



Unit 17

Justice and society

To call something just is to express approval of it as being right in a specific way, but to pin down the specific character is not at all easy. [1]. It is used both of law and of social morality, and although the ideas of legal and moral justice share certain common principles they do not stand in the same relationship to their respective fields of operation, law and morals. Then again, justice may be regarded on the one hand as a concept concerned with the order of society as a whole, and on the other hand as an expression of the rights of individuals in contrast to the claims of general social order. Finally, justice is a Janus-like concept, looking both to past and to future, conserving and reforming.

In the law, the term “justice” is used to cover the whole field of principles and procedures that ought to be followed. [2]. Lawyers will distinguish “the principles of natural justice”, as a relatively small, though fundamental, part of the legal system, from the rest of it, but the distinction here is not between justice and something other than justice; it is a distinction between a basic part of justice which may be called “natural” and the remaining superstructure which is also justice but dependent on custom, precedent, and enactment. [3]. Justice is the foundation of social morality, and without it the rest would collapse, but it is certainly not the whole of social morality. We contrast justice with generosity or charity, which we regard as going

beyond mere justice. What a man is entitled to as a matter of justice we call his rights. [4]. Generosity or charity implies duties for agents but not rights for the potential beneficiaries.

The law does not concern itself with the moral duties of generosity. The law protects rights and enforces the duties which correspond to rights. This is not to say that the scope of the law takes in the whole domain of moral justice (or moral rights). A democratic society, at least, tries to restrict the area of legal (i.e. State) authority in order to leave as much room as possible for liberty, and that many forms of moral wrongdoing can be suitably restrained without resort to legal prohibition. [5]. However, the moral scope of the law is confined within the area of moral justice. A system of law (*jus/ius*) is concerned with the protection of rights (*iura/jura*). It is therefore intelligible that law should use the term "justice" to describe the whole of its operations.

Of course, this does not mean that anything which goes on in a court of law has to be called just. [6]. A law can be called unjust for failing to meet moral ideas of justice; and the administration of law (irrespective of whether the particular law applied to a case is itself morally just or unjust) can be criticized as unjust for failing to meet the standards of fairness required by the procedures of the legal system.

The idea of justice, both in legal and in moral thought, is plainly concerned with the general ordering of society. A breach of that order is called a breach of justice and penalties for the breach are invoked in the name of justice. [7]. The punishment of crime is not a matter of giving satisfaction to the victim but one of protecting the social fabric. In so far as the victim of crime is able to vindicate a claim against the criminal in respect of the wrong, he has suffered (and generally speaking the legal provisions for this are far from adequate), it takes the form of obtaining reparation of compensation for loss or damage, and is in no way a satisfaction of any natural desire to see the aggressor paid back in his own coin. In a system of criminal law (as contrasted with a system of vendetta), that natural desire of a wronged individual is merged into the general desire of society as a whole to be protected from such harmful conduct, and punishment is imposed by the authority of the organized society and for the sake of the whole society.

The concept of justice is also used, however, to uphold the rights of the individual, if necessary, against the claims of general social order. [8]. Most of the transactions of civil law, for example, protect the smooth working of society, in matters of contract, avoidance of negligence, and so forth, and at the same time the judgments that are given in the case of disputes or breaches are vindications of the rights of individuals. But sometimes, notably in the work of the criminal law and in the framing of governmental policy, there can be a conflict between general social interest and the rights of individuals, and when that happens it is the latter notion which presents itself to us under the banner of justice. [9]. For example, if a particular type of crime is prevalent, and if circumstantial evidence would lead many of the real criminals to think that the

person accused has been implicated, then this conviction and imprisonment would act as a deterrent for them to the same extent as the conviction and imprisonment of one of themselves; but —though— useful, this would be unjust. [10].

