

ARTICLES

THE ORIGIN OF JUSTICE *

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I

WHENCE COMES the idea of justice? The question may seem strange. Yet Hume devoted one entire section of *A Treatise of Human Nature* (1739) to "The origin of justice and property" and returned to the problem in Section III of *An Enquiry Concerning the Principles of Morals* (1751), and John Stuart Mill developed a rival theory in the last chapter of *Utilitarianism* (1863).

The concept of justice has been much less central in German moral philosophy. Kant and Hegel each wrote a whole book on *The Philosophy of Right* (1797, 1821) but never discussed *Gerechtigkeit* at any length.¹ When dealing with related questions, Hegel devoted incomparably more attention to guilt, and the same preoccupation marks the writings of Kierkegaard and Nietzsche, Jaspers and Heidegger, Tillich and Buber. All of them have written extensively on guilt, a topic not discussed nearly so much in British moral philosophy, and none of them has written an essay on justice. Only Nietzsche offered a theory of the origin of justice, first in an early aphorism in 1878 and then at slightly greater length in *On the Genealogy of Morals* (1887), which begins with the observation that the English (meaning the British) have made "the only attempts hitherto to arrive at a history of the origin of morality"—abortive attempts, Nietzsche thought.

Freud remained in this German tradition and, though he dealt

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¹ Karl Marx also stands in this tradition, and the concept of justice never played an important role in his thought. See Robert Tucker, "Marx and Distributive Justice," in C. J. Friedrich and John W. Chapman (eds.), *Justice: Nomos VI* (New York, 1963).

repeatedly with guilt, he offered only a passing remark on the origin of justice. His mini-theory is as implausible as the more elaborate suggestions of Hume, Mill, and Nietzsche.

In the following pages I shall propose a theory of my own and criticize the views of Hume, Nietzsche, and Mill. Not only is it inherently interesting how the classical theories went wrong, but anyone who is not content to propose just another theory must show how his suggestion is superior to previous attempts.

"The origin of justice" is not the most important problem about justice, but the question posed by Hume and his successors is fruitful and admits of a solution that should dispel some important misconceptions about justice.

II

Whence comes the idea of justice?²

Have we any right to speak of *the* idea of justice? Are there not a great many different ideas of justice? Isn't all talk of *the* idea of justice colored by the dual heritage of Plato and the prophets who believed in a supernatural origin of justice? Once we renounce that notion, should we not also give up all references to *the* idea of justice?

Clearly, 'justice' is not the proper name of a concept that exists in a Platonic heaven. Plato concentrated exclusively on the Greek language and tradition, and he felt that neither Homer nor the fourth-century poets nor the common run of men deserved as much attention as the few philosophers who had thought about justice, notably Socrates and the Pythagoreans. All the more is the pity that he also ignored the great insights of Aeschylus, Sophocles, and Euripides from whom he might have learned more about moral philosophy than he did from the Pythagoreans. Aeschylus had had some grasp of the way ideas of justice change historically, and all three poets had given a great deal of attention to situations in which, as Aeschylus himself put it, "right clashes with right."² But Plato was under the spell of a new dispensation, Greek philosophy, and thought that if he could only take the

² *Libation Bearers*, line 461: *Arēs Arei xymbalei, Dikāi Dika*.

reflections of a few philosophers who had immediately preceded him a little further he would find the truth within his grasp. His orientation was much more ethnocentric and unhistorical than was necessary for an Athenian of his time, and this was due in large measure to his deliberate resolve to counter the corrosive relativism that was spreading in the wake of the Sophists, and the skepticism nurtured by the great tragedians. The moral absolutism that Plato forged in a desperate attempt to thwart moral skepticism later became one of the prime foundations of Christian ethics.

This was possible because the Hebrew Bible, too, had stood opposed to moral relativism. It would be absurd to blame Amos and the other eighth-century prophets, who lived more than three hundred years before Socrates, for concentrating exclusively on the Hebrew language and tradition or for feeling that neither the moral sense of the common run of their contemporaries nor the practices of the Egyptians, the Babylonians, and the Canaanites deserved as much consideration as the prophets' vision of social justice. There was a remarkable consistency to their conception of justice, and there are good reasons for believing that this conception was anchored in a tradition that they considered altogether right and beyond comparison with rival ideals. Our own thinking about justice has been profoundly influenced by theirs, and modern discussions of justice owe even more to the prophets than they do to Plato. Yet their *z'dakah* was by no means identical with Plato's *dikaioσynē*; their *mishpat* is not his *dikē*; and none of the four corresponds precisely to 'justice'.

That 'justice' is not a proper name of some single concept or entity is so widely recognized at long last that the case need not be argued here. Instead we are confronted by the counsel that we should not ask for the meaning but for the use of important terms. Oddly, the orientation of those who heed this counsel is often as ethnocentric and unhistorical as was Plato's. But 'justice' has largely escaped this approach.

In one crucial respect Plato resembles the prophets: justice is for both the sum of the virtues, and a good man is thus by definition just, and a just man good. This conception of justice (J2) is rooted in an earlier stage in which justice was tied to custom, and injustice meant a violation of tradition (J1). Plato and the prophets have left this older concept behind and are severe critics

of the morality of their age, which they measure against an ideal justice that is not at all the same in his case and in theirs. We shall consider ideal justice later (in Section V).

Aristotle distinguished expressly between the justice that is the sum of the virtues (J2) and the justice that is a particular virtue (J3). Since his time justice has ceased to be primarily a virtue; in modern usage it is above all a norm applied to the distribution of goods and evils or, to put the same point differently, a quality of distributions and retributions (J4).

My concern here is with justice in this last sense (J4). I am not concerned with 'just' and 'unjust' in the sense in which some people use these terms much more generally, saying, for example, that breaking a promise or stealing is "an unjust act." Whenever 'just' comes close to being a synonym of 'moral' while 'unjust' is used more or less interchangeably with 'immoral' or 'evil', we approximate J2; and the origin of that seems clear at least in its general outlines. In any case, it is not my intention here to show how J2 evolved out of J1.

Even if we concentrate on J4, it may seem rash to speak of the origin of *the* idea of justice. Amos and Plato had very different ideas about what would constitute a just distribution, and it might seem as if there were an indefinite number of different ideas of justice. We shall therefore modify our initial query and ask: What is the origin of our ideas of justice?

The appropriateness of such words as 'origin' or 'source' may seem questionable. Although Amos wished justice to flow like a mighty river, we are in danger of being misled by a metaphor. Conversely, the metaphor might actually help us. Whence come the Mississippi or the Nile? From more than one source.

Even so, all rivers come from the mountains. Do all our notions of justice come from a height of feeling, an elevated vision, some peak from which one looks down on men's miseries and sees how they might rise above their wretchedness?

