

THE GREAT IDEAS ONLINE

Mar '01

Center for the Study of The Great Ideas

125

What is just by reference to natural rights takes priority over what is just by reference to criteria of fairness because the latter is based on the personal equalities and inequalities of individuals—their endowments and attainments and how they put them to use—whereas the former is based on the natural needs common to all persons as members of the human race.

—Mortimer J. Adler



THE NATURE OF MAN

The Nature of Man was an appropriate title for the first formal lecture given at the opening of the Aspen Institute for Humanistic Studies. That lecture was given by Mortimer J. Adler on July 1, 1950. Now, in this interview, forty-five years later (1995) he sums up his views on aspects of Human Nature, Nurture, Culture, and their relation to Natural Justice and Natural Rights. (in seven parts)

PART VI

ON NATURAL JUSTICE AND NATURAL RIGHTS

Weismann: I would now like to move to different theories about justice that began with the Greeks. In Plato's dialogues we are confronted with the fundamental issues about law and justice and about justice and expediency. This calls attention to the fact that there are different theories with regard to the idea of justice. May we have your brief analysis of these still current controversies?

Adler: Historically, the central and predominant controversy consists in a three-sided dispute, three conflicting theories, two ancient, one modern.

Coming down to us from antiquity is the view that might makes right. This, in the course of centuries, became the legalist or positivist theory of justice, which holds that, antecedent to the positive law of the state that carries with it the force of the sovereign, nothing is either just or unjust. Unjust acts are those prohibited by the positive law; just acts those prescribed by it.

Equally ancient is the view that natural justice is antecedent to legal justice—that the precepts of the natural moral law and the existence of natural rights determine what is just and unjust prior to and

independent of legislative enactments by de facto or de jure governments. This being the case, states, constitutions, governments, and their laws can be judged just or unjust by reference to natural rights and the principle of natural justice.

The third side in this three-cornered dispute is the utilitarian or pragmatic theory of justice, which emerged in the nineteenth century. According to this view, the criteria of what is just or unjust in human actions as well as in the acts or policies of governments and in the laws they make and enforce derive from the consideration of the ultimate end to be served—called the “general happiness” or “the greatest good for the greatest number” by the early utilitarians, but equally well named when it is called “the general welfare” or “the common good.” Acts, policies, and the laws are just to the extent that they serve and promote the general welfare or the common good; unjust to the extent that they injure it or detract from it.

Weismann: In my view of the matter as stated, each of these three theories of justice must be false when it claims to be the whole truth, excluding what is sound in the other theories. Which of these theories do you hold with?

Adler: That is correct, and although I favor the naturalist theory as sounder than either of the other two, I must concede that when it claims to be able to answer all questions about justice by reference to natural rights, it goes too far. The questions it can answer are of prime importance, but they fall short of being all the questions that call for answers.

Similarly, the claim that all questions of justice can be answered by reference to criteria of fairness in exchanges or distributions is excessive. Some, but only some, certainly can be, and these are of secondary importance.

Weismann: Are you saying that questions that cannot be answered by reference to natural rights or criteria of fairness can be answered by the consideration of what is expedient or inexpedient in relation to the general welfare or the common good?

Adler: Yes, however, many though not all determinations of what serves or disserves the general welfare or the common good turn out upon examination to be identical with determinations of the just and the unjust by reference to natural rights or to criteria of fairness. The protection of natural rights from violation and the requirement of fairness in exchanges and distributions are highly expedient social policies. They promote the general welfare or the common good.

Weismann: Does this mean that the claim made by the legalists or positivists that all questions of justice can be answered by reference to laws enacted by the state and enforced by a government in power can be embraced only by those who are unashamed to espouse the extreme doctrine that might makes right?

Adler: Yes, but nevertheless, a retreat from that extreme must admit that some determinations of what is just or unjust stem solely from the enactment of ordinances that decide which of several alternative policies should be adopted as expedient in the service of the public interest.

