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# SOCIAL JUSTICE

## ANALISYS OF THE CONCEPT OF ECONOMIC JUSTICE ACCORDING TO C. B. MACPHERSON

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**Celio Roberto Correa**

Mestrando em Direito no Centro Universitário Internacional (UNINTER). Advogado.

**Jéssica Jane de Souza**

Mestranda em Direito no Centro Universitário Internacional (UNINTER). Advogada.

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**Resumo:** This article refers to studies and research on the economic justice model proposed by C. B. Macpherson, aimed at promoting social justice. Currently, much is discussed about the interdisciplinarity of law and how economics can positively contribute to the Study of Social Justice. Considering that economic justice is based on market and economic capital matters, as well as on equal accesses, it is necessary to understand it to further reflect on the possibility of using such a justice model as a means of promoting social justice, that is, of something that aims at collective well-being. The article is organized as follows: the first section presents theoretical aspects about the concept of justice and economic justice; section two seeks to comprehend whether economic justice is capable of preserving human dignity; section three describes the proposal for the return of economic justice according to C. B. Macpherson. It ends by presenting the final considerations, suggestions for future work and the references used.

**Palavras-chave:** Concept of Justice; Equal accesses; Economy.

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## 1 INTRODUCTION

The article seeks to analyze the conception of economic justice from the work "The Rise and fall of economic justice and other essays" by C. B. Macpherson, it is believed that such a model contributes to the promotion of social justice.

The Author, who has a deep knowledge in political theory, begins his work with the concept of economic justice, which differs from the fundamentals of the concept of justice in general.

Historically, the definition of justice has undergone transformations, with the Aristotelian doctrine being responsible for formulating the first and current concept of economic justice.

This type of justice has a character linked to monetary and ethical values, its essence is in the protection of the individual and mainly in equality and collectivity matters.

As Law and Economics are increasingly closer, thus being its multidisciplinary necessary for the study of legal science, it is understood that the comprehension of economic justice and its functioning may be useful to strengthen social and academic debates, as the current model of justice in Brazil seems overloaded and ineffective.

Initially, it will be verified the concept of justice based on Hans Kelsen and other Authors who define access to justice aimed at social balance and protection of fundamental human rights, C.B Macpherson's conceptions will also be studied to delimit what is economic justice.

It also seeks, based on the work studied, to analyze whether economic justice is able to contribute towards minimizing social inequalities, considering that financial matters cause numerous problems such as hunger, environmental imbalance, education, justice and health access limitation.

Therefore, the methodology used in the studies and research carried out so far is the critical-reflexive one that operates through the bibliographic review.

In general terms, the possibilities of returning to the use of economic justice and if this can be considered something positive in the social sphere will be studied, since historically, there has been countless attempts that were ultimately unsuccessful, all explained by C. B Macpherson

## 2 JUSTICE AND ACCESS TO JUSTICE

In the words of Hans Kelsen (2001, p. 02), *justice is, above all, a possible, but not necessary, characteristic of a social order*. The Kelsenian conception of Justice can be understood as an inherent virtue to the human being, since a person can be considered "righteous" when

they behave according to a legal order considered fair, for satisfactorily regulating human behavior, to the point of allowing all to find their ideal of "happiness".

Hans Kelsen clarifies that happiness is not absolute, because in certain moments there will certainly be conflicts of interest, which can generate imbalances. Moment that the social order will not be able to resolve them to the point of making everyone involved equally satisfied<sup>1</sup>.

Individuals have different conceptions of what happiness is, the social order can guarantee exclusively the objective-collective sense and not the subjective-individual. It is worth saying that happiness can be understood as the satisfaction of certain needs recognized as such by the social Authority - the legislator-, such as the need for food, clothing, housing and equivalents (KELSEN, 2001, p.03)

For Fernando L.L.D'Eça, Justice can be considered as *a principle of harmony, proportional equality and reciprocity* (D'EÇA, 2017, p. 43), understood as a process of exchange or distribution of goods and rights, inherent to intersubjective relations in order to attribute to each one what it really belongs to them. It is based, then, on valuation criteria, which aim to include economic content to legal relations.

According to the previously mentioned author, the term Justice can be used from a formal aspect that means the *faithful realization of the law* in the face of arbitrary actions, and in the substantial aspect, in which *essential social values are considered* (D'EÇA, 2017, p.44) to instruct the existing law. Such meanings must be recognized and reconciled to generate balance between the parties of a legal relationship, to preserve and limit the autonomy and the individuals dignity, as they are independent and indispensable within an organized civil society and cannot be misunderstood as the whole internalized in the form of State.

