

Comment

Giving Injustice Its Due

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Every courthouse boasts a statue of justice in all her dignity. Justice has been represented in an endless number of pictures.¹ Every volume of moral philosophy contains at least one chapter about justice, and many books are devoted entirely to it. But where is injustice? To be sure, sermons, drama and fiction deal with little else, but art and philosophy seem to shun injustice. They take it for granted that injustice is simply the absence of justice, and that once we know what is just, we know all we need to know. That belief may not, however, be true. One misses a great deal by looking only at justice. The sense of injustice, the difficulties of identifying both the unjust person and the victims of injustice, and the many ways in which we all learn to live with each other's injustices tend to be ignored, as does the relation of private injustice to public order.

Why should we not think of those experiences that we call unjust directly, as independent phenomena in their own right? Common sense and history surely tell us that these are primary experiences and have an immediate claim on our attention. Indeed, most of us in all likelihood have said, "this is unfair or unjust," a lot more often than "this is just." Is there nothing much to be said about the sense of injustice that we know so well when we feel it? Why then do most philosophers refuse to think about injustice as deeply or as subtly as about justice?

I do not know why this curious division of labor prevails, why philoso-

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1. Curtis & Resnik, *Images of Justice*, 96 YALE L.J. 1727 (1987).

phy ignores evil while history and fiction deal with little else, but it does leave a gap in our thinking.

Fortunately, political theory, which lives in the territory between history and ethics, seems to me to be ideally suited to do something about the puzzle, especially about the sense of injustice. Injustice is not a politically insignificant notion, after all, and the apparently infinite variety and frequency of acts of injustice invite a style of thought that is less abstract than formal ethics, but more analytical than history. At the very least one might begin to shorten the distance between theory and practice when one looks at our actual wickedness, rather than only at pictures of what we ought to be and do.

My investigations are not meant to challenge in any way the worth of the various theories of justice, nor their search for its ultimate philosophical foundations. I simply want to consider injustice differently, more directly and in greater depth and detail, and also to illuminate a common condition, victimhood, and the sense of injustice which it inspires.

Such an enterprise may look less eccentric if we recall that European philosophy does feature many unconventional intuitions about justice and injustice, and that these have often moved the political imagination to its greatest achievements. There are giants upon whose shoulders I can, with some presumption, try to stand.

Should we, however, think about injustice more amply than simply to note the absence of righteousness, as the word implies? The answer to this question is far from obvious, because traditional ethics would seem to reject this proposal. For there is a normal way of thinking about justice, which Aristotle did not invent, but certainly codified and forever imprinted upon all our minds. This normal model of justice does not ignore injustice, but it does tend to reduce it to a rejection and breakdown of justice, as if injustice were a surprising anomaly. So too the conventional pictorial representation of injustice faithfully shows a devil breaking the scales of justice, tearing the blindfold from her eyes, and beating her up.² Injustice simply destroys justice. And while most versions of the normal model begin with a brief sketch of injustice, they serve only to introduce the sort of conduct that the rules of justice are designed to control or eliminate. Injustice is mentioned to tell us what must be avoided, and once this preliminary task has been quickly accomplished, we can turn with relief to the real business of ethics: justice.

At its barest, the normal model of justice argues that any political society is governed by rules. The most primary of these set out the status and entitlements of the members of the polity. This is distributive justice and its rules are just if they correspond to the most basic ethical beliefs of the

2. Q. SKINNER, *Ambrogio Lorenzetti: The Artist as Political Philosopher*, The Raleigh Lecture, 72 PROC. OF THE BRITISH ACADEMY (1986).

society. In a warrior society, for example, the brave must be rewarded, while in an oligarchy the rich ought to get richer. But in all cases distributive justice depends on something apparently very elemental and solid for its authority. Even in a complex modern society in which there may be a multiplicity of belief systems side by side, the normal model reaches down to find some solid ground on which distributive justice can ultimately rest.

Distributive justice is, however, an unfortunate term, partly because it had a very different meaning in the middle ages and because it is never clear just what is to be distributed. I therefore shall call it "primary" justice, which is more neutral and merely indicates its place in the normal scheme. In addition to the primary rules settling what is due to whom, there must be effective institutions to maintain the rules in the course of private exchanges and to punish violations. When these norms are not followed there is injustice, and that is all that can be said about it.

There is nothing absurd about the normal model, and it has been accepted by Aristotelians and Hobbesians, Kantians and utilitarians, liberals and conservatives, and most theologians as well. I do not propose to challenge it, or to reject the legal values that it promotes. The state of nature is a perfectly convincing, though philosophically imaginative just-so story, which reminds us how dismal a lawless existence would be. What I do propose to question is the normal model's complacent view of injustice and its confidence that the institutions which the model underwrites really can cope with the manifestations of iniquity. It is an assumption that some skeptics have always questioned, and I share their doubts.