Or are all our ideas of justice born of resentment and envy, as has been claimed? In either case the experience of injustice would be defined at least in part by the demand that men ought to get what they deserve. But in the first case the demand would be born of generosity and compassion, in the second of hatred and

self-pity. Are all of our ideas of justice born in the depths of oppression and humiliation?

Or are the metaphors of both height and depth misleading, and is the idea of justice born of *guilt* feelings? Suppose some penalties had been proclaimed for certain deeds, not in the name of justice but for other reasons—say, simply because some persons in power (rulers, parents, bigger brothers, or enemies) had not wanted somebody to do some things—and then the penalties were not inflicted, owing to some oversight or to the death of those in power or to almost any other reason. In such a case, as also when the penalty had merely been delayed, the reprieve need not at all prompt unambiguous delight, relief, or jubilation. One might well be waiting for the penalty, feeling that it still must come to complete the cycle, and in this expectation it might prove impossible to draw a line between ‘must come’ and ‘ought to come’. Even as some geometric figures are seen as incomplete triangles or circles that cry out for one more brief stroke of a pencil, it is felt in cases of this kind that some painful event is still required or—deserved. “You’ve got it coming to you.”³

Or suppose that you were punished more than once for doing a forbidden deed, but now that someone else has done the same thing he was not. Now the same feeling of fitness, the same expectation appears with a different emotional tone. It could be fear for a person loved; it could also be, and is more often, the desire that he should be punished as you were—if not in this life, perhaps in the next. Need it be a case of either fear or an unambiguous wish? The two might mingle.

Everything here said about guilt, whether one’s own or that

³ Cf. Kafka’s deeply insightful and moving *Brief an den Vater*: “It is perfectly true that you hardly ever actually beat me. But the shouting, the way your face turned red and you hurriedly loosened your suspenders, their lying ready over the back of the chair, were almost worse for me. . . . When one has to live through all the preparations for one’s own hanging and only when the noose hangs in front of one’s eyes learns of one’s pardon, one may suffer from this experience for the rest of one’s life. Moreover, from these many times when, according to your clearly manifest opinion, I deserved a thrashing but, owing to your grace, barely escaped it, I accumulated a profound sense of guilt,” *Hochzeitsbevorreitungen auf dem Lande und andere Prosa aus dem Nachlass* (New York, 1953, pp. 182 f.).

of others, can be transposed. Imagine that it is not a penalty that is delayed or not inflicted but a promised reward that is postponed or not granted. Again the same sort of expectation may be felt that something must or ought to happen—that it is deserved.

We have found the origin of justice—and it is, surprisingly, a single source. There are many different ideas of justice, and the approximately but by no means strictly synonymous terms which we find in different languages and periods have many different connotations. In spite of that, *the many notions of justice have a single origin: an unfulfilled promise.*

The promise may concern reward or punishment, and this may be deferred or it may never come, in our own case or in that of others; and this non-event may be met with envy or compassion, with self-pity or guilt feelings, with indignation or concern, with ardent hope or extreme anxiety. *No one emotion is the source of justice.*

It is obviously not necessary for this kind of promise that the words 'I promise' are employed. What matters is that one is given to understand that one can count on some reward or punishment, and that those who make this declaration are in a position to make such a promise.

It would be nice if we could draw a sharp line between power and authority and say that they have authority, not merely power. A robber who told us that if we shouted for help he would shoot us, but who then did not shoot although we did yell, would not fit the bill. If he told us that if we gave the police any description of him he would come back to kill us, and we defied his threat, we might live in dread that he might come back, but we would not feel that we deserved to be killed. These cases illustrate power without authority. An older brother may represent a more ambiguous or marginal case: even if he has no legal authority, a younger brother or sister may nevertheless see him as having some authority. What is crucial is how the person to whom the promise is made views the person making the promise: as long as one feels unequivocally that this person has no authority, the sense that we've got something coming to us will not develop; and the less doubt there is about the person's authority, the stronger the sense will be.

Does the concept of authority involve a prior sense of justice? In this context it does not, and therefore our argument is not circular. What is required is *respect*—an emotional orientation rather than an intellectual or moral judgment. What is required is that we do not feel contempt for the person who makes the promise; we must not despise him. But it is not necessary that we love him. Some admiration may be indispensable, though it can be mixed with resentment. Figuratively speaking, what is essential is that we look up to him. All of which amounts to saying what we have said: what is required is respect.

There is ample evidence that criticism and reproaches from those whom a child—and not only a child—does not respect tend to be shrugged off even when they are quite harsh as well as deliberate, while a casual rebuke from a greatly admired person who himself fails to remember his remark is frequently felt to be crushing and never forgotten. One might say that in this case the casual critic is endowed with subjective authority, even if objectively he lacks authority.

This approach to the origin of justice is indebted equally to the British and the German traditions. The problem of the origin of justice was explored by Hume and Mill before any German philosopher of stature dealt with it, but the German preoccupation with guilt turns out to be fruitful for the investigation of the origins of justice. Those who have guilt feelings feel that they deserve worse than they got and that justice has not been done. While it would be wrong to conclude that the idea of justice is born of guilt feelings, I have tried to show that the origin of guilt feelings illuminates the origin of justice.

III

Two definitions of justice (J4) are eminently plausible; both cover the whole range of distribution and retribution: treating people in accordance with their deserts and treating like cases alike. The fact that it is not possible to do either—because *one cannot determine what men deserve* and no two cases are alike—

calls into question not these definitions, which reflect accurately what is meant by justice, but the concept of justice.⁴

Of these two definitions, the former is in one sense primary. A man treating like cases alike could be criticized for being unjust because he did not treat people in accordance with their deserts. Conversely, a man treating others in accordance with their deserts could not be accused of having failed to treat like cases alike.

This consideration shows the moral primacy of the first definition, which actually formulates the essence of justice. Those who have different ideas of justice have different ideas of what is involved in treating people in accordance with their deserts. Those, for example, who consider it simple justice that murderers should be hanged or that heretics should be burned or that pickpockets should be whipped believe that this is the treatment that people falling into these categories deserve. Those who believe that justice consists in treating noblemen and slaves very differently believe that different classes of men deserve to be treated differently. In other words, what cases are considered alike, or what differences are taken to be relevant, is a function of what one thinks men deserve.

Once we are struck by the impossibility of gauging what men deserve, the question arises of how the notion that men deserve certain punishments or rewards ever developed. We have answered this question by deriving "x deserves y" from "x has got y coming to him because he was told he would receive y." The origin of justice is not ethereal but a promise. The criticism of such promises, of rules, laws, and arrangements, comes later in time, and we shall deal with it shortly. It would be a mistake to begin with ideal justice as if that were logically or historically primary.

