

Justice

INTRODUCTION

THE discussion of justice is the central theme in two dialogues of Plato—*The Republic* and the *Gorgias*. The dispute between Socrates and Thrasymachus in the one and between Socrates and Callicles in the other is of such universal scope and fundamental character that it recurs again and again in the great books with little change except in the personalities and vocabularies of the disputants.

It is a conflict of such polar opposites that all other differences of opinion about justice become arguable only after one or the other of the two extreme positions is abandoned. It is the conflict between the exponents of might and the exponents of right—between those who think that might *makes* right and that justice *is* expediency, and those who think that power can be wrongly as well as rightly exercised and that justice, the measure of men and states, cannot be measured by utility.

Though Plato gives us the first full-fashioned statement of this issue, he does not fashion it out of whole cloth. The issue runs through the fabric of Greek life and thought in the age of the imperialistic city-states which played the game of power politics culminating in the Peloponnesian War. In his history of that war, Thucydides highlights the Melian episode by dramatically constructing a conversation between the Athenian envoys and the representatives of Melos, a little island colony of Sparta which had refused to knuckle under to Athenian aggression.

Recognizing the superior force of the aggressors, the Melians enter the conference with a sense of its futility, for, as they point out, if they insist upon their rights and refuse to submit, they can expect nothing from these negotiations except war and, in the end, slav-

ery. The Athenians reply with a frankness that is seldom found in the diplomatic exchanges of our own day, though in their real contentions the conferences which have preceded or followed the world wars of our century repeat what happened, if not what was said, at Melos.

The Athenians tell the Melians that they will not waste time with specious pretences "either of how we have a right to our empire . . . or are now attacking you because of a wrong you have done us." Why make a long speech, they say, which would not be believed? Instead they come directly to the point and put the matter simply or, as we now say, realistically. "You know as well as we do," they tell the Melians, "that right, as the world goes, is only in question between equals in power, whereas the stronger do whatever they can and the weaker suffer whatever they must." There is nothing left for the Melians except an appeal to expediency. "You debar us from talking about justice and invite us to obey your interest," they reply to the Athenians, before trying to persuade them that their policy will end in disaster for Athens.

The language of Thrasymachus in *The Republic* resembles that of the Athenian envoys. "I proclaim," he says, "that justice is nothing else than the interest of the stronger . . . The different forms of government make laws democratical, aristocratical, tyrannical, with a view 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 him who transgresses them they punish as a breaker of the law, and unjust. And 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."

The thesis seems to have two applications. For the stronger, it means that they have the right, as far as they have the might, to exact from the weaker whatever serves their interests. Their laws or demands cannot be unjust. They cannot do injustice. They can only fail to exert sufficient might to hold on to the power which can secure them, not from the charge of injustice, but from reprisals by those whom they have oppressed or injured.

The thesis also means, for the weaker, that they can only do injustice but not suffer it. Injustice on their part consists in disobeying the law of their rulers. Hence for them, too, justice is expediency, only now in the sense that they are likely to suffer if they try to follow their own interests rather than the interests of the stronger.

This thesis appears to be repeated in somewhat different language by Hobbes and Spinoza. To men living in a purely natural condition, the notions of justice and injustice do not apply. They apply only to men living in civil society. "Where there is no Commonwealth," Hobbes writes, "there is nothing unjust. So that the nature of justice consists in the keeping of valid covenants; but the validity of covenants begins not but with the constitution of a civil power sufficient to compel men to keep them." The breach of civil laws or covenants "may be called injustice, and the observance of them justice."

It is Spinoza's opinion that "everything has by nature as much right as it has power to exist and operate." It follows, therefore, that "in a natural state there is nothing which can be called just or unjust, but only in a civil state." Here as before justice consists in obedience, injustice in disobedience, to whatever laws the state has the power to enforce, the laws themselves being formulated not by reference to justice, but to the interests of the state which must seek its own preservation and has the right to do so, so long as it has the power.

THOSE WHO TAKE the opposite view agree that justice is political in the sense that the state, in organization and operation, is a work of justice. Wisdom is the virtue of the rulers in *The Republic*, but justice is the organizing principle of Plato's ideal state.

