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Truth or Justice – That Is the Question

1. Introduction

Truth and justice are two of the brightest stars embellishing the firmament of ideals in Western culture. John Rawls talked about them as «the first virtues of human activities».[1] With deep roots in Greek philosophy[2] and Judeo-Christian tradition,[3] truth and justice represent fundamental aspirations of enlightened societies: an undistorted view of the world as it is and entire fairness in how human beings are dealing with each other.[4] Both values serve as a compass for society and individuals alike. Legal rules and moral canons therefore embrace truth and justice as overarching principles across the board.[5] Nietzsche, on the other hand, attacked this idealistic harmony head on: «Good people never speak the truth», he declared.[6] His cynical observation reveals serious tensions between striving for truth and, at the same time, realizing the good and just.[7]

1 John Rawls: A Theory of Justice, New York 1971, 4.

2 Plat. apol. 21d, 35c; Aristot. eth. Nic. V–VI; Jürgen Habermas: Auch eine Geschichte der Philosophie, Berlin [3]2019, I 406–459.

3 Hans Kelsen: Was ist Gerechtigkeit?, Ditzingen 2016, 9; Elke Mack: Eine Christliche Theorie der Gerechtigkeit, Baden-Baden 2015, 165–176.

4 Richard Rorty: Objectivity, Relativism and Truth, in: Philosophical Papers I, Cambridge 1991, 21–22.

5 Ronald Dworkin: Justice for Hedgehogs, Cambridge MA 2011, 2–11.

6 «Gute Menschen reden nie die Wahrheit», Friedrich Nietzsche: Also sprach Zarathustra, in: Kritische Studienausgabe, IV, Berlin, New York [2]1988, 251.

7 The latter is, at least arguably, part and parcel of the first, R. Dworkin: Justice for Hedgehogs, 11–15; Aristot. eth. Nic. 1129b29: «in justice is every virtue comprehended».

Translating the ideals of truth and justice into social reality is in fact a Herculean task. It is on this operational level where a host of conceptual as well as practical issues come to the forefront.[8] It is also here where trade-offs have to be made that ring the bell of Hamlet:[9] Truth or justice, that is the question.[10]

The article starts with a brief analysis of the notions of truth and justice in view of operationalizing them in the context of modern democratic societies (chapter 2). It continues with a specific focus on their institutional implementation in legal, business and social practice. It thereby points out a whole array of conceptual as well as structural limits in translating the two notions into social reality (chapter 3). Given such constraints and tensions, the article devises some pragmatic guiderails for the simultaneous pursuit of truth and justice in modern social discourse (chapter 4). Two specific examples, i.e. the debates about discrimination (chapter 4) and economic disruption (chapter 5), demonstrate the inherent tensions between truth and justice and the trade-offs that may be made among them. The article closes with a nod to moral virtue as a necessary, though itself elusive, addition to the institutional pursuit of the two ideals (chapter 7).

2. Spelling out Truth and Justice Ideals

David Hume dissected the notions of truth and justice, as well as their relationship, famously in his *Treatise of Human Nature*.[11] His analysis brought out Hume's Law: There is no way to infer an ‹ought›,

8 The term ‹operational› refers to the practical implementation (‹social engineering›) of truth and justice ideals.

9 «To be or not to be – that is the question», William Shakespeare: Hamlet, Act III, Scene 1.

10 The rhetoric allusion to Hamlet's famous binary choice does, of course, not exclude other important trade-offs that may have to be made in individual as well as social decision-making. Given the high value attached to truth and justice in Western culture, the trade-offs between them are, however, particularly sobering and perhaps also underestimated.

11 David Hume: A Treatise of Human Nature [1740], Reprint, London 1984, 510.

like justice, from an ‹is›, like truth.[12] Two hundred fifty years after Hume, a theoretical analysis of truth, justice and their relationship would, of course, require deep inquiries into numerous strands of thought since then. Given the operational perspective of this article, a primarily practical approach, with a focus on institutional issues, seems more promising. A brief theoretical conceptualization of truth and justice will, nonetheless, be helpful.