For John Rawls (1997, p.05) justice can be understood as a virtue of social institutions, just as the truth is for systems of thought. In this sense, when a theory is not true, it should be rejected or even revised, even if it is elegant and even economical, applying this reasoning to laws and institutions, it is useless to be organized and efficient if they are unjust, the right thing to do would be to abolish or reform them.

In this sense, to John Rawls each subject has something that is inviolable and that cannot be ignored by social welfare, as it is something based on justice. This being the reason why justice does not allow inequality, that is, that some are sacrificed for the good of the majority. Thus, in a

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<sup>1</sup>Kelsen explains that "If justice is happiness, then just social order is impossible, as long as justice means individual happiness. A just social order is impossible even on the premise that it seeks to provide, if not the individual happiness of each one, at least the greatest possible happiness to the greatest number of people". This concept refers to the idea of social justice that aims to cover most people.

society considered fair, it has equivalent and inviolable citizenship freedoms; justice ensures rights that cannot be negotiated by politics or valued in benefit of social interest. The author concludes that *an injustice is only tolerable when it is necessary to avoid an even greater injustice* (RAWLS, 1997, p.05), with justice being something unavailable.

Another equally important concept is that of access to Justice, which has historically undergone mutations based on social progress and the complexity of human relations.

Effective access to justice has gained prominence as a fundamental requirement, being considered one of the most basics of the human rights existing within a legal and egalitarian system (CAPELLETTI, 1988, p.12). Such recognition, social as it is, is necessary due to the need of having an effective balance of forces in all relationships, in order to ensure, especially for the underprivileged, giving them the proper representation and conditions to fight for their interests, transposing thus the obstacles that prevent access to justice (CAPELLETTI, 1988, p.9-12).

In Brazil, the State is responsible for creating means that facilitate equal access to Justice in all its areas, there are even mechanisms such as exemption from costs through Free Justice and the Public Defender's Office that aim to serve the needy population.

After a brief analysis of the concept of justice and access to justice, the study of what economic justice is begins, according to C.B Macpherson an obvious requirement is that its concept concerns the existing economic relations in a society, between individuals as producers, owners or exchangers of valuable goods and services (MACPHERSON, C. B, 1991, p. 14-15).

Economic justice can be understood as a model of the overall concept of justice since economic relations can be seen as distinct from social and political relations and as a result, need specific principles and some ethical principle inferred in natural law.

The first mention of the term economic justice was made by Aristotle, in the fourth century BC, a period of the modern extremity, together with a distinction between simple market economy related to production and exchanges for consumption, from the complex market economy, which necessarily aims at profit, moment when traders bought products and resold them to obtain a profitable margin, with a focus on increasing their wealth (MACPHERSON, C. B, 1991, p. 19).

For Aristotle, the complex economy destroyed man's dignified life, considering that its starting point was money, thus having an unnatural character from three perspectives. In the first, it appears that the acquisition has become an end by itself and not means to achieve a dignified life, the individual has become an accumulator and this process has no limits, and the dignified life needs only limited resources, it is an unfair economy, whereas a man makes a profit at the expense of others (MACPHERSON, C. B, 1991, p. 19).

Aristotelian doctrine contributed to the maturation of the concept of economic justice in Medieval Europe, subdivided into commutative justice and distributive justice. The first refers to exchanges made for a "fair price", that is, a price that maintains social standards and a certain balance provides the producer with a gain that is consistent with their needs and social position. In this period, the values of the products were determined by social life, for example, with the occupation and qualification of the person and not with the market indexes.

Distributive justice, instead, is based on the ideal that every family should have the necessary income to maintain a dignified life, so there is a *distribution among citizens of society's the global product*, on the other hand, there is no accumulation of wealth by traders not to generate inequality and also not to jeopardize people's livelihoods and interfere in the means of consumption.

In the conception of Rodrigo RabeloLobregat (2017, p. 224), the effective realization of a social justice must contemplate the distributive modality and commutative retributive logic, so that each individual receives their consideration according to their work, personal production and creation. In this sense, when a good is produced by an entrepreneur, for example, they will take advantage of most of the consideration and the rest will be destined to society, and this will have to reserve part of the collection for people in situations of vulnerability.

With the evolution of society, economic justice has gone through periods of rise and fall, with its concept always being resumed according to Aristotle's guidelines, in which, basically, commutative justice demanded a fair price, exchanges should always be made between objects of the same value, at least for the value that both parts of the business agreed as fair. And the distributive was linked to the merit that each human being, the product of society was distributed according to the value that the citizen had to be entitled to the merchandise (MACPHERSON, C. B, 1991, p. 22).