Aristotle maintains that man is a political animal, whereas other animals are merely gregarious. He cites the fact that man alone has a power of speech able to communicate opinions about the expedient and the just. "Justice is the bond of men in states, for the administration of justice, which is the determination of what is just, is the principle of order in political society." Aristotle describes man "when separated from law and justice" as the worst of animals. "Justice being taken away," Augustine asks, "what are kingdoms but great robberies?"

Those who agree that political institutions involve justice are confronted by these alternatives: *either* the principle of justice is antecedent to the state, its constitution, covenants, and laws, *or* the determination of what is just and unjust is entirely relative to the constitution of a state, dependent upon its power, and consequent to its laws.

When the second alternative is chosen, the proposition that justice is political is seriously qualified. It is *merely* political. There is no natural justice, no justice apart from man-made laws, nothing that is just or unjust in the very nature of the case and without reference to civil institutions. On this theory, only the individual who is subject to government can be judged just or unjust. The government itself cannot be so judged, nor can its constitution, its laws, or its acts; for, since these determine what is just and unjust, they cannot themselves be judged for their justice.

The opposite answer conceives political justice as a determination of natural justice. "Political justice," Aristotle remarks, "is partly natural and partly conventional or legal." The fact that there is a sense in which just action on the part of a citizen consists in law-abiding conduct, does not exclude another sense in which the laws themselves can be called just or unjust, not only the laws, but the constitution of the state itself. Though the justice of civil

laws is partly relative to the constitution under which they are made and administered, there are some enactments which, since they violate natural justice, cannot be justified under any constitution. The constitution, moreover, cannot be regarded as the ultimate standard of justice by those who compare the justice of different forms of government or diverse constitutions. On their view, the ultimate measure of justice in all human institutions and acts, as well as in the characters of men, is not itself a man-made standard, but rather a natural principle of justice, holding for all men at all times everywhere.

THE ISSUE JOINED BY these two theories of justice extends by implication into many related matters. The opposition, for example, between those who affirm the reality of natural law as the source of legality in all civil regulations and those who derive the legality of positive laws from the will of the sovereign alone, is considered in the chapter on LAW, but its parallelism with the issue of natural and conventional justice should be noted here.

Those who deny natural justice and natural law also tend to deny natural rights, which, unlike civil rights, are not conferred on the individual by the state, but are inherent in his human personality. They are, according to the Declaration of Independence, "unalienable" in the sense that the state cannot rescind them. What the state does not create, it cannot destroy. If a government transgresses natural rights, it negates its own reason for being, since it is "to secure these rights [that] governments are instituted among men."

According to Tocqueville, it is by reference to natural rights that "men have defined the nature of license and of tyranny." No nation, in his view, can be "great without respect for rights; one might almost say that without it there can be no society."

Those who deny natural rights, among which the right to liberty is usually included, do not have a standard for judging when governments violate the rights and invade the liberties of men. When men are thought to have no rights except those granted by their rulers, the absolute power which the rulers exercise

cannot be criticized as tyrannical or despotic.

Considering the situation of men in what he calls "a state of perfect freedom"—apart from government and civil institutions—Locke says of this state of nature that it "has a law of nature to govern it, which obliges everyone; and reason, which is that law, teaches all mankind who will but consult it, that, being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions . . . Everyone, as he is bound to preserve himself, and not quit his station willfully, so, by the like reason, when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind, and not, unless it be to do justice on an offender, take away or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another." Since this law of nature, and its implied principle of just dealing between men, is not abolished when men associate in the common life of a civil society, natural justice and natural rights remain, according to Locke and others, to limit the powers of government and to measure the justice of its laws.

The principle of natural justice is sometimes not accompanied by a doctrine of natural law and natural rights, as for example in Greek thought. Their connection first seems to occur in Roman jurisprudence and medieval theory. Not all the opponents of natural justice avoid the use of the words "natural law" and "natural rights." Using these words in a different sense, Hobbes, for example, speaks of men living under natural law in a state of nature, which is "a condition of war of every one against every one," and "in such condition every man has a right to everything, even to another's body." Only when men *abandon* this unlimited right in order to form a commonwealth, do they acquire in recompense certain civil rights or, as Hobbes says, "proprieties." Then, and only then, can there be any meaning to justice, conceived according to the ancient maxim which Hobbes accepts, that justice is "the constant will to render to each man what is his due."

