

THE GRAMMAR
OF JUSTICE

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With this argument I believe Mill would concur, for he consistently maintained the need for respect of differences, including different points of view, and here the difference is one relating to the two sex groups. Respect for persons in all their variety was at the heart of both his libertarianism and his ethical philosophy. However difficult they may be to understand in terms of one's own principles, people are worthy of respect: that was his repeated theme. "Man is not a machine," he wrote, and he surely did not think women are machines for sex.⁴⁷ To demean women in the way pornography is felt to do is to treat them as possessions or as servants. So in the end I think that Mill, who argued passionately for women's rights and equal worth and dignity, would find it intolerable to have his views invoked to protect pornography, as they have been.

Although the libertarian case against controls seemed clear-cut and irrefutable, appeal to atomistic ideas cannot solve such a powerfully felt moral issue. If respect for people really exists, it will appear in the way complaints of insult are handled and not only in the propositions used to rebut them. What is needed is not a vision of justice, a simple doctrinaire solution, but a carefully plotted middle way between broad and oppressive controls and reckless liberty. Such an approach will go beyond atomism and deal with injustice in a different and less theoretical way.

⁴⁷One needs only to read Mill's essay *The Subjection of Women* (Cambridge: Harvard University Press, 1970) to see a heavy irony in using his arguments to defend pornography from controls. See particularly pp. 42-44, 59.

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Why Justice Isn't an Ideal

We imagine that justice is an ideal or standard from which injustice departs. That we have such a standard seems necessary, for how else will we recognize a case of injustice when we come upon it? We need justice the way we need a pattern or standard that something can fail to fit. Though the idea is natural, I argue that it's mistaken. And from this mistake others flow, such as antinomies that have no rational solution in the face of morality's demand for one. My approach here involves looking not at the concept by itself but more broadly at its grammar, at the ways and the contexts in which justice is invoked.

I

It seems at first glance reasonable that injustice should be a violation of just rules or a just system, that injustice is a departure and goes contrary to justice, whatever it is. Justice is the prior notion, and it connects with some positive vision.¹ Thus we have

¹John Rawls, in *A Theory of Justice* (Cambridge: Harvard University Press, 1971), proposes to "derive a conception of a just basic structure, and an ideal of the person compatible with it, that can serve as a standard for appraising institutions and for guiding the overall direction of social change" (pp. 26-27). And in "Justice as Fairness," *Philosophical Review* 67 (April 1958): 178, he speaks of justice as a

the image of the scales that are originally in balance, and imbalance comes as a departure from the original equilibrium. Therefore to redress injustice we must tip the scales back into symmetry.

How do we get the tipping done? By punishing criminals, fining civil offenders, granting claims to damages, and exiling traitors. Public justice, Kant writes, "is just the principle of equality, by which the pointer of the scale of justice is made to incline no more to the one side than the other."² The language of debt and repayment goes along naturally with the image of the scales, for both images suggest returning things to some prior condition of rest, or, as Plato would say, of harmony. When that point is reached, nothing further needs to be done. The condition of justice is one of stasis: the account books are in balance and can be closed. Injustice is an upsetting of the balance, which restlessly demands adjustment, while payment restores things to the state of satisfaction and rest.

Yet notoriously the metaphor fails at just this point, that is, the return of things to their original equitable state. For when a criminal is punished—having committed rape or burglary or murder, say—things are *not* returned to their original state.³ Even though a theft is recompensed, the injury and wrong done cannot be undone; they become a permanent part of the universe, never to be erased. Thus the condition of stasis, defined as the condition in which the wrong is essentially corrected, is unattainable. The debt cannot be repaid.

"primitive moral notion." But it should be remarked that he also supports the Humean idea that justice depends on circumstances of scarcity, which suggests that it isn't so primitive after all. In the same essay Rawls also writes that justice "is not to be confused with the all-inclusive vision of a good society," and that he will focus on the usual sense of "justice in which it is essentially the elimination of arbitrary distinctions and the establishment . . . of a proper balance between competing claims" (p. 165). This definition is more negative and so closer to mine than Rawls's usual formulations. For an excellent discussion of Rawls's ambivalence on this point, see Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), pp. 169–75. The question "What is justice?" invites this way of conceiving the subject, since it points toward an answer cast in a description of some thing or state. In my view, that is to misconceive the grammar of the term.

²Immanuel Kant, *The Philosophy of Law*, trans. W. Hastie (Edinburgh: T. T. Clark, 1887), pt. 2, p. 196.

³The ineradicability of wrongs and its connection with my view of a just universe are considered in more detail in chap. 7, below.

If there were a debt it could be repaid; and scales out of balance can be brought into balance again. The problem with our reasoning here is a problem with the images we use. The images of debt and scales are unreliable guides to show us the grammar of justice, to show how that concept works. The point at which both fail is the identification of justice with a logically prior, harmonious state of affairs, a state to which theoretically we could return by redressing injustices in an appropriate way.