Political skepticism is often rooted in a general cognitive skepticism, but it does not depend on any specific philosophical assumptions about knowledge. It is simply a doubting, unconventional view of accepted social beliefs. The skeptic may well begin his journey away from the common understanding because he is overwhelmed by the evil of the times. Certainly Plato, St. Augustine, Cicero and Montaigne had every reason to look about them with despair and disgust. And in the midst of a shattering civil war and its debris one might well ask "what do we know?" and indeed "what can we know?" That is how the great skeptics came to doubt the moral relevance of the normal model of justice, among many other things. And they rejected or altered it in ways that made injustice stand out more starkly than conventional political ethics permit.

It is always the aim of skepticism to expose hidden ignorance and false intellectual self-assurance. And it is not difficult to show that a too secure belief in the efficacy of the normal model might well be self-defeating. The great skeptics doubted that law-governed judgments could achieve their aims, because we simply cannot know enough about men or events to fulfill the demands of justice. That is why Plato turned his back on the normal model, while St. Augustine and Montaigne reduced its relevance and Cicero revealed its political limitations. All of these philosophers had

an unusually enlarged sense of the scope of injustice, but they did not focus on the individuals' *sense* of injustice. It was not until much later that Rousseau made this sense of injustice the very heart of a wholly new democratic notion of political morality.

These are the thinkers, cognitive, psychological and civic skeptics, who have given the theory of injustice its main structure. They did not, of course, deny that lawlessness and unfairness in exchanges and in judging were acts of wrongdoing, but they looked beyond these obvious misdeeds to rediscover injustice itself in all its endless variety. They saw it as not just encompassing those acts that laws and customs are meant to eliminate, but all those occasions that make us cry out in anger and resentment: "that is not right!" and "that is not fair."

I shall begin with an historic review of their arguments. And any effort to rethink injustice must begin with Plato, not because he has the first or the last word on the matter, but because he is so remote, so much the foreign mirror in which we learn to see ourselves. His also is the most radical of all rejections of the normal model. So there is no other intellectually comparable place to begin.

According to Plato, the normal model is an expression of deep ignorance and a bad joke, a circus. Far from altering unjust people, it only encourages and maintains their habits. Injustice, truly understood, is a condition of misdirected psychic energy, in which aggressive and acquisitive impulses expand, while rationality can barely assert itself. A society that reflects these dispositions is not only incapable of educating its members, but, in fact, actively misleads them. Its art of ruling is reduced to keeping the basest impulses alive by checking and taming them. In effect its rulers only encourage disharmony. For what do law courts do but invite the greedy to accuse the even more greedy of offenses arising from greed and aggression? The very existence of the normal model of justice is the most telling testimony of its own incompetence.

Can anyone be said to receive or give others what is due, when no one is fit to do his assigned task and when we constantly meddle in affairs that are wholly outside the range of our understanding? All historically known societies are simply unable to achieve their own norms, or even to understand them. The reign of ignorance is thus not only inherently disorderly, but also unjust in the conventional sense of the word, since no one either gives or receives what is demanded by the normal social rules. If competence and occupation are never matched, and when there are no ruling principles according to which the inherently unlimited wants of men can be restrained and ordered, then there is no justice or harmony. And the normal model, far from establishing order, merely allows personal disorder to become socially systematic. It simply perpetuates injustice by disguising it.

Even a wholly infra-rational society would do better than a normal one,

in Plato's view. Here people, rather like pigs, would be prompted by nothing but physical and other immediate needs. The division of labor, production and consumption would all be limited and ordered by the stringent demands of physical necessity, and there would be no occasion for disorder, and thus none for law or injustice either. When, however, the dominion of need is replaced by that of want, we enter the realm of normal justice, designed merely to check, but in no way to redirect the ways of men perpetually at war with each other, neighboring cities and themselves. For Plato, courts, lawyers, assemblies, juries, armies—all the normal political institutions—are merely ways of organizing these irrational public impulses. Not that people really want matters to be as they are; but they are wholly unable to know themselves or how to improve their lives. So they settle for the injustices of normal justice, which only freezes them into enduring ignorance.³

Unlike the normal model, Plato presents a pre-legal state of peace and a juridical nightmare. And if his image of the rational order is too difficult to be achieved, it does throw a lurid light on what is usually taken to be justice but is in fact unjust by its own standards. For normal justice does not and cannot achieve its own ends. Neither equal nor proportionate deserts can be distributed when no one even knows what constitutes a human world. For Plato injustice is first and foremost a cognitive problem. Our inability to know the whole, or to understand what a rational society would be like, renders us incapable of establishing a just order.

Plato's is not the only form of political skepticism. Religious faith is as often at odds with the normal model as is perfect rationality. In European theology St. Augustine must always represent the most uncompromising and rigorous vision of the relations between a triumphant and remote God and an abjectly sinful and self-destructive humanity. The Augustinian bleakness has no room for the self-confident implications of most theories of justice either. To be sure, there is no Manichean suggestion that absolute justice and injustice, God and Lucifer, share the governance of the world equally, or worse, that Evil has triumphed universally over Good. There is no doubt about the eventual redemption through Christ, but that has nothing to do with justice. The condition of sinful men, here and now, is such that law and justice cannot significantly alter their inherited guilt and continuing evil. We would, to be sure, be far worse without coercive government and restraints of every sort, but these only prevent the worst. And among the consequences of sin is an ignorance so deep that we simply cannot be just, since we can never know enough about each other to make adequate judgments.

