



A Brief History of JUSTICE

David Johnston

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A BRIEF HISTORY OF JUSTICE

DAVID JOHNSTON

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For
Charles E. Lindblom
Scholar Mentor Friend and for the students and staff of
Introduction to Contemporary Civilization

Acknowledgments

This book grew out of a longstanding dissatisfaction with contemporary academic thinking about justice, and especially with the estrangement between that thinking and a sense of justice that has been, and remains, widely shared across many cultures since the earliest times of which we possess written records. In order to pierce the academic bubble within which scholarly conversation about justice has been contained for at least the past several decades, I have immersed myself over the past few years in texts, both celebrated and relatively obscure, in an effort to recapture the various sensibilities that have motivated people's ideas about justice over the centuries. I hope that the results of this effort will cast some light on the idea of justice itself, as well as unearthing evidence for a history of ideas, some of which have long been either forgotten or summarily and unjustifiably dismissed.

This is a concise book, but it covers considerable territory, especially of the chronological sort. In order to make the narrative and arguments as accurate, clear, and incisive as possible for this subject, I have freely sought advice from others, and have accordingly acquired many debts. Danielle Allen, Robert Goodin, Ira Katznelson, Jennifer Pitts, Thomas Pogge, Melissa Schwartzberg, Annie Stilz, Katja Vogt, Jeremy Waldron, Gareth Williams, Jim Zetzel, and the members of the Columbia Seminar on Studies in Political and Social Thought, especially Jerry Schneewind, all have read and made suggestions on at least one and as many as four of the book's chapters. This book is a much better product than it would have been without their help. Luke MacInnis made suggestions for Chapter 6, Liz Scharffenberger

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Introduction

For many years now scholars have consistently mapped virtually all ideas about justice onto one of two continents. According to this cartography, the utilitarian territory is populated by views that stipulate a goal and derive a conception of justice from that goal or objective, usually by specifying a set of principles, rules, and institutions that are expected to be instrumental to its achievement. The most talked about goal in modern times has been the maximization of happiness. This goal is formalized in the principle of utility (or greatest happiness principle), which is the central idea of the classical utilitarian tradition. The label “utilitarian” is applied to this continent in recognition of the recent dominance of this school of thought, but this land is also inhabited by a number of other schools, devoted to variations on this theme or to objectives that are altogether distinct from it.

The “deontological” continent (in the jargon of modern moral philosophy) is the only other recognized territory. The class of deontological views is united by the conviction that justice is a matter of strict duties that cannot be overridden by any other considerations, not even for the purpose of achieving highly desirable goals. The rudimentary thought out of which this set of views springs is that some things are *right* whether or not they are *good*.

Although the principal views recognized by this division have relatively long pedigrees, the notion that all significant ideas about justice can be represented as incarnations of one of these two types goes back no further than the late eighteenth century, when the two principal traditions of modern moral philosophy – the

utilitarian and the Kantian schools - acquired the distinctive identities they have maintained with considerable continuity since that formative period.

This representation of the geography of ideas about justice is neglectful of, or even oblivious to, the preceding 4,000 years of thinking about the subject. It is in fact astonishingly ahistorical. What is even more troubling, this mapping withholds recognition from a set of ideas and intuitions about justice that have been shared widely by many people who are not professional intellectuals (as well as by some who are) throughout recorded history and across innumerable cultures. An entire continent is missing from the geography of ideas about justice that is commonly transmitted and received through the modern community of scholars.

My main aim in this work is to offer a concise and accurate map of the principal ideas about justice that have seized the imaginations of people in the "western" world over the course of its recorded history. The oldest and probably most widely endorsed understanding of justice focuses neither on an overarching goal from which the principles and rules of justice are allegedly to be derived, nor on a conception of the right and a set of unyielding duties that flow from it - but on the characteristics of relations among persons. This understanding is rooted in the concept of reciprocity, a concept which is malleable enough to have been shaped and embellished over the centuries into a considerable range of elaborated conceptions of justice, but which retains a core meaning that ties together all those conceptions as members of a single extended family of ideas.

