



MORTIMER ADLER ON JUSTICE AND FAIRNESS

The domain of justice is divided into two main spheres of interest. One is concerned with the justice of the individual in relation to other human beings and to the organized community itself—the state. The other is concerned with the justice of the state—its form of government and its laws, its political institutions and economic arrangements—in relation to the human beings that constitute its population.

Two serious errors that affect our understanding of justice have already been touched on and corrected in earlier chapters of this book, explicitly or by implication.

One, the mistake of giving primacy or precedence to the right over the good, had its origin in the moral philosophy of Immanuel Kant and was given currency in this century in a book, *The Right and the Good*, published by an Oxford philosopher, Professor W. D. Ross, in the early thirties. It stems from ignorance of the distinction between real and apparent goods—goods needed and goods wanted—an ignorance that could have been repaired by a more perceptive reading of Aristotle's *Ethics*.

Once that distinction is acknowledged and its full significance understood, it will be seen at once that it is impossible to know what is right and wrong in the conduct of one individual toward another until and unless one knows what is really good for each of them and for everyone else as well.

Real goods, based on natural needs, are convertible into natural rights, based on those same needs. To wrong another person is to violate his natural right to some real good, thereby depriving him of its possession and consequently impeding or interfering with his pursuit of happiness. To wrong or injure him in this way is the paradigm of one individual's injustice to another.

In short, one cannot do good and avoid injuring or doing evil to others without knowing what is really good for them. The only goods anyone has a natural right to are real, not apparent, goods. We do not have a natural right to the things we want; only to those we need.

“To each according to his wants,” far from being a maxim of justice, makes no practical sense at all; for, if put into practice, it would result in what Thomas Hobbes called “the war of each against all,” a state of affairs he also described as “nasty, brutish, and short.”

If, as Professor Ross maintained, the right had primacy over the good, we should be able to determine what is right or just in our conduct toward others without any consideration of what is really good for them. But that is impossible.

The second mistake, equally serious for the subject at hand, made its appearance more recently in a widely discussed and overpraised book, *A Theory of Justice*, written by Harvard professor John Rawls. The error consists in identifying justice with fairness in the dealings of individuals with one another as well as in actions taken by society in dealing with its members.

Fairness, as we have seen, consists in treating equals equally and unequals unequally in proportion to their inequality. That is only one of several principles of justice, by no means the only principle and certainly not the primary one.

If, as Professor Rawls maintained, justice consists solely in fairness, murdering someone, committing mayhem, breaching a promise, falsely imprisoning another, enslaving him, libeling him,

maliciously deceiving him, and rendering him destitute, would not be unjust, for there is no unfairness in any of these acts. They are all violations of rights, not violations of the precept that equals should be treated equally.

Only when the facts of human equality and inequality in personal respects and in the functions or services that persons perform provide the basis for determining what is just and unjust can justice and injustice be identified with fairness and unfairness.

When, on the contrary, the determination of what is just and unjust rests on the needs and rights inherent in human nature, then justice and injustice are based on what is really good and evil for human beings, not upon their personal equality or inequality or upon the equality and inequality of their performances.

The fact that all human beings, by nature equal, are also equally endowed with natural rights does not make their equality or their equal possession of rights the basis of a just treatment of them. If only two human beings existed, one could be unjust to the other by maliciously deceiving or falsely imprisoning him. That wrongful act can be seen as unjust without any reference to equality or inequality. It is unjust because it violates a right.

Murder, mayhem, rape, abduction, libel, breach of promise, false imprisonment, enslavement, subjection to despotic power, perjury, theft—these and many other violations of the moral or civil law are all unjust without being in any way unfair. They are all violations of natural or legal rights. That is what their injustice consists in, not unfairness.

Murder wrongfully deprives an individual of his right to life. Mayhem, torture, assault and battery wrongfully impair the health of an individual, which is a real good to which he has a natural right. False imprisonment, enslavement, subjection to despotic power transgress the individual's right to liberty. Libel, perjury, theft take away from individuals what is right fully theirs—their good name, the truth they have a right to, property that is theirs by natural or legal right. Rendering others destitute, leaving them without enough wealth to lead decent human lives, deprives them of the economic goods to which they have a natural right.

In all these instances of injustice, which consist in the violation of rights, the ultimate injury done the unjustly treated individual lies in the effect it has upon his or her pursuit of happiness. The circumstances under which individuals live and the treatment they

receive from other individuals or from the state are just to the extent that they facilitate his pursuit of happiness, unjust to the extent that they impair, impede, or frustrate that pursuit.

Unfairness enters the picture when unjustifiable discrimination takes place. To pay women less than men when they hold the same job and perform the same function equally well is an unjust discrimination. It is unjust because it is unfair. It treats equals unequally.

