

# The Need for Justice

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## Abstract

The thought of construing justice as a basic human need arose belatedly from a long-standing professional concern for the resolution of civil, criminal, and social conflict. As a result, it seemed that justice in its pure form required restatement as providing the initial impetus for customs, laws, and regulations that govern human activity, instead of relating simply to the outcome of either formal or informal procedures for settling disputes. The proposition is developed and advanced for the consideration of administrators, community leaders, law enforcers, lawyers, politicians, policy analysts, practitioners, and scholars of different academic disciplines concerned with individual and community well-being, and for the public at large<sup>1</sup>.

## Introduction

Those whose daily work brings them into contact with the suffering brought about either by adverse circumstances or malevolence might think it self-evident to construe justice as a basic human need. Indeed, there are historical precedents, because the classical Greek philosophers regarded justice as one of the foremost

virtues alongside courage, prudence, and temperance, and the early Christian Fathers declared such virtues to be universally applicable ([http://www.deadly\\_sins.com/virtues.html](http://www.deadly_sins.com/virtues.html) - accessed May 6, 2004). Certainly, the powerful confluence of law traceable to the codes of Hammurabi, Moses, Brehon, and Rome in the West and Middle East, to say nothing of those in the Far-East and the Pacific, suggest that good law is an essential pre-requisite for the maintenance of any society<sup>ii</sup>.

But the case has to be advanced, because justice is sometimes difficult to discern behind laws and their enactments. As John Warr said in 1649, “At the foundation of governments justice was in men before it came to be laws...Laws upon laws do bridle the people...” (cited in Christopher Hill, 1972, pp. 272-273). Systems introduced for apparently worthy purposes become self-serving and encrusted with irrelevance, and they require revisions of a kind that the NZ Law Commission (cf.2004), Parliament<sup>iii</sup>, and reformers sometimes proclaim<sup>iv</sup>. Another point is that judgments based on the best evidence presented in Court at a given time might only proximate the truth. Beyond that, to the man in the street criminal justice seems to assume more importance than civil justice, while social justice – the youngest member of the judicial family (and in some ways the runt of the litter) – is only now making itself heard. Rome was not built in a day.

Consider the social injustice of economic deprivation with regard to the onset of law-breaking (Weiss 1998) and poor health and life expectancy (Howden-Chapman & Tobias, 2000; Marmot, 2005), to say nothing of the destructive effects of economic globalisation on community life (Korten in press). Concerning the latter, the World Commission on the Social Dimension of Globalization (WCSDG) (2004) went so far

as to declare that a 'fairer and more prosperous world is the key to a more secure world. Terror often exploits poverty, *injustice* (my emphasis) and desperation to gain public legitimacy. The existence of such conditions is an obstacle in the fight against terrorism' (WCSDG, 2004, p.8). Subsequently the United Nations General Assembly (2005) endorsed the WCSDG theme, and it urged member countries to redress their priorities to avoid further catastrophe. For victims of war and atrocity in particular, the South African psychiatrist Derek Summerfield (2000) asserted that post-traumatic reactions were not simply 'a private problem, with the onus on the individual to recover, but an indictment of the sociopolitical forces that produced them'. He went on to say that social reform was the best medicine, 'this means .... *justice*' (my emphasis). On both points Mollica, Guerra, Bhasin, and Lavelle (2004) coordinated a series of chapters in their book of best treatment practice to facilitate recovery from catastrophic experience.

Similarly, the human rights lawyer Paul Hunt spoke to the School of Government at Victoria University on 10<sup>th</sup> August 2005 of the abuse of economic, social and cultural rights being among the most important and challenging issues of the day. The very next week at a National Counter Terrorism Capability Seminar at the same place, the political analyst Kumar Ramakrishna (2005) described the three main roots of terrorism as the interaction of a striving for political ascendancy, the elaboration of an ideology, and a pervasive discontent with the *status quo* reflecting social injustice.

Being thus encouraged about the relevance about fundamental conceptions of justice in the contemporary world, examples of disjunctions now follow, the concept of justice is approached, terms defined, theories of motivation incorporating justice sought, a revision of Maslow's theory proposed in which the need for justice might be placed, empirical confirmation sketched, and a few implications outlined for further consideration.

