

# THE GREAT IDEAS ONLINE

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Nov '20 *Philosophy is Everybody's Business* N° 1072



## JUSTICE

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**W**elcome to another discussion of The Great Ideas. Today we shall consider The Great Idea of Justice. And in the time we have together I would like to discuss with you some of the difficult problems that have always bothered men about this basic idea.

When anyone uses a word like *justice* or a word like *truth* it produces a reaction of which I am familiar from long years of teaching and long years of talking to people about such things. They tend to say, both students in the classroom and the adults that I have talked with about fundamental ideas, they tend to say no one can—it is impossible to say what justice is or what truth is. These are almost empty words, big words but words without clear and definite meaning.

And I think there are two reasons for this widely prevalent attitude that one can't say or can't tell the meaning of such terms as *justice* or *truth*. One of the reasons is that people confuse two different questions. The question, what is justice? and the question, what is just in this case? Now I tend to think that it is much easier to say what justice is than it is to say what in this particular case is a just handling of it, just as it is much easier to say what truth is than to

say what is true in a particular argument. But that isn't the only reason why people shy off such big and difficult words as *truth* and *justice*.

The other reason is that they have a feeling that there are so many conflicting senses of the word. They have a general impression that in the history of European thought immanent philosophers have given quite different meanings and that—as a matter of fact in ordinary speech people use the word *justice* with quite different meaning. They are right about that. They are quite right. Now you may have this impression, you are quite right in thinking that the word *justice* has been defined in various ways by the philosophers, that even in ordinary discussion men use the word *justice* in a number of senses.

Let me give you quickly an indication of two or three of the different fundamental senses in which the word *justice* is used. First—and by the way, these different senses that I'm going to enumerate for you are, I think, the senses in which you and I every day of our lives use the word *justice* or the adjectives *just* and *unjust*. Whether we like it or not, whether we think we know the meaning of this word or not, we tend to use the word—you will say “that's unjust” or “that's just.” And I would like us to remind you of the sense in which you and I, whenever we say “that's just” or “that's unjust,” mean the word.

The first of these senses is carried by the notion of equality. Justice consists in treating equals equally and unequals unequally. Now let me give you a few examples of what I mean. Last week when we were discussing punishment, I gave you one example of this I would like to repeat. Suppose two criminals or two men commit the same crime, but the crime be petty larceny. Is it just or unjust if one man is sentenced to three months imprisonment and the other to nine months imprisonment? Supposing the crime and all the circumstances to be the same, I think our general sense is the men having committed a crime of equal gravity, they should be punished with equal severity. But take the opposite case, one man has committed petty larceny and the other man has committed grand larceny, involving in addition to that assault and battery. Would it be just to give these two unequal men, men who have committed crimes of unequal gravity, the same punishment? Or shouldn't we punish more severely the man who has committed the graver offense? Now it is in this simple sense of equal treatment of equals and unequal treatment of unequals that I think we all use every day of our lives the words *just* and *unjust*.

Or let's take another example. In a democracy most, with few exceptions, all adults are granted the political rights and privileges of suffrage. And we tend to think this is just. That the opposite would be unjust, that a society in which only a few persons were admitted to citizenship and other men and women were excluded on the grounds of race or sex or religion or lack of wealth would be unjust. Why do we think that? Because we think that all men are equal and in their equality deserve equal status under the constitution of the law. That equal status is the status of citizenship. Hence we think that the equal treatment of men involves giving them all the equal status of citizenship.

Or take one other example of the meaning of justice as equality in which we talk about a fair exchange as opposed to an unfair exchange. If I give you something of greater value than you in turn give me, this unequal exchange is unfair and we call it unjust. Let me mention the second meaning of justice. Justice, it is said, consists in rendering to each man what he is due, giving to each man what belongs to him. Thus a man who pays his debts is a just man because he owes the other man something and he is giving another man what belongs to him, whereas a man who steals is an unjust man for he is taking from another man what belongs to him. And so we speak of a just government as one which respects and secures the natural rights of men. Why? Because what we mean by natural rights are the things that a man—that belong to a man are proper to him. And a government which does not give to a man what is his due is unjust, whereas those governments which respect and secure the natural rights of human beings are therefore just.