Truth is both an individual and a collective ambition. It aims at discerning facts as they appear to the human mind and experience.[13] The effort is empirical in essence, but also requires the intellectual interpretation of any made observations.[14] As a joint human endeavour, it inevitably involves a host of cultural and social constructions.[15] They are inherent in any accepted truths, including scientific ones.[16] As a result, no idea of truth will ever have a claim to ultimate objectivity and remains subject to refutation and falsification.[17] In the sober words of Jürgen Habermas, truth has to settle for mere «rational acceptability».[18]

Given the described epistemic limitations, a modern ideal of truth has to confine itself to the modest goal of setting proper conditions for its individual and collective pursuit.[19] That, in turn, opens up a whole panoply of institutional choices to be made in order to

12 Ibid., 520–521.
13 Ibid., 508–510.
14 Hannah Arendt: Wahrheit und Politik (1963), 330–331, http://gellhardt.de/arendt_bluecher/12_Wahrheit_u_Politik.pdf
15 Cf. e.g. Niklas Luhmann: Die Gesellschaft der Gesellschaft, Frankfurt a.M. 1997, 92–96; Michel Foucault: Les mots et les choses, Paris 1966, 355–359; Ludwig Wittgenstein: Philosophische Untersuchungen, Frankfurt a.M. 1984, § 2–7.
16 Thomas Kuhn: The Structure of Scientific Revolutions, Chicago ^{3}1996, 35–42; Paul Feyerabend: Wider den Methodenzwang, Frankfurt a.M. 1976, 28–46.
17 Karl Popper: Logik der Forschung, Tübingen ^{10}1994, 3–21.
18 Jürgen Habermas: Zwischen Naturalismus und Religion, Frankfurt a.M. 2005, 48.
19 R. Rorty: Objectivity, Relativism and Truth, 28–29; J. Habermas: Auch eine Geschichte der Philosophie, 743–746.

facilitate the quest for truth. Democratic constitutions and fundamental freedoms, incl. academic freedom, freedom of speech, freedom of conscience, but also various forms of economic freedom, are typical ways to support the cause of truth in liberal democratic societies.[20] That cause may be broken down into three basic aspirations:

(1) Empirical aspiration, i.e. the search for and the complete openness to facts and reality as they appear to human perception.[21]
(2) Logical aspiration, i.e. the relentless attempt to interpret perceived facts consistently by means of reason.[22]
(3) Social aspiration, i.e. the honest disclosure of perceived facts and insights in private as well as public discourses.[23]

Justice is highly elusive in its own right.[24] It embraces such differing notions as social justice, legal justice, economic justice or political justice.[25] It is an upshot of social cooperation and can, therefore, be seen as having a quasi-contractual base.[26] Rawls, e.g., famously conceptualized justice as the result of a hypothetical social contract behind a ‹veil of ignorance›.[27] He inferred two justice principles: The Liberty Principle, assigning basic political liberties to all citizens, and the Difference Principle, justifying inequalities among citizens to the extent they also benefit the least well off.[28]

20 Cf. e.g. Raymond Aaron: Liberté et égalité, Paris 2013, 33–37; John Stuart Mill: On Liberty, London 1974, 115–118.
21 ‹Tatsachenwahrheiten› (factual truths), cf. H. Arendt: Wahrheit und Politik, 330.
22 ‹Vernunftwahrheiten› (logical truths), ibid., 330, 340.
23 Kant described absolute honesty as a ‹holy rule of reason› «Es ist also ein heiliges, unbedingt gebietendes, durch keine Convenienzen einzuschränkendes Vernunftgebot: in allen Erklärungen wahrhaft (ehrlich) zu sein», Immanuel Kant: Über ein vermeintes Recht aus Menschenliebe zu lügen, in: Akademie-Ausgabe, VIII 427.
24 Michael J. Sandel: Justice – What's the Right Thing To Do?, New York 2009, 3–30; Otfried Höffe: Gerechtigkeit, München ^{6}2021, 26–39.
25 Gunther Teubner: Self-subversive Justice, Contingency or Transcendence Formula of Law?, in: Modern Law Review 72 (2009) 6–7.
26 D. Hume: Treatise of Human Nature, 541–542.
27 J. Rawls: A Theory of Justice, 11–22.
28 Ibid., 60–65.