Both Spinoza and Hume make the same point. Where there is no recognized title to

property, or *legally established* right, there can be no justice—no respecting of what is a man's own or giving him what belongs to him. The difference between Locke and these others seems to lie in his conception of *property* as the natural right which a man has to the preservation of his life, liberty, and estate. There can be justice, therefore, between men in a state of nature, for even then each has some property that the others are bound to respect.

THE MEANING of natural justice can be examined apart from these different interpretations of the so-called "state of nature." Those who, like Aristotle and Aquinas, do not conceive the origin of political society as a transition from the "state of nature" do, nevertheless, appeal to a principle of natural justice. For Aquinas, this principle seems to be an integral part of the natural law. Sometimes the statement of the first precept of the natural law is "Seek the good; avoid evil." Sometimes it is "Do good to others, injure no one, and render to every man his own." In this second formulation, the natural law seems to be identical with the precept of justice. The essential content of this precept seems to be present—separate from any doctrine of natural law—in Aristotle's analysis of the nature of justice both as a virtue and as a quality of human acts.

"The just," Aristotle says, "is the lawful and the fair." What he means by the word "lawful" in this context does not seem to be simply the law-abiding, in the sense of conforming to the actual laws of a particular society. He thinks of law as aiming "at the common advantage . . . We call those acts just," he writes, "that tend to produce and preserve happiness and its components for the political society." Lawful (or just) actions thus are those which are for the common good or the good of others; unlawful (or unjust) actions, those which do injury to others or despoil the society.

It is in this sense of justice that both Plato and Aristotle lay down the primary criterion for differentiating between good and bad governments. Those which are lawful and serve the common good are just; those which are lawless and serve the private interests of the rulers are unjust. This meaning of justice ap-

plies as readily to all citizens—to all members of a society—as it does to those who have the special duties or occupy the special offices of government.

Whether it is stated in terms of the good of other individuals or in terms of the common good of a community (domestic or political), this understanding of justice seems to consider the actions of a man as they affect the well-being, not of himself, but of others. "Justice, alone of the virtues," says Aristotle, "is thought to be 'another's good,' because it is related to our neighbor." Concerned with what is due another, justice involves the element of duty or obligation. "To each one," Aquinas writes, "is due what is his own," and "it evidently pertains to justice," he adds, "that a man give another his due." That is why "justice alone, of all the virtues, implies the notion of duty." Doing good to others or not injuring them, when undertaken as a matter of strict justice, goes no further than to discharge the debt which each man owes every other.

In consequence, a difference of opinion arises concerning the adequacy of justice to establish the peace and harmony of a society. Some writers, like Kant, seem to think that if perfect justice obtained, a multitude of individual wills would be perfectly harmonized in free action. Others, like Aquinas, think justice necessary but insufficient precisely because it is a matter of duty and debt. "Peace," he writes, "is the *work of justice* indirectly, in so far as justice removes the obstacles to peace; but it is the *work of charity* directly, since charity, according to its very nature, causes peace; for love is a *unitive force*." The bonds of love and friendship unite men where justice merely governs their interaction. What men do for one another out of the generosity of love far exceeds the commands of justice. That is why mercy and charity are called upon to qualify justice or even to set it aside. "Earthly power," Portia declares in *The Merchant of Venice*, "doth then show likest God's when mercy seasons justice."

THE PRECEPT "to render unto others what is their due" is read in a different light when the other aspect of justice is considered. When the

just is conceived as the fair, the fairness which is due ourselves or others applies, not to benefit and injury generally, but to the exchange and distribution of goods or burdens. What is the principle of a fair exchange or a fair distribution? Aristotle's answer to this question is in terms of equality.

