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ON JUSTICE*

The word “justice” is on everyone’s lips these days. Anyone capable of having moral feelings resonates with this word emotionally. Demands are made in the name of justice to preserve or change existing relations. These demands often go in contradicting directions. What underlies this contradiction may be a difference of opinions as to the premises concerning the actual state of affairs, but it can also be a difference in the way justice is conceived, the ambiguity of the word “justice” itself. This article aims to focus on this ambiguity and the many associated notions of justice being used without people always being aware of this multitude. Some of the concepts of justice will be analyzed in more detail.

I

1. Let us begin by noting that the meaning of the word “justice” varies depending on what it is applied to. After all, when we say that people’s actions are just or unjust, we use the word “justice” in a different sense than when we say that people themselves have the distinguishing feature of being just or unjust. We can also speak of just or unjust regulations, laws, or rules, etc., and when we do, we use the word “just” in yet another meaning. Although, however, the meanings of the word “justice” we have enumerated are not

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identical, they are closely connected, so that, having established one meaning, we shall easily determine the rest.

When speaking of justice, we shall usually take the word “justice” in the meaning in which it is applied to people’s actions.

2. Besides the group of various meanings of the word “justice” whose variety is associated with the variety of what it describes, there is also another group. Namely, in the history of philosophy, and elsewhere, we may encounter such a meaning of the word “just” where it is used to describe people’s actions when we simply wish to describe them as ethically positive, or righteous. Therefore, the word “justice” as the name of a certain human virtue is used to describe people when we wish to ascribe to them moral perfection. “Justice” in this meaning refers, then, to universal virtue. Plato seems to use the word “justice” in this broad sense, regarding its referent as a crowning of all virtues, which can be achieved by people when all parts of their soul do what they should do. This broad meaning is used in religion, where it is claimed that the just will enter the heavenly kingdom. This very general interpretation of the word “justice” is archaic nowadays.

We currently use this term in a meaning different and narrower than the one identifying the concept of a just action with the concept of ethically positive action and identifying the concept of an unjust action with the concept of ethically negative action. We cannot say of every ethically positive action that it is a just action, and we cannot say of every ethically negative action that it is an unjust action. Perhaps everyone can recognize wastefulness, debauchery, drunkenness, etc. as ethically negative actions, but still, may claim that these actions do not fall within the opposition: justice — injustice.

Let us attempt to delimit the actions which can be assessed as just or unjust, assuming that we use the corresponding words as we do today. It seems that nowadays we call *only* those actions just or unjust which involve someone doing something good or bad to another person. We also sometimes apply the words “just” and “unjust” to the omission of an action we would be inclined to call just or unjust. Thus, for instance, we call paying for a service just and we call avoiding paying for a service unjust. We sometimes call a punishment imposed on someone or revenge taken on someone just or unjust. Yet we may also say that it is just when an unjust punishment is withheld.

Thus, every action whose performance or omission can be assessed from the point of view of justice must involve two parties, where one does something good or bad to the other. These parties can be two natural persons, or two people, but also institutions or social groups, which can also be called persons in an extended sense.

3. An important question comes to mind — of when doing something good or bad, or omitting to do either, is just and when it is unjust. A strictly formal and not very informative answer comes from the old formula of a Roman lawyer, Ulpian: *suum cuique*. We could flesh out the thought expressed by this trivial formula by saying: John acts justly towards Peter when John does for Peter what John owes Peter. In consequence, we would say that John acts unjustly towards Peter when John does not do for Peter what John owes Peter.

4. Yet doubts arise even with these banal statements. After all, we may ask if John acts justly towards Peter only if he does what he owes him. What if, for instance, John did a good thing for Peter that he did not owe him; would he act unjustly towards Peter? We could ask further: would John always act unjustly towards Peter if he did not do for Peter what he owed him? For instance, if a father waives a well-deserved punishment for a child or when someone forgives a due payment, do they act unjustly?