Men's sense of what they or their fellows deserve can be exceedingly unsubtle. When it is, their sense of justice is unsubtle. Originally, both in the history of humanity and in our infancy, what is held to be deserved is that which we are *told* is deserved

⁴ See my "Doubts about Justice," in *Contemporary Philosophic Thought*, Vol. IV: *Ethics and Social Justice*, ed. by Howard E. Kiefer and Milton Munitz (1969). The present paper continues the line of thought begun there, and much has been left unsaid here because it was developed there, in my contribution to the International Philosophy Year, Brockport, N.Y., November 3, 1967.

or to be expected. If a command to do something is followed by a promise of reward, then it is assumed that those who fulfil the commandment deserve the reward (have it coming to them) and that justice is done when they receive it and injustice when they do not.

If a prohibition is accompanied by the proclamation of a penalty, it is assumed that those who transgress deserve the penalty, that justice is done when they receive it, even if the punishment should be brutal, while it would be unjust for the transgressor to go free or to receive another penalty instead. At this stage justice does not necessarily presuppose a law, but it does presuppose a command or a prohibition and a promise.

This is the origin of justice. It does not follow that this is all justice is today. Far from it. But it is surprising how much of its origin survives in widely different ideas of justice.

Our account implies that originally the sanction of justice or desert is to be found in some authority, whether a parent or a teacher, a ruler or a god, a priest or some writ—an authority that simply tells us that this is the way things are: if you do or fail to do this, then you must expect or deserve that. If someone else does the same thing, it does not follow that he must expect, or that he deserves, the same consequences. On the contrary, a child may not do what his parents and perhaps even his older siblings may do or even have to do. Rank, station, and sex are important. Priest, warrior, peasant, and servant are not expected to perform the same acts nor are they treated alike if they do perform the same acts; and the same goes for generals and ordinary soldiers, high priests and novices. *Quod licet Jovi non licet bovi.*

Justice does not presuppose law. As a norm of distributions and punishments, it only presupposes distributions and punishments. These are possible before any rules are codified—for example, in a family.

Even so, some may wonder whether equality is not after all of the very essence of justice. If I do something and am punished for it, does not justice require plainly that if somebody else performs the same act he should be punished, too, in the same way? And if somebody else does something and reaps a reward, is it not a demand of simple justice that I should receive the same reward for doing the same thing?

The answer to both questions is clearly No. If no such promise was made and it was understood from the start that *quod licet Jovi non licet bovi*, then it accords with most men's sense of justice that one man is honored for performing the very act for which another is, or would be, punished. We can easily give examples in which this procedure would not offend our moral sense, while other instances would strike many people as paradigms of injustice. The recent development of justice has been more and more in the direction of equality. It is less and less taken for granted that those in positions of privilege are like Jove while other men are mere oxen: reasons are demanded to justify privileges and inequalities. But we are here concerned not with the direction in which justice is moving but rather with its origins.

To sum up, we have asked about the origin of that justice which is a quality of distributions and retributions (J4). This kind of justice consists in treating people in accordance with their deserts. Elsewhere⁵ we have argued at length that it is not possible to treat people in accordance with their deserts, and we have raised serious doubts about justice. These doubts lend some urgency to the question of how the notion that one deserves some reward or punishment arose in the first place. We have ventured an answer to this question.

We have acknowledged that treating like cases alike is also a plausible definition of justice (J4), but we have argued that this is a corollary of treating people according to their deserts (and not vice versa). It does not follow that the idea or practice of treating like cases alike originated solely as a by-product of treating men according to their deserts. Plainly, it did not and there are altogether independent, non-moral reasons for it: economy and expediency. To enable groups of people to live together, there has to be some predictability: one must know to some extent what to expect, but not every contingency can be foreseen. Hence it is one of the oldest of unwritten laws—indeed, nothing less than the assumption upon which all law is based—that like cases are to be dealt with alike. But this is not yet the origin of justice. For the fact remains that no two cases are alike, and the question arises what inequalities are relevant. When that query is answered in

⁵ See note 4.

effect by saying that those inequalities, and only those, must be considered which constitute differences in desert, and that the norm must be to treat each according to his desert, then justice is born. And we have addressed ourselves to the origin of this strange notion of desert.

It did not turn out to be as different from custom and positive law as one might have supposed, although we went back beyond law to commandments and prohibitions. Since there is nothing inspiring or uplifting about this origin, it may be asked why we have made such a point of stressing desert rather than equality. The reason is simply that grossly unequal treatment of, say, the children in a single family is not necessarily felt to be unjust. Radically different treatment for males, or the first-born son, or cripples is not usually felt to be unjust. What is felt to be unjust—what is nothing less than the root experience of injustice—is the deviation from a promised reward or punishment. In such cases one feels that something, though deserved, was not received.

We still have to account for *ideal* justice and the origins of the moral criticism of positive justice. But before we come to that let us examine David Hume's account of the origin of justice.

IV

It has been suggested that Hume's account of the "origin of justice" may be analytic rather than genetic. This contrast is by no means self-explanatory: Freud's version of analysis, for example, is plainly genetic. And for all the differences between Hume and Freud, there is abundant evidence that Hume was trying to explore the psychological foundations of our sense of justice. This does not preclude the relevance of his inquiry—or ours—to an analysis of justice.

Hume's discussion is in many ways admirable, and the following critique does not purport to cover all of his acute observations. But his major points include the following.

"Morals . . . cannot be deriv'd from reason" (p. 457).⁶ "No

⁶ Page numbers refer to L. A. Selby-Bigge's edition of the *Treatise* (Oxford, 1896). All italics are Hume's.

action can be virtuous, or morally good, unless there be in human nature some motive to produce it, distinct from the sense of its morality" (p. 479). In the case of justice this motive can be neither "our private interest" nor "*regard to publick interest*" (p. 480), and Hume considers specific objections to both suggestions. He concludes that "the sense of justice and injustice is not deriv'd from nature, but arises artificially, tho' necessarily from education, and human conventions" (p. 483), and he adds that "Tho' the rules of justice be *artificial*, they are not *arbitrary*" (p. 484).

The point so far is that the psychological basis of justice is to be found neither in reason nor in self-interest nor in benevolence; that justice owes its origin to convention rather than nature—but that this convention is not arbitrary. At this juncture begins "Section II. *Of the origin of justice and property.*"

Here the convention in question turns out to be "only a general sense of common interest." "Two men, who pull the oars of a boat, do it by an agreement or convention," and Hume makes plain that he does not imagine a specific act of agreement or a formal contract but rather something that "arises gradually, and acquires force by a slow progression, and by our repeated experience of the inconvenience of transgressing it" (p. 490).