Disjunctions that gave rise to the proposition

No matter how orderly and promising any social systems might appear, in the inimitable words of Robbie Burns "the best laid schemes o' mice and men gang aft a-gley". As far as justice is concerned, it took me years for reality to dawn. First as a Probation Officer and then as a prison psychologist, later a visiting consultant psychologist to the Department of Psychiatry at Wellington Hospital and in private clinical practice, I encountered a number of challenging instances about 'justice' in action that invoked the Shakespearean phrase that some were indeed 'more sinn'd against than sinning'. Consider, the field of **criminal justice** in which:

1. a young offender brutalised for years by his tyrannical father in the name of discipline
2. a congenital cripple before the court who had been ostracised by the community but befriended by a criminal gang for which in return he was pleased to serve as a look-out on their escapades
3. two prisoners, one of whom admitted that he had committed offences for which the other was imprisoned

4. a man who had pleaded guilty to rape but was visited in prison by the 'victim' and her family while on remand, became engaged to her after being sentenced, and married her on his release
5. the many hundreds of adolescent 'ship girls' sentenced between 1924 and 1980 to Borstal for being 'idle and disorderly and having no fixed abode', while they had hardly been 'idle' and their seamen hosts had acted with impunity by inviting them to their cabins.

In **civil matters** there was the man who displayed bizarre behaviour after falling from a ladder on night shift in a factory. He was rushed to hospital with a troublesome combination of neurological and psychological signs and symptoms that were thought to have been caused by intracranial bleeding. A neurosurgeon burred holes in each side of the man's skull to release the blood – but there was none apart from that caused by the operation. On discharge the man sued his employer for negligence, and a psychiatrist for the firm's insurance company referred him to me for assessment. In the preliminaries the man proved to be a malingerer who was seeking enough cash for the deposit on a smallholding – as it turned out he had done successfully once before. Despite the exposure, the insurance company settled the claim on pragmatic rather than moral grounds, saying that it might have lost more business from adverse publicity in rejecting the claim than from paying it.

Finally the question of **social justice** struck home, not so much from having been on the fringe of observing student revolutions in Europe and the United States in 1968/9 and in China in 1989 (Taylor 1970; 1994), nor from meeting holocaust survivors and

visiting Auschwitz in 1975, visiting Hiroshima in 1984 and discovering that the atomic bomb had been dropped **after** the Japanese had made entreaties for surrender, nor from the discrimination against women in education and employment, discrimination against the early Chinese immigrants, the maltreatment of children in their own homes or orphanages, the neglect of long-stay patients in mental hospitals, nor even the actions of successive New Zealand governments in ignoring their obligations to Maori under the Treaty of Waitangi (cf. King, 2003, ch.12) – serious matters as indeed they all were. No, the day dawned only when hearing the plaintiff appeals for justice in May 2000 in Fiji from families of hostages searching desperately for an explanation for the action of the insurgents holding their loved ones in captivity in Parliament (Taylor, Nailatikau, & Walkey, 2002). For them the issue was not of the inalienable rights of mankind as reflected in the previously written or unwritten codes epitomised by the *1948 UN Declaration of Human Rights*, but of having their basic need for justice satisfied for security and sense of belonging.

The concept of justice approached

By any account justice is a nebulous but far from negligible concept. It underlies the operating system of individuals, families, tribes, communities, and nations both separately and collectively. Following the previous examples it has three strands - criminal, civil, and social – that in combination contribute to basic human needs for security and belonging that precede any system designed to promote it. According to the moral philosopher John Rawls (1971, p.302), justice rests on two principles. The first being that “everyone has as an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all”, and the second that “social and economic inequalities are to be arranged so that they are to

the greatest benefit of the least advantaged and attached to offices and positions open to all under conditions of fair equality and opportunity”. He argued that in determining justice, people should abandon their vested interests and adopt an “original position” for testing social contracts, in which the terms would be acceptable to everyone regardless of their personal financial position, race, religion, or health. In effect he was advancing the case for justice to be seen as a basic human need, but he stopped short of saying so.