The Christian prince or judge trying to be just is doomed to fail. His

3. PLATO, *THE REPUBLIC* bk. II, at 369a-373e; bk. III, at 405a-405c; bk. IV, at 421c-426e, 442d-445d (Modern Library 1950).

"lamentable judgments" are grounded in ignorance of the character of the witnesses he tortures and the accused whom he condemns. We can never know other people well enough to make such decisions rightly, and the more conscientious a judge is, the more likely he is to deplore the weight of his office. He is, nevertheless, condemned to perform his self-damning duties because without severe punishments everyone would be far more wicked in every way.⁴

Like Plato, St. Augustine recognized injustice as an expression of our limited cognitive resources. It was not, however, an intellectual defect, for it is God whom we refuse to acknowledge. We do not know enough to give God his due. The pagan state cannot know what it owes God, and the partially just Christian ruler also fails, even if intentions are good. For though intentions do make all the difference morally, political actions are always imperfect. A Christian ruler may well try, but he cannot succeed.

The pagan state does not even try to be good; it exercises social controls only through discipline. In Rome, even in its days of virtue, it was all done only for the sake of glory. From St. Augustine's perspective the confident assertion that the Roman Republic had been a just society was more than mere folly. It was a failure to judge the Romans in terms of their real ideology and passions, which were all aimed at war and glory. Cicero, who had claimed that Rome had been a real commonwealth in which each received his due, inevitably became the butt of the Augustinian scorn.⁵ It is a judgment that, I think, was entirely unfair.

Plato and St. Augustine do not exhaust the skeptical case against the normal model of justice. There is also a purely psychological skepticism that doubts that we can ever know enough about each other to devise adequate social rules. Montaigne, who was the most perfect spokesman for this view, suspected that our legislative efforts do us a lot of harm. We might know ourselves, but we misperceive others. Our subjective, personal experiences are too various and incommunicable to be ordered by uniform rules for conduct, and the attempt to impose them tends to backfire. Personal thoughts and feelings are distorted by the rules of language, and our memories are altered by rules of interpretation. Rules blur the truth. They also thwart our spontaneous moral inclinations and our better impulses. Moreover, given our feeble emotional and intellectual resources, no rules that we could invent would be better, because we remain both too ignorant and too diverse to be fit into any tolerable general normative scheme.

That is not all. When we trust the rules we tend to become too sure of our competence, and that makes us arrogant, cruel, and tyrannical. The normal model of justice may be entirely unobjectionable, but it is just not

4. ST. AUGUSTINE, *THE CITY OF GOD* 681-83 (M. Dods trans. 1950).

5. *Id.* at 699-700.

made for us. Because it ascribes psychological and intellectual qualities to us that we simply do not possess, it leads us to engage in oppressive and self-destructive practices. In our radical uncertainty, therefore, the best we can do is to regret our insuperable limitations, and to do as little harm as possible.⁶

Montaigne's psychological skepticism has lost none of its bite. On the contrary, the findings of contemporary social psychology reinforce some of his doubts. It appears that very few people are capable of applying statistical information or of making even simple calculations of probability. In making judgments under conditions of less than complete information, most of us therefore misinterpret the evidence available to us. We need statistics and conjectures to make decisions about the character and conduct of other people, but we refuse to accept the necessary intellectual discipline. The inability to think scientifically is, moreover, not a matter of intelligence or education. It is just the way we are.

Equally discouraging is our rigidity in refusing to alter our beliefs when new information should lead us to change our minds. Our fluency in causal thinking simply allows us to incorporate new evidence without adjusting our previously established expectations. And it also seems that in explaining conduct we tend to attribute environmental causes to our own behavior, but internal ones to that of other people.⁷ Intuitively we tend to blame others and to excuse ourselves.

Most people are not spontaneous scientists and common sense is flawed through and through, just as Montaigne thought. With that in mind one might well share his belief that the normal model of justice not only fails to achieve justice, but also promotes general harshness and social rigidity, thanks to the illusions of adequacy and of false self-confidence that it generates.

Skepticism gives injustice its due, because it recognizes that our judgments are often made in the dark and doubts that they are right. That does not have to lead to an all-out Platonic onslaught on the normal model of justice, but only to an enhanced sense of the dominion of injustice. And indeed, all I mean to evoke by recalling these skeptics is the sense of the enormity of injustice and our helplessness in the face of our iniquity.

