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by bringing theologians into conversation with scholars
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Disciplinary Brief

WHAT IS JUSTICE?

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Prof. Wolterstorff helpfully points out that justice is based on healthy and well-ordered relationships between persons. For Thomas Aquinas, the medieval theologian influenced by Aristotle and Augustine, such order emerges from natural human inclinations to seek happiness in virtuous and constructive ways, through relationships of affability and love of friendship, within the framework of collective lives based around goods shared in common. [See *Summa Theologiae* II-II, qq. 58, 61] A human family, for example, is a kind of common good in which each person can flourish through affable and caring relationships, friendships of the spouses and parental friendships with children in their care. Based on such relations, an order of justice emerges. Parents, for example, normally owe certain standards of care and education to their children. Spouses normally owe one another a certain degree of engagement and genuine fidelity. The relationships between persons in this context amount to more than relationships of justice but they include and are supported by fundamental relations of justice. Aristotle notes that friendship and love are more than justice can provide but they cannot be sustained without basic justice.

Three Forms of Justice

This first case is familial but one could extend the examples to include collective organizations of work, education, or statecraft. In any of these cases, one may speak analogically of various forms of justice, not one form alone. There is justice that results (1) from the part to the whole (which I will call participatory justice), (2) the part to the part (which he calls commutative justice), and (3) the whole to the part (distributive justice). However can we illustrate each of these cases inductively from examples?

(1) Participatory justice: the part to the whole

The person (considered as part) who participates in a larger common good (the whole life of the city, the family, the workplace, the university) incurs obligations and responsibilities toward the whole, precisely as a beneficiary participant. In this case each person has a role to play in contributing to the larger group. It is reasonable for example that a city or

state ask its citizens to pay taxes, or that a family asks its children to participate in a common family outing. An academic is expected to creatively contribute to the university in teaching and writing or in administrative work. Diverse nation states need to work together collectively within the framework of a larger international common good, so that all states contribute constructively to peace, international justice, and economic prosperity.

(2) Commutative justice : the part to the part

Each member of the collective community has obligations and rights vis a vis one another as individuals. The most common example of this is in exchanges, as when one is expected to pay a just price for something one purchases or one is owed a just wage for work one does. However this notion is flexible and somewhat analogical, applying to various forms of equality. The spouses have equal rights and responsibilities in justice to one another within a marriage bond. Two academics who write a paper or edit a book together have a kind of equal share in the reputation and effect of the book. Two nation states need to show mutual respect and just concord in relations with one another, be they economic or political.

(3) Distributive justice: the whole to the part

The whole has obligations to each individual, depending upon the needs and capacities of the individual in question. This is the kind of justice that typically comes to the forefront in questions of political policy. Any common good has some representative leadership that represents the whole and makes decisions in view of the common good of the whole. In doing so they have to think about the qualities, capacities and limitations or needs of individuals and sub-groups. Parents in a family need to think of the just distribution of needs for an infant versus a teenager who may need tutoring versus a child with athletic or artistic talents they legitimately wish to develop. A university administration can distribute scholarships prudently in view of a diverse representation of students, and can distribute grants, honors or responsibilities among academics in view of representative academic excellence. The state has social obligations to various groups of people who are more vulnerable or who require distinct kinds of advocacy: the disabled, the poor, the socially marginalized. Any given country needs to respect the subsidiary and self-determination of small collective groups and institutions within its polity. Wealthier or more powerful nation states should think rightly of how to incorporate more materially disadvantaged or less developed nations within the larger collective common good of deliberation and exchange.

