



The administration of a republic is supposed to be directed by certain fundamental principles of right and justice, from which there cannot, because there ought not to, be any deviation; and whenever any deviation appears, there is a kind of stepping out of the republican principle, and an approach toward the despotic one. —Thomas Paine

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JUSTICE is the only foundation upon which a society of free and independent people can exist. Justice is a concrete, recognizable, and objective principle. It is not a matter of opinion.

In our day and age the word justice is rarely used in political and economic discussions. The entire reason for the existence of communities, laws, governments and court systems has been forgotten.

But if life and property are to be protected and secured, which is the purpose of society, then justice *must* be the rule. To quote Paine again, "A republic, properly understood, is a sovereignty of justice."

According to a 1931 Webster's dictionary, justice is the "quality of being just; impartiality." Just is "conforming to right; normal; equitable." A 1961 Webster's dictionary says justice is "The principle of rectitude and just dealings of men with each other—one of the cardinal virtues. Administration of law . . ." A 1975 edition of a Grolier Webster dictionary says justice is "Equitableness; what is rightly due; lawfulness. . . ."

Since 1931 a new meaning of the word justice has been added, that of lawfulness, which is not only erroneous, but deceitful and misleading. Justice is not based on law;

rather, law ought to be based on justice. It is only common sense, for men lived and worked together before laws were formed. Generally laws are passed to formalize what has preceded under common practice, what has stood the test of time as being just and equitable. Laws are common practice put down in black and white for all to see and know.

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The ancient philosophers said that justice is speaking the truth and paying your debts, giving to each man what is proper to him, doing good to friends and evil to enemies. Therefore, there must be something more basic, more fundamental than laws on which to found justice. In fact, the French jurist Charles de Montesquieu (1689-1755) ably contended that "before laws were made, there were rela-

tions of possible justice. To say that there is nothing just or unjust but what is commanded or forbidden by positive laws, is the same as saying that before the describing of a circle all the radii were not equal."

Minding One's Own Business

The Greek philosophers had the simplest definition of justice. To Plato (c. 428-348 B.C.), in *The Republic*, Book IV, justice is simply "doing one's own business, and not being a busybody. . . . A man may neither take what is another's, nor be deprived of what is his own. . . . This is the ultimate cause and condition of the existence of all" other virtues in the State, "and while remaining in them is also their preservative."

In Book XII of Plato's *Laws*, the conclusion is drawn that "by the relaxation of that justice which is the uniting principle of all constitutions, every power in the state is rent asunder from every other." In other words, without justice the threads of society unravel and society disintegrates into barbarism.

Aristotle (384-322 B.C.) in *Nicomachean Ethics*, Book V, gives greater perception to what justice is. It "is found among men who share their life with a view to self-sufficiency, men who are free. . . . Therefore *justice is essentially something human.*" (Emphasis added.) In other words, free men may choose to

be just or unjust. Justice, as an ethical term, is voluntary; ". . . a man acts unjustly or justly whenever he does such acts voluntarily." When wrong is done and done voluntarily, it then becomes an act of injustice. In short, "All virtue is summed up in dealing justly," said Aristotle.

More concretely, Aristotle claims, in *Rhetoric*, Book I, "Justice is the virtue through which everybody enjoys his own possessions in accordance with the law; its opposite is injustice, through which men enjoy the possessions of others in defiance of the law." There is the problem of using the law to legalize theft and to redistribute the property of one group to another group, but for the time being, we must assume Aristotle means the use of laws that are rightful and just. For when he says "justice has been acknowledged by us to be a social virtue, and it implies all others," he has laid the foundation of a just society.

Furthermore, Aristotle maintains that "legal justice is the discrimination of the just and the unjust." And, "Of political justice part is natural, part legal—natural, that which everywhere has the same force and does not exist by people's thinking this or that." Natural justice must precede law and form the basis of law thereon.

In the sixteenth century Michel de Montaigne (1533-1592), in his *The Essays*, eloquently said: "The justice

which in itself is natural and universal, is otherwise and more nobly ordered, than that other justice, which is special, national, and constrained to the ends of government." He continues, "There cannot a worse state of things be imagined, than where wickedness comes to be legitimate, and assumes with the magistrate's permission, the cloak of virtue. . . . The extremest sort of injustice, according to Plato, is where that which is unjust, should be reputed for just."

Hobbes on Natural Justice

In Thomas Hobbes' (1588-1679) *Leviathan*, further ground is laid on which to base natural justice. The names just and unjust, says Hobbes, when they are attributed to men's actions, signify conformity or non-conformity to reason. Therefore, "Justice . . . is a rule of reason by which we are forbidden to do anything destructive to our life, and consequently a law of nature."