The convention most stressed by Hume is that "concerning abstinence from the possessions of others." "After . . . every one has [thus] acquir'd a stability in his possessions, there immediately arise the ideas of justice and injustice; as also those of *property*, *right*, and *obligation* (pp. 490 f.). Of this trinity, property is emphasized much the most, and its relation to justice is explained repeatedly. "Our property is nothing but those goods, whose constant possession is establish'd by the laws of society; that is, by the laws of justice. . . . The origin of justice explains that of property. The same artifice gives rise to both" (p. 491).

Both in this section and again at the beginning of Section VI, Hume insists that it is justice that turns possessions into property, and that justice is required for the definition of property. In Section VI he goes so far as to say that it is on justice "that the nature of property depends, and not the virtue on the property" (p. 527); but in the last paragraph of Section II he says that in any state in

which "there was no such thing as property . . . consequently cou'd be no such thing as justice or injustice" (p. 501).

It is, according to Hume, of the very essence of justice that it (1) presupposes possessions and (2) marks the point at which a gradually developed stability of possessions culminates in the concept of property. The mere habit of abstinence from the possessions of others is thus conceived as what we might call proto-justice, while the emergence of justice proper consists in the recognition that a man's possessions are his by *right*, that they are his *property*, and that we have an *obligation* to respect his right and abstain from his property. As long as there was no property, there was at most proto-justice but not justice.

In the preceding two paragraphs I have attempted to give a sympathetic account of Hume's position and to be clearer than he is. It needs to be added that Hume believes that "'tis utterly impossible for men to remain any considerable time in that savage condition, which precedes society; but that his very first state and situation may justly be esteem'd social" (p. 493). While it is all right for philosophers to speak of a state of nature, it should be allowed "to be a mere philosophical fiction, which never had, and never cou'd have any reality" (p. 493).

This remark suggests that Hume does not profess to have found the *historical* origin of justice. Although he writes most of the time as if he were concerned with that, he evidently believes that there was no human history before there was justice. It does not follow that his account is not meant to be genetic in any sense at all. On the contrary, his concern is with psychology and in particular with the psychological foundations or sources of the sense of justice. His solution of this problem is stated in two sentences: "If men were supplied with every thing in the same abundance, or if *every one* had the same affection and tender regard for *every one* as for himself; justice and injustice would be equally unknown among mankind. Here then is a proposition which, I think, may be regarded as certain, *that 'tis only from the selfishness and confin'd generosity of men, along with the scanty provision nature has made for his wants, that justice derives its origin*" (p. 495).

This I take to be Hume's theory of the origin of justice, and

it strikes me as implausible on two accounts. Hume associated justice far too much with possessions, and he understood justice as a regard for others and the restraint of selfishness.

The first of these two points invites reflections on the importance of a philosopher's historical situation; possibly also on his psychological make-up. We shall resist both of these temptations. Suffice it to note that Hume's 'justice' cannot be identified with any of the four stages that we have distinguished, and he is not discussing the origin of the same phenomenon (J4) that concerns us primarily. He is rather closer to what we have called J1, and he moves beyond J1 in a direction slightly different from the one Plato took when he advanced to J2. It does not follow that Hume's conception of justice is as plausible as our own. On the contrary, his preoccupation with possessions makes for a curiously partial and inadequate notion of justice. One way of bringing this out is to note that when Hume speaks of crimes and punishments in his *Enquiry*,⁷ he says that when a man "is punished by the laws . . . the ordinary rules of justice are, with regard to him, suspended for a moment." Yet punishment according to law has generally been considered a paradigm case of applied justice. In Hume's account of the origin of justice retributive justice is ignored altogether. We shall see later how John Stuart Mill overreacted to this omission.

Secondly, Hume's insistence that problems of distributive justice do not arise where there is no scarcity is well taken, but his claim that they do not arise either where benevolence is extensive depends on his false assumption that justice is more or less the antonym of grabbiness or selfishness. Even where benevolence is extensive, the problem does arise, given scarcity, how goods are to be distributed among those for whom one feels benevolence.

Because it is possible to make this second criticism so succinct, its importance is easily overlooked. Long and involved arguments may create a presumption of greater significance. But in Hume's discussion the point here criticized is crucial. For him the problem of "the origin of justice and property" is very largely the problem how "the love of gain" (p. 492) can be restrained. Not by reason, he says, and not by regard for the public interest but—by the love

⁷ Section III, tenth paragraph.

of gain itself. Or in Hume's own words: "Whether the passion of self-interest be esteemed vicious or virtuous, 'tis all a case; since itself alone restrains it" (p. 492). Justice is born of the recognition that the love of gain requires us to institutionalize abstinence from the possessions of others. Unless we do that, our own possessions are unsafe. Up to a point, this approach may be so familiar and seem so reasonable that one is apt to overlook Hume's central dictum: "Encrease to a sufficient degree the benevolence of man, . . . and you render justice useless" (pp. 494 f.).

Imagine a man with a truly fantastic degree of benevolence who has several children and loves them all immensely. Surely, Hume is utterly mistaken in supposing that for such a man no problems of justice could arise. Nor need we assume that the children are possessed of any great love of gain. "Gain" and possessions could be totally out of the picture, along with "*limited generosity*" (p. 494).⁸

If we said that the very essence of justice escaped Hume, it might seem as if polemics had led us back to Plato's fallacy. Is there really an essence of justice? If we keep in mind the development from J1 to J4, the answer is that there is not; but if we concentrate on J4 we can say that there is and that it did escape Hume. The sense of justice is the sense that somebody deserves something. Justice consists in treating people in accordance with their deserts. Thus justice is, Hume notwithstanding, logically and psychologically quite independent of possessions, and problems of justice can arise in a community in which nobody has private property. They can arise in connection with rewards and punishments, honors, offices, and duties.

In defense of Hume it may be said that he was not discussing J4. But this, while true, comes nowhere near exonerating him completely. His notion of justice was, as we have tried to show, decidedly odd and inadequate. Why, then, bother with it at such length? Because Hume gave the problem of "the origin of justice" a central place, establishing it as one of the major problems of moral philosophy; because he was a brilliant philosopher whose works are a joy to read and a mine of insights; and because not

⁸ For a similar criticism of Rawls' position, which is very close to Hume's in many ways, see my "Doubts about Justice," *op. cit.*, Section 10.

only his insights but also his errors, including those exposed here, have had a tremendous influence and mar modern discussions of justice, too.

V

We are now ready to round out our own theory with a brief account of the origin of ideal justice. In early childhood and in early history, orders, promises, and threats tend to be improvised, *ad hoc*, unsystematic. Later on, attempts are made to codify them; for example, as one leaves home for school or at some stage in the development of a society. But it is extremely difficult to achieve consistency. Typically, one principle is invoked or implicit here and another there; one sentiment or intuition at this point and another at that; one precedent now and then another one. Such inconsistencies prompt reformers, prophets, critics, and revolutionaries to invoke one tradition or set of ideas against the rest.