That brings me to my last ancestor. Cicero was certainly skeptical in many ways, but his confidence in the law was quite genuine. He was, however, far less limited in his views than one might suppose from St. Augustine's assault on him. A distinguished lawyer, he had a special concern for the fairness and availability of public judicial services. The flaws

6. M. DE MONTAIGNE, *Of Coaches, Of the Art of Conversation, Of Cripples, Of Physiognomy, Of Experience*, in *WORKS OF MICHAEL DE MONTAIGNE* 186, 215, 349, 363, 398 (O. Wight ed. 1859).

7. JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES 3-20, 115-28, 129-52 (D. Kahnemann, P. Slovic & A. Tversky eds. 1982).

Cicero found in the normal model were political, not cognitive. His was a civic, not a philosophical, contribution to the theory of injustice.

When he came to reflect on injustice he had been driven from public life. In a deep bitterness of spirit, he came to see it in places where most Romans did not choose to look, such as their treatment of loyal allies, whom they destroyed when it suited their purposes. He also worried that the law, by becoming too refined and complex, might create its own injustices. But his real originality was in emphasizing two kinds of injustice, one active and the other passive, a distinction that he may well have found in Plato.

"Who does not prevent or oppose wrong when he can, is just as guilty of wrong as if he deserted his country," according to Cicero.⁸ In his republican ideology injustice encompasses more than active misconduct. And in this respect it differs from the normal model, which ignores the ills that we cause by simply letting matters take their course. That is why there is no mention of passively unjust people in Aristotle.

It is important to note that passive injustice is a civic notion. It does not depend on any particular moral philosophy. It does not entail utilitarianism, positive or negative, nor is it part of a general theory of duty. It does not concern itself with personal moral conflicts.⁹ Passive injustice refers strictly to the failures of citizens, especially in republics, to fulfill their public responsibilities. For them it should not be enough to wait around until the agencies of government act when a public wrong has been committed.

Passive injustice is also not like being a bad Samaritan who lacks charity. The latter demands more of himself than living up to the political ideals of republican citizenship. The good Samaritan offers help that goes beyond human rules and even the call of duty. He is really superior to anything that can be called politically just or right.¹⁰

The passively unjust man is not accused of failing to go beyond duty, but of not seeing that citizenship involves more than normal justice demands. The normally unjust man is guilty of unfairness and of actively violating law and custom. The passively unjust man, however, does something else. He is simply indifferent to what goes on around him, especially when he sees fraud and violence. His failure is specifically as a citizen. It is not a matter of lacking general goodness. When he sees an illegal action or a crime, he just looks the other way. If he is a public official his offence

8. CICERO, *THE OFFICES* bk. II, at ch. 8; bk. I, at ch. 10 & ch. 7 (W. Miller trans. 1951); PLATO, *THE LAWS*, bk. IX, at 880b (Loeb Library).

9. The issues taken up by JONATHAN GLOVER, *CAUSING DEATH AND SAVINGS LIVES* 92-112 (1977), and by Bernard Williams, *A Critique of Utilitarianism*, in *UTILITARIANISM FOR AND AGAINST* 93-107 (1973), though deeply troubling, are not relevant to the Ciceronian proposition, which bears only upon our duties as citizens of a republic.

10. D. HEYD, *SUPEREROGATION* (1982); J. FEINBERG, *Bad Samaritans*, in *HARM TO OTHERS* 126-86 (1984).

is very grave. He is the tyrant who condones injustice by ignoring it, or an indifferent ruler who does nothing to mitigate and prevent the social and natural disasters that afflict all of us.

Let me develop Cicero's notions. In our cities a Ciceronian eye would see not only the injustices committed by officials, criminals and cheats, but also emphatically those of the citizens who refuse to report crimes, to notify the police, to give evidence in court, and to come to the aid of victims merely because it is inconvenient for them to do so. If they have any reason to be afraid to act, the burden of guilt falls on their neighbors and the police. But the typically passive citizen is not in that position. She simply would rather let someone else do her civic duty for her.¹¹ She is a free-rider and little else. Typically she does not vote, attend meetings, keep informed or speak up. To be passively unjust is not to fail to rise above ordinary duty in acts of supererogation, or to be saintly and heroic, which may not be acts of duty at all. To prevent fraud and violence, when we can do so, is only a part of our duty as citizens, the most universal of our political roles. As human beings we may well have greater ones. As citizens we fail, however, if we are passively unjust.

Citizens are passively unjust not only in sensational cases, such as that of Kitty Genovese, who was murdered while her neighbors watched from their windows too indifferent or scared to call the police, but when they close their eyes to small daily injustices, even for such harmless motives as not wanting to make a fuss, be a busybody or disturb the peace, such as it is.

When we let the wife-beater next door go to it rather than interfere, or when we close our eyes to a colleague who routinely grades randomly and arbitrarily out of sheer laziness, we are passively unjust. We may say that family feuds are a private matter, and that the wife is not likeable in any case. We can argue that departmental civility is more important than fairness to students, but we would still be paying for peace with injustice. What these examples suggest is that no one has a greater burden of passive injustice to bear than the individual citizen. And his or her failures have public consequences as well as personal ones.