Then Hobbes leads beautifully into the virtue of just actions: "That which gives to human actions the relish of justice is a certain nobleness or gallantness of courage, rarely found, by which a man scorns to be beholding for the contentment of his life to fraud, or breach of promise. This justice of the manners is that which is meant where justice is called a *virtue*; and injustice, a *vice*."

Earlier it was established that justice is the social virtue on which a just society is constructed. Hobbes adds to this not only by tying virtues to the laws of nature, but to moral philosophy as well. "Now the science of virtue and vice is moral philosophy; and therefore the true doctrine of the laws of nature is the true moral philosophy. . . . For moral philosophy is nothing else but the science of what is good and evil in the conversation and society of mankind." Thus, Hobbes establishes the fact that a *just society is a moral society*.

Saint Augustine (354-430) in *The City of God*, Book XIX, declares "Where, therefore, there is no true justice there can be no right. For that which is done right is justly done, and what is unjustly done cannot be done by right." Hence, justice precedes "rights."

Joseph Joubert eloquently phrased justice as truth in action.

Since practicing the virtue of justice is voluntary, man ought to have the courage to stand up and fight for what is right and against what is wrong. Cato the Younger said it this way: ". . . a man has it in his power to be just, if he have but the will to be so, and therefore injustice is thought the most dishonorable because it is least excusable."

Another way to consider what justice is, is to compare it with injustice. For example, in *Utilitarianism*,

John Stuart Mill (1806-1873) states that ". . . it is just to respect, unjust to violate, the *legal rights* of any one." Second, ". . . injustice consists in taking or withholding from any person that to which he has a *moral right*." Third, "It is universally considered just that each person should obtain that (whether good or evil) which he *deserves*." Fourth, "It is confessedly unjust to break faith with any one: to violate an engagement, either expressed or implied. . . ." Fifth, "It is, by universal admission, inconsistent with justice to be partial."

A Moral Issue

Mill, too, sees justice as a moral issue. He concludes: "Whether the injustice consists in depriving a person of a possession, or in breaking faith with him, or in treating him worse than he deserves, or worse than other people who have no greater claims, in each case the supposition implies two things—a wrong done, and some assignable person who is wronged. Injustice may also be done by treating a person better than others; but the wrong in this case is to his competitors, who are also assignable persons. . . . Justice implies something which it is not only right to do, and wrong not to do, but which some individual person can claim from us as his moral right."

Thomas Paine's *Dissertations*

speak about justice where the public good is concerned. He maintains that, "The foundation-principle of public good is justice, and wherever justice is impartially administered, the public good is promoted; for as it is to the good of every man that no injustice be done to him, so likewise it is to his good that the principle which secures him should not be violated in the person of another, because such a violation weakens his security, and leaves to chance what ought to be to him a rock to stand on."

The great American constitutional lawyer of the nineteenth century, Lysander Spooner, wrote a pamphlet entitled: *Natural Law, or The Science of Justice*, which succinctly summarizes what justice is:

The science of mine and thine—the science of justice—is the science of all human rights; of all a man's rights of person and property; of all his rights to life, liberty, and the pursuit of happiness.

It is the science which alone can tell any man what he can, and cannot, do; what he can, and cannot, have; what he can, and cannot, say, without infringing the rights of any other person.

It is the science of peace; and the only science of peace; since it is the science which alone can tell us on what conditions mankind can live in peace, or ought to live in peace, with each other.

These conditions are simply these: viz., first, that each man shall do, towards every other, all that justice requires him to do; as, for example, that he shall pay

his debts, that he shall return borrowed or stolen property to its owner, and that he shall make reparation for any injury he may have done to the person or property of another.

The second condition is, that each man shall abstain from doing to another, anything which justice forbids him to do; as, for example, that he shall abstain from committing theft, robbery, arson, murder, or any other crime against the person or property of another.

So long as these conditions are fulfilled men are at peace, and ought to remain at peace, with each other. But when either of these conditions is violated, men are at war. And they must necessarily remain at war until justice is re-established.

Through all time, so far as history informs us, wherever mankind have attempted to live in peace with each other, both the natural instincts, and the collective wisdom of the human race, have acknowledged and prescribed, as an indispensable condition, obedience to this one only universal obligation: viz., that each should live honestly towards every other.

The ancient maxim makes the sum of man's legal duty to his fellow men to be simply this: "*To live honestly, to hurt no one, to give to every one his due . . .*"

Never has such a complex subject as justice been treated so clearly and simply. To summarize justice thus far: Justice means that each must be accountable for his own actions, entitled to the reward of his labor, and responsible for the consequences of his wrong doings.