The doubts raised here are associated with further ambiguity of the word “just.” We may speak of strict justice and merciful justice. Strict justice requires not giving anyone any more or less than owed. Merciful justice requires only not giving anyone any less than owed, but it allows for sharing good in excess.

In the merciful sense, all and only people who always do the owed good and never do the owed evil act justly.

In the same merciful sense, all and only people who do not do the good owed or do the evil which is not owed act unjustly.

On the other hand, in the strict sense, all and only people who do the good owed and do the evil owed but do not do the good or evil that is not owed act justly. Therefore, in the strict sense, all and only people who do not do the good or evil owed, or who do the good or evil not owed act unjustly.

We consider merciful justice acceptable for those who do something good or evil in their own name only, whereas we demand strict justice from those who act as a proxy of another person, doing good or evil in their name. A judge or an examining professor should follow strict justice, as showing compassion when handing out benefits or disadvantages does undue harm to the society which authorized them to distribute these values.

5. Developing the meaning of the *suum cuique* formula, where Ulpian attempted to include the content of the concept of justice, we indicated the relationship between the concept of justice and the concept of what is owed. This relationship is so banal that a sentence stating that one acts justly when they always do what they owe looks like a simple tautology. We will go a step further in our analysis when we establish what it means to be owed something. Let us then proceed to discussing this question.

6. To begin with, we must state that there are three meanings of someone being owed something. We can say, firstly, that someone is owed something according to the letter of positive law, secondly, that someone is owed something in the spirit of this law, and thirdly, that someone is owed something out of rightness. Following this distinction, we can speak of justice in three meanings: (1) legal justice consisting in accordance with the letter of the law, (2) legal justice consisting in accordance with the spirit or the idea of law, and (3) moral justice (see Rumelin 1920).¹

7. Out of these three concepts of justice, the concept of literal legal justice requires the least explanation. In this interpretation, every action which finds sanction in the reading of a rule of positive law is just.

The second form of legal justice requires a longer comment. It takes place when someone is given the good or evil which they are owed according to the spirit of the law. What is that spirit of the law, though?

Law always consists in normalizing a given social order, implementing an ideal, more or less clearly guiding those who established the law. This ideal could be, e.g., moral order; then, everything which is right in the ethical sense will be in line with the spirit of the law. This ideal could be *salus reipublicae*; then everything which contributes to reinforcing the power and wellbeing of the state will be in line with the spirit of the law. Nowadays, this ideal guides legislators in some countries. A legislator may want to implement a specific social system, such as liberalistic, communist, or others, with the laws they pass. The lawmaker may be guided by their own interest or that of their own social stratum. The spirit of the law will be different every time. The spirit or the idea of the law is not usually uniform. In principle, three motives influence a lawmaker, more or less intentionally, when issuing laws. One of them is the desire to comply with the rules of moral rightness, the second is the tendency to remain faithful to tradition and prevailing customs, and the third is respect for the interest of a smaller or larger social group the lawmaker or lawmakers themselves belong to. This may therefore be the interest of one's estate, one's class, one's professional group, the nation as a whole, or the interest of the state.²

Having presented the above explanation, it will be easy to answer the question of when someone is owed something according to the spirit of the law. If, by doing something good or evil for someone, we will contribute to introducing or maintaining the social order which the lawmaker wanted to normalize through the legal rules they implemented more or less knowingly, we

¹ See Max Rumelin, *Die Gerechtigkeit*, Tübingen: J. C. B Mohr 1920.

² See Pierre de Tourtoulon, *Les trois justice*, Paris: Librairie du Recueil Sirey 1932.

will basically act justly in the legal sense, and we will do to another person what they are owed according to the law, although perhaps not according to the letter of the law. Judges, passing their verdicts, do not only make sure that these verdicts are just according to the letter of the law but often make sure that they are passed according to the spirit of the law. Thus, they will not pass the same sentence for murder done for gain as murder committed by an incompetent person or a saboteur intending to perform an action that may have brought incalculable losses to the state the judge is passing judgment for. Therefore, a judge takes into account the spirit of the law when, e.g., taking account for extenuating or aggravating circumstances which impact the amount of the penalty which the law schematically provides.