Aristotle, too, differentiated between two categories of justice.[29] Justice as ‹lawfulness› encapsulates legal compliance in support of the common good,[30] justice as ‹fairness› encompasses, inter alia, «distributions of honour or money or the other things that fall to be divided among those who have a share in the constitution».[31]

For the purposes of this article, justice may be similarly broken down along two axes. The first axis can be seen as encompassing the common causes of relevant communities that are supposed to universally benefit all members. In the case of states, common causes would typically be reflected in constitutional and legal rules. In liberal democracies they include peace, security, individual freedom, prosperity and other public interests.[32]

The second axis embraces the reciprocity arrangements of relevant communities, i.e. the mutual gives and takes among their members.[33] Reciprocity is a centrepiece of perceived justice.[34] Empirical research has confirmed the strong link.[35] In the case of liberal democratic states, reciprocal justice comprises the fair distribution of goods, opportunities, risks and obligations, incl. the recognition of all citizens as, at least in principle, equal.[36]

Of course, justice concepts are not limited to states and may overlap. Other spheres of justice are families or private organizations.[37] Teubner, while deconstructing any universal concept of justice,

29 Aristot. eth. Nic. 1130b.
30 Ibid., 1129b14–19.
31 Ibid., 1130b29–1131a10.
32 Rawls' Liberty Principle would belong here, J. Rawls: A Theory of Justice, 60–61.
33 Rawls' Difference Principle would belong here, ibid., 61–62.
34 M. J. Sandel: Justice, 149–151; Brian Barry: Justice as Impartiality, Oxford 1995, 46–51.
35 Ernst Fehr, Simon Gächter, Georg Kirchsteiger: Reciprocity as a Contract Enforcement Device: Experimental Evidence, in: Econometrica 65/4 (1997) 833–860; David Miller: Principles of Social Justice, London 1999, 61–67.
36 J. Rawls: A Theory of Justice, 440–442; R. Dworkin: Justice for Hedgehogs, 13–14; Michael J. Sandel: The Tyranny of Merit – What's Become of the Common Good?, New York 2020, 205–211.
37 Michael Walzer: Sphären der Gerechtigkeit, Frankfurt a.M., New York 2006, 70–80.

identified the functional subsystems of modern society, incl. politics, law or the economy, as the loci of idiosyncratic, incommensurable justice notions.[38] His sociological analysis illustrates an additional factor heavily influencing any justice idea: the social structures and institutions in which it is being reproduced.[39]

Hence, an operational notion of justice can be conceptualized along three tightly linked dimensions.[40] They may all generate just or unjust results, yet they always represent the basic quest for justice:

(1) Common purpose dimension, e.g. the common purposes pursued by states as reflected in their constitutional or legal rules.
(2) Reciprocity dimension, e.g. the reciprocal rights, obligations and expectations of state citizens as enshrined in laws or social practices.
(3) Order dimension, e.g. the institutions and structures implementing the common purpose and reciprocity arrangements of states, incl. legislators, courts, governments or markets.[41]

Given the diversity and complexity of the described truth and justice notions, is there a distinct line of reasoning linking the two? Hume's Law notwithstanding, there exists, in fact, a symbiotic relationship between them.

Social cooperation requires sufficient assurances that other members of society will comply with the reciprocal terms of a given justice order and not cheat. Truthful conduct is, in other words, a crucial base for social trust. Without basic honesty, the intersubjective processes that make up public and institutional discourses in liberal democracies could not work either.[42] Hence, there cannot really be justice without truth.

38 G. Teubner: Self-subversive Justice, 1–13.

39 Rawls, too, recognizes the role of institutions in shaping justice, albeit in more traditional political terms, J. Rawls: A Theory of Justice, 54–60.

40 This echoes Gustav Radbruch: Rechtsphilosophie, Leipzig [3]1932, 70–75, who described the concept of law (‹Rechtsidee›) along three closely linked dimensions: ‹Zweckmässigkeit›, i.e. common causes, ‹Gerechtigkeit›, i.e. reciprocal equality, and ‹Rechtssicherheit›, i.e. legal predictability.

41 J. Rawls: A Theory of Justice, 4–6, 235–238.

42 J. Habermas: Zwischen Naturalismus und Religion, 54–56; H. Arendt: Wahrheit und Politik, 331–333.

Similarly, the search for new truths, incl. new technologies or production mechanisms, may support the social efficiency,[43] i.e. prosperity, but also the stability of communities as part of their justice order. That further underscores the role of truth in the pursuit of justice.

In the reverse, justice serves as a basis for public and private discourses. There can hardly be any collective search for truth without at least some form of justice that supports social cohesion.[44] Truth and justice are, therefore, mutually reinforcing: the more of both, the better.