Take the case of a shopper who is given the wrong change by the cashier in a supermarket. It amounts to \$2.50, a considerable amount for him. He protests, but the cashier brushes him off. The woman next to him in line, who is there in no other role than that of a citizen, is passively unjust if she does not speak up at this point. Her personal motives may range from misanthropy to merely being in a rush, but that does not alter the fact of avoidance, in the absence of any danger to herself. We have plenty of survey evidence to show that if she were alone in the line she might

11. H. Goldstein, *Citizen Cooperation: The Perspective of the Police*, in *THE GOOD SAMARITAN AND THE LAW* 199-208 (J. Ratcliffe ed. 1966).

interfere, but as there are several other people around her she does nothing, partly out of fear of appearing conspicuous and partly in the hope that someone else will assume the responsibility. Most people in such situations are perfectly aware of what they are doing: They are collaborating with injustice, but they cannot bring themselves to act.¹² As "pure" citizens they are simply letting injustice prevail.

The injured shopper now goes to the store manager to complain. She, however, also brushes him off. It is surely her job to attend to his complaint and we might say that given her role she is actively unjust. She certainly has, in her role as a manager, more power to do something about the situation than the shoppers in the store. She does not see it that way, however, because she has functions and ideological commitments other than those of a "pure" citizen, which is not all that she is in her capacity as manager of the store. There is a real labor shortage in Ruritania and she has a duty to keep the atmosphere among the employees reasonably happy. This is a socially valid extenuating circumstance in her case. These considerations may, moreover, include her ideological convictions as well. Our manager may be an ardent communitarian and her employer also does his best to hire and to protect members of their common ethnic group or their neighborhood. She will perhaps reprove and correct the cashier later, but not in the presence of strangers. The wrongs done by other employees thus may not be a matter of indifference to her, but justice to an outsider may count far less for her than the bonds of communal solidarity. Again her unjust conduct is mitigated, unlike that of the "pure" citizen.

Let us say at the very least that the manager of the store has, after all, been hired to run a smooth operation. So she sends our shopper to the Ruritanian customers' small claims and complaints court. There he is turned away because the court does not take on cases under \$5.00. This rule is in keeping with primary justice because Ruritarians have made it clear in the last election that they wanted tax revenues to be spent not on extra civil servants to administer services, but on building new schools and sewage disposal facilities. Education and health are truly important values here. Yet \$2.50 is a lot of money for our poor senior citizen shopper, and he certainly has every reason to feel that he has been treated unjustly. He got nothing but the bum's rush.

Who was most unjust? His fellow shopper, the "pure" citizen, is passively unjust, with no excuse at all, unlike all the others. The evasion of the manager is not a socially wholly worthless claim and the court acted properly. There are only two possible conclusions from this perfectly common occurrence. Either we do not care as much about justice as we say

12. R. BROWN, *SOCIAL PSYCHOLOGY. THE SECOND EDITION* 43-46, 67-88 (1986); B. LITANÉ & J. DARLEY, *THE UNRESPONSIVE BYSTANDER* 29-36, 121-28 (1970).

and we really prefer peace with injustice, or there being no possible way to have a just society without a massive and effective education in civic virtue for each and every citizen, we cannot afford justice. We may well prefer liberty to this prospect, so that it is only fair to say that we choose to be passively as well as actively unjust. But we do work hard at inventing plausible excuses for our countless acts of injustice.

One of the reasons there is no cure for injustice is that even reasonably upright citizens do not want one. This state of affairs is not due to disagreements about what is unjust, but to unwillingness to give up the peace and quiet that injustice can and does offer. In this claim they may be quite right. A decent society may require a bundle of positive conditions, among which peace and a general spirit of tolerance are certainly not insignificant. A very sophisticated skeptic might thus favor trading some degree of justice for other social goods, but these are always difficult political choices.

It is, however, difficult to imagine that *anyone* would choose to live under an unjust government or a tyranny. And a truly oppressive government may be not only actively, but also passively, unjust. The peace that dictators promise rarely, if ever, materializes in fact. Governments, like citizens who do nothing to oppose injustice, allow the innocent to be tormented and promote lawlessness because it may well be to their benefit. There is, indeed, a perfect representation of such a ruler in the Arena Chapel in Padua, Giotto's *Injustice*.¹³ It is in the center of the other vices, replacing the Christian sin of pride, but it is not without religious significance, for it is a male profile that looks right at the part of the *Last Judgment* that depicts in incomparable detail the horrors of hell. The face of Giotto's *Injustice* is cold and cruel with small fang-like teeth at the sides of the mouth. He wears a judge's or ruler's cap, but turned backward, and in his hand is a nasty pruning hook, not a scepter or miter. As he has sown, no doubt so he shall reap, for some of the trees that surround him are rooted in the soil beneath his feet where crime flourishes. Around him is a gate in ruin, but under him we see the real character of passive injustice.¹⁴ There is a theft, a rape and a murder. Two soldiers watch this scene and do nothing, and neither does the ruler. The woods, always dangerous places, are unguarded, as they are where the sort of men who prosper under passive injustice can be as violent as they please.