The third concept of justice is the concept of moral justice. We will deal with it more extensively further on.

II

8. The concept of moral justice is closely associated with the concept of being owed according to rightness. It is easy to explain what it means that someone is owed something according to rightness. A given good is owed to John according to rightness means the same as: it is morally right that John gets this good from Peter, and (if we mean strict rather than merciful justice) it is morally wrong for him not to get it. Unfortunately, this answer does not shed any light on the issue until we explain what is morally right. This, however, raises some fundamental difficulties, as the content of the notion of moral rightness is indistinct; that is, it is a concept whose content cannot be captured by a definition. Like many other concepts used in everyday life, it is a concept governed by usage — that is, we can apply it in specific cases with more or less certainty but we are unable to define it. In practice, our usage of the concept of rightness is determined by the following rule: whenever a deed becomes the object of a specific (and hard to describe verbally) feeling of moral approval, we say of this deed that it is morally right. We also think we would infringe on the meaning of the word “right” if we were reluctant to apply this word to a deed for which we feel moral approval.

This does not automatically mean that everything and only that which meets our approval is morally right. On the contrary, upon self-reflection, we often realize that we had approved morally of something which did not deserve it — which was not right. Although, as observers, we accept the belief that our sense of rightness is sometimes mistaken, and that not everything we approve of is right, we act as if that were not the case — that is, we persist in calling right that and only that which meets with our approval. However, when we judge an action to be morally right, we do not mean by this that this

action evokes in us a feeling of approval. The feeling of approval is only a criterion of moral assessment rather than its content. When judging a given deed, we are guided by moral approval as a criterion of this assessment, but the content of this assessment is not the statement that the assessed action meets the criterion, but rather, something else is the said content. It is similar with judging an object to be red, for example. The criterion we are guided with when judging is the impression made by the object. However, when judging an object to be red, we do not mean that it makes such an impression on us, but something completely different. Therefore, the guiding criterion for issuing a judgment or an assessment is one thing and the content of this judgment or this assessment is quite another. I believe that insufficient differentiation between these two issues — that is, the criterion of a judgment or of an assessment and their content, is one of the sources of the view called relativism, both in the cognitive and ethical sphere.

9. Let us abandon these overly subtle inquiries, which we would have to continue if we intended to go deeper into the aforementioned issue of relativism. Let us also conclude our conceptual analyses which would lead us to establishing the relationships between the concept of moral justice, the concept of someone being owed something, and finally, the concept of moral rightness. It seems to me that we can go no further in this analysis than determining the aforementioned relationships. However, we shall proceed to a discussion of certain claims which do not add up to a definition of the concept of moral justice and yet seem to be dictated, in some way, by the content of this concept. Admittedly, the claims we will proceed to discuss speak more of what someone is owed in fairness rather than about justice directly, but as we said before, these concepts stand in a close relationship to one another.

10. One such claim is the age-old principle that could be called the principle of equal payment and repayment. It asserts: if X obtained from Y a certain W having a positive or negative value, then X owes Y according to rightness a certain V of the same value as W. The value mentioned here is taken in its broadest sense. It may be utility value — e.g., money; it could be health, fame, social position, teaching a skill, etc. It does not only have to be a positive value, it may also be a negative value in the broadest sense — e.g., taking away money, sickness, depriving someone of honor, social degradation, etc. This rule, or at least its part which refers to negative values, reminds us of the old adage: “an eye for an eye, a tooth for a tooth.” In philosophical literature, the principle of equal payment and repayment is present in Aristotle, who considers it to be the main rule for compensatory justice.