The critique of positive law begins as a protest against inconsistency. The demand for ideal justice is linked to the denunciation of hypocrisy and to an appeal to selected elements of an old tradition. None of this necessarily involves superior moral standards, although the standards invoked will, of course, be proclaimed to be superior.

The ideal justice that is contrasted with what passes for justice can involve more rigorous respect for ancient inequalities, as in Plato's attack on democracy, or a plea for equality, or even special consideration for widows, orphans, and strangers, as in the Hebrew Bible. Which strands of the tradition set his heart afire shows what kind of a man a social critic is.

The contrast between *ideal* morality or justice and *positive* morality or justice is important and fruitful. But it would be disastrous to suppose that ideal justice is or tends to be the same everywhere. Any such claim is as false as it would be concerning positive justice. Amos' ideal justice would have outraged Plato, and vice versa.

The origin of ideal justice, however it may be articulated, is dissatisfaction with positive justice. But for all that it may also be found in an unfulfilled promise. Prophets typically appeal to

ancient promises that have, they argue, been betrayed. And the demand for consistency as well as the protest against hypocrisy suggest that ideal justice is importantly related to honesty.

The critique of positive justice and the demand for ideal justice *can* be presented as a protest against brutality and inhumanity. This, however, is not the rule but an exception. Typically, the great critics of positive justice have denounced inconsistency and irrationality. Hypocrisy is a kind of inconsistency, and treating people differently on account of differences that on reflection can be seen to be irrelevant and to constitute no sufficient reason for the difference in treatment is a form of irrationality. Thus the demand for justice is often a plea for rationality and honesty.

This point entirely escaped Freud who had little to say about justice; and what he did say about it misses the essence of justice, not only of ideal justice. "That woman must be conceded little sense for justice seems to be connected with the preponderance of envy in her psychic life, for the demand for justice represents a conversion of envy and indicates the condition under which one may release it."⁹

VI

The notion that the demand for justice masks envy had received its classical formulation in the chapter "On the Tarantulas" in Part Two of Nietzsche's *Thus Spoke Zarathustra* (1883): ". . . you preachers of *equality*. To me you are tarantulas and secretly vengeful. . . . *That man be delivered from revenge*, that is for me the bridge to the highest hope, and a rainbow after long storms. The tarantulas, of course, would have it otherwise. 'What justice means to us is precisely that the world be filled with the storms of our revenge'—thus they speak to each other. 'We shall wreak vengeance and abuse on all whose equals we are not'—thus do the tarantula-hearts vow. . . . Aggrieved conceit, repressed envy—perhaps the conceit and envy of your fathers—erupt from you as a

⁹ *Neue Folge der Vorlesungen zur Einführung in die Psychoanalyse* (1933), the penultimate paragraph of lecture 33: *Gesammelte Werke* (London, 1940 ff.), Vol. XV, p. 144. Cf. also *Massenpsychologie und Ich-Analyse* (1921), end of Chapter IX: *ibid.*, Vol. XIII, pp. 133 f.

flame and as the frenzy of revenge. . . . Mistrust all in whom the impulse to punish is powerful. . . . The hangman and the bloodhound look out of their faces. Mistrust all who talk much of their justice." ¹⁰

No doubt, the demand for justice can cloak or even openly voice envy, hatred, and the yearning for revenge. But that is not the *origin* of justice, and Nietzsche himself recognized this as clearly as could be when he wrote his *Genealogy of Morals* (1887).

First, a crucial methodological point. In his *Genealogy* Nietzsche sharply distinguishes the *origin* and the *purpose* of punishment and adds: "There is for historiography of any kind no more important proposition than [this] . . . : the cause of the origin of a thing and its eventual utility, its actual employment and place in a system of purposes, lie worlds apart; whatever exists, having somehow come into being, is again and again reinterpreted to new ends, taken over, transformed, and redirected by some power superior to it. . . . The form is fluid, but the 'meaning' is even more so." ¹¹

This is altogether admirable. Moreover, Nietzsche does not connect the origin of justice with punishment. His theory is stated concisely in a one-page aphorism (Section 92) in *Human, All-too-human* (1878) that bears the title *Origin of justice*.

"Justice (fairness) ¹² originates among those who are approximately *equally powerful*." Where "a fight would mean inconclusive mutual damage," one has recourse to negotiation, and "the initial character of justice is the character of a trade."

This aphorism is commended to the reader in Nietzsche's preface to the *Genealogy of Morals* (Section 4), and it is echoed in the second essay of that work (Section 8).

Section 45 of *Human, All-too-human*, also cited in the preface

¹⁰ *The Portable Nietzsche*, selected and translated, with an introduction, prefaces, and notes, by Walter Kaufmann (New York, 1954), pp. 211 f.

¹¹ *Basic Writings of Nietzsche*, translated and edited, with commentaries, by Walter Kaufmann (New York, 1968), pp. 513 f., i.e., second essay, Section 12. All of the Nietzsche quotations that follow come from this volume, but generally only the section numbers are cited as these are the same in all editions.

¹² *Ibid.*, p. 148. The German terms are "*Die Gerechtigkeit (Billigkeit)* . . ." See also the many passages listed under 'justice' in the index of my edition of *The Will to Power* (New York, 1967).

to the *Genealogy*, is entitled *Dual prehistory of good and evil*. Here Nietzsche distinguishes between the morality "of the ruling tribes and castes" and that "of the oppressed, the powerless." This theme is developed at length in the first essay of the *Genealogy* and might well lead us to expect a distinction between two concepts of justice. The origin of justice as fairness would then seem appropriate for the masters' concept of justice, while the 'justice' of the oppressed would have to be accounted for in a different way, presumably by being traced to *ressentiment*. This would allow a place for the indictment of the "tarantulas" who were attacked in Part Two of *Zarathustra*. Surprisingly, this is not how Nietzsche proceeds in fact.

Section 45 ends: "Our current morality has grown on the soil of the *ruling* tribes and castes." But when Nietzsche picked up the theme of the dual prehistory of good and evil in *Beyond Good and Evil* (1886), he clearly suggested that our current morality was a mixed type (Section 260), and a year later, in the *Genealogy*, which is subtitled *A Polemic*, one might have expected him to stress the streak of slave morality in our moral heritage. *Noble* justice, one might have expected him to say, was born "among those who are approximately *equally powerful*," while our *modern* concept of justice is rooted in resentment. But this is *not* the line adopted in the *Genealogy*.

Section 11 of the second essay is given over to an emphatic "repudiation of attempts that have lately been made to seek the origin of justice in . . . *ressentiment*." The writer singled out for attack in this connection is Eugen Dühring. But the critique is also applicable to some extent to John Stuart Mill, who is not mentioned expressly in the *Genealogy* although Nietzsche disparaged him here and there in his late works, and Mill seems to be alluded to in the first section of the book. Before we consider this allusion, let us examine Nietzsche's argument which is far from compelling.