3. Implementing Truth and Justice

Truth and justice are highly intertwined with the social institutions that are supposed to protect or promote them. In liberal democracies, this includes state as well as non-state institutions, incl. markets, universities, mass media, religious and other civil organizations. As game theory has shown, credible institutions are instrumental for the creation and maintenance of social trust.[45] Effective institutions also allow for much higher forms of cooperation.[46]

To be sure, all institutions – both public and private – face operational limits. As a result, compromises between the aspirations of truth and the dimensions of justice are inevitable. They have existed all along on the level of legal institutions, but also in business and social practice.[47] The following examples may bring some light to this:

– Democratic discourses, even though constitutionally protected and committed to the various aspirations of truth, are not unrestricted. National security, as part of the common cause dimension of justice, may serve as an example. The secrecy that

43 J. Rawls: A Theory of Justice, 67–75.
44 D. Hume: Treatise of Human Nature, 547.
45 Ken Binmore: Natural Justice, Oxford 2011, 77–92.
46 Ibid.
47 There might also be tensions within the different aspirations of truth or the different dimensions of justice. They shall, however, not be further explored here.

regularly goes with discussions about it cuts into the social aspiration of truth.[48] As a result, the objectivity of debates about important political issues can be seriously hampered.[49]

– Procedural laws are also forced to make trade-offs between truth and justice. A criminal justice procedure, e.g., has the undoubted aim of leading to a just condemnation or exoneration based on full empirical and logical truth.[50] However, rules of evidence, having their base in the order dimension of justice, may interfere with this aspiration.[51] The high standards of proof in criminal procedures or the right of the accused to stay silent may have similar effects.[52]
– Significant compromises between the social aspiration of truth and justice also exist in private contracting and business. An example is the right to hide the truth about an existing pregnancy and other personal matters in job interviews.[53] Its base can be found in the reciprocity dimension of justice, i.e. equal opportunities. Another example is the protection of business secrecies. It has its roots in the common purpose dimension of justice.[54]
– Social customs, too, compromise between truth and justice.[55] Courtesy rules advise, e.g., against telling a counterpart everything

48 Secret service activities are a particularly extreme (and risky) example of the trade-off.

49 H. Arendt: Wahrheit und Politik, 336, warned: «Meinungsfreiheit ist eine Farce, wenn die Information über die Tatsachen nicht garantiert ist.»

50 Cf. Marc Thommen: Gerechtigkeit und Wahrheit im modernen Strafprozess, in: Zeitschrift «recht» 2014, 264–276.

51 An example is the right of witnesses to refuse testimony in procedures involving other family members.

52 Both rules can be seen as having their base in the reciprocity dimension of justice. i.e. the presumption of innocence as part of the fair and equal treatment of anyone accused of a crime.

53 Dominique Strebel: Du darfst lügen, in: Beobachter, 30 December 2009, https://www.beobachter.ch/magazin/gesetze-recht/du-darfst-lugen-15347?

54 I.e. the promotion of social efficiency through the establishment of incentives to invest in innovation.

55 Ayelet Gundar-Goshen: Unehrlich währt am längsten, Neue Zürcher Zeitung, Folio Nr. 365, January 2024, 51–55.

one knows and thinks about him or his environment. At their core lies the respect for one another in communicating as part of the reciprocity dimension of justice, i.e. the recognition of each community member as ultimately equal.

On top of the operational trade-offs that have their cause in the inherent tensions between truth and justice ideals, institutions face significant imperfections and deficiencies that stand in the way of realizing truth and justice alike. Major examples are power limits, time and budget constraints, complexity and agency issues:

– Power limits: All institutions face limits of power and, as a consequence, reduced potential to support the causes of truth and justice. Institutional authority may, for good reason, be restricted in order to prevent overreach. The crucial separation of powers between the executive, the legislator and the judiciary in liberal democracies is a case in point. Similarly, the rule of law constrains the discretion of government in view of preventing abuse. Private institutions and their agents, too, are restrained by market forces, internal governance and political oversight. In addition, all political powers are subject to the limits of national sovereignty as defined by international law. That puts major structural constraints on the reach of laws and their enforcement everywhere.[56]
– Time and budget constraints: Another structural impediment to the realization of truth and justice ideals are time – and related thereto – the budget constraints of institutions. The empirical aspirations of truth, e.g., are agnostic to time and costs, but institutions are not. Neither are the order or reciprocity dimensions of justice: Justice delayed is justice denied. The quest for truth – and justice – will therefore often have to be cut short in order to come to institutional decisions and actions.[57]

56 Cf., e.g., Wall Street Journal, Dec. 31, 2024: SEC Writes Off $10 Billion in Fines It Can't Collect.

57 Jacques Derrida: Force de loi, Paris 1994, 57–58.

– Complexity: Reducing complexity is a necessary standard procedure in all social settings.[58] Undercomplexity is inevitable. That reflects, e.g., in the oversimplicity of general abstract legal rules.[59] Legal overshooting or undershooting may be the result. Similarly, the fact situations triggering the application of laws are regularly reconstructed from the outside or in hindsight by government agencies and courts. That, too, may lead to serious underenforcement on one side or an overbearing state on the other.
– Agency issues: The term ‹agency issue›, which was coined in corporate governance, reflects the fact that institutional agents are charged with acting in the best interests of their principals, e.g. the public in the case of politicians, but pursue other personal or group interests instead.[60] The abuse of discretion associated with agency power could hamper truth and justice alike.[61] Politicians may tweak the truth or even lie in order to pursue their personal or party interests. Judges may bend the law because they are biased or treat cases with sloppiness.