What should we think of this principle? First of all, we should note that its application in specific cases would encounter insurmountable difficulties as it is

not easy to compare different values. It is probably the least difficult to compare the values of economic goods. However, even here the problem is not so easy to resolve. When it comes to comparing the value of market commodities, it is not clear if we are supposed to compare them according to their exchange value, which depends on supply and demand, or according to their utility value, which depends on the degree to which they meet needs. Is the measure for comparing the value of commodities supposed to be the total cost of their production or should we only compare their value according to the amount of work put into their production? We will reach different conclusions every time we compare economic goods from any of these points of view. Which method of comparison should we choose so that the choice conforms with the intention of the principle of equal payment?

However, economic goods do not have to be what justly requires an equivalent payment according to this principle. After all, a punishment is repayment for a crime, where neither crime nor punishment is or has to be an economic good. For instance, how do we establish the length of a prison sentence for lese-majesty?

Besides the unclarity in the concept of the *equality* of payment and repayment, the principle raises many other doubts, which would require supplements and modification which would be hard to implement. For instance, we deem payment for delivered goods due as long as the person delivering the goods acquired them by honest means. A thief selling stolen goods is not owed a payment but even deserves punishment. This concept of an honest owner, implicit in the principle of equal payment, is highly unclear and in specific cases, it will often be hard to determine whether it can be applied. Naturally, we mean the intuitive, moral concept rather than the legal concept, which constitutes a conventional sharpening of the intuitive concept. When using the intuitive concept of the right of the owner, it will be hard to determine whether someone who acquired certain goods without making an effort to make them but rather seized the results of the labor of others, forced to silent consent by the circumstances, is or is not the honest owner of these goods in the moral sense.

Certain unclarity will be associated with the part of our principle speaking of due payment for the evil done. Repayment for the evil done can probably be recognized as due if the evil which we should repay with evil was done on purpose — that is, with evil intentions, and moreover, if the person doing the evil is responsible for their actions in the moral sense. Again the intuitive concept of moral responsibility is unclear and ought to be made more precise, which would only be possible through a conventional modification of the primary intuitive concept.

Yet, although the rule itself becomes vague due to the lack of clarity of a number of concepts present in the principle of equal payment and repayment, it corresponds quite well with our concept of moral rightness, which is also unclear and unsteady to a high degree.

However, it must be noted that the principle under discussion does not exhaust all cases where, according to our intuition, someone is owed something from someone else according to rightness. Our intuition tells us that there are cases where someone is owed something although the person who is owed had not done any good for the other person; for example, a baby is owed care from its parents although the baby had not done anything good yet. So-called human rights and citizen's rights mention goods that the society owes to every individual, regardless of their merits. The principle of equal payment and repayment provides at most only sufficient conditions but not the necessary conditions to recognize doing good or evil as owed according to rightness.

11. The necessary condition to recognize a certain benefit as owed is formulated by another principle, which could be called the principle of equal measure. The thought at the base of this principle has been formulated very often in the following form: all people have equal rights, or in other words, no person is owed more or less than other people. In this formulation, the principle is in stark contradiction to our sense of rightness. After all, it is evident that a thief is due a prison sentence and a benefactor is due gratitude and a reward. Thus, not everyone is due the same thing.

However, only the cited formulation of the principle of interest to us at this point is faulty, rather than its actual content. The principle of equal measure could be formulated in the following words: nobody is owed anything only because they are that person and not someone else. Therefore, if we grant John certain benefits, which we deny someone else, we do it rightly only when we grant these benefits because he has certain advantages or merits which another person does not have, and not because this is John.

According to this principle, whenever a sentence granting a benefit to a person whose name and surname are mentioned, X. Y., is true, then what must also be true is some general principle granting this benefit to every person in possession of a certain property, which person X. Y. has but which does not consist in the fact of being X. Y. but also is not the kind of property for which it is possible to demonstrate *a priori* with only logical means that X. Y. has this property.