Nietzsche insists that "the last sphere to be conquered by the spirit of justice is the sphere of the reactive feelings! When it really happens that the just man remains just even toward those who have harmed him . . . this is a piece of perfection and supreme mastery on earth. . . . On the average, a small dose of aggression, malice or insinuation certainly suffices to drive the blood into the

eyes—and fairness out of the eyes—of even the most upright people. The active, aggressive, arrogant man is still a hundred steps closer to justice than the reactive man. . . .”

Nietzsche’s eulogy of those who remain objective “under the assault of personal injury, derision, and calumny” does him credit. But his argument ignores several possibilities. First, the sense of justice could have had humbler beginnings, far removed from that “perfection” of which Nietzsche speaks here. Secondly, there might be two concepts of justice of which one *was* rooted in resentment. Finally—there is no need here to enumerate more than three alternatives—for all that Nietzsche says, *my* theory of the origin of justice might well be right.

Nietzsche goes on to claim that law has always been imposed by the powerful, not by the oppressed among whom *ressentiment* flourishes. “Wherever justice is practiced and maintained one sees a stonger power seeking a means of putting an end to the senseless raging of *ressentiment* among the weaker powers that stand under it.” (Shades of Aeschylus’ *Eumenides*, which Nietzsche does not mention!) Law is essentially impersonal, and “‘just’ and ‘unjust’ exist, accordingly, only after the institution of the law (and *not*, as Dühring would have it, after the perpetration of the injury).”

This seems wrong, as I have tried to show above, at least insofar as “just” and “unjust” do *not* presuppose laws. They do presuppose commands or prohibitions, but the regularity of laws or what Nietzsche calls “the institution of the law” is not required, and those who have the power to promise pleasant or unpleasant consequences do not necessarily have any thought whatever of “just” or “unjust.” They simply promise some reward or threaten some punishment without the slightest implication that it is “deserved.” The sense of desert, the notion that a person has something coming to him, and thus the idea of justice originate in the minds of those to whom the promise has been given—not the powerful but the others. It does not follow that justice is born of resentment. As I have tried to show, no one emotion can be singled out as the source of justice: neither resentment nor envy, neither indignation nor compassion, neither self-pity nor guilt feelings.

One other passage in the *Genealogy* needs to be considered in

this context: Section 14 of the first essay. Here the “men of *ressentiment*” are overheard as they call themselves the good and the just, as they speak of “the triumph of *justice*” and profess to “hate ‘injustice’ ” and “godlessness.” Isn’t this after all another concept of justice? In context it is clear that Nietzsche considers such talk of “justice” so repulsive and contemptible that he refuses to speak of two concepts of justice. In the immediately following section he quotes first Aquinas’ view that the blessed in heaven will behold the punishments of the damned “in order that their bliss may be more delightful for them,” and then Tertullian’s detailed vision of the Day of Judgment. For this notion of justice Nietzsche reserves sneer quotes.

Justice worthy of the name he considers a good thing—that “ends, as does every good thing on earth, by *overcoming itself*. This self-overcoming of justice—one knows the beautiful name it has given itself: *mercy*.” The strong and powerful can afford to dispense with punishment (II.10).

In sum, Nietzsche’s views regarding the origin of justice are rather different from those usually attributed to him. The question remains why he so firmly repudiated any attempt to trace the origin of justice to resentment. It would serve no purpose here to attempt a psychological answer, but we should not take leave of Nietzsche without taking note of what he says in the first section of the first essay of the *Genealogy*.

“These English psychologists, whom one must also thank for the only attempts hitherto to arrive at a history of the origin of morality—they themselves are no easy riddle.” The riddle is what they really want when they so persistently drag “the *partie honteuse* of our inner world into the foreground Is it a secret, malicious, vulgar, perhaps self-deceiving instinct for belittling man? . . . Or a petty subterranean hostility and rancor toward Christianity (and Plato) that has perhaps not even crossed the threshold of consciousness?”

Thus Nietzsche associated with the British philosopher-psychologists and repudiated the very approach that is now widely attributed to him. And at least *one* reason why he did not take this path is evidently that he found it well trodden and did not like where it led. Instead of considering Dühring in this connection, as Nietzsche did, let us conclude our reflections with an

examination of John Stuart Mill's essay on justice at the end of his *Utilitarianism*. This will give us an opportunity to consider more closely the idea rejected by Nietzsche, that justice is rooted in resentment.

VII

At least since the time of Hume, utilitarianism has been central in British moral philosophy, and discussions of justice have generally dealt at length with the relation of justice to utility. In the twentieth century, American moral philosophy has gone the same way. This is not to say that all Anglo-American moral philosophers are utilitarians but rather that most of them consider the issues posed by utilitarianism to be of central importance. Again, by no means all of them accept Hume's or Mill's account of the overwhelming utility of justice; many argue that justice is the rock on which utilitarianism suffers shipwreck.

Therefore I shall not confine myself to Mill's theory of the *origin* of justice, although this must be our primary concern here. First I shall briefly summarize what I take to be Mill's central theses about justice. Then I shall criticize first Mill's theory of the origin of justice and then also his conception of the relation of justice to utility. While this will take us beyond the *origin* of justice, my interest in justice is by no means primarily genealogical, and as long as we are discussing utilitarianism at some length it would almost be perverse to stop short of indicating where I stand.

Mill's central thesis about justice is that the sentiment does not arise from expediency but that "whatever is moral in it does." The root phenomenon he finds in the desire to punish, and this he calls "a spontaneous outgrowth from . . . the impulse of self-defense and the feeling of sympathy" (p. 936).¹³ In brief, justice is held to have developed out of resentment against wrongs done to others with whom we sympathize.

¹³ All page references in parentheses after Mill quotations refer to *The English Philosophers from Bacon to Mill*, edited by E. A. Burt (New York, 1939). It should be easy to locate all of these passages in any other edition of *Utilitarianism* if it is kept in mind that in the above volume *Utilitarianism* begins on p. 895 and ends on p. 948, and the last chapter, "On the Connection Between Justice and Utility," begins on p. 928.

While this thesis is not particularly plausible, Mill's moral sentiments *are*, and one is tempted to go along with him when he says that this desire to punish, as an extension of "the natural feeling of retaliation or vengeance, . . . has nothing moral in it; what is moral is the exclusive subordination of it to the social sympathies." Mill goes on to speak of "just persons resenting a hurt to society though not otherwise a hurt to themselves, and not resenting a hurt to themselves, however painful, unless it be of the kind which society has a common interest with them in the repression of" (p. 937).