In the transactions of commerce, fairness seems to require the exchange of things equivalent in value. The rule of an eye for an eye, a tooth for a tooth, is another expression of the principle of equality as the criterion of a fair penalty or a just compensation. If honors or rewards are to be distributed, equals should in fairness be treated equally, and those who are unequal in merit should receive unequal shares. For all to share alike is not a just distribution of deserts if all do not deserve alike. "Awards should be 'according to merit,'" Aristotle writes. He claims that "all men agree" with this, "though they do not all specify the same sort of merit, but democrats identify it with the status of freeman, supporters of oligarchy with wealth or with noble birth, and supporters of aristocracy with excellence." The unequal treatment of unequals, however, still derives its fairness from the principle of equality, for there is an equivalence of ratios in the proportion of giving more to the more deserving and less to the less.

Aristotle employs the distinction between these modes of equality—arithmetic and geometric, or simple and proportional, equality—to define the difference between fairness in exchange and fairness in distribution. The one is the type of justice which is traditionally called "commutative," "corrective," or "remedial," the other "distributive."

The type of justice "which plays a rectifying part in transactions between man and man," Aristotle further divides into two kinds. "Of transactions," he writes, "(1) some are voluntary and (2) others involuntary—voluntary such transactions as sale, purchase, loan for consumption, pledging, loan for use, depositing, letting . . . while of the involuntary (a) some are clandestine, such as theft, adultery, poisoning, procuring, enticement of slaves, assassination, false witness, and (b) others are violent, such as assault, imprisonment, mur-

der, robbery with violence, mutilation, abuse, insult." The sphere which Aristotle assigns to commutative or corrective justice thus appears to cover both criminal acts and civil injuries. But, as applied to civil injuries, the principle of fairness in exchange usually involves a payment for damages, restitution, or compensation in kind; whereas the principle of commutative justice as applied to criminal wrongdoing usually calls for a punishment somehow equalized in severity to the gravity of the offense. This last is the principle of the *lex talionis*—an eye for an eye, a life for a life. The problems of justice which it raises are considered in the chapter on PUNISHMENT.

JUSTICE IS SOMETIMES divided into economic and political according as, on the one hand, fairness or equalization concerns the kind of goods which originate with the expenditure of labor, or as, on the other hand, it involves the status of men in the state. The difference between these two modes of justice seems to be largely dependent upon the kind of transaction to which the principle of justice is applied. The forms of justice—the two modes of equality or fairness—appear to remain the same. The special problems of economic justice are more fully examined in the chapters on LABOR and WEALTH, as the special problems of political justice are treated in greater detail in all the chapters dealing with the state, government, and the several forms of government. Here we shall consider only the generalities, and especially those which touch the main issues in the theory of justice.

Though Marx does not engage in the controversy over natural justice, he seems to take the side which looks upon justice as a universal standard that does not derive from, but rather measures, human institutions. Something like "from each according to his ability, to each according to his needs"—or, in another variant of the maxim, "to each according to his deserts"—seems to be for Marx the maxim of a just economy, stated without argument as if a principle self-evident in the very nature of the case. So, too, in his consideration of the exploitation of labor in its various historic forms—chattel slavery, feudal

serfdom or agrarian peonage, and what he calls "wage slavery" under industrial capitalism—Marx assumes that a clear and unquestionable principle of justice is being violated when the goods produced by the labor of one man enrich another disproportionately to that other's contribution or desert. Such basic words in *Capital* as "expropriation," "exploitation," and "unearned increment" seem never to be simply terms of description, but of evaluation. Each implies a specific injustice.

The labor theory of value, the origin of which he attributes to Adam Smith, Marx conceives as solving a problem in justice which Aristotle stated but did not solve. He refers to the chapter in the book on justice in Aristotle's *Nicomachean Ethics*, in which Aristotle discusses money as a medium to facilitate the exchange of commodities. Money permits so many units of one commodity to be equated with so many units of another. But the problem is how to determine equivalents in the exchange of unlike things, apparently incommensurable in value. How can the value of a house be commensurated with the value of a bed, so that an equality in value can be set up between a house and a certain number of beds? Abstracting entirely from considerations of supply and demand, the determination of a just exchange or a fair price requires an equation of comparable quantities.