This is not to say that the claims of social interest must always give way to those of justice, only that the idea of justice stands up for the rights of the individual, even of a guilty individual, against the demands of utility. The principle that an innocent individual should not be subjected to criminal penalties is made absolute in any civilized system of criminal law by defining “punishment” as the consequence of (usually wilful) breach of law. [11]. In Britain at the beginning of the Second World War, people of German nationality were confined in detention centres. It was called detention, not “imprisonment”, but for those detained there was not a great deal of difference. For that matter the enforced isolation of people suffering from dangerous contagious diseases is not altogether different from the deprivation of liberty that imprisonment involves. [12]. Hence there is no possibility of linking these deprivations of liberty with ideas of punishment. But even within the penal processes of the criminal law, although the logically necessary connection between the ideas of punishment and guilt places an absolute bar on punishing the innocent for reasons of utility, we do sometimes allow utility to override justice where this absolute bar is not present. If a person is guilty of committing a crime of a kind that is becoming widespread, we tolerate the imposition of “exemplary” punishment that goes beyond his individual deserts, in order to deter other potential offenders. [13]. The same sort of thing can happen in the formation of a governmental policy which involves questions both of utility and of justice. If a scheme of military conscription in time of war exempts from the call-up men in civilian occupations (such as engineering) that are especially important to the war effort, or if a scheme of demobilization at the end of the war gives priority to those whose civilian occupations (such as building) are especially important for post-war reconstruction, we allow that the national interest requires discrimination, but we do so with some reluctance and we admit that it is unfair to the men who are called up to the forces early and are released late. [14].

In the thought of the ancient Greeks (and no doubt the same is true of more primitive societies) the idea of justice almost always had a reference to social order, or, by a natural transference of ideas, to cosmic order. Justice did not connote the same kind of order for a democratically minded person as it did for one who favoured aristocracy, but for both it had to do with social order. Although ancient Athens was a more radical democracy than modern democracies, and although the Athenian democrat prized liberty and equality, the idea of the rights of the individual does not seem to have developed to be given explicit expression in language. [15].

In Plato’s *Republic* there is an idiosyncratic notion of “justice in the soul” which is compared and contrasted with justice in society. This does not —really— form an exception to the generalization I have made about Greek thought. Plato’s idea of “jus-

justice in the soul" is conceived as analogous to justice in society and still relates to a form of order, harmonious order between the different elements of the soul, as justice in society is, according to Plato harmonious order between different social classes. Plato's view of justice is in fact an aristocratic one, and part of the point of his analogy between society and the individual is to support his preference for aristocracy. [16]. When the concept of justice relates to an individual, it concerns relationships between him and other individuals or between him and a group (including the large group that constitutes the organized society of the State). The rights of the individual that are comprised in one aspect of justice are rights vis-à-vis other persons.

Plato's concept of "justice in the soul", however, is not designed solely to bolster an aristocratic view of justice in society. It also gives expression to the idea of a spirit of conscientiousness in all forms of moral action. From this point of view, it approaches Judaeo-Christian ideas about the authority of conscience and the value of the individual soul, though without the equalitarianism that was implicit in those ideas. They were the notions which eventually brought into full consciousness the aspect of justice that is concerned with the rights of the individual. [17]. The attachment of the idea of moral or natural rights to the notion of the individual person came to full fruition only in the seventeenth century, when Protestantism upheld the authority of the individual's conscience in matters of religion and morals, an in-consequence individualism spread into social and political thought also.

The third dichotomy that needs to be noted is that between justice as a conservative, and justice as a reformatory principle. Conservative justice protects the established order of society with its established distribution of rights, and in the event of breaches it requires restitution of the status quo so far that is possible. [18]. The second of the concepts is, I think, what people usually have in mind when they speak of "social justice". The term "social justice" tends to issue from the mouths of reformers, and to be regarded with suspicion by those who are satisfied with the existing order. It is not, in fact, a suitable term for expressing the differences of opinion between these two groups, for the adjective "social" has misleading implications in suggesting that reformatory justice is social while conservative justice is not. As we have seen, justice always has a social reference in that it concerns the order of society as a whole or relationships between individuals or groups of persons; for Plato, justice never means a virtue that affects an individual agent alone, as the virtues of self-respect and prudence can. [19]. Quite apart from reform of the law introduced by political process, the system of legal justice is itself apt, in civilized countries, to include procedures for self-criticism and reform. The Supreme Court of the United States has had its periods of conservatism and its periods of remarkable reform. In the history of English Law, the courts of Equity modified the rigidity of common law, and while the courts of today leave it to Parliament to make reforms by way of statute, judges are not averse from reinterpreting old laws to suit modern conditions

and modern ideas. It is in general true that common law conserves moral ideas of the past, and that statute reforms the law in the light of moral ideas of the present, but this is not a universal rule.