Difference in gender is a totally irrelevant consideration, as is difference in skin color, difference in ethnic origin, difference in religion. These differences being irrelevant, the persons involved are equal. They are, therefore, equally entitled to be considered for a job if one is open. And, when hired, they are entitled to equal compensation if they perform equally well. To treat them unequally is to discriminate among them unjustly, and that is unfair.

It is also unfair and therefore unjust not to discriminate when discrimination is required because relevant considerations are present. Not to give greater rewards to those who do more is unfair. Children of a tender age are quickly sensitive to such unfairness. When parents, who have assigned siblings certain household chores, reward equally the child who has discharged his assigned duties and the child who either has not done so or has done much less, the child who is aggrieved by the manifest injustice of his parents will cry out, "That's unfair."

Unfairness occurs in any transaction between individuals when, in an exchange of goods or services, one receives less than he deserves and one gets more than he deserves. The butcher who defrauds his customer by weighting his scales exacts an unfair price for the meat the customer is buying. The employer who pays an employee less than the going rate for the work to be done, because the latter is in such dire need that he will take the job at any wage, commits an injustice that is unfairness. He is giving the employee less money than he deserves. Fair wages and fair prices are prime examples of justice in exchange.

Unfairness occurs in distributions as well as in exchanges. When two soldiers who have performed heroic actions far beyond the call of duty both receive the Congressional Medal of Honor, the awards have been fairly allotted; but when one who has done as much as the other, by applicable standards of bravery, receives a less honorable citation than the other, the distribution of honors is manifestly unfair and unjust.

This is particularly true if the unfairly treated individual has been unjustly discriminated against because of irrelevant considerations, such as gender, race, or religion. Such unfairness, stemming from unjust discrimination, occurs in appointments to public office when candidates of equal merit are not given equal consideration because of differences among them that have nothing to do with their ability to discharge the duties of the office. The nondiscriminatory character of justice is symbolically epitomized by the blindfold on the eyes of the statue.

It may be thought that the use of the word “deserves” in our discussion of fairness—a woman getting less pay than she deserves, a soldier awarded an inferior honor getting less than he deserves, a customer defrauded by his butcher giving less than he deserves—introduces the notion of rights into our understanding of fairness. It certainly can be said that what a person deserves he or she has a right to. If that which an individual has a right to is something he or she deserves, why is not every injustice that is a violation of rights also an instance of unfairness?

The answer derives from which consideration comes first in the determination of what is just or unjust.

When what the individual deserves is based on what he has a natural or legal right to, that right is the criterion for regarding an action as unjust because it is violated.

When what an individual deserves is determined by comparison with what another individual also deserves, and when the comparison is made with respect to what both individuals have done or are able to do, then the equality or inequality of their performance or of their ability to perform is the criterion for regarding the treatment accorded them as just or unjust because it is fair or unfair.

Fairness and unfairness in distributions to individuals always involve some comparison of the merits or deserts of the individuals concerned, and that comparison always involves considerations of equality and inequality. Fairness and unfairness in exchanges between individuals always involve some comparison of the value of the things being exchanged, and that comparison also always involves considerations of equality and inequality. Therein lies the essence of the justice and injustice that is identified with fairness and unfairness.

In contrast, the injustice that is identified with a violation of rights calls for no comparison of the merit of one individual with that of another, or comparison of the value of one thing with another. Nor does it involve considerations of equality and inequality. The existence of a right in just one individual suffices to make any action that transgresses that right an unjust

It would appear that the definition of justice at the beginning of Justinian's codification of Roman law—"the constant and perpetual will to render to each what is his due"—covers both justice as securing rights from violation and also justice as fair treatment. However, what appears to be the case is only superficially true. Justinian's definition covers both forms of justice while neglecting to observe their difference.

What is due an individual or what an individual deserves can be determined either (1) by the criterion of what he deserves by right, either his natural rights or rights granted him by the law of the state; or (2) by the comparison of one individual with another according to their merits, either in terms of what they can do or in terms of what they have done.

These two forms of desert are irreducible to one another, as are the injustice that consists in the violation of rights and the injustice that consists in unfair distributions or exchanges. There is still a third form of injustice that is irreducible to the other two. The natural moral law puts us under three obligations. Its first precept commands us to seek the good and avoid evil, which, spelled out, means seek everything that is really good for us and so is an indispensable ingredient in making one's whole life good.

This first precept is not a principle of justice because it concerns the individual's conduct of his private life. Only the second and third precepts of the natural law are principles of justice. They concern the conduct of an individual in relation to others.

The second precept of the natural moral law commands us to do good and avoid doing evil, which, spelled out, means acting justly toward others, either (a) by not violating their rights and thus not impeding or frustrating their pursuit of happiness, or (b) by treating them fairly rather than unfairly in distributions and exchanges.

