



Interpersonal justice as partial justice

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Abstract

Despite being sympathetic to the aim of Martijn Hesselink's paper to explore how private law might be used to tackle gross inequalities, it is argued that private law is based fundamentally on the moral principles of interpersonal justice, which being a kind of partial justice as explained by Thomas Nagel are distinct and often opposed to the impartial standards of justice used in theories of social justice. European private law either has to abandon the principles of interpersonal justice in favour of a goal-oriented regulation or alternatively a richer conception of interpersonal justice may be developed that may assist to a limited extent the pursuit of greater equality.

Keywords: interpersonal justice; social justice; private law; inequality; regulation

1. The agenda of social justice and private law

The central ambition in Martijn Hesselink's essay on 'Reconstituting the Code of Capital'¹ is to explore how European private law might respond to the widespread concern about growing inequality in society, particularly the yawning gap between the super-rich and the remaining 99 per cent of the population. At first sight, the use of the private law of contract, tort and property to address these concerns seems rather wide of the mark. Do these areas of law have anything to say about redistribution of wealth?

Hesselink points to the recent work of Katharina Pistor for support for the relevance of private law to this agenda.² She has demonstrated how private law's rules about securitisation of income streams and other intangibles enable the wealthy and legally expert to transform their wealth from uncertain streams of income into permanent capital assets, which can then be used as security to create more wealth. Although Pistor's focus is on capital markets, the idea that the rules of private law, especially private ownership of property, provide essential support and structure for market capitalism has a long pedigree, going back at least as far Karl Marx. If private law rules provide the essential legal support for capitalism and especially provide essential infrastructure for this stage of financial capitalism that seems to be harbouring growing inequality, it makes sense to wonder if a critical revision of those rules, especially contract law and property law, might help to challenge the privileges of the rich and even push back against the rising tide of inequality.

This ambitious agenda set by Hesselink is bound to meet many obstacles and objectives. Many will say that the contemporary problem of growing inequality is mostly the consequence of the

¹M Hesselink, 'Reconstituting the Code of Capital: Could a Progressive European Code of Private Law Help us Reduce Inequality and Regain Democratic Control?' 1 (2) (2022) *European Law Open* 316–43.

²K Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton University Press 2019).

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Partial Justice Partial Justice

Joseph F. Spillane, David B. Wolcott



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