None of these alternatives is to be recommended on the ground that it secures natural rights or that it represents fair dealing. None is superior to the others as being more expedient in the service of the general welfare. Therefore, it is only the enactment of a positive law embodying that alternative which determines what is just in this case.

Weismann: Since it seems that aspects of each of these theories are sound, how then can we resolve this problem?

Adler: The reconciliation of these conflicting theories of justice can be accomplished by avoiding the excessive claim each makes and by putting what is true in each of them together in a well-ordered manner. This can be briefly set forth as follows: everything that is just by reference to natural rights or just by reference to criteria of fairness is also just through being expedient in the service of the common good or general welfare. What is just by reference to natural rights takes priority over what is just by reference to criteria of fairness because the latter is based on the personal equalities and inequalities of individuals—their endowments and attainments and how they put them to use—whereas the former is based on the natural needs common to all persons as members of the human race.

Everything that is expedient in the service of the common good or general welfare is just because it serves that end, but it may not always be just also by reference to natural rights or to criteria of fairness. Herein lies the special truth contributed by the pragmatic or utilitarian theory of justice.

All of the foregoing determinations of what is just or unjust can be made antecedent to the enactment of positive laws by the state. In fact, the enactment of positive laws that are just embodies the foregoing determinations of what is just.

Weismann: It seems to me that some things cannot be thus determined to be either just or unjust. They are morally indifferent in the sense that they are neither for nor against natural rights, neither fair nor unfair, neither more nor less expedient in the public interest. What is your position on this matter?

Adler: I concur, yet in the public interest, one or another alternative course of action must be decided upon. When this decision is made by legislative enactment, a course

of action prescribed by positive law becomes just, and one prohibited by positive law becomes unjust. Herein lies the special truth contributed by the positivist theory of justice.

In conclusion, if the formulation I have just presented is correct, (which you must decide for yourself), the reconciliation of these three conflicting theories has been accomplished by rejecting the extravagant claims made by each of them and by recognizing that each makes an indispensable contribution to the whole truth that is not made by the others. It is also necessary to put these partial contributions together in a way that recognizes the inherent priority of the naturalist theory over the pragmatic or utilitarian theory.

When this is done, we end up with a sound and adequate rendering of the idea of justice, and one that, in my judgment, cannot be achieved in any other way.

LETTERS TO THE EDITOR

Dear Max:

By relegating cultural diversity to matters of taste, and by exemplifying the latter with conventional, or explicitly agreed upon behavior, thus ignoring the historical, psychological and biological qualities that not only differentiate but radically separate diverse peoples from each other, Dr. Adler has not only made world government impossible but also any unified total truth accepted by all mankind. Unless, of course, world government and total truth are imposed on mankind by coercive authority, i.e., dictatorship.

But there would not be sufficient unity between diverse peoples to allow stability even there. Dr. Adler badly underestimates the differences that divide us and primarily determine human history.

Theoretical knowledge, as such, does not move humanity to action.

Journet Kahn

Dear Max,

Here is something I think my fellow members may enjoy.

Mark Brawner

Philosophical Health Check

Check your Tension Quotient!

To take the philosophical health check (PHC), go through the statements below, selecting for each one 'agree' or 'disagree'. If not sure, select the response which is closest to your opinion. When you have answered all the questions, click the 'submit' button and the results of your check will be generated.

The PHC does not judge whether your responses are right or wrong, so feel free to answer as honestly as you can. Each statement is carefully worded, so do pay attention to what each one actually says.

Enjoy the check-up!

<http://www.philosophers.co.uk/games/check.htm>

=====
WELCOME NEW MEMBERS

Ronny Douek

Dale Reed
=====

As always, we welcome your comments.

THE GREAT IDEAS ONLINE is published
by the Center for the Study of The Great Ideas
Founded by Mortimer J. Adler & Max Weismann
1151 N. State Street - Suite 272
Chicago, IL 60610
312-943-1076
E-mail: TGIdeas@speedsite.com
Homepage: TheGreatIdeas.org
A not-for-profit (501)(c)(3) organization.
Donations are tax deductible as the law allows.