Now there is a third meaning of justice. And that one again we are all familiar with. We say that a man is a just man if he obeys the law of the community in which he lives. The just man is the law-abiding citizen; the criminal, the man who breaks the law, is unjust.

Now what I would like to do in the course of the next few minutes is to show you how these three senses all fit together, that they are not inconsistent or conflicting. I would like to show you how they fit together and in the course of doing that I would like to face with you one of the most difficult, perplexing problems that is raised by this fundamental idea of justice.

Aristotle, in his ethics, has an analysis of justice which shows us how to put these three different senses of the just and the unjust together. Let me report this to you. He, first of all, makes the distinction between what he calls general justice and special

justice. He takes justice and divides it into general and special. What he means by special justice is that special virtue through which men are fair with one another in the exchange of goods or in the distribution of goods. It is the justice we have in mind when we speak of a fair wage or a fair bargain or a fair price or a fair exchange. It is that special virtue of justice which is concerned in the economic order particularly with the exchanges that occur between men of goods and services or the distributions of ranks and burdens and privileges.

Now what Aristotle means by general justice is something quite different. He looks at a man as acting in relation to other men, acting for the common good, acting in such a way that he does right, wrongs no one, does good to other people. "And such a man," he says, "is generally just, a man who is virtuous, quite virtuous, in his conduct toward his fellow men and in the service of the common good or the general welfare."

What is the basis of this notion of general justice? It is a fundamental justice of what is right and wrong in conduct and ultimately is based upon what is due other men, what rights they have that we must respect, and not respecting them, we would be wronging them. So that you have here in these two senses the meaning of justice as fairness in exchange and justice as giving to another man what is his due when we act well toward the other man or toward the society in which we live.

Now what about the third sense of justice, the sense in which we say justice consists in obeying the law? Aristotle treats this as a part of general justice. For he tends to say that general justice is to special justice as the lawful is to the fair. Let me put that down for a moment. Use the abbreviations, general justice is to special justice as the lawful is to the fair. That is, in so far as men obey the laws of the land in which they live, they are generally just. Only some of the laws of the land in which we live are concerned with such things as fairness in exchange: fair price, fair wages, and so forth. Thus you see the special justice dealing only with fairness in exchange is a part of general justice which is concerned with obeying the laws, being lawful in general in the community.

But as soon as that is said, another problem arises. It is the problem of the justice of the laws itself. Because a man would not be just obeying the law if the laws he obeyed were not just. Suppose you were to live, for example, in a tyrannical state or in a totalitarian and fascist society, in which many of the laws were unjust. Would obedience to the laws of such countries constitute a just man and

just action? I think your answer and my answer would be no. Justice consists in obeying the laws only if the laws themselves are just. And once one says this, one faces the most difficult problem of all.

Let me show you the problem just by putting the words on the chart here. Suppose we put the word *just* down. And then put the word *man* and the word *law*. Now notice, we speak of a just man as a man who obeys the laws. But we say a man who obeys the law is just only if the law itself is just. Now does the word *just* mean the same thing when we speak of the man is just and the law is just? Hardly, for the meaning of the word *just* as applied to man is determined by his obeying the law and therefore can't be the same meaning that we have when we apply it to law—say that law is just which the man obeys.

Now Aristotle, faced with this difficult problem of the sense in which we speak of the law as just, quite differently from the sense in which we speak of the man is just when he obeys the law, has—at least offers us a beginning of the solution to the problem. He distinguishes between natural and conventional justice. For example, in all the communities in which you and I live there are traffic laws. We are asked to stop at certain corners, drive at certain speeds, drive on the right or the left hand side of the road. There is nothing just or unjust about any one of these things until the law is made. But once in the community in which we live, it is conventionally decided, simply decided by the legislator or by some commission, traffic commission, that these are the rules of driving in the community, then the just man is one who obeys these laws simply because they are the statutes or ordinances of the community in which he lives. For there is nothing right or wrong about left hand driving as opposed to right hand driving.

On the other hand even if there were no law made concerning stealing or murder, to kill a man or to take what belongs to him and not to you is, according to Aristotle at least, naturally unjust. And so a law that prohibits murder or prohibits stealing is a law, the justice of which is not conventional but natural. If justice is based upon the natural rightness or the natural wrongness of such things as stealing and murder.