I hope, further, to give the reader some reasons to believe that a conception of justice focused on the character of relations among persons rather than on a

single pre-eminent goal or on a set of strict duties is worthy of being revived as an estimable alternative to the two approaches that, taken together, have dominated scholarly discussions about justice for the past several generations. I do not mean to suggest that the particular conceptions of justice as reciprocity that have played the most prominent role in the history of ideas before our era can, without alteration, serve as reliable guides to puzzles about justice in the world today. These conceptions must be revised if they are to make a constructive contribution to the thoughts and actions that will shape our futures. Yet, in order to reconstruct a conception of justice focused on the character of relations among persons that could play a significant role in shaping our ideas, we must first recover some of the intellectual materials out of which earlier conceptions were fashioned, scrutinizing their strengths and weaknesses in the hope that we will be able to fashion ideas about justice that will serve us well. In this sense, the present book is an essay in retrieval as well as a survey of the past.

In the course of this study we shall see that, for the first 1,500 years or more of recorded history, human beings' ideas about justice were based heavily on the concept of reciprocity – an understanding that Plato attacked and attempted to replace with a new, teleological (that is, goal-directed) conception of justice. From Plato's time onward, the history of ideas about justice has been marked by a persistent tension between reciprocity-based understandings and teleological theories that have been developed with the aim of overthrowing those understandings. We shall also see that two momentous innovations in thought that first appeared in ancient times, but became ascendant only in the modern era, have, over the last few centuries, transformed the

landscape of ideas about justice decisively. These innovations are the notion that human beings are capable of reshaping their social worlds so as to make them accord with their intentional designs – a notion that seems first to have appeared among the sophists of Athens in the fifth century BCE – and the idea that all human beings are equal in worth, which originated in the Stoic tradition of ancient philosophy and was disseminated very gradually, primarily through the efforts of the Christian movement. We shall also have occasion to notice that these two innovations, taken together with the insight that virtually all the wealth generated in modern societies is a social product rather than merely an aggregation of the products of individuals taken singly (an insight that is identified most closely with Adam Smith), led to the formulation of the modern idea of social justice. This idea has played an outsized role in thinking about justice for some two centuries.

No one is more aware than I am of the limitations of this study. I say little here about strictly legal justice, which is the most obvious form in which people usually encounter something resembling justice in the everyday world. My reason for this neglect, aside from constraints of space, is that I am not convinced that a comparison between strictly legal justice and justice is any less unfavorable to the former than the common comparison between military music and music is. It may be that, in the very best conditions, legal justice leads with some consistency to relatively just outcomes, but it has not done so in most legal systems of which we know over the centuries. I also say little about the deep skepticism about justice that can be found in the philosophical tradition, from the voice of Thrasymachus (as represented by Plato in the *Republic*) to the writings of Nietzsche and beyond. While I conceive this study in part as a response to that skepticism, it has

seemed to me that the best way to frame that response is to present the positive claims about justice that have been articulated throughout that tradition as perspicuously as I am able to do. The skeptical view is based on a corruption of understanding, which forgets that the idea of justice is a tool that has been invented and refined by human beings, but, like other tools, is not infinitely plastic and cannot be reinvented in any form one happens to like, at least not if we want it to do the kind of work that the idea of justice was brought into being to do. I bestow what some might see as an inordinate amount of space and attention on a handful of “canonical” or “great” thinkers and only a little on the context of their ideas and on the ideas of others, who are considered less eminent in standard recent treatments of the history of political philosophy. I have allocated my attention in this way without misgivings, because I believe the writers on whom I have chosen to focus articulate the principal modes of thought about justice with at least as much fullness and clarity as could be found in any other selection. I have made no attempt to be evenhanded toward periods in the history of political thought, because I believe that some eras have been far more fecund with regard to ideas about justice than others. Perhaps most problematically, I have confined my attention to “western” ideas (including, however, the thinking of the ancient Babylonians, who borrowed heavily from the Assyrians and Sumerians before them, and that of the ancient Israelites). For this shortcoming my only excuses are the limited word count to which I agreed when I undertook this study, the design of the series to which this book is a contribution, and, most importantly by far, the limitations of my competence.

I hope that, despite its limitations, this study will be considered to be of some interest and use. For,

notwithstanding its many omissions, the story it tells will uncover a set of ideas about justice that is as significant as it is neglected – ideas the contemplation of which may enable us in the future to frame issues about justice more constructively than we have been able to do for at least the past two or three generations.