Later Rawls (1993) substituted the term ‘fairness’ for justice – a decade ahead of the WCSDG reported above. No doubt for some people the substitution revived nostalgic memories of middle childhood and sportsmanship when the notions of right and wrong were unsullied by selfishness, bitter life-experience, specious argument, financial concerns, or vested interests. More recently along the same vein, a worthy desire to create ‘a level playing field’ has often been voiced. But professionalism and the desire to win at all costs corrupt the most noble of such intentions. The competing teams are also rarely well-matched, and for the weaker side the game seems interminable, with no half-time giving an opportunity to benefit from changing ends. Finally, as Judge McElrea (2002) said in an address to a legal conference in London, too often the process is itself portrayed as a game, “with the lawyers playing the system (the rules) while the court acts as umpire, (*and*) justice... the loser”.

For such reasons it seemed better to try to retain the earlier conception of justice than to substitute the sporting analogy, and to disentangle it somewhat from the definition of morality – the one being more pragmatic and applied, while the other is more

abstract and ideal. To complete the package it was thought advisable also to offer a definition of ‘needs’.

#### Definition of terms

The legal and philosophical definitions of justice, morality, and needs, have generated a wealth of scholarship (cf. Coate & Rosati, 1988; Fisk, 1993). Without being too pedantic, the offerings from OEDOnline reflect the convention that presently obtains: viz

- **justice** is “the exercise of authority or power in maintenance of right; vindication of right by assignment of reward or punishment”
- **morality** is the combination of “personal qualities judged to be good or bad”, and
- **needs** provide the impetus to “be under a necessity to do something”.

But for present purposes the definitions can be rephrased to focus on justice as being more than the process designed to deal with breaches of common law and statutory law: viz

- **justice** is as an essential precondition for approximating the good life that ensures the reciprocal quality of relationships between people for their mutual well-being
- **morality** is the quintessential code by which behaviour might be ordered, with the distinction between morality and law resembling the difference between idealism and pragmatism
- **basic human needs** are the mainsprings of action for personal and social development that are energised by depletion and satiated by repletion.

## Theories of human motivation incorporating justice

Not unreasonably, the same Judge McElrea (2002) thought one “should be able to find, or create a theory about the innate sense of justice”. Sadly, the Judge will be disappointed, because justice is essentially a subjective matter involving human values, and mainstream psychologists are still too devoted to logical positivism on epistemological grounds (cf. Israel & Goldstein, 1944) to be concerned with the study of them. As Krutch (1956, pp. 122-123) wrote around the time of the onset of behavioural domination in academic psychology:

What the mechanist disparagingly calls ‘the subjective’ is not that which we are least, but rather that of which we are most certain... Undoubtedly there are good reasons for distinguishing the ‘objective’ from ‘subjective’ phenomena when our purpose is to study the first. But there is no justification for calling only the one real.

The epistemological tension gave rise to the humanistic movement (Bugenthal, 1967) in which the emphasis changed from the authority of scientific method to the creativity of scientists themselves (Feyerabend, 1978). A fierce debate ensued, and it still continues, with newcomers considering the social influences on science to be more important than the rational or empirical (cf. the Strong Programme- [http://en.wikipedia.org/wiki/Strong\\_program](http://en.wikipedia.org/wiki/Strong_program) and the rejoinder by Sokal, 1996, for the traditionalists in exposing the uncritical acceptance of his own contribution to what he called intellectual rubbish).

Meanwhile to legitimate the academic study of human values – that conceivably could include justice – O’Donohue (1989) appealed to clinicians to incorporate values as a third component of the scientist-practitioner model. Although the incorporation would garnish rather than tarnish the reputation of psychologists, it has yet to gain ground explicitly. Yet it was interesting that after 9/11, the American Psychological Association advised its clinical members to respond to disasters by attending to self-care strategies that include their own spiritual needs (cf. [www.apa.org/practice/practitionerhelp.html](http://www.apa.org/practice/practitionerhelp.html) – accessed 28 November 2001). Here in New Zealand the Public Health Advisory Committee to the National Health Committee (2004, p.2) nailed its colours to the mast by defining health “broadly as including physical, mental, emotional, family/whanau, community and spiritual wellbeing”.