As modern societies get more complex and develop faster, the challenge of institutional controls over the quests for truth and justice will become ever more daunting. Fake news and political manipulations, both facilitated by new technologies, economic unfairness, underenforced laws and a host of other social ills may mushroom and put the resilience of liberal democratic institutions to test.[62] Is there any general guidance that can be devised to tackle this conundrum?

58 N. Luhmann: Die Gesellschaft der Gesellschaft, 143–144.
59 J. Derrida: Force de loi, 50–52.
60 Karl Hofstetter: Corporate Governance – Theorie, Regeln und Praxis in der Schweiz, Bern 2023, 2–3.
61 It could also give modern meaning to Hobbes' famous thesis: «auctoritas, non veritas, facit legem». Thomas Hobbes: Leviathan, in: Opera philosophica, ed. William Molesworth, III, London 1841, 202.
62 Cf. Danielle Kost: Meta Faces Limits of Policing Information, in: Harvard Gazette, 14 January 2025,

4. Truth or Justice – that Remains a Question

‹Fiat iustitia et pereat mundus› or rather ‹Fiat veritas et pereat mundus›? The implementation of truth and justice ideals in liberal democracies remains a perennial struggle. Public discourse, political or legal decision-making and private market activities will have to continue working out pragmatic compromises. Two general guiderails can perhaps be set for this operational challenge: one against suppressing the quest for truth in the name of justice and the other against disregarding significant justice implications of newly discovered truths.

Friedrich A. Hayek, in his fundamental critique of the social justice concept, construed a close kinship between truth and justice and categorized the latter as a mere substitute of truth: «Like all abstractions, justice is an adaptation to our ignorance […] in a society of omniscient persons there would be no room for a conception of justice».[63]

It is, of course, speculative whether all justice issues would be moot if omniscience existed.[64] At least under real social conditions, the conceptualization of justice cannot evade human ignorance. Leading modern justice theories reflect that prominently. Rawls developed his hypothetical justice notion behind a ‹veil of ignorance›.[65] The ‹ideal speech situation› of Jürgen Habermas,[66] but also Ronald Dworkin's hermeneutic search for an ‹overlapping consensus›,[67] target actual social discourses striving to get in front of the veil.

https://www.library.hbs.edu/working-knowledge/meta-faces-the-limits-of-policing-misinformation

63 Friedrich A. Hayek: Law Legislation and Liberty, II: The Mirage of Social Justice, Chicago 1976, 39.

64 Hume's Law indicates that this would not be the case. Arrow's Impossibility Theorem, too, showed that it is impossible to deduce consistent social choices in constellations of starkly differing individual preferences, Kenneth J. Arrow: Social Choice and Individual Values, New York 1951.

65 J. Rawls: A Theory of Justice, 136–142.

66 In Habermas' model the search for truth and justice go hand in hand, J. Habermas: Zwischen Naturalismus und Religion, 56–57.

67 R. Dworkin: Justice for Hedgehogs, 63–66.

Hayek's substitution thesis contains nonetheless an important truism: The contribution of scientific discoveries, economic innovations and other new truths to common causes can be huge. This may also allow for the establishment of new justice arrangements potentially benefiting everyone.[68] That favours the basic openness of any justice arrangements for the discovery of new truths and cautions against shutting down the pursuit of truth in the name of justice.[69]

To be sure, the proposal leaves open the question of how transformations to new truths – and new justice arrangements associated therewith – may be realized in practice. This is where the second operational guiderail harks in: Laws and markets need to properly internalize the effects of new truths and innovations on social cohesion.[70] This calls for legal and market safeguards that manage or mitigate major impacts on established justice bedrocks without, at the same time, undercutting the quest for truth.

