
A THEORY OF JUSTICE

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except in passing the justice of the law of nations and of relations between states (§ 58). Therefore, if one supposes that the concept of justice applies whenever there is an allotment of something rationally regarded as advantageous or disadvantageous, then we are interested in only one instance of its application. There is no reason to suppose ahead of time that the principles satisfactory for the basic structure hold for all cases. These principles may not work for the rules and practices of private associations or for those of less comprehensive social groups. They may be irrelevant for the various informal conventions and customs of everyday life; they may not elucidate the justice, or perhaps better, the fairness of voluntary cooperative arrangements or procedures for making contractual agreements. The conditions for the law of nations may require different principles arrived at in a somewhat different way. I shall be satisfied if it is possible to formulate a reasonable conception of justice for the basic structure of society conceived for the time being as a closed system isolated from other societies. The significance of this special case is obvious and needs no explanation. It is natural to conjecture that once we have a sound theory for this case, the remaining problems of justice will prove more tractable in the light of it. With suitable modifications such a theory should provide the key for some of these other questions.

The other limitation on our discussion is that for the most part I examine the principles of justice that would regulate a well-ordered society. Everyone is presumed to act justly and to do his part in upholding just institutions. Though justice may be, as Hume remarked, the cautious, jealous virtue, we can still ask what a perfectly just society would be like.² Thus I consider primarily what I call strict compliance as opposed to partial compliance theory (§§ 25, 39). The latter studies the principles that govern how we are to deal with injustice. It comprises such topics as the theory of punishment, the doctrine of just war, and the justification of the various ways of opposing unjust regimes, ranging from civil disobedience and militant resistance to revolution and rebellion. Also included here are questions of compensatory justice and of weighing one form of institutional injustice against another. Obviously the problems of partial

2. *An Enquiry Concerning the Principles of Morals*, sec. III, pt. I, par. 3, ed. L. A. Selby-Bigge, 2nd edition (Oxford, 1902), p. 184.

compliance theory are the pressing and urgent matters. These are the things that we are faced with in everyday life. The reason for beginning with ideal theory is that it provides, I believe, the only basis for the systematic grasp of these more pressing problems. The discussion of civil disobedience, for example, depends upon it (§§ 55–59). At least, I shall assume that a deeper understanding can be gained in no other way, and that the nature and aims of a perfectly just society is the fundamental part of the theory of justice.

Now admittedly the concept of the basic structure is somewhat vague. It is not always clear which institutions or features thereof should be included. But it would be premature to worry about this matter here. I shall proceed by discussing principles which do apply to what is certainly a part of the basic structure as intuitively understood; I shall then try to extend the application of these principles so that they cover what would appear to be the main elements of this structure. Perhaps these principles will turn out to be perfectly general, although this is unlikely. It is sufficient that they apply to the most important cases of social justice. The point to keep in mind is that a conception of justice for the basic structure is worth having for its own sake. It should not be dismissed because its principles are not everywhere satisfactory.

A conception of social justice, then, is to be regarded as providing in the first instance a standard whereby the distributive aspects of the basic structure of society are to be assessed. This standard, however, is not to be confused with the principles defining the other virtues, for the basic structure, and social arrangements generally, may be efficient or inefficient, liberal or illiberal, and many other things, as well as just or unjust. A complete conception defining principles for all the virtues of the basic structure, together with their respective weights when they conflict, is more than a conception of justice; it is a social ideal. The principles of justice are but a part, although perhaps the most important part, of such a conception. A social ideal in turn is connected with a conception of society, a vision of the way in which the aims and purposes of social cooperation are to be understood. The various conceptions of justice are the outgrowth of different notions of society against the background of opposing views of the natural necessities and opportunities of human life. Fully to understand a conception of justice we must make explicit the concep-

tions, it may win quite general acceptance. Surely our liberties are most firmly based when they are derived from principles that persons fairly situated with respect to one another can agree to if they can agree to anything at all.

I now wish to examine more carefully the meaning of the priority of liberty. I shall not argue here for this priority (leaving this aside until § 82); instead I wish to clarify its sense in view of the preceding examples, among others. There are several priorities to be distinguished. By the priority of liberty I mean the precedence of the principle of equal liberty over the second principle of justice. The two principles are in lexical order, and therefore the claims of liberty are to be satisfied first. Until this is achieved no other principle comes into play. The priority of the right over the good, or of fair opportunity over the difference principle, is not presently our concern.