The love of justice should be in-

stilled in every man, woman and child—all should wish to see justice done. For without justice the rule of men (dictatorship), not of law, assumes power. Without justice, society disintegrates into barbarism, where courts of law are administered by favor and pull instead of objective law, and without objective laws, the individual is at the mercy of the ruling power and its agents. The ancient atrocities return, such as no trial by jury, confiscatory taxes on life and property, the purchasing of judges, legislators, and sheriffs; all previous forms of the prior administration of justice become part of the current machinery which administers not justice, but injustice or tyranny.

In short, all that is good rests on justice. Where there is no justice, there is no morality—no right or wrong—anything goes and usually does. Justice is a social virtue to be practiced by individuals. Justice demands that the individual reward or recognize good and condemn evil. To practice justice one should know a man for what he is and treat him accordingly, whether he be honest, dishonest, friend or thief. The good should be rewarded, the bad punished.

The Highest Goal

Society cannot place before it a higher or nobler goal than the administration of justice. Thus, here is

a bit of advice from *Conversations with Goethe*, March 22, 1825: "A great deal may be done by severity, more by love, but most by clear discernment and impartial justice."

Once the meaning of justice has been established, next comes the understanding of freedom and liberty, which are crucial because only under freedom can the individual achieve his highest potential and pursue his happiness.

To speak of liberty and freedom is to speak first of natural laws or the right of nature. Hobbes lays an excellent foundation of natural laws or rights. He affirms that the right of nature is the liberty each man has to use his own power for the preservation of his own life, and his own judgment and reason are the best means for achieving it.

The first law of nature, according to Jean Jacques Rousseau (1712-1778), results from man's nature. "His first law is to provide for his own preservation, his first cares are those which he owes to himself; and, as soon as he reaches years of discretion, he is the sole judge of the proper means of preserving himself. . . ."

Therefore, if man's first obligation is to provide for his own life, he must live under the proper conditions in which to sustain his life, namely, liberty. By liberty is understood the absence of external impediments, the absence of opposition.

Hayek on Liberty

In *The Constitution of Liberty*, Nobel-prize winner Friedrich A. Hayek points out that liberty is a negative concept like peace. "It becomes positive only through what we make of it. It does not assure us of any particular opportunities, but leaves it to us to decide what use we shall make of the circumstances in which we find ourselves. . . ." He continues, "Liberty not only means that the individual has both the opportunity and the burden of choice; it also means that he must bear the consequences of his actions and will receive praise or blame for them. Liberty and responsibility are *inseparable*." (Emphasis added.)

To expound further, Mill explains that one cannot take away another's freedom no matter how sincerely one tries to protect another. Only by our own hands can any positive and lasting improvement in our lives be worked out. And through "the influence of these two principles all free communities have both been more exempt from social injustice and crime, and have attained more brilliant prosperity, than any others. . . ."

Further, ". . . any restriction on liberty reduces the number of things tried and so reduces the rate of progress. In such a society freedom of action is granted to the individual, not because it gives him greater satisfaction but because if allowed to

go his own way he will on the average serve the rest of us better than any orders we know how to give."

In short, liberty is the only object which benefits all alike and should provoke no sincere opposition. Liberty "is not a means to a higher political end. It is itself the highest political end," says Lord Acton. It is required for security in the pursuit of the highest objects of private life and civil society.

Morality Requires Freedom

If liberty is to live upon one's own terms and slavery is to live at the mercy of another's, then it follows that to live under one's own terms means the individual has a choice of actions. He can be virtuous or not; he can be moral. Therefore, morality requires freedom. Thus, only free men can be just men!

In his *The Road to Serfdom*, Hayek ties liberty to morality. Since morals are of necessity a phenomenon of individual conduct, to be moral one must be free to make choices. Where man is forced to act by coercion, the ability to choose has been pre-empted. Only under liberty and freedom can man be moral. As a result, only "where we ourselves are responsible for our own interests . . . has our decision moral value. Freedom to order our own conduct in the sphere where material circumstances force a choice upon us, and responsibility for the arrangement

of our own life according to our own conscience, is the air in which alone moral sense grows and in which moral values are daily recreated in the free decision of the individual. Responsibility, not to a superior, but to one's conscience, the awareness of a duty not exacted by compulsion . . . and to bear the consequences of one's own decision, are the very essence of any morals which deserve the name."