Justice bedrocks might find their expression in the provisions or spirit of a formal constitution or laws, incl. perceptions about the mechanisms of an existing market economy. Their fine fabric consists of the widely shared common ground among a relevant, e.g. national, population that maintains the latter's social cohesion and props up its support for an existing political and economic order.[71]

Of course, justice bedrocks, too, must ultimately be contestable and adapt in the face of developing truths.[72] Everything else would

68 In economic parlance, this would reflect Kaldor Hicks efficiency, i.e. the benefits to the winners of an innovation would allow the compensation of losers and still be socially net positive, Daniel M. Hausmann, Michael S. McPherson: Economic Analysis and Moral Philosophy, Cambridge 1996, 94.

69 Private contract law, too, reflects this openness on various fronts, incl. in the so-called ‹clausula rebus sic stantibus›, cf. the decision by the Swiss High Court in Bundesgerichtsentscheid 127 II 300.

70 J. Habermas: Auch eine Geschichte der Philosophie, 142–143.

71 Walter Eucken: Grundsätze der Wirtschaftspolitik, Tübingen ^{6}1990, 180–193; Yoram Hazony: The Virtue of Nationalism, New York 2018, 61–75.

72 The paradox is aptly conceived in Teubner's notion of self-subversive justice that cannot escape the pressures from its environment, G. Teubner: Self-subversive Justice, 3.

come down to what Teubner termed ‹justice imperialism›.[73] But the challenge and substitution of justice bedrocks should be managed carefully in order to save social cohesion. This could either mean that compromises have to be made with certain aspirations of truth or that corrective or compensatory measures need to be employed in order to meet legitimate justice expectations.[74]

Two examples involving the modern-day debates about discrimination and economic disruption, respectively, may show the applications of the inferred general guiderails to specific fact situations.

5. Example 1: The Discrimination Debate

Discrimination is and – recent backlashes notwithstanding – remains a hotly debated issue in all Western countries. The influence of race, gender, sexual orientation, age, religion and other factors on social, educational and economic opportunities has been a major topic in politics, business as well as academia. It is an upshot of justice, i.e. its reciprocity dimension: The call for non-discrimination and equal opportunities is a logical inference from the principle of equality.[75]

The aspirations of truth, on the other hand, favour the generation and representation of empirical and statistical realities, even if they turned out to be embarrassing or devastating for certain individuals and social groups. Should justice arguments, therefore, be used to curb the aspirations of truth and limit research and public discussions about arguable human inequalities?

An incident bringing the issue to the forefront were comments made by then Harvard President Larry Summers in 2005. He mentioned the possibility that one reason for the lower presence of females in science and mathematics at US elite universities may be biological differences and superior innate abilities of males in

73 Ibid., 22–23.

74 M. J. Sandel: The Tyranny of Merit, 207.

75 Cf. the similar comments in chapter 3 above about courtesy rules in social practice.

these fields.[76] He referred to empirical data to bolster his point. Yet, his comments caused a huge uproar and led to his resignation as president of Harvard as well as a lasting personal stigma.[77]

Declaring specific categories of human beings as naturally inferior to others comes down to a significant break with fundamental principles of modern democracies. Throwing the idea of basic equality and dignity of all members of society overboard, even if in reference to empirical or logical truths, could be seen as undercutting bedrock principles of justice, in particular its reciprocity dimension. Utmost care in doing so should, accordingly, be applied, without making it impossible to research and debate these issues.

From this perspective, it seems understandable that Larry Summers was forced to resign. As President of Harvard, he was an institutional agent and represented an established justice order, not himself. In this role, it was problematic to highlight data questioning a bedrock principle of egalitarian justice. As a pure academic, however, he should have been able to do so. As Jonathan Haidt, warning against attempts to politicize US universities, put it: ‹veritas› should trump ‹iustitia› in academic discourse.[78]

6. Example 2: Economic Disruption

The free market economy is, to different degrees, a central pillar of all liberal democratic states. It covers a huge sphere of activities

76 Harvard Chief defends his Talk on Women, in: The New York Times, 18 January 2005, https://www.nytimes.com/2005/01/18/us/harvard-chief-defends-his-talk-on-women.html

77 David Usborne: Summer's ‹sexism› cost him top Treasury job, in: Independent, 24 November 2008, https://www.independent.co.uk/news/world/americas/summers-sexism-costs-him-top-treasury-job-1033373.html