Prologue

From the Standard Model to a Sense of Justice

It is often assumed that people's actions are invariably intended to promote their own interests. This assumption tints our perceptions both of public figures and of our acquaintances in everyday life. When we notice conduct we find hard to explain, we frequently suppose that closer scrutiny would reveal the self-interested motives underpinning that conduct. We take for granted that politicians and celebrities are moved by desire for personal gain in the form of wealth or fame or both, and we regard with suspicion claims that these figures are motivated primarily by an interest in the public good, or by other selfless goals. Philosophers and social scientists have produced many striking statements of the self-interest assumption. In the most celebrated work of political philosophy ever written in English, Thomas Hobbes declared that, "of the voluntary acts of every man, the object is some *Good to himselfe*." A century and a quarter later, in the book that is widely considered the founding work of the entire tradition of economic science, Adam Smith proclaimed:

It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.

Recent writers have followed suit. For example, Richard Alexander, writing of evolutionary biology, asserts that we will not understand human conduct until we grasp that societies are “collections of individuals seeking their own self-interests” – a claim that echoes Richard Dawkins' earlier announcement, in the same field of study, that “we are born selfish.”

In modern times the self-interest assumption has been refined significantly by writers who have observed that a person's interests may encompass aims beyond his or her own individual good. This observation is fundamental to the theory of rational choice – a broad body of thought that has in recent years assumed a central role in a range of social sciences. According to this theory, individual behavior can best be explained by appealing to three factors: the individual's subjectively determined aims, whatever these may be, including the way in which the individual weighs or ranks them in relation to one another; the set of alternatives available to the individual; and the causal structure of the situation the individual confronts. The rational action for a given individual in any particular situation is then defined as the action that would best attain the individual's objectives, whatever those objectives may be.

The self-interest assumption, as refined in the modern theory of rational choice, is the central feature of what has become the standard model of human behavior. Thoughtful proponents of the theory of rational choice acknowledge that human actions are not always rational. A number of factors are capable of fostering irrationality. Sometimes the individual's aims may not be clearly defined, or they may not be clearly and consistently ordered, so that the individual is unable to rank them or weigh them consistently in relation to one another. Or the individual's beliefs about the available alternatives or the

causal structure of the situation may be distorted by irrational processes such as self-deception and wishful thinking. People may also behave irrationally as a result of bias in the way they gather evidence about facts that weigh in their decision-making. Even if people *intend* their actions to promote their aims, those actions may not be optimally designed to do so. If actions fall short of being optimally designed to promote a person's aims, then, according to the standard model, they are irrational.

It is a truth that might be considered mildly embarrassing for the standard model, then, that people sometimes act with the intent of benefitting others at some cost to their ability to achieve their own aims, and that they do so in a manner that seems rational from a commonsense point of view. Here is one example. In an experiment, human subjects were told that they had been paired with a partner (who was actually fictitious) and were then asked to perform a simple task in an industrial setting, while their “partners” were performing a similar task in a different location. After completing the assigned task, the subjects were told that their partners had been given the chance to allocate their joint pay of \$3 (this experiment was conducted a number of years ago). They were also told that they and their partners had performed their tasks equally well. The subjects were then led to believe that their partners had allocated them either \$1, \$1.50, or \$2 out of the total of \$3, keeping the remaining cash for themselves.

After learning of this allocation, the subjects were asked to respond to a series of questions about how they felt (happy, pleased, guilty, etc.), how they felt about their partners, how fair the allocation was, and the like. The results displayed a clear pattern. The subjects were happiest and liked their partners most when they

received \$1.50, which they believed to be equitable pay in view of their performance. They were less happy when they received \$2, which they perceived as excess compensation, and less happy still when they received only \$1, which they perceived to be less than they deserved. It appears that the human subjects in this experiment were affected by two motives: a desire to do for themselves as well as they could *and* a desire for joint rewards to be allocated fairly between them and their partners. The subjects preferred receiving \$2 over receiving \$1 because they preferred to do as well for themselves as they could. Yet they preferred receiving \$1.50 over receiving \$2 because they considered the greater amount of compensation unfair, even if they were beneficiaries of the unfairness.