The fact is that none of the three dichotomies which I have made coincides with any of the others. [20]. Legal and moral justice are each concerned both with an equitable order of society and with protecting the rights of individuals against the demands of society, if need be, as well as against other individuals. Each of the two again has its conservative and its reformative aspect: both law and morals regard it as unjust to violate expectations based on long-standing arrangements; yet both recognize that an established order is always liable to ossify conceptions which have become out of date, and that changes in the character of human life, both material and spiritual, require changes of the social structure. [21] Conservative justice is concerned both with the preservation of established social norms and with the protection of the freedom, person, and property of individuals. Reformative justice is undoubtedly intended to produce a more equitable society, as the common term "social justice" implies, but it is equally intended to secure for needy or meritorious individuals the rights to which it thinks they are entitled.

Exercise A:

Place the following phrases within the correct gaps.

- A. Reformative justice calls for revisions of the social order and a redistribution of rights to suit current ideas of fairness. [...]
- B. Everybody knows that the measures taken in such instances are dictated entirely by the general social interest and that questions of justice or individual rights are simply swept aside. [...]
- C. Corresponding to these rights of the potential beneficiaries of just actions, there are duties for the potential agents. [...]
- D. The criminal law especially is designed to protect the order of society as a whole.
- E. The distinction between legal and moral justice is not the same as that between the justice of the social order and justice for individuals, nor is either of them the same as the distinction between conservative and reformative justice. [...]
- F. It is obvious, finally, that the distinction between conservative and reformative justice is quite different from that between the justice of the social order and justice for individuals. [...]
- G. Justice is a complex concept. [...]
- H. Often there is no opposition between them; the two go together. [...]

- I. The system of law as a whole is often called, in legal parlance, the system of justice. [...]
- J. If one wanted to translate the noun "rights" into ancient Greek, no single word would be entirely appropriate and one would need either to make do with a word meaning "privileges" or else to use a periphrasis. [...]
- K. In social morality, however, justice does not cover the whole field of principles and actions that are considered right. [...]
- L. In other instances (e.g. in the discouragement of deceit) the "rough engine" of the law, as Sir James Fitzjames Stephen called it, is not a practicable method of protecting moral rights, and to invoke it would do more harm than good. [...]
- M. Nevertheless, considerations of general social interest may, in exceptional circumstances, be held to warrant the detention of a person who has not broken any law. [...]
- N. There is no such thing as justice within an individual. [...]
- O. It can be criticized as unjust either from a moral or from a legal point of view. [...]
- P. In admitting that it "goes beyond his individual deserts" we recognize that there is an element of injustice or unfairness in the degree of the penalty, and we imply some measure of compunction in allowing the claim of utility to prevail over that of justice. [...]
- Q. And if the intention, in speaking of social justice, is to contrast this with legal justice, it is a mistake to suppose that the justice of the law is always conservative. [...]
- R. Again, a man who is guilty of a crime may not justly receive punishment in excess of that merited by his degree of guilt. [...]
- S. The idea of rights as such made its first appearance, of course, in the language of the law, and the concept of moral or "natural" rights, under the rubric of moral or "natural justice", was an extension of that. [...]
- T. Thus, for instance, no person who is innocent of breaking a law may be justly subjected to punishment, although there are circumstances in which this might be conducive to the general interest and the maintenance of public order. [...]
- U. Justice or fairness to the individual is contrasted with utility or general interest, and whichever of the two is held to prevail in a particular situation, the opposition of principle remains. [...]

Exercise B:
Answer the following sentences.

1. What is justice?

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2. What distinction do lawyers make when they talk about the “principles of natural justice”?

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3. What is the relationship between justice and social morality?

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4. What according to Sir Stephen is true “rough engine”?

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5. When can we say that law is unjust?

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6. Is punishment justly bestowed to wrongdoers?

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7. What were the detention centres in which Germans were confined during the Second World War in England?