To her credit, Ruth Bolletino (2001) made the case for recognising spiritual needs in processes of psychotherapy and counselling, particularly from her work with cancer patients. Following Albert Schweitzer she defined spirituality as “the awareness that comes from experience and reflection (that) ethical behaviour (Good) is seen as preserving life, promoting life, and developing life that is capable of being developed”. Drawing on existential authorities, she argued that the axiom held for people with either theistic or non-theistic beliefs. Recently Noreen Tehrani (2005) took up the theme by organising a symposium at a leading conference in Britain, from which there are likely to be positive developments.

However, despite the hesitancy among academics to address values, parsimony dictated that it were still better to try to build on existing theory than to construe

justice as being so important as to warrant a theory of its own (Taylor, in press b, ch.14). Turning first to theories of social and community development and then to those of personality development and motivation, the social psychologist Melvin Lerner's (1980) concept of a 'just world' looked promising. But Lerner restricted it simply to a description of the initial tendency for individuals to maintain the status quo after any adverse incident by blaming the victim, unless the magnitude of the distress were substantially disproportional to the action that might have caused it. He reiterated his focus on justice as a process in a later publication by saying that:

At the macro-level of analysis, at least in Western societies, justice has a special status superseding all other norms and values. The requirements of justice have the power to legitimize and, at times, to demand the sacrifice of liberty, lives, and happiness. No other secular norm has comparable power. (Lerner 2002).

In making the emphasis he left open the question of legitimacy by whom, because might is not necessarily right. For example the morality of such usage of power by operation of totalitarian government-appointed death squads in recent years (Sluka, in press) and also the widespread use of torture by governments (Burns, in press) is questionable. The same question is being heard today about the justice of certain democratically elected governments claiming the right a) to make pre-emptive strikes abroad against their perceived enemies, b) to send captives abroad for interrogation under 'rendition programmes', and c) not to safeguard the rights of prisoners in the custody of the military.

However in the 1980s the followers of community psychology came close to what is now proposed for justice as a human need, when they construed justice as a

prominent motivating force in human behaviour, the attainment of which according to them depended primarily on negating adverse environmental factors. But they abandoned the concept two decades later, with Gregory (2001) reporting that “the lofty spirit, awakening of morals, and arousal of conscience (*had*) dimmed ... (*and*) wealth and power (*had replaced*) principles about what is right, or the pursuit of justice for all, or simply the greater good”.

Then from the 1990s the business consultants Porter, Bigley, and Steers (2003, ch.2) took advantage of developments in social theory to refer to justice as it reflected a) the fair distribution of rewards and penalties in industry, b) the fairness of the processes through which the distributions were made, and c) the fairness of the interpersonal consequences. But they made no mention of the adverse psychological effects on general staff and stakeholders of the plundering of resources by management and corporate dictatorships for personal gain – i.e. corporate malfeasance or the unjust enrichment on a gigantic scale resulting from the abuse by executives of their financial responsibilities, the results of which can be regarded as tantamount to those of any other kind of disaster (Taylor, 2003b). Similarly, theories that conceptualise public policy gave the need for justice scant attention as distinct from scrutinising the process of justice (cf. Kurtines & Gewirtz, 1991), as also did the most recent contributions to forensic psychology (Ross & Miller, 2002).

To its credit, some 30 years ago the United Nations lent support for the use of **social indicators** in monitoring matters of concern about individual and community wellbeing<sup>v</sup>. The indicators were selected for their relevance to the outcome of interest, for being based on broad support, grounded in research,

allowing for disaggregation, having consistency over time, being statistically sound, and allowing for international comparisons to be made. They were introduced in New Zealand by the Department of Statistics in the 1970s and used periodically as part of national census taking (Shields, 1979), and then used by the Royal Commission on Social Policy (1988a) to gather empirical evidence from the community about prevalent social priorities that included justice, health and hospitals, education, housing, employment, and personal social services, to determine whether New Zealand Society was 'fair and just'.<sup>vi</sup> The indicators were construed as measures of the pattern of widely held social goals that contribute to the 'good life'. Since then they have become regular assessment devices of the Ministry Social Development (cf. 2004 99. 7-11), but they have yet to be fully explored with regard to attaining the fundamentals of justice.