The facts have been established thus far that man must live under liberty to become as productive, as noble, and as just as he can, since liberty is the condition under which morality thrives. Also, only the individual knows what is best for himself. And finally, liberty does not provide opportunities, but leaves the individual free to choose those actions which he thinks will best suit him and to bear the consequences of those actions.

The Price of Freedom

There is one more thing to consider about freedom and liberty—the price. Tocqueville remarked, "Some abandon freedom thinking it dangerous, others thinking it impossible." But there is a third reason. Some abandon freedom thinking it too expensive. Freedom is not free. "Those who expect to reap the blessings of freedom, must, like men, undergo the fatigues of supporting it," noted Paine.

"Freedom is the most exacting form of civil government—it is, in fact, the most demanding state of all for man. That is because freedom demands—depends upon—self-discipline from both the governed and the governing. The foundation of freedom is self-government and the foundation of self-government is self-control," explains author Rus Walton, of *One Nation Under God*. Freedom requires more, however. It requires a strong and vigilant defense. "The greater the threat of evil, the stronger that defense must be. That which is right does not survive unattended; it, too, must have its defenders. . . ."

Is liberty worth the effort? According to Frederic Bastiat, all you have to do is look at the entire world to decide. That is, which "countries contain the most peaceful, the most moral, and the happiest people? Those people are found in the countries where the law least interferes with private affairs; where government is least felt; where the individual has the greatest scope, and free opinion the greatest influence; where administrative powers are fewest and simplest; where taxes are lightest and most nearly equal, and popular discontent the least excited and the least justifiable; where individuals and groups most actively assume their responsibilities, and, consequently, where the morals of . . . human beings are constantly im-

proving; where trade, assemblies, and associations are the least restricted; . . . where mankind most nearly follow its own natural inclinations; . . . in short, the happiest, most moral, and most peaceful people are those who most nearly follow this principle: although mankind is not perfect, still, all hope rests upon the free and voluntary actions of persons within the limits of right; law or force is to be used for nothing except the administration of universal justice."

What this means to us today is that our society, so filled with government regulations and laws, has taken away many of our liberties. For example, we cannot go into some businesses without being licensed,

taxed, and regulated. We are presumed guilty (of dishonesty) until proven innocent (which is impossible). Our reputations are continually under attack and, for the most part, stand for nothing. Honesty and integrity, once the backbone of our society, have been replaced by government regulations and promises. Under this system of injustice all of us are losing our liberties, wealth, and happiness.

What better way to summarize the spirit of liberty and freedom and justice than to quote Tocqueville, who said, "I should have loved freedom, I believe, at all times, but in the time in which we live I am ready to worship it." ⊕

Justice vs. Charity

JUSTICE is the execution of the law which treats all men equally. In its exercise the state has the monopoly of the use of force. . . . The state has the power of the sword to execute justice.

Some feel that this idea of justice is a cold, heartless concept. They want the state to produce social and economic justice as well. They want justice to include a more equal distribution of the goods of this world. They want charity and sympathy to be effected by the power of the law. In the process of broadening the meaning of justice to include these political activities, real justice is destroyed. The use of force to take from some to give to others is the very opposite of justice. Economic equality or economic redistribution cannot be effected by force apart from an unequal, and thus unjust, treatment of individual citizens. When this becomes the policy of the state, justice no longer prevails.

FRANCIS E. MAHAFFY, "Social Justice"

IDEAS ON



LIBERTY

Reflections on History

WHEN Jacob Burckhardt, the Swiss historian of art and culture, died in 1897, he left a series of classroom lecture notes that he considered unready for book publication. It was only as he was dying that he gave permission to his heirs to bring them out if they saw fit. The notes were originally published in Germany in 1905, but it was not until some forty years later, in the middle of a war against the very totalitarianism that Burckhardt had predicted, that the first English translation was made.

The original American title, as of 1943, was *Force and Freedom*; Reinhold Niebuhr and others seized upon the book at once for its astoundingly accurate prophecies about the coming of the Goliath State. The odd thing was that Burckhardt, no Hegelian, did not

believe in historical determinism. His fluid conception of history could have done wonders to counteract the Marxism and neo-Marxism that have bemused so many of our intellectuals. But his influence has been limited, and his name has been pretty much forgotten.

Now, as part of a program that is seeing many neglected classics restored to contemporary use, the Liberty Fund of Indianapolis has republished *Force and Freedom* as *Reflections on History* (Liberty Classics, 7440 North Shadeland, Indianapolis, Indiana 46250, 354 pages, \$9.00 cloth; \$4.00 paper), with a beautifully comprehensive introduction by Gottfried Dietze. What immediately strikes the reader is that Burckhardt, a man of the nineteenth century, explains the 1980 headlines as no modern com-