78 Jonathan Haidt: When Truth and Justice collide, choose Truth (2020), https://www.stern.nyu.edu/experience-stern/faculty-research/when-truth-and-social-justice-collide-choose-truth

and is, therefore, a major arbiter in the dynamic battle between the aspirations of truth and the dimensions of justice. The battle often reaches a climax when technological innovations or changed global production arrangements trigger major restructurings in companies, regional or national economies. The adjustments that are required to meet the opportunities and challenges of new economic truths about efficient production may lead to plant closings, mass dismissals, unemployment and a myriad of other effects which undercut established social equilibriums. This can be perceived as a violation of explicit or implicit reciprocity arrangements in which affected segments of the population, in particular dismissed employees, had invested their trust.[79]

Of course, there is an inherent and accepted risk in any employment contract of being terminated. Market mechanisms, incl. collective bargaining in combination with employment laws,[80] can, in principle, take proper care of such risks. However, there may be a critical mass where, e.g., whole industries, regional or national economies suffer to an extent that undercuts a population's trust in the system's fairness. The demise of the steel industries in Europe or the US, as a result of globalized economic forces, are one example.[81] The prospect of AI replacing major categories of jobs and perhaps industries is another.[82]

Given such typical conflicts between new economic truths and established justice arrangements: on which side should modern

79 Cf. the similar arguments in Andrei Shleifer, Lawrence H. Summers: Hostile Takeovers as Breaches of Trust, in Alan J. Auerbach (ed.): Characteristics of Targets of Hostile and Friendly Takeovers, Chicago 1988, 33–56.

80 W. Eucken: Grundsätze der Wirtschaftspolitik, 321–324.

81 The debates are still ongoing on both sides of the Atlantic, cf. Ein Hauch von Gerlafingen in den USA? Zukunft der amerikanischen Stahlindustrie sorgt für heftige Diskussion, in: Luzerner Zeitung, 9 January 2025, https://www.luzernerzeitung.ch/wirtschaft/us-steel-ein-hauch-von-gerlafingen-in-den-usa-zukunft-der-amerikanischen-stahlindustrie-sorgt-fuer-heftige-debatte-ld.2718275

82 Daron Acemoglu, Simon Johnson: Power and Progress, London 2023, 297–338.

market economies err? First of all, no serious argument can be made that justice considerations should outweigh the constant search for new, i.e. more efficient economic truths and stop it. Socially efficient and innovative production is, after all, a typical common cause and therefore itself part and parcel of the idea of justice.[83] Hayek's blueprint of the free market as a powerful ‹discovery procedure›,[84] therefore, deserves recognition, as does, e.g., Schumpeter's notion of ‹creative destruction›.[85] Justice concerns, nonetheless, caution against disregarding the fundamental social impacts of major economic shifts generated by market forces.[86]

How can this called-for sensitivity be implemented operationally? The notion of established justice bedrocks might help again. Any free market system is ultimately implemented politically and dependent on the widespread support of its members as citizens. As long as they remain convinced that the system is basically productive and fair, the support stands a good chance of remaining intact.[87] If there are, however, fundamental doubts about the system's merits and its reciprocal fairness, political backlash will build one way or another as a response to the perceived violation of justice. The debate about runaway manager salaries in Europe[88] or the opposition against free trade in the US that had a significant impact on recent political elections can be seen as examples.[89]

83 J. Rawls: A Theory of Justice, 60–67.

84 F. A. Hayek: Law Legislation and Liberty, II, 10.

85 Joseph A. Schumpeter: Capitalism, Socialism and Democracy, New York et al. 1975, 81–86.

86 Jean Tirole: Economics for the Common Good, Princeton 2017, 47–51.

87 An example would be the ‹rags to riches›-narrative in US public discourse that has for a long time reflected and symbolized the widely supported meritocratic traits and ambitions of US society, M. J. Sandel: The Tyranny of Merit, 73–77.

88 Karl Hofstetter: A Theory of Justice for Management Compensation, in: Margit Osterloh, Katja Rost (Hg.): Die Unternehmung, Sonderband 1 (2011) 25–41.

89 How Democrats Lost the Working Class, in: The New York Times, 4 January 2025,

Accordingly, major economic shifts with widespread social consequences that are not mitigated by markets themselves can turn into political stumbling blocks.[90] The public may start questioning the merits of markets and their innovative force as such. In order to prevent this inflection, political countermeasures, even if they inhibit free market mechanisms to some extent, may be an optimal response.[91] They include corrective measures, e.g. labour legislation or tariffs to protect workers, as much as compensatory ones, e.g. subsidies or government-sponsored social aid and insurance programs.[92] To the extent that these measures do not fundamentally undercut innovation and efficient economic restructurings, they also protect basic aspirations of truth.