For C.B Macpherson (1991, p.28), in different periods of history, liberal theorists have omitted the notion of economic justice to emphasize the market and minimally compensate for distributive effects.

The Author explains that economic justice has disappeared because it is not viable for the State, consequently justice and its general model have also been affected, being reduced to the calculation of maximum utility, aimed at the solution of contracts. While the capitalist market economy gained space and a bias considered beneficial with the false idea that the concept of justice seemed to be unnecessary, even deluding theorists who no longer bothered to define it.

### 3 IS ECONOMIC JUSTICE ABLE TO PRESERVE HUMAN DIGNITY?

Art. 170 of the Constitution of the Republic of 1988<sup>1</sup> presents the fundamental principles of the economic order, which can be interpreted as a means of making the valorization of the working human being and at the same time guarantee their freedom.

The mentioned constitutional precept is not restricted to the economic sphere, since it turns to the sphere of social justice in which the collective bias prevails over individual interests, there is a reciprocal dependence between people.

In the words of Oscar Dias Corrêa (1994, p. 206), social justice implies in:

Improvement of living conditions and distribution of assets, reduction of social inequalities, with the rise of the less favored classes. It is not an objective that is achieved without continuous effort that affects the economic order itself and its beneficiaries

Social justice can interfere in the economic order, to contribute and implement the living conditions of everyone in society in search of achieving dignity and satisfaction (RODRIGUES, 2017, p. 162).

Luis Fernando Barzotto (2003, p.11) understands that *social justice can be based on the social character of the human being*. In this way, the individual only reaches it when he is involved in the whole, as in a network of obligatory relationships, it is as if everyone:

owe something to everyone as members of the community. Firstly, everyone must have their dignity as human beings recognized, which in the legal-political field means that everyone has identical rights and duties: "each citizen has the same legal and political rights", and to that extent, everyone can develop their "self-respect", which consists of "awareness of one's dignity and a certain ability to put it into action" (53) and which depends only on the status of a human person who is a member of the community.

In the contemporary world there is still disrespect for human rights, governments seem not to insist on defending them, perhaps because other interests may be in conflict with these rights, such as the acceleration of economic growth, or what sociologists tend to call social mobility and growing economic, that is, a system in which some people can aspire to a higher socioeconomic position, if necessary, at the expense of others (MACPHERSON, C. B, 1991, p. 38).

Social evolution and the expansion of capitalism in all continents is undeniable, consequently man turned to the consumer society and started to prioritize individualism and

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<sup>1</sup> Art. 170 of the 1988 Federal Constitution, The economic order, founded on the valorization of human work and free initiative, aims to ensure a dignified existence for all, according to the dictates of social justice, with due regard for the following principles.

having it, for C.B. Macpherson *it is necessary without delay to resize the individualism that is so important to us.* (MACPHERSON, C. B, 1991, p. 39).

Misery spreads across the world without causing strangeness to most people, everyone seems to be concerned about the accumulation of their private capital and feel threatened by the possibility of new social and economic rights.

To answer the question contained in the title of this session, it is enough to be aware that in the third world countries the capitalist line has strength against human rights, whereas the advanced capitalist countries of the West, have lines of force against economic and social rights, they create obstacles to the accumulation of business capital. There is an increasing probability of interference with civil and political rights, in the sense of restricting them because government measures to combat economic stagnation are not viable (MACPHERSON, C. B, 1991, p. 52).

In this sense, explains the Author, there is an illusion that economic growth is positive for everyone, when its foundation is based on the oppression of rights already conquered, people start to settle for less and put at risk everything that has been achieved after years of struggle for specific groups in society. The need to think collectively as in remote times is evident, in order to maintain the essential rights already guaranteed, such as, for example, health, education and respect for workers.

Economic justice seems to guarantee a certain social and economic balance, since it aims to value the individual, his work and generate an equal distribution of income, consequently preserving human dignity, for this reason it has fallen into disuse several times, because *as it triumphed capitalist market economy made the notions of distributive justice and commutative justice useless and obsolete* (MACPHERSON, C. B, 1991, p. 27), in order to weaken the fight against market dominance.

C.B. Macpherson observes that over the centuries, specifically, in Western society in the 20th century, it is possible to identify three changes that resulted in the reemergence of economic justice, the first being the expansion of unions and workers' or social democratic parties, all use their concept as an ideal to even win voters.

