

## What Is Meant?

If we are to elucidate the essential nature of justice, we must first be clear what we mean when we speak of justice. Justice may mean many things. If we take as our starting-point the saying of the ancient sage Theognis, “All virtue is subsumed in justice,”<sup>a</sup> or if, as would appeal to a Christian theologian, we set out from the Scriptural use of the word justice,<sup>b</sup> we should be speaking of something which has nothing to do with our theme. When we moderns speak of justice, of just and unjust, we do not mean the sum total of all goodness or all virtue: nor do we mean, as the Bible does, real devoutness, confidence based on faith in the grace of God. Both in ancient Greece and in the Bible the word “just” has a depth and scope which it has long since lost.<sup>c</sup> When we speak of just and unjust, we have something far more restricted in mind than when we simply distinguish good from evil.

Even Aristotle was faced with the necessity of drawing this distinction.<sup>4</sup> He realized that in his day the word “just” was used in a double sense: firstly, in that comprehensive sense in which it means righteousness; and, secondly, in a narrower, more specific sense in which it means a just rendering to every man of his due. Since Aristotle’s time that broader, more comprehensive sense has almost vanished from our minds. No man of to-day but would find it strange if, because he was kindly, devout,

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<sup>a</sup> Diehl, “Fragmente der Vorsokratiker.”

<sup>b</sup> *Vide* Translator’s Note.

<sup>c</sup> Gf. “Theologisches Wörterbuch des Neuen Testaments” Vol. II, pp. 176-229.

charitable, grateful and God-fearing, he should be called just, as in the language of the Bible and, in another fashion, in the older Greek which survives in the saying of Theognis. This narrowing down of the term has been fateful to us. We can no longer use the word “just” as the ancient world used it without causing the gravest confusion. The use of the word in its narrow sense has, since Aristotle, become universal.

When we moderns speak of justice, we mean a mode of conduct which certainly belongs to the moral sphere, but neither embraces it entirely nor exhausts its depths. We say for instance, of a man – “he isn’t what you would call kind, but we must admit that he’s just.” We use the word here exclusively in Aristotle’s second sense, which means the just rendering to each man of his due. Thus we speak of a “just” teacher or critic when he is impartial, of a “just” tax when its burden is properly distributed, of a “just” polity when it properly determines the rights and duties of its citizens towards each other and the relation of rulers to subjects. It is in this sense that we speak of a just reward for labour and just punishment, of just and unjust distribution of property, of just laws, of just or unjust social systems.

That is the justice which is the theme of the present work. Our object is to inquire into its origin and nature, to discover the principle by which just dealing is distinguished from unjust, just criticism from unjust, just wages from unjust, a just from an unjust polity. We are not dealing with that Biblical justice, of which we read: “The just shall live by his faith,”<sup>d</sup> still less of that righteousness of God “which is not of the law,”<sup>e</sup> but was revealed in the Atonement by Jesus Christ. What we have to deal with is, in the language of Christian theology, “worldly justice,” not “the justice of faith,” but the justice of the institutions of this world. A just teacher who treats his pupils impartially, even though he is just in this narrower earthly sense, may be anything but just in the Scriptural sense of the word, while a just wage is not only not identical with what the New Testament calls the justice of faith,

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<sup>d</sup> Hab. ii, 4; Rom. i. 17.

<sup>e</sup> Rom. iii. 21 *ff.*; Phil. iii. 9.

but stands in a notable contrast to it. The justice which metes out just punishment to the lawbreaker is quite different from that “better justice” which, in the teaching of Christ, resists not evil; which, having been smitten on the one cheek, turns the other, and thus, in our manner of speaking, should rather be called forgiveness by love than justice.

Between this even-handed justice, which renders to each man his due, and that other, heavenly justice, which returns good for evil and forgives the transgressor seventy times seven, there is an ultimate, secret affinity, which we shall not ignore, but, in due course, elucidate as far as possible.<sup>f</sup> But what we have to deal with is earthly and not heavenly justice, the thing that satisfies the plain man’s sense of justice, yet whose nature cannot be directly inferred from that elementary, unreflective sense of justice. What is, what origin and what authority has, that justice which distinguishes just from unjust payment, just from unjust punishment, a just from an unjust polity? That matter, that theme is our matter, our theme. We have spoken in the preceding chapter of the breakdown of this idea of justice, of its restoration as the prime condition for the reconstruction of just institutions in the Western world, whose life has been so terribly devastated by that breakdown. What is, in this sense, just and unjust? How can we acquire a standard for the distinction, as a whole and in detail? Can we say what makes an action, a law, a relationship just or unjust? Can we discover the principle of this justice?