The sense of justice is thus assigned psychological origins that are not especially edifying, and what we might call proto-justice is according to Mill not at all morally admirable. Only social utility transforms proto-justice into justice and a virtue. The utility in question is not some trivial expediency but an "extraordinarily important and impressive kind of utility" (p. 939). Indeed, Mill says a little later on: "I account the justice which is grounded on utility to be the chief part, and incomparably the most sacred and binding part, of all morality" (p. 943).

In this view, justice does not supplement utility or benevolence; it is grounded on utility and derives its moral value solely from its surpassing utility.

Mill makes another point regarding the relation of justice to utility. "There is as much difference of opinion . . . about what is just, as about what is useful to society. Not only have different nations and individuals different notions of justice, but in the mind of one and the same individual, justice is not some one rule, principle or maxim, but many, which do not always coincide in their dictates" (p. 940). Mill proceeds to give examples of such differences of opinion, and his illustrations are well chosen to show how difficult it may be to choose sides. "Who," he finally asks, "shall decide between these appeals to conflicting principles of justice?" And he replies: "Social utility alone can decide the preference" (p. 942).

This brief sketch of Mill's view of justice should show how attractive his position is. Although he follows Hume in stressing the utility of justice, Mill's theory is far more plausible and comprehensive than Hume's. Unlike Hume, he does not tie justice to possessions; he does not see it merely or largely as the antonym

of grabbiness; nor does he overlook retributive justice. And by appealing to social utility he places disputes about justice on a plane where rational discussion is possible and appropriate.

VIII

Mill's theory of the origin of justice is untenable on two counts.

(A) His central emphasis on "the animal desire to repel or retaliate a hurt or damage to oneself, or to those with whom one sympathizes" (p. 938), his stress on "the natural feeling of retaliation or vengeance" (p. 937), and "the natural feeling of resentment" (p. 947) are misguided. One can see how Mill was led to this position. For one thing, he was overreacting to Hume's oversight, making the stone that Hume had rejected the cornerstone and foundation. Moreover, Mill's own sense of justice may have seemed to him to consist in large measure in resenting the harm done to his fellow men as if it had been done to himself. The demand for social justice is then understood as resentment universalized. Loving one's neighbor as oneself is interpreted as hating the wrong done to him as a less civilized person might hate the wrongs done to himself. But justice is as intimately concerned with rewards as it is with punishments, and Mill's emphasis on hateful feelings is excessive.

Mill's very belated attempt, five paragraphs from the end of his essay, to deal with the non-vindictive side of justice remains feeble. "Good for good is also one of the dictates of justice"; but clearly it "has not at first sight that obvious connection with hurt or injury." Even so, argues Mill, "the connection, though less obvious, is not less real." How? Ingratitude "inflicts a real hurt" (p. 944). So it does. We may even admit that not only ingratitude hurts, which really is not centrally relevant, but that the disappointment of reasonable expectations, of which Mill speaks, does, too. From this point Mill tries to build a bridge to the desired conclusion: "Few wrongs are greater than this mere withholding of good; none excite more resentment, either in the person suffering, or in a sympathizing spectator. The principle, therefore, of giving to each what they deserve, that is, good for

good as well as evil for evil, is not only included within the idea of justice . . . but is a proper object of that intensity of sentiment, which places the just, in human estimation, above the simply expedient" (p. 945).

The argument is clear. Not only the hurt inflicted by an aggressor arouses resentment and the desire for retaliation; the hurt inflicted by those who disappoint some reasonable expectation by withholding a good arouses the same feelings—and these feelings, universalized, become the sense of justice.

If Mill were right, the sense of injustice would be the primary phenomenon: outrage and resentment would come first. Fulfilling some reasonable expectation would not be felt to be just; but failing to fulfill it would be felt to be unjust and arouse resentment. While it would not be difficult to multiply examples in which we have no doubt that an injustice has been done although we should not be able to specify any distribution or punishment that would be just,¹⁴ Mill's claim that the origin of justice lies in resentment is not backed up by any good argument or evidence and ought to be rejected.

Earlier, Mill himself mentions that one of our intuitions about justice is that "it is just to respect, unjust to violate, the *legal rights* of anyone" (p. 930). The conception of justice as conformity to law or, yet earlier, to custom or tradition, and originally to orders and prohibitions issued by those in power, antedates the phenomena of which Mill speaks, both in our childhood and in early history.

What we feel when we do not get what we thought we had coming to us, or when others do not get what we thought they had coming to them, is by no means necessarily resentment or a desire to retaliate. When a punishment is postponed or not inflicted, we may experience anxiety or guilt feelings or, if this happens to someone else with whom we sympathize, worry and dread. But these feelings presuppose some sense of what is deserved. That is also true when it is a reward that is deferred or not given at all. The sense that it was deserved, that someone was entitled to it, is primary and may but need not give rise to resentment or a desire to retaliate.

¹⁴ See the essay cited in note 4 above.

(B) Even when men do feel powerful resentment in view of a wrong done to another human being, it is not necessarily, or even usually, sympathy that accounts for this phenomenon; nor is sympathy gradually "widened so as to include all persons" (p. 938). Rather is it a fact that most outlets for human aggression and hatred are closed by society, and the law that inhibits us provides a safety valve by permitting us to vent our hatred and aggression upon those who break the law. Sympathy with those who may have been wronged is probably more often than not a flimsy pretext, and many people dispense with this pretext and make no such claim. Moreover, universalized resentment does not require proof that anybody at all has been hurt. It is quite sufficient that the lawbreaker has done what we should have liked to do but, in obedience to the law, quite possibly from fear of punishment, did not do. If he got away with that, then we were fools to be so timid, then we missed out on something for no adequate reason. Thus two motives come together: dammed up hatred and aggression find a legal outlet, and at the same time we justify ourselves, proving that we were not timid fools but prudent and righteous.

Thus Mill's theory about the origin of justice is doubly wrong. Up to a point, it is, as we have seen (A), misleadingly unedifying, making far too much of the animal desire to retaliate a hurt to oneself or to those with whom one sympathizes. But then (B) the discussion of *this* motive is after all too edifying and glosses over psychological realities explored by Nietzsche and Freud but not by Mill. These two criticisms of Mill do not contradict each other. Mill treats one motive as if it were the only one and much more basic than it is in fact (A); and his discussion of this motive is, moreover (B), superficial and misleading. So much about Mill on the *origin* of justice.

IX

Mill's conception of *the relation of justice to utility* is suggestive but unacceptable. He is right in pointing out that very different notions of justice seem plausible, even compelling, not only to different nations, to the same nation in different ages, and to different individuals, but even to "one and the same individual"

as he listens first to one presentation and then to another. Not only is Mill right; the phenomenon to which he calls attention is of the first importance.