This seems to be the correct content of the principle stating that no person as such has any privileges above others. This very convincing principle, when we consider it from the theoretical point of view, is often violated in everyday life. After all, in everyday life we live in a world where a certain per-

son seems to be distinguished from others as being just this person and not another. For each of us, our own person is distinguished in such a way, that is as being just this person and not because of our special qualifications. The private image of the world everybody carries is an image where a certain point as the center of the world stands out, and the person themselves is the center of the world in each of these private worlds. As mental development progresses, everyone develops the ability to view the world objectively and publicly, without egocentrism. This view of the world without a center is what we always have before us when we assume a theoretical attitude. However, whenever our attitude becomes active, whenever we begin to act practically, we fall into egocentrism and we become the center of the world for ourselves again. I am not one of the people, I am the subject, and other people are certain objects among other objects.

12. Egocentrism leads straight to egoism, in the form that everyone is inclined to grant themselves extraordinary benefits and not because they ascribe some special features to themselves, but because they are themselves, because they feel like a subject rather than an object.³

Overcoming this egocentrism, accepting the fact that the property of being a subject is relative, and granting that property to all people, initially treated as mere objects, is demanded by the principle of equal measure. This principle requires that we accept the idea that being a subject is not a property which distinguishes me from others, as no one is a subject in the absolute sense, but everyone is a subject for themselves. In consequence, it requires us not to make claims to obtain extraordinary benefits due to our subjective character, as anyone can make that claim. Therefore, if any benefits come from that claim, they cannot be special for anyone, but rather, they must be benefits granted to everyone equally.

The postulate of applying an equal measure is related to the commandment to love your neighbor, but it does not go as far in its demands. The commandment "Love your neighbor as you love yourself" requires me to strive with as much zeal to obtain what is beneficial to me as I strive for others to obtain what is beneficial to them. The postulate of applying an equal measure allows me to strive for myself rather than for others, but only under the condition that I grant the same right to everyone else.

13. Let us now return to the issue of people's egocentrism and note that there are various forms of feeling like a subject. They reveal themselves in speech whenever we use the personal pronoun in the first person. However, a personal pronoun has the first person singular and plural. I feel like a subject

³ See G. del Vecchio, *La Giustizia*, Bologna: Zanichelli 1924.

both when I say “I” and when I say “we.” The word “we” can signify certain social groups the person uttering the word feels they belong to. “We” can mean: “we Poles,” “we Europeans,” “we white people,” etc. Whenever one uses “we,” one refers to a specific social group one belongs to, rather than just oneself, but thinks of the group in the first person — that is, does not distinguish it from oneself, treating the group as an object, but feels that the group is one’s extended self — something like a different form of subjective consciousness that one can experience. In such cases, we draw a contrast between our own group, perceived as a subject, and other social groups, treated as mere objects.

In connection with this social egocentrism there arises social egoism consisting in being prepared to grant special benefits to one’s own social group, not because it has some special advantages but because it is just that group. The principle of equal measure opposes this tendency as it refers to social groups and not only individuals. It denies that any specific social group has any distinct rights due to the fact that it is that group, and claims that every group may acquire any right contingent on possessing any positive feature that any other group could also, in principle, possess.

It should be stressed again that the principle of applying equal measure does not prevent anyone from taking care of their own social group more than any other. It only requires someone who grants the right to take care of their own group first to grant this right also to anyone else who is a member of another equivalent group.

The principle of equal measure provides us with a method that can often help us determine whether we believe incorrectly that we are owed something; that is, we grant certain benefits to ourselves wrongly. It is sufficient to consider whether we would gladly grant anyone else the rights we grant ourselves if the person found themselves in the same conditions. If the result of this test is negative, if in our mind’s eye, we put another person in our place and then cannot find in our sense of rightness a sufficient basis to grant them that special right, then we have made a claim to that right out of egocentrism — we have granted the right to ourselves because we are us, not for any right and substantive reasons.

The principle of equal measure is purely negative in character. It only states what cannot be the basis for right entitlements — that is, the fact that one is a specific individual can never constitute the reason to obtain special entitlements.

This principle is very modest in its content. Yet it seems to constitute the core of the sense of justice, something that has always been present in the sense of justice in all peoples and in all times, and such that its lack signals a complete decay of any sense of moral justice.