In turning from social and community theories and practices concerning justice to those of individual personality development, it is clear that the most accommodating of them merely allude to the acquisition of moral behaviour (cf. Lundin, 1996). By way of confirmation, an unlimited PsycINFO search on 2 June 2005 for specific research studies relating directly either to 'moral development and justice' or to 'justice and basic needs', produced a complete blank. Soon to break the drought is a chapter by Paul Jose (in press) that combines aspects of Darwinian and Piagetian theory to explain the acquisition of rules for the survival of the species. Up to a point, he considers that self-interest preserves individual contributions to the common heritage and that altruism creates group interdependence against adversity.

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In fact of all the major motivational researchers and social theorists, Abraham Maslow (1908-1970) was the only one who came close to nominating **justice** *per se* as a human need when he:

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- mentioned a number of its attributes such as “the child’s need for some kind of undisrupted routine or rhythm...a predictable, orderly world”, adding that “**injustice**, unfairness, or inconsistency in the parents seems to make a child feel anxious and unsafe” (Maslow, 1954, p.86)<sup>vii</sup>

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- warned of the consequences of **injustice**, the evidence of which would be seen in the “neurotic or near-neurotic individuals” who had been endangered as well as “the economic and social underdogs” (Maslow 1954, p. 87). He observed that clinically such people behave “as if a great catastrophe were almost always impending, i.e. (*they are*) usually always responding as if to an emergency. (*Their*) safety needs often find specific expression in a search for a protector, or a stronger person on whom (*they*) may depend, perhaps a Fuhrer (Maslow 1954, p.88)”,<sup>viii</sup> and he

- went on specifically to describe conditions such as “ freedom to do what one wishes, so long as no harm is done to others, freedom to express oneself...to defend oneself, **justice**, fairness, and orderliness in the group (*as*) preconditions for basic need satisfactions, (*saying*) These conditions are not ends in themselves but they are *almost* (sic) so since they are so closely related to the basic needs, which are apparently the only ends in themselves” (Maslow 1954, p. 92) – (emphasis added in bold-face type).

But Maslow fell short of expecting the most psychologically mature people – whom he called the “self-actualized” – to have moral obligations for helping the rest of mankind to address the injustice they might be suffering. Instead, he epitomised them in mystical terms as people capable of understanding everything but resolving nothing. Many of them became “personal growth” disciples, but very few critical companions.

A revision proposed of Maslow’s theory

Despite the shortcomings of the theoretical constructs and their empirical validation that Maslow himself acknowledged, it seemed sensible to revise his conceptualisation by:

1. including justice – all three civil, criminal, and social components combined – for convenience in the group of safety needs that he identified, while also accepting its relevance in the need to belong
2. redesigning the familiar illustration to show the physiological needs, the safety needs, and the belonging needs as three legs of a milking stool, the precarious structure of which makes clear the fundamental importance of all three legs (Figure 1)
3. showing that the functional development of the later stages of self-esteem and self-actualisation depends on all three legs being strong enough to carry the load, and
4. placing an obligation on the more fortunate and psychologically secure individuals and communities to help people who might be under heavy strain

(Insert figure 1 about here)

If accepted heuristically, it would remain for practitioners, scholars, and researchers to develop procedures for testing the proposition by methods that are appropriate for their disciplines – i.e. the first through the time-honoured method of systematising professional experience, the second through discourse analysis and publication, and the third through the distillation, study, and psychometric appraisal of the theoretical constructs put forward.