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8. What was the concept of justice in ancient Greece?

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9. What is stated in Plato's Republic?

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10. What is the Judaeo-Christian idea about the authority of conscience and the value of the individual soul?

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11. What is the difference between conservative and reformatory justice?

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12. Why do we have such a difference?

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Exercise C:

Fill in the gaps using one word only.

The Welfare State is an amalgam of (1) drawn both from liberalism and from communism. (Historically it is (2) heritage of radical liberalism). It assures a basic minimum, the satisfaction of basic (3) of subsistence, to all equally, irrespective (4) merit or work. But above (5) line of the basic minimum (6) leaves individuals free to compete for higher rewards. Just (7) the line of the basic minimum should (8) drawn is, of course, not clear. Different countries, (9) different political groups within a country, will (10) different views of what constitutes the basic (11) of human existence that ought to be provided (12) all and that can be afforded. For the purpose of (13) conceptual discussion, however, the point is (14) the basic minimum is regarded as a right, something required (15) justice, while above the line of the basic minimum (16) remains within the scope of the older liberal idea (17) leaving a man free to rise or (18) by his own effort or (19) of it, and by the good or ill fortune of his natural endowments (20) the chances of personal history and environment.

Exercise D:

Spot the mistake, if you think the sentence is correct then put a tick in the box.

1. The terms "political theory" and "political philosophy" are often
2. used interchangeably, but there is a recognizable difference
3. between the theoretical work of political scientists
4. and that of political philosophers. Similarly there is
5. a recognizable difference between sociological theory,
6. as pursued by theoretically minded sociologists, and
7. social philosophy. In discussing the difference
8. between the two types of theory, it will be useful
9. to consider the social and the political together.
10. There is of course a distinction between the
11. social and the political, but my initial purpose is
12. to distinguish philosophical theorizing about society
13. and the State from the kind of theorizing that is
14. done by some political scientists and sociologists.
15. A definition of "politics" or of what can be described
16. as "political", is the subject of controversies.
17. For the moment it is more relevant to note that
18. the idea of "social" studies can be used in a wider
19. or a narrow sense. In the wider sense, social studies
20. include the study of politics, embracing everything
21. that has to do with the activities of men in society;
22. much sociological theory is of this character.

Exercise E:

Fill in the gaps using the correct prepositions or phrasal verbs.

Social political philosophy is different, but (1) what way? It is often said that social and political philosophy, as practised (2) the past (3) traditional philosophers, differs (4) the scientific type (5) theory (6) being "normative" instead (7) positive. What is meant (8) this is that scientific theory deals (9) positive facts, (10) what is (11) fact the case, while the philosophical kind (12) "theory" is really a doctrine, or an "ideology", setting (13) "norms" or ideal standards (14) society and government, telling us what ought to be (15) the case, or what we ought to do. A prime example is

Plato's Republic, which depicts an ideal society or utopia. I myself think that this view (16) traditional political philosophy is questionable. It is true that some (17) the classical political philosophers have set (18) ideal forms (19) society, but (20) my opinion this has not been their central concern. Even (21) Plato, the purpose (22) depicting an ideal society is to criticize existing society and to promote understanding (23) general social concepts such as justice. Social and political philosophy can be regarded as normative (24) a less obvious way, but first I must describe what it does.

Exercise F:
Listening activities.

Activity 1: Please go to the following link watch and listen carefully to what is being said and then answer the following questions as TRUE or FALSE:

<https://youtu.be/5cmGIAvdTgg>

- a. Social Justice focuses on the concept of fairness in the relation between voters and society.
- b. Social Justice appeared at the end of the 19th century.
- c. Social Justice arose because there was inequality and wealth.
- d. Social Justice arose during the Industrial Revolution.
- e. Social Justice is a philosophical and political theory.
- f. Today Social Justice emphasizes Human Rights, Land Rights, and Improving the lives of disadvantaged and marginalized people that have historically faced discrimination.

Activity 2: Please go to the same link, watch/listen to what is being said, and answer the following questions in your own words.

<https://youtu.be/5cmGIAvdTgg>

- a. What did Social Justice focus on initially?

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