Justice and Personhood

This idea of justice presupposes some form of human exceptionalism: there is a reason human beings are agents and recipients of justice, due to their dignity as intellectual and free animals, able to live constructively or destructively with one another. This means that any realistic notion of justice cannot be merely procedural or formal, politically convenient or conventional, but must be grounded in a viable claim about what human persons are, and what they are genuinely meant to live for (and not live for). The Christian intellectual tradition typically has argued that the human being has a unique dignity because he or she is made in the image of God, and has spiritual powers of intelligence and free will. The Thomistic tradition has argued that this truth claim is at least in part verifiable and defensible by means of philosophical argumentation. [See in this respect Madden (2013) and Stump (2005), noted below.] One can analyze and explain key

facets of human reason and free decision making so as to show why human beings are agents of moral responsibility and more profoundly, why they are spiritual animals. They are constituted not only by bodies possessing (highly evolved) animal powers but also by a spiritual principle or “soul” that is the formal cause of personal identity. Does one have to go all the way into such metaphysical speculation to retain a rich conception of human justice? Some would say no. I agree with philosophers like Augustine, Aquinas, Hume and Nietzsche that it matters very much that we determine first what human beings are if we wish to in turn to evaluate their ethical nature.

Justice and Mercy

From this line of thinking of thinking about justice one also might suggest that the search for justice is integrally related to the search to love or care for others personally in responsibility, and the need of the community not only to punish or rehabilitate but also to forgive and have mercy. Mercy entails a love that passes beyond the mere requirement so justice, so as to care for a person when he or she is suffering *in extremis* or failing ethically. Mercy helps us recall what interpersonal relations are about fundamentally, the communion of persons in love of friendship. Mercy can seek to reconstitute communion even after people have failed to attain the due measure of justice, even while acknowledging justice. In this sense there is no mercy without justice since mercy is more apparent when love passes beyond merely “what is due” to another. At the same time, justice without mercy readily becomes a caricature of itself, a kind of ethical false coinage. Just relations between persons exist in view of love of friendship, cooperation that is personal, and in view of a civilization of human charity. When one weaponizes justice in uncharitable ways so as to exclude or destroy persons and harden society abrasively, one creates an unmerciful and in effect unloving society. War does this, even just war, to some extent (though one may still commend one’s enemies to the eschatological mercy of God). But it is an error to construe civic and political life as always being on war footing. The truth is that all human beings are unjust at times, even radically so, so in a society that loses a sense of mercy, justice will eventually become intolerable and so even a culture of justice will be difficult to sustain. The wielders of justice if they are not perfect, which they will not be, will appear arbitrary or inconsistent in their justice, so their notions of justice will become suspect. Those who want a culture of justice should strive also to create a culture of mercy, rehabilitation, and reasonable penance. Indeed, penance is important for the harmony of justice and mercy, so that confession, forgiveness and reconciliation can be a dimension of human social life.

Historically the cultural belief in the centrality and practice of mercy as a qualifying feature of justice is of Christian ancient and medieval origin, and there are noteworthy exponents of it who developed their ideas against the backdrop of a Christian eschatological and theo-centric vision of the human person and of society. We can think here of Augustine, Aquinas, Catherine of Siena, and in more recent times, Pope Leo XIII, Elizabeth Anscombe and Pope Francis. Christian intellectuals should think not only of human justice but also of the transcendent divine justice and mercy of God publicly revealed in Christ. The latter idea is not merely a private or individual truth, unless one holds to an erroneous conception of it. In the New Testament we are intriguingly told that God himself has justified humanity. That is to say, in the person of Christ, God has revealed a deeper mystery and order of justice unfolding in human history, in which God seeks to repair our ties of weak or self-interested love (individual or collective), to reestablish and reframe our human common life, by the power of his grace.

Christians need not be reticent to speak about this mystery of divine love and justice, unveiled in Christ, in the university

today. Historically speaking the very idea of Christian atonement (literally: at - one - ment) gave rise to the aspiration of a genuinely universal culture of learning and love of God and others, at the heart of the medieval university. In our contemporary academic context characterized by ideological heterogeneity and by an often contested search for new grounds of ethical normativity, this distinctively Christian notion of universal love and personalistic justice can provide a helpful resource in the ongoing shared human search for the truth.

Speaking Justice to the Whole Academy

Is it really possible to speak about such matters with people who do not share a common assent to the central truth claims of Christianity? I think it certainly is at least in part. We might note some of the key claims made above that one could openly propose or discuss with colleagues not prone to share any particular convictions regarding God or Christianity.