The second change refers to the decline in competition in the face of capital concentrations, in which few companies with significant economic power dominate the market in different sectors. When this happens, it is not possible to say that the market treats buyers and sellers equally, fairly as previously studied, generating disparity and a supremacy of entrepreneurial capital over society (MACPHERSON, C. B, 1991, p. 29).



Finally, the third change, equally important the others, is the presence of the State as an intervener in the distribution of income, the market is no longer solely responsible for the distribution of the annual and global product among those who contributed to its production.

Regarding the changes pointed out by Macpherson, it is clear that both are directly related to State intervention. See in this sense that the creation of Unions has always been subject to government approval, despite the recognized contradiction to the text enshrined in the OIT Convention No. 87, which is vigorous in ensuring union freedom. The same applies in relation to the decline in competition due to major mergers, which are also controlled, or rather, their incorporation plans properly approved by the State, which does so in the figure of the Administrative Council for Economic Defense - CADE.

As can be seen, in a certain way, the State prevents or distorts the distribution previously carried out by the market, *currently distribution is still mainly done through the markets, but not through the markets: the part that is done through the markets belongs to the State and to powerful groups* (MACPHERSON, C. B, 1991, p. 29) of companies in full operation.

In this sense, it emerges from the Marxist State Theory that there is a confrontation from two perspectives, the first with the deep understanding that there is a very tenuous relationship between the capitalist class and the state apparatus, which is understood as an instrument of dominant classes, being used for their interests. The second perspective, on the other hand, considers to be correct the intervention of the State in very specific interests, which maintains a focus on the protection of social relations, and which serves as a requirement for the domination of the social class. This means to effectively say that the State is not working in favor of this or that class, but that in fact it ensures the maintenance of the rules that constitute and give life to the capitalist class society (OFFE, 1984, p. 122-124).

In effect, the concept of capitalist state “refers to an institutional form of public power in its relationship with material production”, marked by four determinations. The first is called “production privatization” and consists of the fact that public power within this capitalist structure cannot intervene in material production, entirely under the command of private initiative and, therefore, free from political interventions. The second determination on the other hand concerns “dependence on taxes”, that is, the State's dependence on the taxes it collects and which are necessary for the maintenance of the machine, and which directly depends on the volume accumulated by the private sphere (OFFE, 1984, pp. 122-124).

The third determination is “accumulation as a reference point”. Said content concerns the need of the State to promote means that favor private accumulation, which does not mean that

there are benefits directed to certain classes or layers, or even privileged access by capitalists in the decisions taken by the State in favor of the first, except in some institutional exceptions where the event actually safeguards the maintenance of the capitalist structure. In short, it consists of a bureaucracy that balances supply and demand (OFFE, 1984, p.124).

The last of the determinations concerns “democratic legitimation” and consists of obtaining the power that is achieved through general elections, that is, through majority support, recognized for being democratic, representative, and constitutional. It remains equally clear the fact that this formula for obtaining state power is dependent on a model where the public, the voter, is interested in maintaining the accumulation system, which encounters the institutional form of the government, equally dependent on the government. accumulation system (OFFE, 1984, p.124).

It can be seen with this that State intervention can be seen as a response to pressure from labor movements, also by pressure from organized capital sectors or even to try to save the system itself.

For Nancy Fraser (2006, p. 233) people who are subject to cultural and economic injustice need recognition and redistribution to be able to claim their needs. She asks, how is this possible? And replies that:

When dealing with collectives that approach the ideal type of the ideal class of the exploited working class, we face distributive injustices that need redistributive remedies. When we deal with collectives that approach the ideal type of sexuality despised in contrasts, we face injustices of negative discrimination that need acknowledgment remedies. In the first case, the remedy's logic is to end this group thing; in the second case, on the contrary, it is about valuing the group's “sense of group”, recognizing its specificity.

The author defends that a possible remedy for economic injustice is the political-economic restructuring, with income redistribution, reorganization of the division of labor among other controls that directly reflect on society, but it is important to verify that the State must act in the interest of the public interest, it can thus be understood, that it must invoke economic justice as a means of promoting social justice.

In this same sense, Amartya Sen (p.288) understands that democratic freedom can be used as a mechanism to promote social justice and, in a way, favor a more just and quality policy. For that, for it is not a quick and easy process, it is necessary a political engagement of the citizens. In some places like Asia, India and China they have some experiences that demonstrate in practical terms the author's statement, that a more just society is possible when its democratic base is strong and is concerned with the rule of the majority and the rights of the minority.