13. S. PFEIFFENBERGER, *THE ICONOGRAPHY OF GIOTTO'S VICES AND VIRTUES AT PADUA* (1966); see also A. KATZENELLENBOGEN, *ALLEGORIES OF THE VIRTUES AND VICES IN MEDIAEVAL ART* 65 & n.3 (1964) (describing depiction of *Injustitia* as one of 12 vices depicted in illustrated encyclopedia of 1120); E. PANOFKY, *RENAISSANCE AND RENASCENCES IN WESTERN ART* 152 & n.2 (1960) (describing Giotto's rendition of *Justice*); Smith, *Giotto: Artistic Realism, Political Realism*, 4 J. MEDIEVAL HIST. 267, 281 (1978).

14. That the Ciceronian idea of passive injustice was being discussed at the time can be seen in the writings of one of Giotto's younger contemporaries, Marsiglio of Padua. C. Naderman, *Knowledge, Justice and Duty in the Defensor Pacis: Marsiglio of Padua's Ciceronian Impulse* (unpublished paper delivered at 1988 annual meeting of American Political Science Association).

They have a cruel tyrant to govern them, but he and they deserve, indeed engender, each other. The trees around these figures are "the fruit of the flesh" and not of the spirit, as St. Paul wrote in his list of sins;¹⁵ and they are not just sown by active injustice, but by a government that passively lets it happen.

It is no comfort to us to know that *Injustice* will end in Giotto's hell, as long as we still get raped, robbed and murdered. What we have learned is what the completely unjust person is really like. At worst he is bold enough to deprive others of their dignity and life, and at the very least he simply does not care at all about what happens to them as a result of his own or anyone else's conduct.

The political point is that the unjust person is not to be treated only as violent or greedy, but as a morally deaf and dissociated citizen. He is responsible for maintaining and serving bad governments, and in daily life for allowing fraud and aggression to occur.

The unjust person, however, first and foremost may be unjust to himself. That was certainly Plato's view, because he thought that unjust people do not really understand what they are up to, do not act voluntarily and are usually so misguided that they really deserve pity. They suffer from a disordered soul and are tormented by driving desires and rages that they are unable to satisfy or to control. Irrationality, insolence, uncontrollable desires, aggressiveness and sheer stupidity are all in their way psychic diseases that make us unjust, and we do such people no favor at all if we allow them to continue to live in such a state.¹⁶

If injustice is the suppression of reason, and the rule of the lowest human qualities over the highest, then the unjust person is no less unfair to himself than to others. In the normal view, however, as Thomas Aquinas put it, justice owed to oneself is merely metaphorical.¹⁷ For does anyone really hurt oneself willingly?¹⁸ If injustice consists of voluntary acts, there must be at least two persons, an agent and a passive victim, and often a third person to decide their conflicting claims. In spite of this Aristotelian common sense, however, we are often unjust to ourselves. For example, we blame ourselves for imaginary faults and feel guilty for acts we did not, in fact, perform.

In older cultural contexts, injustice done to oneself also makes a great deal of sense. The temple robber or murderer, especially the destroyer of his own kin, is polluted, as Plato reminds us. A criminal commits a violence against himself when he pollutes himself. He has thus injured himself more seriously than anyone else, though such a man is in danger of

15. *Galatians* 5:19-21.

16. THE LAWS, *supra* note 8, bk. IV, at 716a-716b; bk. V, at 731c-731d; bk. IX, at 860d-864.

17. T. AQUINAS, 2 SUMMA THEOLOGICA, question 58, art. 2, at 1436 (Fathers of English Dominican Province trans. 1947).

18. ARISTOTLE, NICOMACHEAN ETHICS, bk. V, at 1136a-b.

contaminating those near him and of bringing the divine wrath down upon all. Not only his community but his descendants are endangered by him, for unexpiated guilt will be inherited by them.¹⁹ The unjust person must be punished and exorcised in order to purify him and the community, and punishment is his only hope of improvement, although it is also meant to teach others to avoid his crimes.²⁰ The real roots of the notion that the unjust person is mentally sick are evidently very ancient. It is only our ideas about the nature of illness that have altered.

Compared to Plato's account of the wretchedness of the unjust person, Aristotle's treatment is undramatic. The unjust person does not merely act in a fit of anger or a moment of passion; rather, he has a permanently warped character as his greed becomes habitual. The more often he performs unjust actions, moreover, the worse his whole personality becomes. The dynamic flaw that drives such a person is simple greed, a single fixed urge for more and more. Greed does it all.