Here is another example. In a survey about tipping in restaurants, people were asked two questions, presented here with aggregate responses (note that this survey was conducted in the 1980s, when the cost of restaurant meals was lower than it is now):

Question 1.	If the service is satisfactory, how much of a tip do you think most people leave after ordering a meal costing \$10 in a restaurant that they visit frequently?
Meanesponse:	\$1.28
Question 2.	If the service is satisfactory, how much of a tip do you think most people leave after ordering a meal costing \$10 in a restaurant on a trip to another city that they do not expect to visit again?
Mean Response:	\$1.27

The respondents to this pair of questions seem to believe that the prospects that tipping behavior might elicit sanctions in the form of either exceptionally solicitous service or embarrassing retaliation by an irate waiter have virtually no effect on people's tipping behavior. Their responses tend to support the commonsense view that tipping behavior is guided by a sense of fair compensation for good service, without regard to any

benefit that might accrue in the future to the person leaving (or withholding) a tip.

These findings are reinforced by a host of more recent experiments based on game theory. One large cluster of games with many variants (one example from this cluster is called the “trust game”) mimics real-life situations in which people transfer things to one another in sequential order and there is no effective enforcement mechanism to prevent “cheating” in the form of withholding a transfer that another player would have reason to anticipate. Despite the presence of incentives to cheat, the general pattern in these games is that most players make the expected transfers, which benefit other players at some cost to the player making the transfer. This pattern of behavior is sometimes called “altruistic rewarding.” It is complemented by a pattern called “altruistic punishment,” demonstrated in another cluster of games, of which the “ultimatum game” is the best known. The overall pattern of outcomes in these games shows that many people – in some instances a majority – are willing to punish other players for behavior they perceive as unfair, and that they do so even at some cost to themselves, and even when the perceived unfair activity was inflicted on a third party rather than on the player doing the punishing. These experiments make it clear that people sometimes act in ways that are not intended to promote their own interests. Indeed, at a relatively high rate, they go out of their way and display willingness to incur loss to themselves in order to act fairly or to punish others for acting unfairly.

These patterns are evident also in many ordinary and extraordinary non-experimental circumstances. It is well known that people will sometimes go to great lengths to retaliate, to their own detriment, in cases where individuals have inflicted harm or acted with egregious

injustice against them or against others. Similarly, some people (though perhaps not many) have taken serious risks and made great sacrifices to help others, including strangers, in cases where the latter are endangered or have become victims of injustice.

Willingness to incur costs in order to act fairly or to punish others for acting unfairly is highly variable from one person to the next. Similarly, perceptions about what constitutes fairness seem to vary significantly across cultures. Yet sensitivity to considerations of fairness seems to be ubiquitous, despite variations in the understanding of fairness. The standard model of human behavior suffers from a systematic failure to account for behavior in situations in which fairness is a salient feature.

It is evident, then, that human beings engage in far more prosocial behavior (behavior that benefits others, sometimes at some cost to those who undertake it) than the standard model would lead us to predict. Prosocial behavior is not unique to humans. However, unlike nonhuman animals, human beings also form evaluations and make judgments about the justice or fairness of their own and others' behavior, judgments that presumably shape or channel their prosocial behavior in distinctive ways. These judgments appeal to standards which, from the point of view of those who form them, are distinct from and external to their individual aims and desires. The capacity to be motivated by evaluations and judgments about fairness that transcend, or seem to transcend, what individuals take to be their interests appears to lie outside the purview of the standard model of human behavior.

Evaluations and judgments about justice and fairness can be contrasted with prudential evaluations and judgments. If I consider that it would be sensible, for the

purpose of maintaining my long-term well-being, that I stick to a nutritious diet and that I exercise regularly, this is a prudential judgment. Similarly, if I decide to support my daughter's aspirations for a career in music by paying for lessons, that decision is based on prudential reasoning. Conclusions and decisions of these sorts are prudential because they are based on objectives that are contingent. Our lives are filled with occasions that call for prudential evaluations of all sorts of matters. Many of these matters are mundane: Should I listen to some music now, and, if so, what music would I most likely enjoy? Others are momentous: Whom should I marry (if I wish to marry)? Despite their variety, prudential evaluations have in common the fact that the objectives in light of which we engage in them are contingent on aims and priorities we happen to have, aims and priorities that another person might not share with us.

