTOTLE

To start with, we owe him the distinction between justice as the whole of virtue and justice as a particular virtue. In the former sense, being just is synonymous with being virtuous or moral. The religious notion of righteousness seems to be closer to this sense of justice. But, as a particular virtue, justice means fairness or equality: one is just in this sense if one does not take more than one’s due. Aristotle’s thinking about justice in this latter sense is a direct corollary of his more general theory about virtue itself, particularly of his doctrine of the ‘golden mean’. Virtue, according to him, is the ‘geometrical’ mean between excess and privation, for example, courage, between foolhardiness and cowardice. Justice, likewise, is the mean between too much and too little. Just as there is an actual
mid-point along the length of a given straight line which divides the line equally, so in principle justice can be located by pinpointing what is equal – that is, neither too much nor too little, neither the excess nor the privation of a given commodity or quality. Any allocation that is too much or too little is unjust because it is unequal. Another way of making the same point adopted by Aristotle is to say that justice is the neutral state (mid-point) between doing and suffering injustice. Here are Aristotle's own words:

Just action is intermediate between doing injustice and suffering injustice, since the former is to get too much and the latter is to get too little. Justice is a sort of middle state, but not in the same manner as the other virtues are middle states; it is middle because it attaches to a middle amount, injustice being the quality of extremes. Also justice is the virtue which disposes the just man to resolve to act justly, and which leads him, when distributing things between himself and another, not to give himself a larger portion and his neighbour a smaller one of what is desirable, and the other way about in regard to what is detrimental, but to allot shares that are proportionately equal; and similarly when making a distribution between two other persons. . . . In an unjust distribution to get too little is to suffer injustice and to get too much is to do injustice.¹

It should be clear that Aristotle is here referring, directly at any rate, to what he calls 'distributive' justice, which relates to the distribution of goods, such as money, honour etc., among people according to their desert. 'Corrective' justice, by contrast relates to rectifying injustices in transactions, for example, buying and selling, and so on, or those relating to crime and punishment. (This distinction has already been mentioned in the previous chapter. I bring it up here again in order to give an indication of its role in developing maxims or principles of justice.) Even in this regard, though, the judge can be said to be restoring fairness, equality or due proportion: he or she would be trying to determine if the price paid 'equals' the crime. One way or another, then, equality seems to be crucial to considerations of justice, and so is the need to keep irrelevant differences out. But there is no positive doctrine here about what are to count as relevant differences and what it is in respect of which equality is to be sought nor who are to be regarded as equals. It merely says 'give to equals equally', whatever it is that is to be given and whoever the equal recipients might be. It is important that the judge be impartial; and if a state administers its laws impartially through its judges, then the state can be said to be just.

'Political' justice 'exists between men living in a community for the purpose of satisfying their needs, men who are free and who enjoy either absolute or proportional equality. Between men who do not fulfil these