The view that wrong is inexpungible is defended eloquently by Fyodor Dostoyevsky in *The Brothers Karamazov*. Ivan asks young Alyosha, who plans to enter the priesthood, how there can be so much cruelty in the universe if a good God created it. Take the mistreatment of very young children; you cannot argue that they deserve what they are made to suffer, since they have had no opportunity to sin: they are innocent. Yet children are mistreated in terrible ways in every culture. How do you atone for such acts? If you suppose justice to be a state of harmony, the sufferings of these children "must be atoned for, or there can be no harmony. But how? How are you going to atone for them? Is it possible? By their being avenged? But what do I care for avenging them? What do I care for a hell for oppressors? What good can hell do, since those children have already been tortured? . . . I don't want more suffering."⁴ A state of harmony looks like a state unspoiled by wrong or perhaps one where wrong has been atoned for. But atonement may be impossible; wrong cannot be undone. Therefore, once a wrong is committed, harmony or stasis must be forever unattainable. But in that case, what can we say of achieving justice? If justice *were* the state of wrong expunged, its attainment appears to be logically impossible.

This is the puzzle we are driven to by supposing that justice is a state of harmony, an "original state," morally speaking, from which injustice digresses. That idea is what leads us to think in terms of scales and debts.

From a psychological or a social point of view, one can find support for the argument that justice is an original state in the fact that wrongdoing takes place against a background of decency.

⁴Fyodor Dostoyevsky, *The Brothers Karamazov*, trans. Constance Garnett (New York: Random House, 1950), p. 254.

Only in a setting where people normally treat one another in respectful ways do hurtful and unjust actions stand out and shock us.⁵ Injustice is then seen as diverging from these norms. I don't want to quarrel with this claim. What I contest is the idea that injustice is defined and made recognizable by some positive vision of justice, that the conception of justice is primary.

If wrong is ineradicable, then justice is a poor virtue. What might be preferable would be a state where the need for justice was absent; then the scales would be in balance, for they would be undisturbed. However, we need to look more carefully at the assumptions behind this picture.

II

Instead of fastening our attention on justice the substantive, let us examine some of the contexts where justice is invoked, that is, complaints against injustice. In the face of wrong, justice is demanded and cried out for, and with passion and intensity. "We must have justice!" and "Justice must be done!" are its expressions, and they characteristically have imperative force as well as urgency.

A demand for justice is generally a demand for action in the face of wrongdoing. It is a demand for counteraction, some kind of "corrective." The implication is plain: something must be done because to do nothing would be to accept the wrong and thus to sanction it. To tolerate the wrong is to associate oneself with it. This much is part of our everyday moral understanding.

The need to dissociate oneself from wrong pervades retributive theories of punishment, and is reflected in Kant's remark that a community that doesn't punish its offenders bears some of the guilt on its own head.⁶ But what does the demand for justice tell one to *do*? Kant and other retributivists held that what is demanded is punishment of offenders, for only in this way can the innocent

⁵Colin M. Turnbull, *The Mountain People* (New York: Simon & Schuster, 1972), portrays a tribe that has apparently lost all moral values. Among the 1k, no action in particular seems to be wrong; in a sense the whole picture seems both wrong and ungraspable.

⁶In his *Philosophy of Law*, Kant asserts that a community at the point of dissolving itself must punish any remaining offenders or take some of their guilt on itself (pt. 2, pp. 197-99).

dissociate themselves from the wrong and bring about moral restitution. But how can this account be squared with the consequence that nothing can restore the harmony? And what kind of punitive action would restore it in their eyes? We are left in the dark.

If there *were* an ideal of justice which stood as the original standard for denouncing injustice, then the demand might be understood as a demand to move as close as possible back toward the ideal. Even though only small and partial steps could be taken, the route itself would lie clear, for the ideal of justice would define both the wrong and the degree of wrong, would show whether the departure from it was greater or lesser. But, as I argue, we have reason to doubt that there is such a state or ideal. And then how are we to understand the concept of a just response to wrong?

Let us go back one step. The demand for justice appears to be a demand for action, and the necessity of acting lies somehow in the fact that inaction signifies an acceptance of the wrong, which is to say toleration of it. So part of what is demanded is that one go on record as opposing a wrong and expressing abhorrence of it.

Such expression may take a variety of forms, none of them dictated by the wrong itself. In some cultures it may involve ritual cleansing and repentance, with a public ceremony; or the wrongdoer may be publicly condemned; in others the rule will be physical incarceration and punishment. So in its form the requirement seems exceedingly loose. The commission of a wrong, by its description, does not imply that any action of a particular description will be *the* appropriate response to it.

I think that this fact has sometimes been taken to mean that justice and injustice are entirely relative, even conventional, changing from culture to culture and impossible to pin down. This inference stems, however, from an attempt to see justice either as an ideal or as mere convention, while I suggest that neither of these options is right, that in setting these alternatives we misread the way the concept works. Justice is essentially and grammatically "unwilling," as Edmond Cahn put it, "to be captured in a formula" while it remains "a word of magic evocations."⁷

⁷Edmond Cahn, *The Sense of Injustice* (New York: New York University Press, 1949), p. 12.

The inference I draw from the fact that the character of a wrong doesn't dictate the just response is that we are mistaken in expecting it to do so. We are mistaken if we understand a demand for justice as a demand to do something in particular, analogous to a demand to fix the plumbing or replace the car battery. On the contrary, I argue, expressing a demand for justice is *one appropriate response to wrong*.

If this account contains some truth, we should leave behind the idea of justice as scales being tipped into balance and think of the concept in a different way. What I propose to do now is to make this account plausible.