Aristotle tells us, Marx points out, why he found the problem insoluble. "It was the absence of any concept of value. What is that equal something, that common substance, which admits of the value of beds being expressed by a house? Such a thing, in truth, cannot exist, says Aristotle. And why not? Compared with beds, the house does represent something equal to them, in so far as it represents what is really equal, both in the beds and the house. And that is—human labor . . . The brilliancy of Aristotle's genius is shown by this alone, that he discovered, in the expression of the value of commodities, a relation of equality. The peculiar conditions of the society in which he lived alone prevented him from discovering what, 'in truth,' was at the bottom of this equality."

We cannot help noting the character of the

labor theory of value as an analysis not only of justice in exchange, but also of just compensation to labor for its productivity. The principle of justice here employed seems to be the same as that underlying the medieval condemnation of interest as unjust or usurious, or the later effort to discriminate between just and unjust interest rates. The principle even seems to be implicitly involved in Smith's distinction between real or natural price and the market price which fluctuates with variations in supply and demand.

When the economic problem is one of distribution rather than exchange, another standard of fairness—the proportional equality of distributive justice—becomes relevant.

The assumption of a primitive possession of all things in common, especially land and its resources, is the background against which such thinkers as Aquinas and Hobbes, Locke and Rousseau, Montesquieu and Hegel, Smith and Marx consider the origin or justification of private property. Insofar as the question is one of justification, rather than of actual historic origin, the division of common holdings into privately held shares is a matter of justice in distribution. In the opinion of many, a just distribution would recognize that labor alone entitles a man to claim possession of the raw materials improved by his work and of the finished products of that work.

The other face of the problem assumes an existing inequitable distribution. It is then asked how this can be rectified by some method of redistributing wealth more justly; or it is proposed that the whole system of private property be reformed in the direction of public ownership of the means of production, as the basis for a just distribution of the fruits of human productivity.

THE CONNECTION which has become evident between justice and both liberty and equality does not imply that these three basic notions are simply coordinate with one another. On the contrary, equality seems to be the root of justice, at least insofar as it is identified with fairness in exchange or distribution; and justice in turn seems to be the foundation, not the consequence of liberty.

The condemnation of slavery confirms this observation. If slavery were not unjust, the slave would have no right to be free. The injustice of treating a man as a chattel ultimately rests on the equality between him and his master as human beings. His right to the same liberty which his master enjoys stems from that equality. The justice of equal treatment for equals recognizes that right and sets him free. Aristotle's theory of natural slavery is based on a supposition of natural inequality which is thought to justify the enslavement of some men and the freedom of others. Whenever slavery is justified or a criminal is justly imprisoned, neither the slave nor the criminal is regarded as deprived of any liberty to which he has a right.

It would seem to follow that if a man is justly treated, he has all the liberty which he deserves. From the opposite angle, J. S. Mill argues that a man is entitled to all the liberty that he can use justly, that is, use without injuring his fellowman or the common good. More liberty than this would be license. When one man encroaches on the rights of others, or inflicts on them "any loss or damage not justified by his own rights," he is overstepping the bounds of liberty and is, according to Mill, a fit object "of moral reprobation, and, in grave cases, of moral retribution and punishment."

The various relations of liberty to justice, and of both to law, are considered in the chapters on LIBERTY and LAW. All the writers who make the distinction between government by law and government by men fundamental in their political theory also plainly express a preference for the former on grounds both of justice and liberty.

Absolute government, which violates the equality of men, unjustly subjects them, even when it does not through tyranny enslave them. The benevolence of the despot ruling for the common good has one aspect of justice, but there are other aspects of political justice which can be achieved, as Mill points out, only if "despotism consents not to be despotism . . . and allows the general business of government to go on as if the people really governed themselves." The greater justice of constitutional government consists in its

granting to men who deserve the equal freedom of equals, the equality of citizenship—an equality under the law which levels those citizens who happen to hold public office with those in private life.

The major controversy over the several forms of constitutional government turns on a third point of justice. The defenders of democracy and oligarchy each contend that equalities or inequalities in birth or wealth justify a broader or a narrower franchise. It is Mill again who insists that nothing less than universal suffrage provides a just distribution of the political status of citizenship, and that "it is a personal injustice to withhold from anyone, unless for the prevention of greater evils, the ordinary privilege of having his voice reckoned in the disposal of affairs in which he has the same interest as other people."

