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EXCERPTS FROM *UTILITARIANISM*

Chapter 5

In the case of this, as of our other moral sentiments, there is no necessary connection between the question of its origin, and that of its binding force. That a feeling is bestowed on us by Nature, does not necessarily legitimate all its promptings. The feeling of justice might be a peculiar instinct, and might yet require, like our other instincts, to be controlled and enlightened by a higher reason. If we have intellectual instincts, leading us to judge in a particular way, as well as animal instincts that prompt us to act in a particular way, there is no necessity that the former should be more infallible in their sphere than the latter in theirs: it may as well happen that wrong judgments are occasionally suggested by those, as wrong actions by these.

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In the first place, it is mostly considered unjust to deprive any one of his personal liberty, his property, or any other thing which belongs to him by law. Here, therefore, is one instance of the application of the terms just and unjust in a perfectly definite sense, namely, that it is just to respect, unjust to violate, the legal rights of any one. But this judgment admits of several exceptions, arising from the other forms in which the notions of justice and injustice present themselves. For example, the person who suffers the deprivation may (as the phrase is) have forfeited the rights which he is so deprived of: a case to which we shall return presently. But also,

Secondly; the legal rights of which he is deprived, may be rights which ought not to have belonged to him; in other words, the law which confers on him these rights, may be a bad law. When it is so, or when (which is the same thing for our purpose) it is supposed to be so, opinions will differ as to the justice or injustice of infringing it. Some maintain that no law, however bad, ought to be disobeyed by an individual citizen; that his opposition to it, if shown at all, should only be shown in endeavouring to get it altered by competent authority. This opinion (which condemns many of the most illustrious benefactors of mankind, and would often protect pernicious institutions against the only weapons which, in the state of things existing at the time, have any chance of succeeding against them) is defended, by those who hold it, on grounds of expediency; principally on that of the importance, to the common interest of mankind, of maintaining inviolate the sentiment of submission to law. Other persons, again, hold the directly contrary opinion, that any law, judged to be bad, may blamelessly be disobeyed, even though it be not judged to be unjust, but only inexpedient; while others would confine the licence of disobedience to the case of unjust laws: but again, some say, that all laws which are inexpedient are unjust; since every law imposes some restriction on the natural liberty of mankind, which restriction is an injustice, unless legitimated by tending to their good. Among these diversities of opinion, it seems to be universally admitted that there may be unjust laws, and that law, consequently, is not the ultimate criterion of justice, but may give to one person a benefit, or impose on another an evil, which justice condemns. When, however, a law is thought to be unjust, it seems always to be regarded

as being so in the same way in which a breach of law is unjust, namely, by infringing somebody's right; which, as it cannot in this case be a legal right, receives a different appellation, and is called a moral right. We may say, therefore, that a second case of injustice consists in taking or withholding from any person that to which he has a moral right.

Thirdly, it is universally considered just that each person should obtain that (whether good or evil) which he deserves; and unjust that he should obtain a good, or be made to undergo an evil, which he does not deserve. This is, perhaps, the clearest and most emphatic form in which the idea of justice is conceived by the general mind. As it involves the notion of desert, the question arises, what constitutes desert? Speaking in a general way, a person is understood to deserve good if he does right, evil if he does wrong; and in a more particular sense, to deserve good from those to whom he does or has done good, and evil from those to whom he does or has done evil. The precept of returning good for evil has never been regarded as a case of the fulfilment of justice, but as one in which the claims of justice are waived, in obedience to other considerations.

Fourthly, it is confessedly unjust to break faith with any one: to violate an engagement, either express or implied, or disappoint expectations raised by our conduct, at least if we have raised those expectations knowingly and voluntarily. Like the other obligations of justice already spoken of, this one is not regarded as absolute, but as capable of being overruled by a stronger obligation of justice on the other side; or by such conduct on the part of the person concerned as is deemed to absolve us from our obligation to him, and to constitute a forfeiture of the benefit which he has been led to expect.

Fifthly, it is, by universal admission, inconsistent with justice to be partial; to show favour or preference to one person over another, in matters to which favour and preference do not properly apply. Impartiality, however, does not seem to be regarded as a duty in itself, but rather as instrumental to some other duty; for it is admitted that favour and preference are not always censurable, and indeed the cases in which they are condemned are rather the exception than the rule. A person would be more likely to be blamed than applauded for giving his family or friends no superiority in good offices over strangers, when he could do so without violating any other duty; and no one thinks it unjust to seek one person in preference to another as a friend, connection, or companion. Impartiality where rights are concerned is of course obligatory, but this is involved in the more general obligation of giving to every one his right. A tribunal, for example, must be impartial, because it is bound to award, without regard to any other consideration, a disputed object to the one of two parties who has the right to it. There are other cases in which impartiality means, being solely influenced by desert; as with those who, in the capacity of judges, preceptors, or parents, administer reward and punishment as such. There are cases, again, in which it means, being solely influenced by consideration for the public interest; as in making a selection among candidates for a government employment. Impartiality, in short, as an obligation of justice, may be said to mean, being exclusively influenced by the considerations which it is supposed ought to influence the particular case in hand; and resisting the solicitation of any motives which prompt to conduct different from what those considerations would dictate.