III

The state of things as they were before a given wrongdoing must be preferable to the state afterward. We acknowledge as much when we say that a wrong was regrettable and should never have happened. Thus by simple extension of this move to return to the state before the one when this wrong happened, we can project back to the state before that state, one in which other wrongs had not come about, and see that *that* was preferable to its successor. And so we can follow Dostoyevsky's path, and project a time when our own wrongs had not been committed or even thought of, and envision that state as preferable to the one we find ourselves in now, with many of our actions to be regretted.

Now, I think it is tempting to suppose that we can imagine a time when no wrongs at all had been committed and call that the state of justice: justice is a state in which no wrongdoing exists. Then that state, standing to the present as an infant to a corrupt old man, would function as the ideal of justice we desire and ought to strive for.

But there is something very curious about this procedure. No one would speak of young children as exemplifying *just* behavior, or of childhood as a state that is essentially just.⁸ On the contrary,

⁸This point emerges clearly from Jean Piaget's work with children, documented in *The Moral Judgment of the Child*, trans. Marjorie Gabain (New York: Macmillan, 1965), though it should be obvious anyway.

childhood is a state of innocence; considerations of justice and injustice have not entered the picture. This state of innocence is clearly preferable, to a moral accountant, to the condition of any real adult world. As Michael Sandel argues, "if the virtue of justice is measured by the morally diminished conditions that are its prerequisite, then the *absence* of these conditions . . . must embody a rival virtue of at least commensurate priority, the one that is engaged in so far as justice is not engaged."⁹ On such a view justice can't be a primitive moral notion or have a supreme priority. It is also not merely a "privative" or negative idea, signifying the lack of injustice: that role belongs to the concept of innocence.

But further, innocence cannot be used to show how we should respond to wrong. It can show wrongs in sharp outlines, like figures drawn against a clean, uncluttered background. It can lead us to assess offenders and ourselves through reflection, to regret and perhaps to reform, to shape programs to avoid wrongdoing in the future. But the state of innocence can't show us how to deal with wrongs in general because, being irrecoverable, it doesn't define anything that we can demand. Its information, you might say, is merely negative; it shows what ought not to exist and what ought not to be done, but not how to deal with what does exist and what has been done.

The image of the Fall gives such a picture of innocence: we regret its loss, but our regret doesn't show or lead us to any kind of corrective. It doesn't lead us at all, which is to say that it cannot function as a guide to action or as an ideal.

Therefore a demand for justice is not directly and internally related to a state in which injustice is absent. The concepts of justice and innocence don't grammatically mesh, not directly. But while the two concepts don't engage directly, each stands as a kind of opposite to wrongdoing. On the one hand, wrongdoing signifies the loss of some measure of innocence, as Adam's indulgence in the fruit of the tree of knowledge signifies his loss of purity. Innocence gives an idea of the degree to which our actions depart from what is morally preferable, though it doesn't even hint what to do about it. On the other hand, injustice or wrong contrasts

⁹Sandel, *Liberalism*, p. 32.

with justice, in that the latter is conceived as an antidote or corrective to wrongdoing; injustice provokes and demands that correction. Therefore one can order the concepts in a sort of logical chronology, with innocence first, followed by wrongdoing, which in turn provokes the need for a justice.¹⁰ On this view, justice comes into our vocabulary last. And this is my thesis, that justice is not an original notion from which injustice is derived but vice versa, and this fact is what makes it so difficult to say what justice is. J. R. Lucas puts the matter neatly: "It is only when somebody's rights and interests are in jeopardy . . . that issues of justice arise. . . . Injustice wears the trousers. And therefore we should . . . adopt a negative approach, discovering what justice is by considering on what occasions we protest at injustice or unfairness." As a positive virtue, he continues, justice appears "flat, without depth or dynamic vigour"; it is a "cold virtue." "But injustice is something we soon get steamed up about."¹¹

The ambiguity in the demand for justice helps to explain why efforts to correct wrong may lead to further puzzles and even further injustice. The equation is tenuous.¹² Even under the impetus of acting against injustice, are we sure there is necessarily a net gain when an effort is made to redress it, or might there even be a

¹⁰A different, nonchronological ordering is given by Schopenhauer, who holds that between good and bad there is an intermediate stage that is the "mere negation of the bad," and "this is justice" (*The World as Will and Representation*, trans. E. F. J. Payne [New York: Dover, 1966], vol. 1, par. 66). He may be thinking here that justice is not the creation of some positive good or the recapturing of the good that was destroyed or lost through wrongdoing, but is less than that, something more neutral.

¹¹J. R. Lucas, *On Justice* (London: Oxford University Press, 1980), pp. 4-5. Lucas's view differs from mine, for he thinks that by seeing how we respond to such complaints we can discover justice as a positive concept. Edmond Cahn also thinks of injustice in terms of its role as a spur to action. He writes: "Where justice is thought of in the customary manner as an ideal mode or condition, the human response will be merely contemplative, and contemplation bakes no loaves. But the response to a real or imagined instance of injustice is something quite different; it is alive with movement and warmth in the human organism" (*Sense of Injustice*, p. 13). But like Lucas, he doesn't take this response as a serious lead to the grammar of the term.