1. Justice may be considered broadly as the rendering to each what is due to him or her, but this is in fact analogically denoted, as we have noted above, in diverse ways. One cannot apply notions of distributive justice to situations that entail the norms of commutative justice, or participatory justice. Justice within the family can be analyzed using either of these three forms of justice, depending on the relations in question, but what justice is in the family is different from what it is in the university or work place, the city, the state, the nation or the international order. *Distinct common goods entail distinct relations and forms of responsibility.*
2. This means that the determination of what justice is is not merely a question of intuition or emotivism (though our intuitions or emotions may or may not tell us something about it, imperfectly). *Thinking about justice is an intellectual discipline* marked by care for truthfulness, analytic depth, clarity of analysis and fairness as well as the search for concord, love and appreciation of persons. One can invite non-Christians to this vision of things.
3. It is mysterious that we as human animals are subjects able to be just who are characterized by responsibility. What does this say about us as beings, open in freedom to do what truth requires, but also able to evade or ignore the truth in our actions? To converse about justice is to ask in reality what a human being is, a fact that Plato already saw so well in the *Gorgias*. *The travails of modern university culture in regard to this question are new opportunities to return to the sources of classical reflection on his key question. What is a person?*
4. What about justice within the larger complex dynamic of human existence, marked by moral failure (sin), evil, the need for repentance, forgiveness, and rehabilitation? Anyone who sustains meaningful human relationships knows he or she needs some form of forgiveness to play a life-giving role in their relations to others. What does this unavoidable drama of human good and evil say to us and to our contemporaries? Does our experience of ethical fragility (and for some at times even torment) open us up to religious questions, or should it? Here again we face a perennial question. To ask about justice is also to ask ultimately who in this universe is on trial by whom? Is the court of history constituted merely by passing human beings, who judge us in the hours before they in turn die, and leave the standards to others that may change them? Or are we ultimately on trial before a transcendent standard, the mystery of God in his truth and justice? In this latter case, would the trial, execution and death of Christ have

something to tell us about our relationship to God and one another? Is it a piece of romantic lore or is it Logos made flesh, divine reason unveiled in human history? We might also courageously invite our secular colleagues in the university today to ask this question of Christ himself, doubtful or agnostic though they may be. After all, he can and often will answer them directly, since he is now risen from the dead. We crucified him, but on the other shore of our injustice, *he provides an unyielding horizon of hope, bearing in on us, inviting us to a new and strange regime of justice, mercy, and charity.*

Further Reading

J. Budziszewski, *Commentary on Thomas Aquinas's Treatise on Law* (Cambridge: Cambridge University Press, 2016). *An excellent contemporary introduction to Aquinas' moral theory, that leads the reader through one of his main analytic treatments of ethics.*

Lawrence Dewan, *Wisdom, Law, and Ethics: Essays in Thomistic Ethics* (New York: Fordham University Press, 2006). *An intellectually dense but accessible treatment of many contemporary problems in ethics making use of Aquinas' moral principles.*

Russell Hittinger, *The First Grace: Rediscovering the natural Law in the Post-Modern World* (Wilmington, DE: ISI Books, 2003). *This work engages with the challenge of contemporary perspectivalism or relativism and asks how one might recover a basic sense of universal ethics.*

James Madden, *Mind, Matter & Nature. A Thomistic Proposal for the Philosophy of Mind* (Washington, D.C.: The Catholic University of America Press, 2013). *A splendid and clear defense of the immaterial powers of the human person, in engagement with contemporary analytic philosophy, while keeping in mind modern scientific understanding of the material body.*

Servais Pinckaers, *The Sources of Christian Ethics*, third edition (Washington, D.C.: The Catholic University of America Press, 1995). *A most famous and influential modern work on ethics, arguing that the medieval virtue based approach was eclipsed by utilitarianism and deontology, giving rise to much of the confusion that we experience today in public life. This work presents a eudaimonistic (happiness-based) account of the pursuit of goodness, and situates virtue and law in that context.*

Eleonore Stump, *Aquinas* (London: Routledge Press, 2005). *A major contemporary work of analytic philosophy taking profound inspiration from Aquinas. Notions of personhood and human understanding and freedom are explored here that are relevant to our contemporary conversations on the ontological foundations of ethics and notions of justice.*

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