Aristotle's focus on greed is problematic. Although he numbered it among the vices, Aristotle did not mention cowardice as a significant motive for unjust conduct, nor did he dwell on indolence or madness. Yet the passively unjust person, especially, might well be lazy and fear-ridden, not just greedy. Moreover, the injustice of Aristotle's greedy person is not within him, but in the external consequences of his conduct, a point not lost on Aristotle's most severe critic, Hobbes.²¹ The excess is in giving too little and taking too much of the desirable and pleasant things that are meant to be shared.²² The unjust person simply tends to grab whatever is available, without concern for anyone else. This understanding of injustice fits exactly with Aristotle's model of normal justice, which provides a remedy for such imbalance by restoring proper shares to all claimants. In fact, we all know that the unjust person is more complex than that, and also that intolerance, racism and political ideology account for as much injustice as greed.

Not the least difficulty of making greed the sole motive for injustice is that doing so seems also to indict the person who takes less than his share under the rules, someone who is not greedy enough. A very generous person is not unjust presumably because no one is injured by his conduct, and his entire character is improved by such acts.²³ Still the result of generosity is unjust in two ways. First, the consequences are unjust if someone gets less and another more than their shares, which is what defines injustice. Second, generosity scorns public justice, for a generous and magnani-

19. See W. BURKERT, *GREEK RELIGION* 75–82 (J. Raffan trans. 1985), for the obvious historical model of Plato's religious prescription in *THE LAWS*.

20. *THE LAWS*, *supra* note 8, bk. IX, at 853d–55d.

21. T. HOBBS, *DE CIVE* 45–6 (S. Lamprecht ed. 1946).

22. *THE NICOMACHEAN ETHICS*, *supra* note 18, bk. V, at 1129a–b.

23. *Id.* at bk. IV, 1120a.

mous person disdains the pursuit of normal justice and so weakens its political effectiveness. It may indeed be the mark of a noble character to refuse to chase a dollar through the courts, but it implicitly lowers the ethical prestige of the juridical order. What matters to the noble person is self-perfection, not the maintenance of a just system. To fit the normal model we should be neither too greedy nor too generous. Aristotle, I think, opted for perfection, but most of his successors settled for moral mediocrity.

All the moral and psychological inadequacies of the normal model of justice are probably due to the demands of fairness in judging. To be impartial one may not consider the unjust person as whole, but only those of her traits and acts that are relevant for deciding the case at hand. Indeed to look too deeply into the motives of those who take and get too much might lead to unfairness in judging. Greed does well enough as a surface explanation.

Moreover, if one were really to think of the unjust as Plato did, as victims of their disordered souls, one might be tempted to pity them rather than those whom they have injured. The unjust person is probably not enjoying the good life, but his victim is surely worse off than he is.

Odd as it may seem, philosophers do not find the victims of injustice as interesting as their violators. The absence of victims is not surprising in the aristocratic ethics of self-perfection, which look primarily to the ruined character of the unjust agent. The pursuit of eternal salvation may also function as a quest for self-perfection, shunting the victim of injustice aside. In St. Augustine's *The City of God* we are told that the victim of political injustice, the slave in particular, is ultimately less of a victim than her owner, because she is not exposed to nearly as many temptations. And if she bears her lot patiently, she may expect a better afterlife than her proud master.²⁴

The normal criminal usually does not resort to these arguments, but he may use one that is significant, and which he could have learned from Rousseau's heirs. He might complain that his acts of injustice were forced upon him by an unjust society that deformed and distorted his moral sensibilities and deprived him of material and moral support, so that again he is the true victim. This should not be taken as mere hypocrisy. It is only the last in a long line of arguments that represent the unjust person as a victim.

What of the real victims of injustice? Who are they? What is victimhood like? It is impossible to characterize victims. They are simply people who were in the wrong place at the wrong time in the wrong company. The unjust person has a character; the victim does not even have a lasting role. Many a victim of today will become the victimizer of

24. THE CITY OF GOD, *supra* note 4, at 694.

others tomorrow. The extent of this passivity can be seen only too clearly in the very origin of the word victim. According to the Oxford English Dictionary, the word referred to living creatures that were killed and sacrificed to some deity. Its present extended usage is quite new. And while this definitional expansiveness may well express a growing humaneness, it hardly has reduced the number of human victims among us. Most of us, moreover, enjoy a good laugh at the expense of victims. Farce is almost always funny at the expense of hapless victims. There is nothing spontaneous in a concern for victims, whether of injustice or misfortune.

The normal model has particularly severe difficulties with victims. It limits itself to matching their situation against the rules, which is inadequate as a way of recognizing them. For victimhood has an irreducibly subjective component that the normal model of justice cannot easily absorb. If I am the victim of disappointed expectations, who is to say whether I was or was not justified in holding them? Was there a rule, a custom, or an understanding, as I claim, or was there not? Who is to decide? Am I mistaken or dishonest, or am I right? Should we listen to the victims, who are weaker, given that we always are unequal in some respect, or should we attend to the apparent beneficiaries of prevailing conditions? When social circumstances or ideological change create new expectations which run counter to all previous assumptions, who is to say what rules, if any, do or do not permit a group or an individual to feel victimized? Did they make the rules in the first place? Who did and to whose benefit? If there are rules to decide such disputes, they are far from settled once a challenge is raised. And in a pluralistic society, with many shifting rules and orders in mutual conflict, it is not easy to formalize many of them in a way that would satisfy all.