#### 4 THE RETURN OF ECONOMIC JUSTICE

This session begins with the contribution of Jhon Rawls (2011, p.89) by explaining that the just society is understood as the result of the construction of a social structure instrumentalized by the economy and politics to guarantee *equal opportunities*, and *in fairness society is interpreted as a cooperative enterprise for the benefit of all*.

C. B. Macpherson (1991, p. 31) explains the probable future of economic justice by examining distributive and commutative justice successively. For the Author, there is the possibility of an alliance between Corporate capital and the regulating State, in the sense of denying social democratic pressure and as a way to deconstruct the democratic process. As a result, a corporatist or plebiscitary state does not need to yield to the claims of distributive justice, on the contrary it would invoke other values such as efficiency and stability.

Faced with the economic collapse that affects populations, such as massive unemployment and rampant inflation, the aforementioned alliance would represent a single mechanism capable of saving countries, when there is a great social calamity, the claims of distributive justice are forgotten.

Another point refers to the conflict between democratic pressures and economic interests, which on one occasion may go in opposite directions. In the event that democracy is not overthrown, democratic forces tend to dominate the capitalist state and to overcome or transform it (MACPHERSON, C. B, 1991, p. 31).

Assuming that the transformed society comes to fruition, would the concept of distributive justice have a long life? For C. B. Macpherson (1991, p. 31), no, because a transformed society would probably result from forces that can only plead for their own sake, as trade unions and social democratic parties do.

It is possible to conclude that the democratic state will always give priority to values other than distributive justice, with time this model of justice tends to disappear since when a society is realized, the concern of the movements responsible for its advent turns to other values summarized in the quality of life, for example, the quality of the physical environment, also of the social and economic institutions, among other references related to the development of human potentialities (MACPHERSON, C. B, 1991, p. 32), without the concern with issues of equality and poverty reduction.

Regarding commutative justice, CB Macpherson (1991, p. 33) considers the degree of revitalization of the concept of this type of justice to be impressive in the legislation and judicial

sentences of Western countries, countries are reinterpreting legislation so that there is a minimum of ethical content in commercial relations.

Such reinterpretation seeks to minimize the great inequality that existed in the values of barter and bargaining power, since the legal concept of extortion contracts seemed to be incorporated into the commutative principle of equal value exchange, in legislation there was also the prediction of an excessive price when a contract was not fulfilled, the so-called exorbitant clauses.

Finally, CB Macpherson (1991, p. 32) argues that the revitalization of commutative justice is unlikely to have a long life in the Western world, as well as distributive justice due to the tendency of state control in the distributive market, very present at the end of the century. XX.

Hypothetically, if corporate capital changes from a democratic State to a corporatist state, it will no longer be necessary to demand, even if for electoral purposes, a legislation that protects minorities. However, if the democratic state thrives and takes control of capital, the justice of private contracts loses its importance in the face of issues related to quality of life.

The only action that can prolong the life of the concept of economic justice is the growing pressure from third world countries, as they aim to improve their position in the economically advanced world.

Thus, for the third world countries, the concept of economic justice presents itself, sometimes as an offensive weapon, sometimes as a defensive weapon against the economic domination of the first world countries.

C.B. Macpherson concludes that the aforementioned concept seems doomed to not have a long life, it will always rise and fall from time to time in capitalist countries, until it is completely subdued by a totalitarian or corporatist state and even replaced by a new superior concept of human achievement.

## 5 FINAL CONSIDERATIONS

This research seeks to understand social justice through the concept of economic justice described by Author C.B Macpherson, as historically this model has been used more than once in an attempt to reduce social inequalities.

Initially, it is possible to believe that economic justice can greatly collaborate with the democratic State based on the rule of law, due to its collective character, economic equality is an important point.

However, neither the State nor the capital market has an interest in equity, in social justice, the State often complains about being supportive, but refuses to use means that contribute to human valorization, such as financial balance and quality of life for all.

The redistribution of income, democratic controls and a management focused on the community seem to be essential points for perhaps achieving social justice, equality seems to be an unattainable ideal, as it depends on the will and action of the State, no matter how much it is formed by the social body it seems to be shielded to review certain concepts.

Thus, in order to bring about C. B Macpherson's concept of economic justice, the concepts of general justice were presented descriptively, nomenclature used by the mentioned Author, as well as of economic justice and its subdivisions, all defined from the veil of social and economic equality.

As much as it is possible to question the concepts defended by the Author, there is no doubt that economic justice has been presented as an ideal since ancient civilizations and seems to be far from being achieved.

The explanations tend towards the construction of an egalitarian society; therefore, it is shown as an important instrument of promotion of social justice that can be used by the State, but that will always suffer limitations.

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