Of the three points of justice which seem to be involved in the comparison of forms of government, only the first (concerned with whether political power is exercised for the common good or the ruler's private interests) is not recognizable as a matter of distributive justice. Yet even here the requirement that the ruler should treat the ruled as ends rather than as means derives from a fundamental equality between ruler and ruled. The injustice of tyranny lies in a violation of this equality.

ONE MEANING of justice remains to be considered. It is related to all the foregoing considerations of economic and political justice, of just constitutions, just laws, and just acts. It is that meaning of justice in which a man is said to be just—to possess a just will, to be just in character, to have the virtue of justice. Here difference in theory reflects the difference between those moralists for whom virtue is the basic conception, and those who, like Kant, emphasize duty or who, like Mill, reduce the propensity for justice to a moral sentiment. But even among those who treat justice as a virtue, there seems to be a profound difference in analysis.

For Aristotle, the virtue of justice, like other moral virtues, is a habit of conduct. It differs from courage and temperance in that it is a habit of action, not of the passions. It

is not a rationally moderated tendency of the emotions with regard to things pleasant and painful. It is that settled inclination of the will "in virtue of which the just man is said to be a doer, by choice, of that which is just, and one who will distribute either between himself and another or between two others not so as to give more of what is desirable to himself and less to his neighbor (and conversely with what is harmful), but so as to give what is equal in accordance with proportion."

Another difference between justice and the other moral virtues is that courageous and temperate acts are performed only by courageous and temperate men, whereas an act which is outwardly just can be done by an unjust man as well as by a just one.

Fair dealing in the exchange or distribution of goods, determined by objective relations of equality, is the substance of justice as a special virtue; but there is in addition what Aristotle calls "general" as opposed to "special" justice. Aristotle calls the general virtue of justice "complete virtue," because "he who possesses it can exercise his virtue not only in himself but towards his neighbor also." It embraces all the moral virtues insofar as their acts are directed to the good of others.

"Justice in this sense," he goes on to say, "is not a part of virtue, but virtue entire"; whereas special justice—the justice of distributions and exchanges—is merely a part of moral virtue, merely one particular virtue. Yet special justice, no less than general justice, is a social virtue. The difference between the way each directs actions toward the good of others seems to be like the difference between the lawful and the fair, or the difference between the common good of society as a whole and the good of other individuals.

The thoroughly social conception of justice in Aristotle may have some parallel in the meaning of justice in Plato's *Gorgias* (where the question is whether it is better to suffer than to do injustice), but the definition of

justice as a virtue in *The Republic* does not express or develop the social reference. In the state as in the soul, justice is a fitting disposition or harmonious order—of the several classes of men in the state, of the several virtues in the soul. The just state is not described as acting justly toward other states, nor is the just man pictured as a doer of good deeds. Rather the picture of the soul in which justice resides is one of interior peace or spiritual health—the well-being of happiness.

"Justice," Socrates declares, is concerned "not with the outward man, but with the inward, which is the true self and concernment of man: for the just man does not permit the several elements within him to interfere with one another, or any of them to do the work of others—he sets in order his own inner life, and is his own master and his own law, and at peace with himself." His is "one entirely temperate and perfectly adjusted nature."

This conception of justice bears a certain resemblance to what the Christian theologians mean by "original justice." The perfect disposition of Adam's soul in a state of supernatural grace consisted, according to Aquinas, in "his reason being subject to God, the lower powers to reason, and the body to the soul—the first subjection being the cause of both the second and the third, since while reason was subject to God, the lower powers remained subject to reason." The justice of man's obedience to God seems to be inseparable from the injustice internal to his own members.

The way in which justice is discussed in the *Gorgias* may similarly be inseparable from the way it is defined in *The Republic*. Certainly Callicles will never understand why it is always better to suffer injustice than to do it, unless Socrates succeeds in explaining to him that the man who is wronged suffers injury in body or in external things, while the man who does wrong injures his own soul by destroying what, to Socrates, is its greatest good—that equable temper from which all fitting actions flow.