The third precept commands us to act for the common good or general welfare of the community of which we are members. This is the contributive aspect of justice. It cannot be reduced to the two forms of justice identified above as subordinate aspects of the se-

cond precept of the natural moral law, any more than either of those two forms can be reduced to one another.

For example, the citizen who commits treason does some thing inimical to the security and welfare of the state. He has not injured other citizens directly by violating their rights or by treating them unfairly in relation to one another. Similarly, the citizen who bribes a public official to achieve an illicit result corrupts due process of law and thereby acts contrary to the general interest of the community that prospers under the rule of law.

The public official who acts unconstitutionally by exceeding the authority vested in his office by the constitution commits a grave injustice, one that directly injures the community as a whole and only indirectly its members. It may even be said that the ordinary citizen who fails to exercise his suffrage is defective with respect to contributive justice and that that defect adversely affects the political process and so is contrary to the general welfare.

The ordering of the three precepts of the natural moral law confirms what has already been said about the primacy of the good over the right.

The pursuit of happiness is our primary obligation. Doing what is right with regard to others and doing what is right with regard to the community as a whole are secondary and tertiary obligations.

Their subordination to the first precept and to our primary obligation lies in the fact that our doing what is right, either with regard to other individuals or to the community as a whole, affects everyone's pursuit of happiness, which is the ultimate and common good of all.

It affects it directly, but in a negative way, by not impeding or frustrating anyone's efforts to make a good life for himself or herself. It affects it indirectly, in a positive way, by contributing to the welfare of the community as a whole, which in turn redounds to the benefit of its individual members in their pursuit of happiness.

The distinction just noted between the direct and indirect effects of just acts on the part of individuals leads us to another insight concerning justice. The individual is under no positive obligation of justice to act in such a fashion that others directly benefit from his action. Justice does not consist in doing good directly to others. Justice consists only in giving what is due, what is deserved.

In contrast, the benevolent impulses of love go beyond justice to benefit the loved individual without regard to strict deserts. The generosity of love is gratuitous in its gifts. In contrast, the awards of justice are heartlessly exact. That is why they must sometimes be softened by mercy and dispensed with equity that expresses the spirit rather than the letter of the law.

Justice restricts itself to what others deserve, either because they have a right to it or because they deserve to be treated fairly. This requires actions that benefit them negatively, not positively—by *not* violating their rights, by *not* treating them unfairly.

Individuals act positively for the benefit of others when they discharge the obligation of justice to contribute to the general welfare. In this way they do benefit others, but only indirectly through the participation of all in the welfare of the community, especially its peace and its prosperity.

We come, finally, to the justice of the organized community itself in relation to the good of its individual members. Here we are chiefly concerned with the justice of its form of government, the justice of its economic arrangements, and the justice of its positive, or man-made, laws.

In the sphere of political institutions, the most just form of government is a republic with universal suffrage and with a constitution that includes a bill of economic as well as political rights that secures the natural rights of all. The supreme justice of a constitutional democracy resides in its distribution of political liberty and political equality to all, with the exception of infants and the pathologically disabled, as well as in the protection of other natural rights.


In the sphere of economic arrangements, the most just economy is the one that provides all individuals and families with equal participation in the general economic welfare at least to the extent that all have, on the base line, the degree of wealth needed for a decent human life. No one is left destitute by being deprived of that minimal sufficiency. Above the base line, additional justice is done by a distribution of wealth that is fair because it gives some have more and some have less in proportion to the contribution they make to the production of wealth.

The justice meted out by the man-made laws of the state derives, first of all, from the enactment in positive laws of specific determinations of those principles of the natural moral law that are its pre-

cepts of natural justice. The rules of positive law are just to the extent that they prevent natural rights from being violated and to the extent that they preserve or promote fairness in exchanges and in distributions.

Rules of positive law may also consist in determinations of that precept of natural justice which calls for actions that preserve or promote the general welfare. Laws regulating public assemblies with a view to maintaining peace and order are of this sort; so, too, are tax laws that provide revenue for public services as well as for the support of government itself. These may, in addition, be just or unjust in the manner in which they fairly or unfairly distribute the burdens of taxation.

Last, we come to rules of positive law that do not derive in any way from precepts of natural justice. They command or prohibit what is otherwise morally indifferent—neither just nor unjust in itself. They legislate about matters that must be regulated for the public interest, either in one way or another, neither way being inherently right or wrong.

Traffic regulations are a prime example of laws the only justice of which consists in the fact that, once they are made, compliance with them serves the good of the community. Infractions have the opposite result. Hence the individual who obeys or disobeys such regulations is contributively just or unjust. 

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