¹²Sandel observes of this peculiar "equation" that "when fraternity fades, more justice may be done, but even more may be required to restore the moral status quo" (*Liberalism*, pp. 32-33). It may be a long process.

net loss? Only when the conceptual order of justice and injustice is set straight can we understand why we find it so difficult to know how to address wrongdoing.

IV

Various kinds of evidence can be summoned to support this thesis. First, there is the fact that the word "injustice" derives from the Latin word *injuria*, meaning injury. Now it seems clear to me that an injury is not merely something negative, that the term does not signify only a lack or privation. It is not definable, that is, as a lack, with reference to a prior state of wholeness; it has its own positive characteristics.¹³ Moreover, it is very difficult to define a prior state of uninjuredness or well-being, so if the identification of an injury were dependent on such a definition, the idea of an injury would be fairly obscure. But common sense suggests that suffering an injury, such as having a broken arm, is not simply the lack of a well-defined prior condition. On the contrary, the injury stands by itself. It can be described as a positive condition and its contrary as negative. As health might be defined as the absence of sickness; and this is something like the grammatical arrangement I argue exists in the case of justice and injustice.¹⁴

Second, if we look at the mythology of ancient Greece, we discover Dikē, or Justice, in an interesting role. She is daughter to Zeus and "comes to her father when she is offended, sits down beside him, and tells him of the unjust mind of men so that they

¹³Acknowledgment needs to be made nonetheless that etymologically the prefix in- in "injustice" does signify the negation of justice, as the same prefix in "injury" signifies the negation of some state in which injury is lacking. But it is clear that that prior state in either case is extremely nebulous and hard to specify, while the "negative" states of injury and injustice are quite specifiable.

¹⁴A parallel problem arises in the relationship of illness to health—that is, it is more problematic to define health than to characterize a given state of illness. See, for instance, Leon Kass, "Regarding the End of Medicine and the Pursuit of Health," *Public Interest* 40 (Summer 1975): 11-42, and Christopher Boorse, "On the Distinction between Disease and Illness," *Philosophy and Public Affairs* 5 (1975): 49-68; both of these papers are reprinted in *Contemporary Issues in Bioethics*, ed. Tom L. Beauchamp and LeRoy Walters (Belmont, Calif.: Wadsworth, 1982).

pay the penalty."¹⁵ At her report Zeus plans his response.¹⁶ Nothing in this imagery suggests a prior pattern of justice, a positive image, which either one uses. Justice works quite differently here from the idea of a balance, for here injustices precede any divine concern, while the balance conception requires a well-defined equilibrium before one can say that a given situation departs from it. Thus in the absence of such a touchstone or standard, the claim that any situation departed from a just one would be utterly unprovable.

Again, if we think of justice as the restoration of a prior state, then that state must be definable or somehow describable and the remedy specifiable. But nothing suggests that Zeus is restoring any prior state when he acts. "Whoever offends and contrives outrages, on them the son of Kronos brings from heaven great bane, hunger and plague, an army is destroyed, the city wall collapses, or ships are lost at sea: such is the punishment of the god."¹⁷ What determines exactly what Zeus will choose to do? Nothing. In sum, the pattern of the mythological account suggests the truth of my claim, that injustice is not conceptually dependent on or defined by a prior idea of justice.

Third, in common life and speech we generally look backward at wrong when we speak about justice. We require just trials, just verdicts, just remedies, just sentences—all things that relate to wrongs already done. Moreover, we demand these things often without any agreement on what we seek or clear idea of what a just remedy would be. Thus the demand for justice may be loud and unanimous while the appropriate response is disputed. And this pattern, too, suggests that our idea of injustice may be sharp while that of its remedy remains fuzzy.

It may be reasonably protested that we do mean something by a just trial, a just verdict, and so on, in a particular case. We are not

¹⁵Walter Burkert, *Greek Religion*, trans. John Raffan (Oxford: Blackwell, 1985), p. 249.

¹⁶See the account by Hugh Lloyd-Jones in *The Justice of Zeus* (Berkeley: University of California Press, 1971). According to Aeschylus, Zeus is the champion of Dikē, following up her indications of wrongs with a plan of punishment (p. 87). This account is in agreement with Burkert's.

¹⁷Burkert, *Greek Religion*, p. 249. The inner quotation is from Hesiod's *Works and Days*.

simply railing against wrong with vague expressions of moral revulsion. It is true that we want fair trials, and that we have some criteria for such trials, and we want verdicts that are neither too harsh nor too lenient.¹⁸ We want governments to take actions that really address the issues and don't introduce new wrongs. But though we can all agree on these generalities, in particular cases we notoriously disagree about exactly what should be done. We have a need for some morally satisfying response; that is what we demand when we demand justice. But the need isn't the need to see some action under a specific description. It isn't specific, such as a craving for pineapple or artichoke, but ambiguous, such as an appetite for something new and exotic. What satisfies it—or whether anything will—may be unknown. And the demand carries with it no definition or standard to guide us.