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<sup>f</sup> Cf. Chap. 14, Justice and the Revelation of Scripture.

## The Place of Justice in the Sphere of Ethics

When we call something just, we mean to denote by the word something which is morally good – morally good in so far as the word “justice” can only be used where the human will is involved. Things or animals can of themselves be neither just nor unjust. On the other hand, it is characteristic of the term “just” that it describes not only human will, character, “virtue,” but man-made relationships, conditions and institutions. This first reflection shows that by the notion of justice morality has been extended beyond the immediate sphere of the will; hence that it brings about a certain materialization of morality.

This will at once become clear if we compare justice with love – brotherly love. There is unquestionably a close kinship between the two which we shall have to inquire into later.<sup>a</sup> At this point, however, they mean totally different things. Love is always related to persons, never to things. We can speak of a just law or system, but we cannot speak of a loving law or system. Everybody feels at once that the union between love and personality is incomparably closer than that between justice and personality. We also realize at once that in the personal sphere, in the mutual relation of persons, love, not justice, is the highest good. Everyone knows what is meant, and knows that it is right, when we say that love is more personal than justice; that is, that the relationship between human beings which is based on love is more personal than the

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<sup>a</sup> *Vide* Chap. 15, Justice and Love.

relationship which is based on justice. While love is the acme of all moral goodness, we cannot by any means say the same of justice. It is therefore our bounden duty to inquire what warrant the standard of justice can have, seeing that it does not embrace the highest, ultimate good. Looked at from the standpoint of love, it presents the appearance of a kind of inferior morality, of a mere preliminary stage of the good.<sup>5</sup>

The riddle is solved as soon as we turn our attention to the object of justice, to the sphere it regulates and governs. Unlike love, whose writ runs supreme in the moral sphere of personality, justice has to do not with the person *qua* person, but with the person in view of “something,” a material domain which is not personal. From time immemorial the principle of justice has been defined as the *suum cuique* – the rendering to each man of his due.<sup>6</sup> The definition of justice: *justitia est perpetua et constans voluntas suum cuique tribuendi*, entered medieval jurisprudence by way of Ulpian and the *corpus juris*,<sup>b</sup> side by side with Cicero’s terser definition of justice as *animi affectio suum cuique tribuens*.<sup>c</sup> Who or whatever renders to every man his due, that person or thing is just; an attitude, an institution, a law, a relationship, in which every man is given his due is just. Thereby justice is clearly distinguished from love. Love does not ask what is mine and what thine: it does not render to the other what is his due, what belongs to him “by right,” but gives of its own, gives precisely that to which the other has no right.

When Locke says that there can only be justice where there is property, and even private property,<sup>d</sup> the fallacy is comprehensible, but it is none the less a fallacy. It is true that justice is always concerned with mine and thine, and for that very reason, never with the person *qua* person, but with the person in view of “something.” That mine and thine, however, need not necessarily be a material object, a thing owned or possessed.

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<sup>b</sup> “Dig.,” 1, 3. 10.

<sup>c</sup> “De Finibus,” 5, 23.

<sup>d</sup> “On Government,” § 26.

That *suum*, mine or thine, comprises everything which is not myself, but which “belongs” to me. Kant, referring to Ulpian’s familiar formula,<sup>e</sup> says: “That which is mine by law (*meum juris*) is that with which I am so bound up that any use made of it by another without my consent would injure me.” It may be a man’s good name, it may be due recognition, it may be freedom, or a political right – but it is always something which belongs to me or you. The sphere of justice embraces all that “belongs,” all that is a man’s due, all that he has a “right to.”