7. The Role of Moral Virtue

As the two examples indicate, pursuing truth and justice, but also making trade-offs between them, is inherently difficult. The limits and imperfections of institutions further aggravate the challenge. Vast parts of social interaction will therefore remain ‹dark matter›, uncontrolled or even uncontrollable by rules and institutions. That, inevitably, calls for moral virtue as a necessary addition to any legal and social environment.[93]

Montesquieu emphasized the indispensable role of moral virtue for democratic societies early on.[94] Reinhold Niebuhr underscored

https://www.nytimes.com/2025/01/04/us/politics/democrats-working-class.html

90 Dani Rodrik: Populism and the Economics of Globalization, National Bureau of Economic Research Working Paper Series, Nr. 23559, July 2017, 21–27.

91 Marc Roe: Backlash, in: Columbia Law Review 98 (1998) 234–238.

92 D. Acemoglu, S. Johnson: Power and Progress, 383–422.

93 The diagnosed insufficiency of institutions may, sadly, also encourage strategies of power abuse, opportunism and dishonesty, Niccolò Machiavelli: The Prince [1532], Oxford 2008, 53–82.

94 Montesquieu: De l'Esprit des Loix, Genève [1748], livre III, chapitre 3.

it forcefully in *Moral Man and Immoral Society*, published in the US in 1930.[95] For post-war Germany, Ernst Wolfgang Böckenförde encapsulated the function of moral values in his famous dictum about the impossibility of a liberal democracy to guarantee the conditions on which it is itself based.[96]

What are some of the moral virtues that may support the causes of truth and justice? Once more, Greek and Judeo-Christian traditions set the stage.[97] It is truthfulness, as, e.g., advocated by Vaclav Havel[98] or reflected in Michel Foucault's ‹parrhesia›,[99] that could help carry the flame of truth. Similarly, Richard Rorty's pragmatic solidarity,[100] Ronald Dworkin's ‹moral epistemology›[101] or Emmanuel Lévinas' ethical responsibility ‹for the Other›[102] may assist in promoting justice.

Moral imperatives are, of course, highly elusive themselves. As a consequence, their litmus test is engagement, not just debate. The examples of Socrates,[103] Galilei,[104] or more recently Alexei

95 Reinhold Niebuhr: Moral Man and Immoral Society, Louisville 2021, 257–277.

96 «Der freiheitliche, säkularisierte Staat lebt von Voraussetzungen, die er selbst nicht garantieren kann», Ernst Wolfgang Böckenförde: Die Entstehung des Staates als Vorgang der Säkularisation, in: Recht, Staat, Freiheit. Studien zur Rechtsphilosophie, Staatstheorie und Verfassungsgeschichte, Frankfurt a.M. 1991, 112.

97 Arist. eth. Nic. 1129b25–1130a15, 1139a21–26; Eph 6,14: «Stand firm then, with the belt of truth buckled around your waist, with the breastplate of righteousness in place»; Kant's categorical imperative also belongs to that tradition, H. Arendt: Wahrheit und Politik, 340.

98 Vaclav Havel: Versuch in der Wahrheit zu leben, Reinbek bei Hamburg, 1993, 58, 92–93.

99 Frédéric Gros: Foucault – Le courage de la verité, Paris 2002, 155–166.

100 R. Rorty: Objectivity, Relativism and Truth, 32–34.

101 R. Dworkin: Justice for Hedgehogs, 12.

102 «être pour autrui», cf. Emmanuel Lévinas: Totalité et infini, Paris [24]2025, 340–341; Francisco Xavier Sanchez Hernandez: Verité et justice dans la philosophie de Emmanuel Lévinas, Paris 2009, 285.

103 Plat. apol. 21d.

104 Tobias Straumann: Wie Europa reich wurde – und warum es heute den Anschluss zu verpassen droht, in: Neue Zürcher Zeitung am Sonntag, 17 November 2024, https://www.nzz.ch/wirtschaft/wie-europa-reich-wurde-und-warum-es-heute-den-anschluss-zu-verpassen-droht-ld.1857811

Navalny,[105] linger in the background. Thus, Hamlet comes full circle, this time as an encouragement to act: «To be or not be – that is the question».

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105 Ulrich M. Schmid: Dem Kampf für die Wahrheit hat Nawalny sein Lebensglück geopfert, in: Neue Zürcher Zeitung, 19 February 2024, https://www.nzz.ch/feuilleton/nicht-machthunger-sondern-eine-mission-trieb-alexei-nawalny-an-ld.1814469