There are just and unjust ways of dealing with wrong, and the difference is of enormous moral concern to us. I argue only that the difference doesn't have its source in an abstract ideal or absolute, that nothing dictates in concrete cases how we should go.¹⁹

Consider Plato, who is often cited as giving an ideal of justice in his *Republic*, a model of a harmonious state that is a reflection of the just soul. Harmony there is a condition of stasis; and therefore it would seem that Plato's theory is just the kind that I have argued cannot be developed. Is there a conflict here? Only if one overlooks the fact that for Plato, the natural condition of both the soul and the state is *disharmony*, which arises from within the soul and state themselves. Thus Plato tells us that the soul is like a charioteer with two horses, one manageable, the other impetuous and wild, and it is the charioteer's lifelong job to try to keep them together, driving them in coordination to the highest rational plane and

¹⁸It is interesting that Piaget, in seeking to identify children's ideas of justice, proceeds by asking them whether each of various responses to some offense is fair or unfair. It is clear that an offense sets the stage for exploring the child's idea of justice and also that the children identify unfair treatment without reference to any positive standard; see particularly *Moral Judgment of the Child*, pp. 298–99.

¹⁹A. I. Melden seems to me right in saying that just policies are frequently compromises, made when people's demands conflict; see his *Rights and Persons* (Berkeley: University of California Press, 1977), pp. 111–13. It is important to respect various concerns and not insist on absolute standards; this argument concurs with my own. If justice were an ideal, it would not be subject to compromise.

harmony. Imbalance and stress and conflict are built into this image of justice, which is anything but stable. In the state, too, Plato doesn't dictate exactly what laws the philosopher-king should lay down; he appears to be willing to leave the shape of just government to a wise man to work out, piecemeal perhaps. So although Plato speaks of justice as a form, and of the philosopher-king as someone who knows that form, his image of the government and its policies is much less tidy and less suggestive of an absolute than we sometimes think.²⁰

In Greek tragedy, to cite a last group of sources, it's evident that injustice begins talk about justice and provides the background for it. The gods don't sit and debate the abstract nature of justice. But given a real situation—the misbehavior of a guest to his host in the saga of Oedipus, the killing of a sacred deer in *Iphigenia in Aulis*—then the question of response becomes pressing. Think of Antigone, who finds it necessary to do something in response to Creon's order that Polynices not be buried, who takes an action destined to be futile, takes it despite the counsel of the chorus to "be reasonable." However wrong Creon's order was, the chorus insists, no good can come of resisting it. But neither this advice nor the inevitable futility of her action diminishes Antigone's need to oppose Creon. She consults no ideal but only her sense of injustice.²¹

Or consider the fate of Iphigenia, determined by Artemis' indignation together with Agamemnon's intractable ambition. No one

²⁰In bk. VII of the *Republic* Socrates reminds Glaucon that "the law . . . is trying to produce [happiness] in the city as a whole, harmonizing and adapting the citizens to one another by persuasion and compulsion, and requiring them to impart to one another any benefit which they are severally able to bestow upon the community, and that it itself creates such men in the state . . . with a view to using them for the binding together of the commonwealth" (Plato, *Republic*, trans. Paul Shorey, in *The Collected Dialogues of Plato*, ed. Edith Hamilton and Hamilton Cairns [Princeton: Princeton University Press, 1961], 519c–520a). Here he leaves the ruler plenty of latitude to decide how he will actually govern. He doesn't specify what laws should be laid down, or how the ruler should be guided in day-to-day problems—except that he should be guided by whatever disharmony exists. I owe to Caitlin Croughan the original and interesting suggestion that in the end Plato's theory does not depend on an ideal of justice, despite its connection with the theory of forms.

²¹She is of course guided by the religious demands regarding preparation of the dead for the afterlife and her duty to her brother; but it is clear that she has no general idea of the perfectly just state or a citizen's role in it.

would suggest that the oracle's demand is formed after an ideal of justice. Who would argue that forcing Agamemnon to sacrifice his youngest and favorite daughter is the right and just response for Artemis to make? Or who would argue that once Iphigenia is sacrificed, some recognizable state of justice is restored? The goddess's action isn't derivable from a pattern, the pattern of a just state of things. Even in the shadow of a demand for justice, then, the just response is undetermined, and not only for humans, who notoriously disagree, but for the gods as well.

V

We have the clear conviction that some actions are just and others unjust. It is generally thought unjust, for example, to turn a violent criminal back to mingle with other citizens. How do we arrive at such conclusions if we have no standard? The question is treacherous, for it leads back toward the assumption that justice must be some kind of ideal. What measure, what method *do* we use to determine what is just? Whatever it is, one wants to argue, let us call *it* our idea of justice. But the question is wrong because it implies that we do consult some measure or standard. It is true that we talk as if we did, talk about an eye for an eye sometimes as if it were a usable rule, and of just deserts as if we had an unequivocal standard to measure the justice of deserts. That's the reasoning behind the *jus talionis*—the right to give back an injury similar to one inflicted.

But when we come to decide what to do in particular cases, matters aren't this simple. We disagree about what is deserved and decline to give equal injury for injury done.²² Then how do we decide on a just and fair response to wrongdoing? The same way we decide on other courses of public action and moral response; that is, by taking many factors into account and forging a response that tries to balance them. Which is to say, the question has no theoretical answer.