Nearly allied to the idea of impartiality is that of equality; which often enters as a component part both into the conception of justice and into the practice of it, and, in the eyes of many persons, constitutes its essence. But in this, still more than in any other case, the notion of justice varies in different persons, and always conforms in its variations to their notion of utility. Each person maintains that equality is the dictate of

justice, except where he thinks that expediency requires inequality. The justice of giving equal protection to the rights of all, is maintained by those who support the most outrageous inequality in the rights themselves. Even in slave countries it is theoretically admitted that the rights of the slave, such as they are, ought to be as sacred as those of the master; and that a tribunal which fails to enforce them with equal strictness is wanting in justice; while, at the same time, institutions which leave to the slave scarcely any rights to enforce, are not deemed unjust, because they are not deemed inexpedient. Those who think that utility requires distinctions of rank, do not consider it unjust that riches and social privileges should be unequally dispensed; but those who think this inequality inexpedient, think it unjust also. Whoever thinks that government is necessary, sees no injustice in as much inequality as is constituted by giving to the magistrate powers not granted to other people. Even among those who hold levelling doctrines, there are as many questions of justice as there are differences of opinion about expediency. Some Communists consider it unjust that the produce of the labour of the community should be shared on any other principle than that of exact equality; others think it just that those should receive most whose wants are greatest; while others hold that those who work harder, or who produce more, or whose services are more valuable to the community, may justly claim a larger quota in the division of the produce. And the sense of natural justice may be plausibly appealed to in behalf of every one of these opinions.

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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. No one has a moral right to our generosity or beneficence, because we are not morally bound to practise those virtues towards any given individual. And it will be found with respect to this, as to every correct definition, that the instances which seem to conflict with it are those which most confirm it. For if a moralist attempts, as some have done, to make out that mankind generally, though not any given individual, have a right to all the good we can do them, he at once, by that thesis, includes generosity and beneficence within the category of justice. He is obliged to say, that our utmost exertions are due to our fellow creatures, thus assimilating them to a debt; or that nothing less can be a sufficient return for what society does for us, thus classing the case as one of gratitude; both of which are acknowledged cases of justice. Wherever there is right, the case is one of justice, and not of the virtue of beneficence: and whoever does not place the distinction between justice and morality in general, where we have now placed it, will be found to make no distinction between them at all, but to merge all morality in justice.

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To recapitulate: the idea of justice supposes two things; a rule of conduct, and a sentiment which sanctions the rule. The first must be supposed common to all mankind, and intended for their good. The other (the sentiment) is a desire that punishment may be suffered by those who infringe the rule. There is involved, in addition, the conception of some definite person who suffers by the infringement; whose rights (to use the expression appropriated to the case) are violated by it. And the sentiment of justice appears to me to be, the animal desire to repel or retaliate a hurt or damage to oneself, or to those with whom one sympathises, widened so as to include all persons, by the human capac-

ity of enlarged sympathy, and the human conception of intelligent self-interest. From the latter elements, the feeling derives its morality; from the former, its peculiar impressiveness, and energy of self-assertion.

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If the preceding analysis, or something resembling it, be not the correct account of the notion of justice; if justice be totally independent of utility, and be a standard per se, which the mind can recognise by simple introspection of itself; it is hard to understand why that internal oracle is so ambiguous, and why so many things appear either just or unjust, according to the light in which they are regarded.

We are continually informed that Utility is an uncertain standard, which every different person interprets differently, and that there is no safety but in the immutable, ineffaceable, and unmistakable dictates of justice, which carry their evidence in themselves, and are independent of the fluctuations of opinion. One would suppose from this that on questions of justice there could be no controversy; that if we take that for our rule, its application to any given case could leave us in as little doubt as a mathematical demonstration. So far is this from being the fact, that there is as much difference of opinion, and as much discussion, 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, and in choosing between which, he is guided either by some extraneous standard, or by his own personal predilections.

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[For instance] In a co-operative industrial association, is it just or not that talent or skill should give a title to superior remuneration? On the negative side of the question it is argued, that whoever does the best he can, deserves equally well, and ought not in justice to be put in a position of inferiority for no fault of his own; that superior abilities have already advantages more than enough, in the admiration they excite, the personal influence they command, and the internal sources of satisfaction attending them, without adding to these a superior share of the world's goods; and that society is bound in justice rather to make compensation to the less favoured, for this unmerited inequality of advantages, than to aggravate it. On the contrary side it is contended, that society receives more from the more efficient labourer; that his services being more useful, society owes him a larger return for them; that a greater share of the joint result is actually his work, and not to allow his claim to it is a kind of robbery; that if he is only to receive as much as others, he can only be justly required to produce as much, and to give a smaller amount of time and exertion, proportioned to his superior efficiency. Who shall decide between these appeals to conflicting principles of justice? justice has in this case two sides to it, which it is impossible to bring into harmony, and the two disputants have chosen opposite sides; the one looks to what it is just that the individual should receive, the other to what it is just that the community should give. Each, from his own point of view, is unanswerable; and any choice between them, on grounds of justice, must be perfectly arbitrary. Social utility alone can decide the preference.

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The considerations which have now been adduced resolve, I conceive, the only real difficulty in the utilitarian theory of morals. It has always been evident that all cases of justice are also cases of expediency: the difference is in the peculiar sentiment which attaches to the former, as contradistinguished from the latter. If this characteristic sentiment has been sufficiently accounted for; if there is no necessity to assume for it any peculiarity of origin; if it is simply the natural feeling of resentment, moralised by being made coextensive with the demands of social good; and if this feeling not only does but ought to exist in all the classes of cases to which the idea of justice corresponds; that idea no longer presents itself as a stumbling-block to the utilitarian ethics.

Justice remains the appropriate name for certain social utilities which are vastly more important, and therefore more absolute and imperative, than any others are as a class (though not more so than others may be in particular cases); and which, therefore, ought to be, as well as naturally are, guarded by a sentiment not only different in degree, but also in kind; distinguished from the milder feeling which attaches to the mere idea of promoting human pleasure or convenience, at once by the more definite nature of its commands, and by the sterner character of its sanctions.

THE END

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