Subjectivity, ethical conflict and social change are not the only difficulties in knowing who the genuine victims are. Not only do we often refuse to recognize victims, they often are not prepared to present their grievances. There must be some element of self-identification, but many people whom observers might regard as victims do not think of themselves as such. The battered wife who may neither call the police nor file a complaint is not alone in failing to be a public victim. There are more subtle reasons than fear and helplessness for such refusals, and they are often politically very important, especially in a world of many ascriptive groups.

Social discrimination is both a public and a private act, and it is really a rather simple sort of fraud. The victims are falsely accused of faults and failures, and then treated accordingly. Yet surprisingly many of them do not choose to recognize the injustice of their situation. One extreme response to this sort of injustice is simply "to identify with the aggressor" and abjectly accept his denigrations as truly deserved. Here the injured person hates herself, but she does not think that she is a victim of injustice, only the recipient of the contempt and disdain that she believes she

merits.²⁵ Far less self-destructive is the preference many women show for self-respect over injustice collecting. It has been well-noted in the survey literature that many women who are fully aware of the injustices in employment practices and in the salary rates for women in general, will nevertheless deny, in spite of evidence to the contrary, that they personally have ever been treated unjustly. There are always a dozen circumstances that make their own case exceptional. Blue-collar workers are frequently known to do the same thing. This may upset people who wonder why they do not behave in the ways Marx thought they should, but it is quite understandable. Most people hate to think of themselves as abject victims; nothing could be more degrading, after all.²⁶

Most of us would rather reorder reality than admit that we are the helpless objects of injustice. Even self-deception is far better than having to admit defeat, and the repression of outrage is often easier to bear than failure.²⁷ And there are even ways of turning victimhood to good account and transforming it into an advantage. The victims of ascriptive injustice, especially of racial and religious discrimination, may draw pride and strength from comparing themselves to their tormentors. But in truth, many more suffer in silence and even blame themselves because they prefer to believe in a "just world" in which people usually get what they deserve.²⁸ Blaming the victim is not an uncommon response, and it is not only an expression of mean-spiritedness, but also of our need to trust the social order in which we live. We repress our sense of injustice quite easily.²⁹

People who take up the cause of the victims often have no personal experience of injustice. In politics, protest is not a selfish enterprise. Ideology, not self-interest or private grievance, is the driving impulse in symbolic politics, especially. The most radical French Canadian students admitted readily that their careers and personal lives were going very well, and the people who most objected to school busing to achieve racial integration did not have children in the affected schools.³⁰ The men and women who protest most violently do not have to suffer from a personal sense of injustice. One might say that they become surrogate victims. They may, of course, be self-serving or dangerous fanatics, and we might well

25. M. DEUTSCH, *DISTRIBUTIVE JUSTICE* 46-63 (1985).

26. F. CROSBY, *RELATIVE DEPRIVATION AND WORKING WOMEN* (1982); Martin, *When Expectations and Justice Do Not Coincide: Blue-Collar Visions of a Just World*, in *JUSTICE IN SOCIAL RELATIONS* 317 (H. Bierhoff, R. Cohen, J. Greenberg eds. 1986).

27. Martin, *The Tolerance of Injustice*, in 4 J. OLSON, *RELATIVE DEPRIVATION AND SOCIAL COMPARISON: THE ONTARIO SYMPOSIUM* 217-42 (1986).

28. Dion, *Responses to Perceived Discrimination and Relative Deprivation*, in J. OLSON, *supra* note 27, at 159-79.

29. M. LERNER, *THE BELIEF IN A JUST WORLD* (1980).

30. Dube & Grimmond, *Relative Deprivation and Social Protest: The Personal-Group Issue*, in J. OLSON, *supra* note 27, at 201-16; Sears, Hensler & Speer, *Whites' Opposition to "Busing": Self-Interest or Symbolic Politics?*, 73 *AM. POL. SCI. REV.* 369 (1979).

prefer a measure of familiar injustice to the kind of government they would inflict upon us. They should remind us of how dangerous an unremitting sense of injustice can be.

No theory of either justice or injustice can be complete if it does not take account of the sense of injustice. It is, indeed, one of the failings of the normal model of justice that it does not do so. It does not give injustice its due because it does not consider the sentiments that make us cry out for revenge, and if that is denied, for justice. Too complacent, it forgets the irrationality, fear, indifference and inequality which give injustice its power. Nor is the normal model given to really investigating the character of the unjust person and his relations to his victims. Indeed its very aims prevent it from doing so. For its limitations are the cost of fairness and impartiality. The ethical ends of a theory of justice, as of justice itself, limit its intellectual range. Probity in this case acts as an inhibition on speculation, which is as it should be, even if it may invite the skeptic's scorn. Criticism is not difficult, however, and the skeptic must do better. She must really give injustice its due, and she often does.