Hence the measure of justice in the laws must be found, according to Aristotle, in a principle of natural justice. For only in this way can we talk about the laws being just and unjust in a sense that is different from the way in which we speak of a man as being just or unjust when he obeys the law.

Now suppose for a moment that there were no natural justice. Suppose for a moment there were no natural justice. In that case you could not speak of laws as just or unjust. And all you could say was that men are just or unjust according as they do or do not obey laws. But there would be no way of saying anything about a just law or an unjust law since there would be no measure of justice in the law if there is no justice behind the law or prior to the law. The law itself, the existing law of the community, would be the only measure of justice in which case what was just in one community might be unjust in another. But if there is a criterion or a principle of natural justice, then that is the same universally at all times and places and it measures the justice of laws in any community. In which case there is something behind the law, prior to the law, that determines whether or not men are acting justly when they are acting lawfully.

Now this problem, the problem of the justice of laws and government, which ultimately underlies the question of whether men are just or unjust when they obey laws is, I think, the most serious problem, certainly the most serious political problem that men have ever faced in the history of Western thought, at least, while in connection with the idea of justice. And I would like to expand on this problem a little further and tell you the two opposite positions in some detail. Let's turn to that at once.

Is there a justice which measures the laws of the state? That is the question we are now going to face on which there are two conflicting points of view. Let me—I have in my notes here, I think, a better formulation of that question. Let me read you a more complete formulation of the question. Does justice entirely consist in doing what is required of us by the laws of the state? Or is there a natural justice which requires us to do what is right even when not commanded by the laws of the state, and which is the measure of justice in the state itself in its laws and government?

Now to that question there is the answer of those who, like Aristotle and there have been men, philosophers, Greek, Roman and modern, medieval and modern, who have held with Aristotle that there is a principle of natural justice which is the foundation of justice in laws and government. And those who hold this view argue somewhat as follows: that human reason tells us what is right and wrong, that just by the exercise of our natural faculty of reflection we know that such things as stealing and murder are wrong, and that those who commit these acts, stealing and murder,

are committing unjust acts, and that laws are just laws when they prohibit such wrong acts.

And they argue further that the dignity of man involves the possession by man of each man or each man of certain unalienable, natural rights, like the rights mentioned in the Bill of Rights in our constitution, the rights mentioned—the fundamental rights mentioned in the Declaration, the right of every man to the pursuit of happiness, to liberty, and to such rights as liberty of free speech and freedom of thought. And since these rights belong to man by his very nature, are part of his dignity, those who hold this view say that governments are just and laws are just when they respect and secure these rights and that governments are bad governments in the sense of being unjust governments when they violate these rights. This again is the language of the Declaration, that just governments secure these fundamental, natural, and unalienable rights. Hence on this view, the laws of any given state are just when they command us to do what is right and prohibit us from doing what is wrong. And governments and constitutions are just when they secure and respect the natural rights which are vested in men because they are men and have the dignity of men.

Now the opposite answer to the question denies that there is any such thing as natural justice. And it holds that governments and laws determine what is just or unjust in any society and that as the laws or governments of different societies differ, so what is just or unjust differs from one society to another. According to the laws of the Medes and the Persians, one thing is just. According to the laws of the Greeks, another thing is just.

Now this position, this other view, this opposite view on justice which denies that there is any justice anterior or antecedent to law in government, and that all justice is determined by what the government is or the laws are, is held in modern times by such great, political philosophers as Thomas Hobbes, the Englishman, and the Dutch Jew, Benedict Spinoza.

Let me, just to give you the flavor of this position, read you the language of Hobbes and Spinoza on this very point from the syntopicon. I have the passages marked. Hobbes takes the view that to men living in a purely natural condition, not in a society under government but as it were to a state of nature, that men living in a purely natural condition, there are no distinctions of justice and injustice. It is like saying in that condition anything is fair, as in war. The notions of just and unjust, according to Hobbes, apply only to men living in society. Hobbes says, “Where there is

no commonwealth,” that is, no civil society with government, “there is nothing unjust.” So the nature of justice, according to Hobbes, consists in the keeping, in the obeying, of the laws set up by the sovereign or by the sovereign states in which one lives. The breach of civil laws, the breach of the laws of the land may be called injustice and the observance of them may be called justice, according to Hobbes, but nothing else.