As all the previous examples illustrate, the precedence of liberty means that liberty can be restricted only for the sake of liberty itself. There are two sorts of cases. The basic liberties may either be less extensive though still equal, or they may be unequal. If liberty is less extensive, the representative citizen must find this a gain for his freedom on balance; and if liberty is unequal, the freedom of those with the lesser liberty must be better secured. In both instances the justification proceeds by reference to the whole system of the equal liberties. These priority rules have already been noted on a number of occasions.

There is, however, a further distinction that must be made between two kinds of circumstances that justify or excuse a restriction of liberty. First a restriction can derive from the natural limitations and accidents of human life, or from historical and social contingencies. The question of the justice of these constraints does not arise. For example, even in a well-ordered society under favorable circumstances, liberty of thought and conscience is subject to reasonable regulations and the principle of participation is restricted in extent. These constraints issue from the more or less permanent conditions of political life; others are adjustments to the natural features of the human situation, as with the lesser liberty of children. In these cases the problem is to discover the just way to meet certain given limitations.

In the second kind of case, injustice already exists, either in

social arrangements or in the conduct of individuals. The question here is what is the just way to answer injustice. This injustice may, of course, have many explanations, and those who act unjustly often do so with the conviction that they pursue a higher cause. The examples of intolerant and of rival sects illustrate this possibility. But men's propensity to injustice is not a permanent aspect of community life; it is greater or less depending in large part on social institutions, and in particular on whether these are just or unjust. A well-ordered society tends to eliminate or at least to control men's inclinations to injustice (see Chapters VIII–IX), and therefore warring and intolerant sects, say, are much less likely to exist, or to be a danger, once such a society is established. How justice requires us to meet injustice is a very different problem from how best to cope with the inevitable limitations and contingencies of human life.

These two kinds of cases raise several questions. It will be recalled that strict compliance is one of the stipulations of the original position; the principles of justice are chosen on the supposition that they will be generally complied with. Any failures are discounted as exceptions (§25). By putting these principles in lexical order, the parties are choosing a conception of justice suitable for favorable conditions and assuming that a just society can in due course be achieved. Arranged in this order, the principles define then a perfectly just scheme; they belong to ideal theory and set up an aim to guide the course of social reform. But even granting the soundness of these principles for this purpose, we must still ask how well they apply to institutions under less than favorable conditions, and whether they provide any guidance for instances of injustice. The principles and their lexical order were not acknowledged with these situations in mind and so it is possible that they no longer hold.

I shall not attempt to give a systematic answer to these questions. A few special cases are taken up later (see Chapter VI). The intuitive idea is to split the theory of justice into two parts. The first or ideal part assumes strict compliance and works out the principles that characterize a well-ordered society under favorable circumstances. It develops the conception of a perfectly just basic structure and the corresponding duties and obligations of persons under the fixed constraints of human life. My main concern is with this part of the theory. Nonideal theory, the second part, is worked out after an

ideal conception of justice has been chosen; only then do the parties ask which principles to adopt under less happy conditions. This division of the theory has, as I have indicated, two rather different subparts. One consists of the principles for governing adjustments to natural limitations and historical contingencies, and the other of principles for meeting injustice.

Viewing the theory of justice as a whole, the ideal part presents a conception of a just society that we are to achieve if we can. Existing institutions are to be judged in the light of this conception and held to be unjust to the extent that they depart from it without sufficient reason. The lexical ranking of the principles specifies which elements of the ideal are relatively more urgent, and the priority rules this ordering suggests are to be applied to nonideal cases as well. Thus as far as circumstances permit, we have a natural duty to remove any injustices, beginning with the most grievous as identified by the extent of the deviation from perfect justice. Of course, this idea is extremely rough. The measure of departures from the ideal is left importantly to intuition. Still our judgment is guided by the priority indicated by the lexical ordering. If we have a reasonably clear picture of what is just, our considered convictions of justice may fall more closely into line even though we cannot formulate precisely how this greater convergence comes about. Thus while the principles of justice belong to the theory of an ideal state of affairs, they are generally relevant.