14. We can speak of equality of rights of all people, which is mentioned in the principle of equal measure, in an even broader sense. It is not only the fact that one is this particular human being, rather than another, that cannot be the basis for a rightful claim to special entitlement. Similarly, one cannot make a rightful claim to such an entitlement because they are blonde or tall or were born in a city or born on Sunday rather than a workday. When we attempt to put all those cases into one formula, the following principle comes to mind. No special entitlements are due to anyone for what they got from fate and to which they did not, themselves, contribute. Special entitlements may be due to people only for what is of their own doing. This principle refers to both entitlements in the proper sense — that is, those thanks to which something positive is due, and negative entitlements, which lead to something bad being due. This principle could also be formulated in the following way: nothing good or bad is due to a person for something which is not their doing, unless it is due to everyone. This principle seems to correspond more fully than the previously discussed one with what was meant by the equal rights of all people. Therefore, we shall call it the principle of equality of rights. In the name of this principle, the fight for the abolition of estate and family privileges was fought, as well as the fight for equal rights of women and men, and the fight for equal rights for people of all nations and origins.

The principle of equality of rights has met with criticism. After all, nobody can take credit for being smart or having a good singing voice, or any other talent. However, a smart person is due more than a stupid one, a singer with a good voice is due more than a bad one, etc. Thus, special rights are due to people for something which is not of their own doing. As a response to this objection, let us remember a biblical story of buried talents. Nothing is due for talent itself, but rather for the work created thanks to these talents. A singer with a good voice does not get anything for the voice itself but will be rewarded for singing, which is their work.

Yet does nature itself not act unjustly by bestowing talents on some and skimping on others? Also, is it right to reward someone for work which they create because of a gift of nature, which acted unjustly by bestowing it on them? In response to this objection, we should first note that we overgeneralize the use of the word “just” when speaking of just or unjust acts of nature. After all, justice is a feature of only human actions, and speaking of the injustice of nature, we employ a metaphor which assumes an inadmissible personification of the forces of nature. Never mind, though. When we investigate this objection further, we get the impression that those who pose it take into account two factors that human work depends on. One is innate conditions and the other is effort and endeavors. The intention of the discussed objection

follows the direction where the entitlements a person gains thanks to their work should be dependent only on the effort the person put in it rather than the condition nature equipped them with. Indeed, a similar tendency is not entirely alien to our sense of justice. According to this tendency, an unskilled manual worker and a genius inventor could claim they should achieve payment proportional only to the effort they put in the work, regardless of the difference in the importance of their work and regardless of the fact that the talents necessary for performing the work of an inventor are much more rare, and therefore much more sought after, than the talents necessary for a manual worker. It seems that the mentioned tendency lies at the base of certain radical economic and social doctrines. The principle of equal treatment, which states that people owe any entitlements besides universal entitlements only to their work, does not go that far. It does not claim that people's rights are proportional to the effort they put in their work, and therefore, it does not entail the consequence that people should be rewarded regardless of the talents they have.

Still, we can raise some doubts about the principle of equality of rights presented above. Nature does not only give out talents but also disabilities. There are people who are born blind, deaf, lame, etc. The disability is not their own work. Yet do those people not deserve an exceptional entitlement to special care due to these disabilities? The sense of rightness seems to answer this question in the positive. Yet it therefore negates the principle that special entitlement is only due for people's work. Thus, it seems the principle of equality of rights requires many corrections and supplementations for it to be deemed adequate.

15. The presented formulation of three principles referring to the concept of justice is only a rough attempt to grasp a few principles we follow when evaluating people's actions from the point of view of justice. Further and deeper considerations will probably lead to finding better wording. Alas, the sense of justice, which we attempted to capture, is too indeterminate to be expressed by indubitable and precise principles.

BIBLIOGRAPHY

- Rumelin M. (1920), *Die Gerechtigkeit*, Tübingen: J. C. B. Mohr.
Tourtoulon P. de (1932), *Les trois justice*, Paris: Librairie du Recueil Sirey.
Vecchio G. del (1924), *La Giustizia*, Bologna: Zanichelli.