Now this is Spinoza’s opinion, too. According to Spinoza, everything has by nature as much right as it has power to exist and operate. “And therefore,” he says, “that in a natural state,” that is, in the state of nature, not in society, “there is nothing which can be called just or unjust,” but only in a civil state when men live in society under government as we live in the United States. Here as before, here it is with Spinoza as with Hobbes, justice consists only in obeying the laws of the land in which you live, and injustice in disobeying it. Whatever the laws are the state has the power to enforce. But these laws themselves enforced by the state cannot be called just or unjust, for there is no principle or measure which determines anything like justice and injustice as applied to the laws themselves. Whatever a government makes a law, it is a law. And that determines what is just in that society and there is no way of saying that the laws themselves are just are unjust.

Now you can see at once that this second position is a familiar position, the one that you know as might makes right. All the rights that men have are granted them legally by the state and therefore the state can take them away from them. There are no natural and inalienable rights. All rights are legally granted rights and therefore they can be taken away by the change of laws. On this view justice is the same as expediency; the man who is just in obeying the laws is merely being expedient, for if he doesn’t obey the laws and gets caught, he will suffer punishment. In other words, he obeys the laws not because the laws are right intrinsically but from fear of punishment which is the expedient thing to do. And in this view of the matter there can’t be any such thing as international justice, justice between states. For there is only justice within the states where men are living under the laws of a particular country. As between states, there is no justice. International law is no standard of justice in the conduct and international affairs as between one sovereign state and another.

Now this view which is the other great view on this fundamental question of justice in relation to laws, comes down to us from antiquity. Just as the view that there is natural justice comes down to us from Aristotle, so this view comes down to us from antiquity.




And I would like to have you hear the ancient expression of it because it is so marked.

Let me read you just one statement of this which comes to us from Plato's *Republic*. In the opening book of the *Republic* where the great Sophist, Thrasymachus, says this about justice. He says, "I proclaim," this is Thrasymachus speaking, "I proclaim that justice is nothing else than the interest of the stronger. The different forms of government make law democratical, aristocratical, tyrannical, with a view each to their several interests. And these laws which are made by them for their own interests are the justice which they deliver to their subjects. And he who transgresses these laws, they punish as a breaker of the law and unjust. Notice the laws are not just. The laws say what is just and the man who breaks the law is called unjust. And this is what I mean," says Thrasymachus, "this is what I mean when I say that in all states there is the same principle of justice which is the interest of the government. And as the government must be supposed to have power, the only reasonable conclusion is that everywhere there is one principle of justice, which is the interest of the stronger." And this in a word is saying that might makes right and that right consists in conforming to the existential power, that where the power is that is the right and we must obey or conform to the law of force.

Now you can see at once, can't you, that according as one takes one or the other of these two conflicting views about justice and law, one will take quite different views about the conflict in the world today between the democracies on the one hand and the fascist and the totalitarian powers on the other? For if one takes the view of natural justice, one can say that one of these two conflicting parties is in the right and the other wrong. And then as between states there is a measure of rightness and wrongness. But if one takes the second view that only might makes right and the struggle of the East and the West, if you will, of the democracies and communism or the democracies and the totalitarian countries is merely a struggle of power. And the only final arbitration of this is by might. And the only measure of who is right will be by who wins in the struggle.

The issue we have just been considering is by no means the only problem concerned with The Great Idea of Justice. But it is, in my judgment, the most important problem about justice in the whole field of political philosophy. For there we are concerned primarily with the justice of laws and of government and of the justice of men in relation to society. There are other problems about justice as, for example, the basic moral problem that is posed by the

question: Which is better, to do injustice to others or to suffer injustice done to oneself by them?

I think you will be interested to know that this—and therefore we must conclude here our discussion of this Great Idea. 

***We welcome your comments, questions, or suggestions.***

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## THE GREAT IDEAS ONLINE

is published weekly for its members by the

CENTER FOR THE STUDY OF THE GREAT IDEAS

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A not-for-profit (501)(c)(3) educational organization.

Donations are tax deductible as the law allows.