The several parts of nonideal theory may be illustrated by various examples, some of which we have discussed. One type of situation is that involving a less extensive liberty. Since there are no inequalities, but all are to have a narrower rather than a wider freedom, the question can be assessed from the perspective of the representative equal citizen. To appeal to the interests of this representative man in applying the principles of justice is to invoke the principle of the common interest. (The common good I think of as certain general conditions that are in an appropriate sense equally to everyone's advantage.) Several of the preceding examples involve a less extensive liberty: the regulation of liberty of conscience and freedom of thought in ways consistent with public order, and the limitation on the scope of majority rule belong to this category (§ § 34, 37). These constraints arise from the permanent conditions of human life and

therefore these cases belong to that part of nonideal theory which deals with natural limitations. The two examples of curbing the liberties of the intolerant and of restraining the violence of contending sects, since they involve injustice, belong to the partial compliance part of nonideal theory. In each of these four cases, however, the argument proceeds from the viewpoint of the representative citizen. Following the idea of the lexical ordering, the limitations upon the extent of liberty are for the sake of liberty itself and result in a lesser but still equal freedom.

The second kind of case is that of an unequal liberty. If some have more votes than others, political liberty is unequal; and the same is true if the votes of some are weighted much more heavily, or if a segment of society is without the franchise altogether. In many historical situations a lesser political liberty may have been justified. Perhaps Burke's unrealistic account of representation had an element of validity in the context of eighteenth century society.²⁷ If so, it reflects the fact that the various liberties are not all on a par, for while at that time unequal political liberty might conceivably have been a permissible adjustment to historical limitations, serfdom and slavery, and religious intolerance, certainly were not. These constraints do not justify the loss of liberty of conscience and the rights defining the integrity of the person. The case for certain political liberties and the rights of fair equality of opportunity is less compelling. As I noted before (§ 11), it may be reasonable to forgo part of these freedoms when the long-run benefits are great enough to transform a less fortunate society into one where the equal liberties can be fully enjoyed. This is especially true when circumstances are not conducive to the exercise of these rights in any case. Under certain conditions that cannot be at present removed, the value of some liberties may not be so high as to rule out the possibility of compensation to those less fortunate. To accept the lexical ordering of the two principles we are not required to deny that the value of liberty depends upon circumstances. But it does have to be shown that as the general conception of justice is followed social conditions are eventually brought about under which a lesser than equal liberty would no longer be accepted. Unequal liberty is then no longer

27. See H. F. Pitkin, *The Concept of Representation*, ch. VIII, for an account of Burke's view.

legislation (as defined by the existing constitution) is a sufficient reason for going along with it. When the basic structure of society is reasonably just, as estimated by what the current state of things allows, we are to recognize unjust laws as binding provided that they do not exceed certain limits of injustice. In trying to discern these limits we approach the deeper problem of political duty and obligation. The difficulty here lies in part in the fact that there is a conflict of principles in these cases. Some principles counsel compliance while others direct us the other way. Thus the claims of political duty and obligation must be balanced by a conception of the appropriate priorities.

There is, however, a further problem. As we have seen, the principles of justice (in lexical order) belong to ideal theory (§ 39). The persons in the original position assume that the principles they acknowledge, whatever they are, will be strictly complied with and followed by everyone. Thus the principles of justice that result are those defining a perfectly just society, given favorable conditions. With the presumption of strict compliance, we arrive at a certain ideal conception. When we ask whether and under what circumstances unjust arrangements are to be tolerated, we are faced with a different sort of question. We must ascertain how the ideal conception of justice applies, if indeed it applies at all, to cases where rather than having to make adjustments to natural limitations, we are confronted with injustice. The discussion of these problems belongs to the partial compliance part of nonideal theory. It includes, among other things, the theory of punishment and compensatory justice, just war and conscientious objection, civil disobedience and militant resistance. These are among the central issues of political life, yet so far the conception of justice as fairness does not directly apply to them. Now I shall not attempt to discuss these matters in full generality. In fact, I shall take up but one fragment of partial compliance theory: namely, the problem of civil disobedience and conscientious refusal. And even here I shall assume that the context is one of a state of near justice, that is, one in which the basic structure of society is nearly just, making due allowance for what it is reasonable to expect in the circumstances. An understanding of this admittedly special case may help to clarify the more difficult problems. How-