The temptation persists all the same to say that justice must be

²²Chap. 7, below, discusses the dialectic of wrongdoing and punishment.

some kind of thing, even if it isn't an ideal or abstract form. Thus Edmond Cahn, after acknowledging the primacy of injustice, holds that justice is "the active process of remedying or preventing what would arouse the sense of injustice."²³ But this characterization is inadequate: if one said that some euphoriant or sedative would take care of the feelings of injustice, this solution would be thought spurious. What is wanted is a "process of remedying or preventing" that relates to the wrong. But now the original question has been displaced by another: What active process, if any, will appropriately prevent the sense of injustice from being aroused? The remedy needs to address the injustice and not only the sense or feelings aroused in us. Therefore while it rightly leaves behind an ideal of justice, this characterization makes justice into a different substantive, which in turn needs to be characterized.

I propose then that a demand for justice is not a demand for anything specific, not even for a process. It is unlike a demand for price controls or for higher educational quality, which specify definite and definable results. A demand for justice implies no such goal.²⁴

But although it isn't a demand for action under a particular description, it also isn't trivial or expendable; it ranks high among our moral concerns. Dworkin says that "the single most important social practice we have [is] the practice of worrying about what justice really is." But such a statement is ambiguous: does it imply that the question has an answer that can eventually be found, or does it mean that the importance of the practice lies in the search rather than in any specific end? For it is true that the search for justice forces us to raise deep questions about our institutions and customs and values. And the search is never finished; to quote

²³Cahn, *Sense of Injustice*, pp. 14-15.

²⁴A rough parallel to this situation seems to exist in the concept of peace. Muriel Rukeyser remarks perceptively that "if we look for the definitions of peace, we will find, in history, that they are very few. The treaties never define the peace they bargain for: their premise is only the lack of war" (*The Life of Poetry* [New York: A. A. Wyn, 1949], p. 222). Thus she seems to be saying that peace is often treated as a "privative" concept, as the absence of its opposite. However, she does not concede that this is the logic of the concept, but challenges us to give it a positive content: "not the lack of war, but a drive toward unity," a creative effort, "fierce and positive," toward "completeness" (pp. 229, 227).

Dworkin again, "justice is our critic, not our mirror."²⁵ Justice's relations to our demands and questions and unending dissatisfaction are among its grammatical features.

Although injustice cannot be defined by a form of justice, one positive fact about it is prominent. In the face of wrongdoing it is mandatory to express moral objection. Outrage is required of any person of moral dimension, anyone expecting respect as a member of the moral community, for silence and complacency in the face of wrongdoing are themselves a kind of moral offense. Thus the capacity for righteous indignation is intimately related to a person's moral substance.²⁶ This is to say that there is no room for moral neutrality in the presence of wrong, for neutrality signifies a toleration of wrong. It is for this reason that Kant concludes that even a society on the point of dissolution must punish its last offender; otherwise the members risk condoning and thus "participating" in the offense.²⁷

People must dissociate themselves from an offense. But if their response is not guided by the offense itself and if we have no model of justice to guide us, then in some cases all options may be flawed; there the demand may lead to nothing. Where no action is satisfactory, the protest lies useless, ineffectual, in the air. And then what is the point of demanding? It's easy to complain, to demand, one may say; *doing* is what is essential. That is why injustice wears the trousers, as Lucas put it. Thus my argument, in attaching moral value to the demand itself, may be seen as handmaiden to inaction, and inaction may be seen as toleration of injustice in the end.

When an appropriate course of action is clear and is not taken, an expression of abhorrence at the wrong and a demand for justice do

²⁵Ronald Dworkin, "What Justice Isn't," in *A Matter of Principle* (Cambridge: Harvard University Press, 1985), p. 219.

²⁶Werner Jaeger reports that Greek thinkers and the peripatetics in particular held the capacity for moral indignation to be essential to morality; Aristotle proves the connection in Fragment 80, according to Jaeger; see his *Paideia: The Ideals of Greek Culture* (New York: Oxford University Press, 1945), 1:124. The role of moral indignation in punishment is discussed in chaps. 7 and 8, below.

²⁷Kant, *Philosophy of Law*, pt. 2, p. 198. The case of Kitty Genovese, who was repeatedly attacked and eventually killed while more than thirty neighbors watched from their windows and did nothing, is a good example of a situation that calls for action; we even want laws to *make* such bystanders do something. Their passivity itself signifies a kind of misdeed.

not absolve one of the charge of tolerating wrong. But in the case of many social and individual wrongs, no such course of action may be open. The injustice may be of such a complex kind, or the means of redressing it so meager, that we can do no more than protest. The assumption that every wrong must have some appropriate just response is made of the same stuff as the assumption that justice must be an ideal. We think it must be so; we are unwilling to see that it isn't. In the case of many awful injustices—child abuse, for instance—it is notoriously difficult to see what we can do practically and morally without creating another wrong. My conclusion is that we are inclined to think that a sense of justice can inform our actions in a way that moral experience shows it cannot.

When we look at justice through the demand for justice, we get a picture of how the concept works. We see it in action, as it were, performing its function. This approach is like Wittgenstein's when he tells us that it is part of the grammar of the word "chair" that *this* is what it means to sit on a chair.²⁸ How (one wants to protest) can sitting on a chair—a certain kind of performance—be part of the grammar of the substantive "chair"? Surely the grammar of "chair" needs to represent it as a thing; and a thing can be used in one way or in others, or not used at all, and remain unaffected throughout. But Wittgenstein admonishes us not only to look at a noun as if it showed us the metaphysical status of what it means. Rather we need to think of the way the word is woven into grammatical patterns—orders, questions, protests, expressions of our states—and these patterns integrated into our lives. When we have seen how it works, understood its grammar, we will have grasped its meaning.