In contrast, evaluations and judgments about fairness are based ultimately on standards that human beings construe quite differently from the way in which they think about contingent objectives. Typically, we believe that the fundamental standards underpinning judgments about fairness should be shared by everyone. We also believe that prescriptions for conduct based on those standards should, at least in some important instances, take precedence over, or “trump,” prescriptions based on prudential judgments. Of course, people often disagree about the standards that underpin judgments about fairness. But the fact that they disagree about them is compatible with the fact that they consider those standards to be objectively valid (in the sense of not being contingent on the subjective aims of individuals). People disagree all the time about objective matters, including matters of fact. Indeed, disagreement itself is premised on the assumption that there exists some

objective matter about which it is possible to disagree. In the absence of this assumption, people regard their differences not as disagreements, but as mere divergences of opinion or taste.

The capacity to engage in evaluations about matters of justice and fairness and to be moved by judgments about such matters is known as the capacity for a sense of justice. The capacity for a sense of justice has long been associated with the capacity for language, and both these capacities have often been regarded as distinctive to human beings. In his *Politics*, Aristotle argues as follows:

Nature, as we are fond of asserting, creates nothing without a purpose and man is the only animal endowed with speech [...] The object of speech [...] is to indicate advantage and disadvantage and therefore also justice and injustice. For it is a special characteristic which distinguishes man from all other animals that he alone enjoys perception of good and evil, justice and injustice and the like.

The seventeenth-century philosopher Thomas Hobbes, too, believed that the capacity for a sense of justice is distinctive to humans, and he associated that capacity with language:

It is true, that certain living creatures, as Bees, and Ants, live sociably with one another [...] and yet have no other direction, than their particular judgements and appetites; nor speech, whereby one of them can signifie to another, what he thinks expedient for the common benefit: and therefore some man may perhaps desire to know, why Man-kind cannot do the same. To which I answer [...] [among other things, that] irrational creatures cannot distinguish between injury, and damage; and therefore as long as they be at ease, they are not offended with their fellows [...]

Although in his work as a whole Aristotle emphasizes that the capacity for a sense of justice makes possible the substantial sharing of norms and standards, while Hobbes calls attention to the fact that disagreement about those standards creates occasions for conflict, they agree that the capacity for a sense of justice is distinctive to humans, that it is associated with the equally distinctive capacity for language, and that this capacity is among the most fundamental of all attributes of human societies.

Although questions about the origins of both language and the sense of justice have been fodder for speculation for centuries, we have no accepted account of these origins, mainly because the evidence to which we might appeal to prove or disprove any such account is prehistoric and highly fragmentary. One recent hypothesis suggests that, as hominid societies grew larger and more complex, the capacity for language may have evolved in response to the need for an economical means to convey estimations about the reliability of grooming partners and other matters of a similar kind. While this hypothesis is interesting and seems compatible with the smattering of relevant evidence we possess, it is far from compelling.

We therefore cannot explain how the twin capacities for language and for a sense of justice developed in humans. If ever we are able to obtain a persuasive account of these origins, that account will constitute the first chapter in some future history of ideas about justice. For it is with the acquisition of the capacity for a sense of justice that our story would ideally begin. In the absence of such an account, we must content ourselves with the observation that the history of ideas about justice begins with the capacity for a sense of justice firmly in place within the repertoire of human attributes. Fortunately, we do

possess substantial records of ideas about justice that go back several thousand years, to times of pre-alphabetic writing. We can begin our story, then, by glancing at some of the earliest available written records in human history.

Chapter 1

The Terrain of Justice

From a twenty-first-century vantage point, ancient ideas about justice are striking for two major reasons. First, the extant ancient texts reveal a preoccupation with retribution, and in some cases unbridled vengeance, that is unsettling to modern readers. Second, the ancient sources uniformly embrace stark hierarchies of power, status, and wealth as embodiments of a just political and social order. The commitments to freedom and equality that are widely shared today in those parts of the world which have been strongly shaped by European ideas are nowhere to be seen, at least not in the earliest sources.

The record of ideas about justice extends back many centuries before the beginnings of philosophy, which was a Greek creation. Collections of laws dating from the late third and early second millennia BCE have been preserved from several kingdoms that once existed in ancient Mesopotamia, including Assyria, Accad, Sumer, and Babylonia itself (into which the territories of Accad and Sumer were combined). Similarities among these sources provide strong evidence for the existence of a common customary Mesopotamian law in the third millennium that bridged political divisions. The most extensive of these collections is the Babylonian law, sometimes known as the Code of Hammurabi, although it more nearly resembles a series of amendments to the common law of Babylon or a set of guidelines than a code or collection of statutes.