A few of the implications outlined

The assertion is that justice is more than a matter of a) affirming contractual rights, b) giving protection from criminality, c) neutralising the aversive effects of socio-political policies, d) making the courts and procedures less forbidding, and e) involving a cadre of responsible citizens in the processes of mediation and reconciliation. Necessary as they are in conflict resolution, such procedures serve the deeper purpose of satisfying part of the basic human need for security that overlaps with that of belonging to a community. Marlene Young (2001) demonstrated as much through her authoritative work in the provision of personal assistance to many different categories of victim, in which she drew on Maslow's theory. The same was true of a number of philosophers and political analysts who were deeply concerned with mediation and reparation on a larger scale (cf. the many contributors to Coate & Rosati, 1988). John W. Burton (1915- ) for one, the pioneer mediator and former Australian diplomat with a commitment to social casework, spent years in teaching and practicing "provention" – i.e his term for the active prevention or continuation of conflict through meeting human needs. He argued that such an approach offered more promise for the resolution of bitter conflict between historical enemies than a continuation of the spiral of dominance and suppression (Burton, 1990; 2001;

Mitchell, 2001). He also acknowledged the work of Maslow (1954), and like him was somewhat equivocal about the significance of justice. At one time he said that “*justice* (sic) can be given a universal meaning only insofar as it reflects the satisfaction of human needs, which by definition are universal” (Burton, 1996, p.32), although in his very next volume on the same topic he made no specific mention of it at all (cf. Burton, 1997). His current view is that social structures sustaining power have to change, with smaller community units emerging replacing them, before justice might prevail (personal discussion and email communication on the 19<sup>th</sup> September 2005).

Similarly Johan Galtung (1930 - ) the Norwegian doyen of peace studies and conflict resolution, acknowledged the importance of meeting basic human needs for survival. Specifically in training manuals for UN peacekeepers he identified the need for a minimum of well-being, for identity, and for freedom of choice. He declared all three needs to be non-negotiable (Galtung, 2000, Sec. ‘Conflict theory, conflict practice, some more steps’, p.3), asserting that “(H)human beings will continue to strive for them under all circumstances, like water expanding when it freezes to ice, like seeds growing under asphalt...” But he made scant reference to justice, describing it simply as “the commodity produced by the legal system” (2000, p.34).

However, it would seem to be only a short step for the followers of Maslow, Burton, and Galtung to recognise justice in the way suggested in the present text. Already a few scholars and researchers have welcomed the revival of interest in morality and value systems that have long been excluded from the field of human behaviour (cf. Marshall, in press: Tolman, in press<sup>ix</sup>) – the more especially because of the urgent

need to find common ground in the prevention of terrorism (cf. Ali, 2003; Zaoui, 2005). Already the theologian and human rights lawyer Melodee A. Smith (2005) has broached the topic in relation to restorative justice in her paper to the April 2005 UN Congress on Crime Prevention and Criminal Justice that was held in Bangkok.

May there be positive repercussions from all of their endeavors, as well as from those the present company might contemplate.