The lives into which the language is woven are, furthermore, the lives of creatures with certain tendencies, feelings, affinities, capabilities, physical requirements, and so on. In terms of the lives of such creatures patterns of grammar have their place, and in terms of these patterns the elements (nouns, verbs, etc.) take on their sense. So when we consider the kind of meaning "pain" has, for example (is it private? do we really know about the pains of

others?), we need to look at the grammatical patterns of pain's expression. These expressions include some that are merely cries or moans, sounds such as humans naturally make. Then we need to see how these expressions and verbal patterns fit into the lives of creatures like us—creatures who can both speak and cry, ask for help, express gratitude and relief, and so on. Following this route, we will begin to see the large and complex grammatical picture of which this noun forms a part, and then we can stop focusing on the pain, as if it were an elusive object that we need only put our finger on.

In a similar way, a focus on justice as a substantive gets us deeper and deeper in trouble. What is it if *not* an ideal? We try to keep our gaze fixed on it while we try to understand it. But to ask the question in this way is to overlook the fact that a demand for justice is a response to wrong, and is of a piece with expressing abhorrence at wrong. Such forms of expression are primary facts of morality. They express a person's ethical stance, one's standards and awareness of commitments. But more, they often express these things in a way that shows them to be passionately held and profoundly important.

VI

Think of the matter in this way. Imagine a person who uttered judgments of moral condemnation and praise in the same tone of voice as one says such things as "It's half past two" and "Today's Wednesday." This person says, for instance, "That was a frightful thing to do" or "He's a vicious man" or "What an unjust law" in the same unexpressive voice as one says that the dog has been fed. Surely we would find this difficult to understand; and if someone always spoke of such things unemphatically, we would wonder if he or she really understood them. How can one *not* feel offended at this misdeed, how can one speak so calmly? Is the speaker without any moral sensibilities, calloused? But then why use these sentences at all?

Consider this hypothesis: Perhaps the speaker does feel strongly but in general doesn't give expression to personal feelings. Thus

²⁸Ludwig Wittgenstein, *The Blue and Brown Books* (New York: Harper & Row, 1958), p. 24.

the powerful feelings felt regarding this injustice are hidden.²⁹ The problem with this hypothesis is that it has no support in the circumstances. There is nothing for imagination to get a grip on. Thus the more reasonable alternative is to say that the speaker simply has no feeling about the wrong. But then, what do the utterances mean? Are they hypocritical? What would such a person do, where is the motivation to act? The whole picture of protestations without the feelings that go with them is incoherent.

This example helps to show that the language of condemnation and of praise is an emphatic language, a language of feeling; and powerful expressions of feelings of abhorrence and contempt, admiration and awe, belong to its grammar. If the feelings are subtracted, the authentic meaning is gone. Thus moral condemnation belongs with something besides an objective set of circumstances and requires the involvement of the speaker: a person must *feel* the wrong and be motivated by it to take action if something can be done.³⁰

Consider the same issue from another side. Imagine a child brought up by parents who never showed moral shock or revulsion at the actions of others, no matter how awful the wrong. What notion of morality would that child acquire? He never sees repugnance conjoined with the statements "That's terrible," "It was a frightful thing to do," and the like. In this situation it is hard to think that the child would have any idea of morality at all, for

²⁹This assumption reminds one of Wittgenstein's challenge to imagine that all the people one sees before one are in terrible pain.

³⁰Cahn describes the sense of injustice as denoting "that sympathetic reaction of outrage, horror, shock, resentment, and anger, those affections of the viscera and abnormal secretions of the adrenals that prepare the human animal to resist attack." It involves a fundamental response of our species, he says: "the human animal is predisposed to fight injustice." He relates the sense of injustice to atomism: "The individual man stands at the center of all things, bound by the perspective predicament to his own brief time and narrow place. The sense of injustice gives him a lengthening tether so that he may wander away from self and its setting" (*Sense of Injustice*, pp. 24-25). The sense of injustice broadens a person's horizons by showing the wrongs done to others as attacks on himself; this perspective in turn readies the organism for action. Whether this sociobiological account is right is not important for my argument; however, a sense of injustice does seem to involve people with one another's situations and thus violates the conditions of atomism. But which comes first, the feeling or the larger framework, is also not my concern here. See chap. 9, below.

what has been left out—the involvement of the parents—is what conveys the force of condemnations. Even though the child had learned the sentences and knew when to use them in the sense of knowing the objective situations to which they were appropriate, something crucial is missing from his understanding.

The element of passion is an important aspect of the picture of most moral concepts, I believe, of concepts of praise and admiration as well as of the concept of wrongdoing. Others have proposed this idea, prominently Hume, who held that only some felt response could give moral praise or condemnation its force. And force here means motivation to act; how without feeling something could we be moved to do anything about someone else's wrong?