That “right,” however, does not by any means refer to the positive law of the State, firstly because it is precisely the idea of justice which enables us to distinguish between a just and an unjust law; secondly because we also speak of justice in cases where there could be no recourse to a legal settlement by the State. The schoolboy who has done his work well has a “right” to good marks, it is “unjust” if he is given lower marks than another whose work is inferior; the good marks are his “due.” Hence the primitive idea underlying the idea of justice is that of “belonging.” The simple statement *suum cuique*, which actually comprehends the whole essence of justice – of that justice which is dealt with in this book and which satisfies men’s “sense of justice” – goes back to an underived, primal order of things established by no human law-giver. The man who protests because something that belongs to him is taken away or withheld from him believes that that which has been taken away or withheld belongs to him in virtue of an order which no human being can administer. The possessive pronouns “mine” and “thine” cannot be eliminated from our conception of justice, nor can the idea, even though it remain only half-conscious, of an order in virtue of which this something “belongs” to us. It *must* be given to us, it *must* not be removed or withheld from us, because it “belongs” to us. In that “belongs” lies the whole appeal of the idea of justice to feeling. Our first question is not *what* belongs to each man, or *what* is his by right – that is the subject of this whole book. Nor do we first ask how we *know* what is each man’s due, or even whether we can

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<sup>e</sup> “Metaphysik der Sitten,” I, i. § Ulpian, *neminem laedere*, “Dig.,”

know it with any certainty. All those questions are justified and must be faced in their proper place, but the first unquestionable assertion we have to make is this: when we speak of justice, when we believe injustice, when we demand justice or protest against injustice, we always mean one thing – that primal order of mine and thine which stands above all human apportioning and must be the standard for all human apportioning if it is to be “just.” An action or an attitude of mind, a law or an institution, can only claim to be called “just” if it corresponds to that primal order. The man who does not believe in that primal order, which renders to each man his due, cannot believe that anything “belongs to him by right” – unless in the sense that it is assigned to him by some law of the State. But he could not then distinguish between an unjust and a just law of the State, and he could not speak of justice in cases where the standard of law of the State is not and cannot be applied. The sense of “the just” cannot be given effect without reference to that primal order.

Thus in virtue of the idea of justice mankind is placed in an order. He is part of a structure, fits a certain place in that structure, and it is a structure which orders the whole of life, the relationship of every man to his fellow men and at the same time the relationship of every man to the natural constants of life. By justice, every man is “fitted in,” and hence in a way is disposed of. The idea of “fitting in” is inseparable from the idea of justice. Justice always gives a feeling of stability, however far the substance of what belongs to a man by right may change with the changes of circumstance and personality. Whenever a just claim is put forward, an appeal is made to “what is fitting.” It is in virtue of “what is fitting” that this is due to me, that to you; in virtue of “what is fitting” that that falls to your share, belongs to you, and this to me. That is the deepest reason why a certain impersonality clings to the idea of justice. In every case, what “belongs” to me, what is my due, is something definite, fixed. Hence if I treat a man justly, and only justly, I regard him as fitting his place in the structure, as one whose place has been decided upon, and so decided that this or that is his due or property.<sup>7</sup> I do not see him himself. I see his “claim,” his right, we might even say his “share” in the whole structure. As contrasted

with love, justice has this statutory quality, this sense of things fixed.

It is because justice renders to each man his due that it both connects and severs. It connects inasmuch as it assigns to the individual his place in the ordered whole; it severs inasmuch as it allots to each “his” place, which is nobody else’s. What belongs to me belongs to nobody else, just because it is mine. Justice binds me to the other by making me bound – *obligatus* – to render him his due. I cannot get free of him; I cannot elude my obligation to him. But at the same time it severs me from him by drawing round about him a circle into which I may not penetrate, or by not admitting me to direct contact with him himself, since it only shows me what is “his,” what “belongs” to him. I have to do, not with him, but with his right.

A final point which we have already established as a fact now becomes comprehensible. As distinguished from love, justice can serve as a standard in any question of impersonal relationships, of institutions, laws, ordinances. Since justice is not concerned with, the person, but with that share of something which is derived from the quality of being a person, the predicate “just” or “unjust” belongs not merely to persons, but to all ordered human relationships in which the shares of the individual members of a social whole are regulated. Hence the idea of justice belongs, not to the sphere of personal ethics, but to the ethics of systems or institutions. Even the virtue which bears the name of justice is one which operates in the sphere of systems. While justice always appears as an inferior value in the ethics of the person, in the ethics of institutions it is the supreme and ultimate standard. The highest requirement of systems, institutions, laws, is that they should be just, while it is required of man that he should meet his fellow men not in justice, but in love.