At this point many others might have recourse to relativism if not moral anarchy. A modern reader might proceed from Mill's insight to Sartre's exhortation that each individual must choose for himself, without necessarily adding, as Sartre did in his lecture on "Existentialism is a Humanism," that he must choose not only for himself but for all mankind. Mill seems to have laid the foundation for some sort of voluntarism or irrationalism. But he remains committed to utilitarianism and insists that "social utility alone can decide the preference" (p. 942). Thus differences that might appear fundamental and irreducible at first glance are held to be arguable after all: there is one ultimate standard and norm, namely "social utility." When men disagree about what is just, they ultimately disagree "about what is useful to society" (p. 940). This evidently means to Mill that in such disagreements there is a right and wrong because some things actually are useful to society, while others are not.

Are "social utility" and "useful to society" univocal concepts or fundamentally ambiguous? They could be either. For Mill they are most of the time unambiguous. In the fourth paragraph of his essay he equates "the principle of utility" with Bentham's "greatest happiness principle" (p. 897), and by the "greatest happiness" Mill means, as he explains in Chapter II, "not the agent's own greatest happiness, but the greatest amount of happiness altogether" (p. 903).

It is all-important to distinguish between utilitarianism in the wide sense in which it means that alternative actions or rules have to be judged by their consequences (or "utility") and utilitarianism in the narrower sense in which it means not only this but also that the consequences (or "utility") are to be judged in terms of the greatest amount of happiness. Mill is a utilitarian in the narrower sense.

It follows that he is *wrong* when he says that "social utility alone can decide the preference." The appeal to the greatest amount of happiness is not the only possible appeal. Instead one might invoke as norms the greatest amount of freedom or virtue or the level of development of the arts and of philosophy. It is a

commonplace that Mill himself was not insensitive to such rival claims and actually tried to introduce them into his own conception of happiness in Chapter II in his discussion of the "difference of quality in pleasures" (p. 901). But at this point he became inconsistent.

There is the further problem whether "the greatest amount of happiness altogether" might not actually clash with many people's sense of justice, insofar as Mill's standard might require us to favor a radically uneven distribution of goods that resulted in a slightly greater amount of happiness over an equal distribution that resulted in a slightly smaller total amount of happiness. On Mill's view it might seem that no strong moral argument could be offered against a large majority of people who derived a great deal of pleasure from the misery or even torture of a small minority. But it seems clear what Mill would have answered. He would surely have appealed to his extended discussion of "difference of quality in pleasures" and his claim that man "can never really wish to sink into what he feels to be a lower grade of existence." Mill is eloquent when he speaks of the "sense of dignity" and says that "It is a better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied" (p. 902). These passages make it perfectly clear how he would have judged many cases that critics have adduced against his position. But these passages also make clear how far he had gone from Bentham's position and the standard of "the greatest amount of happiness."

In effect, Mill thus tends toward utilitarianism in the wider sense. But at that point "social utility" and "useful to society" become highly ambiguous, and the words "utility" and "useful" may constitute a liability and be misleading because of their traditional association with utilitarianism in the narrow, hedonistic sense. Where Mill says, "There is as much difference of opinion and as much discussion about what is just, as about what is useful to society" (p. 940), we might say instead: "Basic differences about what is just can be translated into basic differences about what kind of a society men desire."

"Utility" suggests ultimate agreement about ends, as if all differences about justice were reducible to differences about means.

In fact, differences about justice can and often do come down to disagreements about ends.

It does not follow that our crucial departure from Mill commits us to the view that all rational argument about fundamental differences concerning justice is impossible. But rational argument about such matters will take a different form from what seems implicit in Mill's *Utilitarianism*.

Rational argument about such questions ultimately requires a man to explicate his conception of an ideal society. Chances are that he does not have such a conception. Most of us have little more than scattered intuitions, ideals, and assorted admirations and abhorrences. Rational argument beyond a foreground point requires us to see to what extent we can reconcile such feelings, thoughts, and intuitions and project a consistent image of a social order. The task we face at this point is so difficult that we are not at all tempted to be so opinionated about our view that we have nothing but contempt for that of another human being who is trying valiantly to do the same sort of job with his equipment of intuitions, thoughts, and feelings. On the contrary, we may welcome him as a fellow player of a truly royal game.

We can point out false moves to him, hoping that he in turn will direct our attention to our own inconsistencies and errors. To play this game well makes such demands that any brilliant game richly deserves publication and wide attention.

John Stuart Mill was an early player of the game and did far better than most of his predecessors. But he did not do nearly well enough, and some of his false moves are commonplaces today. We have no reason to gloat over his failures. That such a brilliant man should have made such mistakes may serve us as a warning. Unless we get a lot of criticism from both friends and foes, we may do worse.

X

It may seem surprising that attempts to work out in detail visions of a just society have been so rare. But if it is *impossible* to specify distributions and punishments that would be just, then there is no longer any reason to feel surprised at the scarcity of

such attempts. While my claim about this impossibility may seem strange, I believe that something like it has been very widely and deeply felt by legions of men for thousands of years. Instead of trying the impossible, they have preferred to postulate that after death everybody gets what he deserves—whatever that may be. Dogmatic assurance about this supposed fact had been accompanied by utter vagueness about the details.

The myth of Er at the end of Plato's *Republic* stands halfway between Indian notions of *karma* and the Christian dream of heaven and hell. Life is disappointing, countless promises are not kept, and the disproportion between virtue, however construed, and happiness in any ordinary sense is shocking. One must be exceedingly insensitive to claim that everybody gets what he deserves. Some, like Job, impugn the justice of God or the world. Others defend this justice with the claim that after death or on some future day of judgment justice will be done.

This whole dimension of the sense of justice does not fit into the theories of Hume, Mill, Freud, or Nietzsche. Neither possessions nor resentment, neither envy nor a trade among those who are equally powerful is involved in these religious notions or illuminates them very much. But they pose no problem for my theory. On the contrary.

If the sense of justice has its source in an unfulfilled promise, nothing could be more natural than the expectation that the deferred promise will be kept eventually, even if only after death. If the notion of desert originates in the notion that a person has something coming to him, it is not in the least surprising that it should so often have been linked to the afterlife. Again and again, the paradigm of justice was found not in this life but in the next or in the law that covered the transmigration of souls. While one was generally careful not to be precise about rewards and punishments, one did insist that people got what they deserved, and this went far toward creating the untenable impression that, of course, it makes sense to speak of getting the rewards and punishments that one deserves. This false notion would not be so difficult to dislodge if it did not have the support of thousands of years of religious instruction.

While "the origin of justice" is not the most pressing problem about justice, a better understanding of it helps to place more

urgent questions as well as my own doubts about justice in perspective. To go beyond justice we ought to know where it came from.

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