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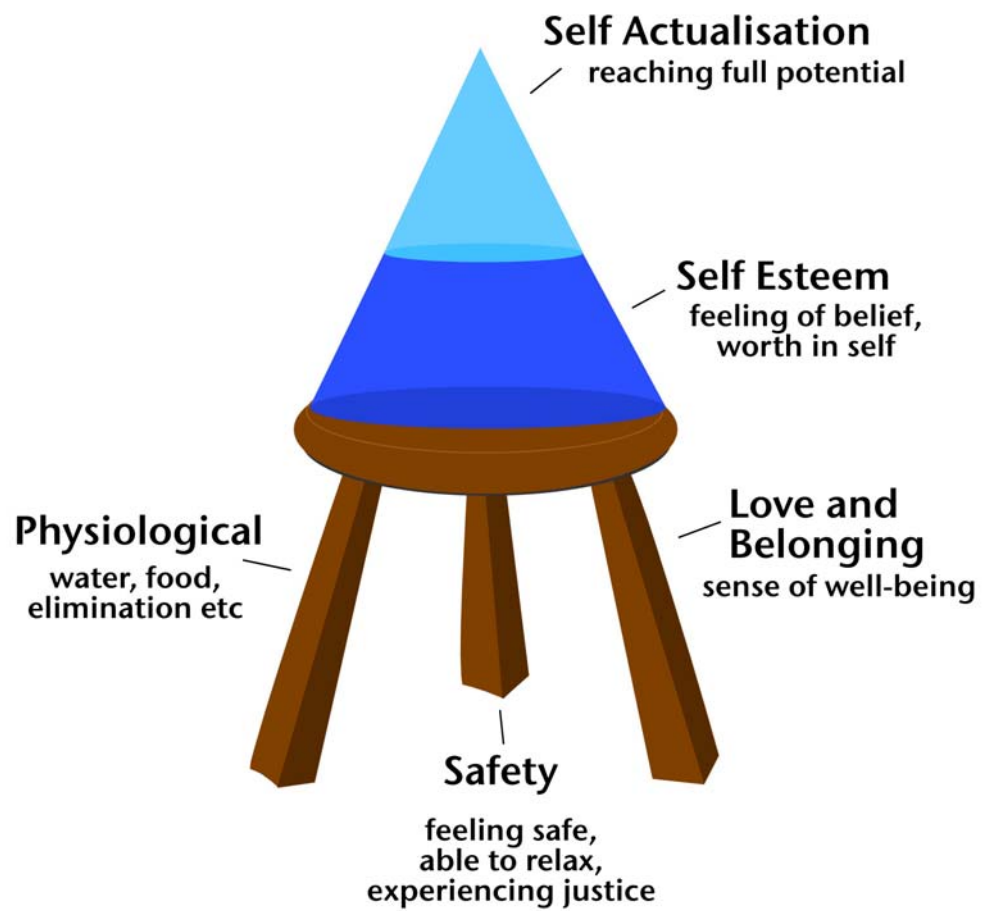
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**Figure 1. Maslow's schema refigured to include justice as a basic human need.**



<sup>i</sup> The argument was presented first in an article (Taylor 2003a) and has since been elaborated in a book with 16 contributors from various academic disciplines (Taylor, in press a).

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<sup>ii</sup> For a succinct appraisal of the functional prerequisites of society, see Aberle, D.F., Cohen, A.K., Davis, A.K., Levy Jr., M.J., & Sutton, F.X. (1949/50).

<sup>iii</sup> Consider the arbitrary if not capricious laws that in New Zealand a) until 1961 led to the prosecution of those who attempted suicide, and made into longer an offence to abduct an heiress, and b) until 1986 led to the prosecution of adult males for their consenting sexual behaviour in private – despite the query raised by Taylor and Inglis (1962) about its legality. Consider also the consequences of the recent changes lowering the drinking age and allowing pokies/casinos without prior social impact studies having been obtained.

<sup>iv</sup> In particular see contributions in the present volume from pioneers concerned with restorative justice, therapeutic jurisprudence, and human rights.

<sup>v</sup> In the words of Peter Davis, an adviser to the Royal Commission on Social Policy (1988, vol 3, pp 345-362), ‘Social wellbeing – its achievement, promotion, enhancement - is the goal towards which social policy is to be directed and by which it should be judged.....it is social in that it goes beyond the private concerns of individuals to a dimension of public and collective significance; and it involves assessments not only of individuals but also of groups, institutions and other social forms and processes, including society itself.

<sup>vi</sup> In passing, it has to be noted that in the executive summary the Royal Commission (1988 b p.52) concluded that a ‘good justice system should provide a fair and efficient means of resolving disputes. It should ensure that individuals receive justice and that society is protected. It should punish appropriately those who commit offences’.

<sup>vii</sup> Although all three editions of Maslow’s text were consulted, for the sake of consistency the references are given to the first edition in which they appeared.

<sup>viii</sup> But in setting out his theory, Maslow made scant reference to the devastating effects of such external social forces on human behaviour – although he did happen to mention in an appendix that “it would have been a blessing, not a curse, if Hitler or Mussolini had broken down with obvious schizophrenia” (Maslow, 1954, p.371).

<sup>ix</sup> Apart from those already cited in the present text from the same volume, see Eccleston and Ward (in press), Fischer and Skitka (in press), Ladley (in press), Maxwell and Morris (in press), Oruvwuje and Taylor (in press), and Wexler (in press).