But the place of justice in Hume's theory is limited. It is a secondary virtue, he argues. "Let us suppose that nature has bestowed on the human race such profuse *abundance* of all *external* conveniences, that, without any care or industry on our part, every individual finds himself fully provided with whatever his most voracious appetites can want." If we make this supposition, we will see that "every other social virtue would flourish . . . but the cautious, jealous virtue of justice would never once have been dreamed of. For what purpose make a partition of goods, where everyone has more than enough? Why give rise to property, where there cannot possibly be any injury? . . . Justice, in that case, being totally useless, would be an idle ceremonial, and could never possibly have place in the catalogue of virtues." Hume's point is that justice is grounded in social utility and would not otherwise exist, neither the virtue nor the moral sentiment that relates to it. The sense of justice isn't a "simple original instinct" but is derived from injustice and disorder. The role of justice depends on our natures and our problems. "What need of positive law where natural justice is, of itself, a sufficient restraint? Why create magistrates, where there never arises any disorder or iniquity?"³¹ It is Hume's view that human nature—those of our tendencies that threaten the

³¹David Hume, *Enquiry Concerning the Principles of Morals*, ed. L. A. Selby-Bigge (London: Oxford University Press, 1951), pp. 183-84, 202-3, 205. Rawls also speaks as if without scarcity justice would not arise or be the important value that it is (*Theory of Justice*, p. 128).

interests of the community and of our fellow citizens—establishes the need for justice.

Justice for Hume is not an original passion like benevolence, which needs no ground. It can be imagined not to exist, that is, in a society in which there is no wrongdoing or injustice. Despite its derivativeness, however, justice remains a passion of some kind. Hume's account comes very close to mine, in which justice is also associated with a passion, one whose role is to point to a corrective response to wrong. So if there were no injustice to worry us, we would have no reason to speak of justice.³² Unlike Hume, however, I don't view this qualification as a serious challenge to the final importance of justice.

VII

Taking abhorrence of wrong—of injustice and wrongdoing—as a basic moral phenomenon helps us to understand other facts of moral theory. For one thing, it helps explain why so much of morality deals with what one *ought not* to do, proscriptions, rather than recommendations what to *do*. If it is abhorrent to do wrong, no wonder that as children we are first of all told to avoid doing certain things. We learn "You shall not do this abhorrent, objectionable thing, whatever else you do."

Second, this account explains why guilt is so central to moral life. If a wrong thing is abhorrent, then when *we* do wrong we find our own actions abhorrent. We may even abhor ourselves for doing them.³³ A good thing that we have failed to do has no power over us to compare with that of a wrong thing that we have

³²Hume's view diverges from mine in his idea that social utility must be the "sole origin" of justice. My argument stops with the conclusion that the concept of justice is understandable against a background of injustice. Whether something socially useful can be done in its name is for me a separate matter, while for Hume a call for justice would seem to be a demand for something that is in fact socially useful. Despite this difference, it seems to me that his view, seen in the light of the primacy of injustice and wrong, is both attractive and nearly right.

³³John Rawls remarks that while feelings of guilt are essential to our humanity, "the moral feelings are admittedly unpleasant" ("The Sense of Justice," *Philosophical Review* 72 [1963]: 299).

done. Without this powerful feeling and its threat, what would our moral existence be like? It is unimaginable.

If the central concepts of our moral language—wrong, injustice, ought not—are negative rather than positive, then the philosophical treatment of morality ought to represent the importance of these negative ideas to us and show us how they function in our lives and what their connection is to action, not focus so much on the positive terms—right, good, virtue, justice—as writers generally do. Such an account would show us the importance of avoiding certain actions, and would show as a consequence that the "moral person" is often not a person notable for heroic or outstanding actions, but one who satisfies his responsibilities conscientiously, perhaps without imagination. We might not call such a person admirable; being moral and being admirable are not the same. We may find such a one dull and straitlaced, tiresome to be around, but his avoidance of wrongdoing is nonetheless an important moral qualification.

The man of virtue, in contrast, often acts in nonstandard, non-prescribable ways. He takes chances in regard to the way things will turn out and the way they will look to others; he is driven by something more than the avoidance of wrong. The virtue of such a man may indeed not be appreciated by observers until much later; that, too, is a chance he takes. His path is not marked out in advance, nor are the reactions of others to his direction. The distinctiveness of such a man and the distinctiveness of his actions may sometimes make him a tragic hero; the risk is a grave one.

In a similar way, I suggest, justice is not prescribable or something with a given form, but a creature of our effort, imagination, and demand. We craft responses to wrong, our purpose being not to satisfy some preconceived picture of justice but to address the snares of injustice.

VIII

In summary, the argument has been that we are mistaken in looking for a positive conception of justice that gives meaning to our talk about it—a pattern or model, an ideal from which

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injustice is a departure. Justice comes into our speech on the occasion of some injustice or wrong, which brings us to demand it. Justice appears then as an indefinite corrective to injustice rather than something definable in its own right. But how do we know what the corrective to an injustice is, or whether there always is one? We don't know and there may not be. In that case we cannot do any particularly just thing, but we are left with our expressions of abhorrence, moral objection, indignation.

I propose that the abhorrence of wrong is a primary and central notion for morals, but it does not imply that there is any correlative just response. The expression itself is part of what is required; it is a crucial aspect of morality, not an ineffectual show of feeling.

What remains for us to consider is how this "subjective" center of morality is consistent with a nonsubjectivist account of right and justice.