Lecture #21: Aristotle
Nicomachean Ethics

3. Justice

V.1: The Ambiguity of “Justice”
• “Both the lawless (παράνομος) man and the grasping (πλεονέκτης) and unfair (ἀνισός) man are thought to be unjust, so that evidently both the law-abiding (νόμιμος) and the fair (ἴσος) man will be just. The just, then, is the lawful and the fair; the unjust the unlawful and the unfair.”
– πλεονέξια (pleonexy), from πλείων (more) + ἔχειν (to have)
– ἴσος can refer either to equality or fairness

Law-abidingness as “general justice”
• presuming good laws …
  – any violation of the laws would be unjust (ἄδικος)
  • not only
    – stealing your neighbor’s property (Minnesota Statute 609.52)
  • but also
    – committing adultery (Minnesota Statute 609.36)
    – casting away one’s arms in the presence of the enemy (Art. 99, UCMJ)

V.2: Two measures of justice
• Justice could be measured by the law
  – presuming a generally just system of laws
  – perhaps this is what the judge should do
• Or it could be measured by a sense of fairness
  – something that price-gougers lack (see Sandel, ch. 1)
    • price-gougers suffer from πλεονέξια (“graspingness”)
    • there is a lack of equality between what they charge and the value they give for that price

A narrower sense of justice
• Theft and the like are unjust because they are greedy and unfair
• The following could also be called acting unjustly (ἀδίκει)
  – throwing away one’s weapons in the face of the enemy
    • but this is not really greedy or unfair (destructive of equality)
  • it’s cowardly
    – committing adultery
      • this might be a case of greed (if it’s done for money)
      • but in the ordinary case, it is a case of lust (lack of “temperance”)
  • “there is more than one kind of justice,
    • there is one which is distinct from virtue entire;
      – we must try to grasp its genus and differentia.”

Kinds of Particular Justice
• (1) that which is manifested in distributions of honor or money or the other things that fall to be divided among those who have a share in the constitution [=distributive justice]
  – (for in these it is possible for one man to have a share either unequal or equal (ἴσον) to that of another),
• (2) that which plays a rectifying part in transactions between man and man.
  – (2a) voluntary transactions [=justice in commerce]
    • i.e., transactions, the origin of which is voluntary
      • e.g., sale, purchase, loan for consumption, pledging, loan for use, depositing, letting
  – (2b) involuntary transactions [=retributive justice; justice in punishment]
    • either clandestine, such as theft, adultery, poisoning, procuring, enticement of slaves, assassination, false witness,
    • or violent, such as assault, imprisonment, murder, robbery with violence, mutilation, abuse, insult
Distributive Justice

- The central distributive problems of community life
  - providing goods
    - fair ("equal") distribution of those that must be distributed by the community
    - some require centralized distribution
    - some may permit centralized distribution
  - fair mechanisms for others
    - this leaves room for markets & other free-choice mechanisms
    - & may need to be limited (some goods being kept off the market)
  - paying for goods (contributive justice)
    - fair distribution of the costs of whatever must be distributed

Who counts as equal?
- Everyone?
- All who equally need the good being distributed?
- All who equally deserve the good?

The criterion to be used depends on the nature (or social meaning) of the object.
- See
  - Michael Walzer, *Spheres of Justice: A Defense of Pluralism & Equality*

Proportionality (not Simple Equality) in Distributive Justice

- Treating equals equally & unequals unequally
- "The just, then, is a species of the proportionate…. For proportion is equality of ratios, .... The just involves at least four terms, and the ratio between one pair is the same as that between the other pair; for there is a similar distinction between the persons and between the things."
  - So

\[
\frac{\text{Person}_1}{\text{Share}_1} = \frac{\text{Person}_2}{\text{Share}_2} \quad \text{or} \quad \frac{\text{Person}_1}{\text{Share}_1} = \frac{\text{Person}_2}{\text{Share}_2}
\]

Distributive Justice as a Mean

- Being just means ...
  - Giving each his due
  - Shares of benefit or burden in accordance with the proportions mentioned in the previous slide
- Being unjust can be done by going to either of two extremes:

<table>
<thead>
<tr>
<th>Extreme 1</th>
<th>Mean</th>
<th>Extreme 2</th>
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</thead>
<tbody>
<tr>
<td>Favoritism, or Respect of Persons</td>
<td>Justice</td>
<td>Cheating Someone, or Invidious Discrimination</td>
</tr>
<tr>
<td>(=too much benefit or too little burden)</td>
<td>(=giving each his due)</td>
<td>(=too much burden or too little benefit)</td>
</tr>
</tbody>
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Justice in Punishment

Criminal Justice

- "Therefore, this kind of injustice being an inequality, the judge tries to equalize it:
  - for in the case also in which one has received and the other has inflicted a wound, or one has slain and the other been slain,
    - the suffering and the action have been unequally distributed;
  - but the judge tries to equalize by means of the penalty,
    - taking away from the gain of the assailant."—Aristotle
- Application
  - Property Crimes
    - the easy case for restitution
    - but is restitution of the stolen goods sufficient for punishment?
  - Crimes of Violence against other persons
    - a harder case from the start
    - one can take away the criminal’s gain
    - but one can’t undo the wound inflicted
Criminal Justice &
Aristotle’s Equalization Model

- Complete equalization is impossible
  - One cannot bring the dead back to life
- But one can equalize partially
  - The criminal not only takes goods (as in the case of theft, &c.) but creates insecurity.
  - So, the criminal must not only restore the goods taken (if possible, though sometimes it is not), but do what he can (or suffer what he must) to restore the loss of security.
- For details, see Bentham
- “One [account of the idea of penal desert offered by the ‘new retributivism’] was that criminals gained by their crimes an unfair advantage over the law-abiding, since they accepted the benefits of the law-abiding self-restraint of others, but evaded that burden of self-restraint themselves: their punishment removed that unfair advantage, thus restoring the fair balance of benefits & burdens which the law should preserve.”—R.A. Duff, “Punishment” in Routledge Encyclopedia of Philosophy, who objects that this account is not fully adequate to crimes of violence

Criminal Justice as a Mean

- The extremes
  - Draconian severity
    - “It is said that Draco [traditional law-giver of Athens, c. 620 BC], when asked why he had fixed the punishment of death for most offences, answered that he considered these lesser crimes to deserve it, and he had no greater punishment for more important ones.”—Plutarch
  - laxity
    - Letting criminals off too lightly
- The mean
  - the lex talionis (“An eye for an eye, &c.”), properly understood—The point of this law (at least in the Pentateuch) was to set an upper limit on punishment, not to mandate a certain level of severity.

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