

6. Justice, Desert and Utility

JOHN STUART MILL

John Stuart Mill (1806–1873), one of the most important British philosophers of the nineteenth century, was born in London and educated by his father, James Mill, a first-rate philosopher in his own right, learning Greek at the age of three and Latin at the age of eight. By the time he was fourteen, he had received a thorough classic education at home. He began work as a clerk for the East India Company at the age of seventeen and eventually became a director of the company. Influenced by the work of Jeremy Bentham (1748–1832), Mill embraced utilitarianism and ardently worked for social reform. When he was twenty-five, Mill became close friends with Harriet Taylor, a married woman, which relationship, though reportedly Platonic, caused a scandal. After her husband died, they were married in 1851. She exercised an enormous influence on his philosophical work, especially on his social political thought, which Mill acknowledged as a joint venture.

Mill was a prolific writer. His *System of Logic* (1848) is one of the most original works on inductive logic ever written. His *On Liberty* (1859) is recognized as a classic work in political philosophy, and his *Utilitarianism* (1861), from which the present selection is taken, is recognized as the classic work in nineteenth-century utilitarianism.

The problem Mill addresses in this selection is that of the relationship between justice and utility. No greater objection to utilitarianism has ever been launched than the criticism that it violates the principle of justice. Mill argues that, far from being opposed to justice, justice is really a handmaiden of utility. He characterizes justice as the moral principle that commands us to give to everyone his or her due, what a person deserves: "we should treat all equally well . . . who have deserved equally well of us, and . . . society should treat all equally well who have deserved equally well of it. . . . This is the highest abstract standard of social and distributive justice." But, Mill argues, this principle itself rests on a deeper principle, that of Utility, from which justice as desert is derived.

IN ALL ages of speculation, one of the strongest obstacles to the reception of the doctrine that Utility or Happiness is the criterion of right and wrong, has been drawn from the idea of justice. The powerful sentiment, and apparently clear perception, which that word recalls with a rapidity and certainty resembling an instinct, have seemed to the majority of thinkers to point to an inherent quality in

things; to show that the just must have an existence in Nature as something absolute, generically distinct from every variety of the Expedient, and, in idea, opposed to it, though (as is commonly acknowledged) never, in the long run, disjoined from it in fact.

To throw light upon this question, it is necessary to attempt to ascertain what is the distinguishing character of justice, or of injus-

tice: what is the quality, or whether there is any quality, attributed in common to all modes of conduct designated as unjust (for justice, like many other moral attributes, is best defined by its opposite), and distinguishing them from such modes of conduct as are disapproved, but without having that particular epithet of disapprobation applied to them. If in everything which men are accustomed to characterize as just or unjust, some one common attribute or collection of attributes is always present, we may judge whether this particular attribute or combination of attributes would be capable of gathering round it a sentiment of that peculiar character and intensity by virtue of the general laws of our emotional constitution, or whether the sentiment is inexplicable, and requires to be regarded as a special provision of Nature. . . .

To find the common attributes of a variety of objects, it is necessary to begin by surveying the objects themselves in the concrete. Let us therefore advert successively to the various modes of action, and arrangements of human affairs, which are classed, by universal or widely spread opinion, as Just or as Unjust. The things well known to excite the sentiments associated with those names are of a very multifarious character. I shall pass them rapidly in review, without studying any particular arrangement.

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

But also, Secondly; the legal rights of which he is deprived, may be rights which ought not to have belonged to him; in other words, the law which confers on him these

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

Thirdly, it is universally considered just that each person should obtain that (whether good or evil) which he deserves; and unjust that he should obtain a good, or be made to undergo

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

► Mill discusses the etymological origins of the notion of justice and argues that it can be properly seen as a part of utility. He develops this last point in what follows.

Is, then, the difference between the Just and the Expedient a merely imaginary distinction? Have mankind been under a delusion in thinking that justice is a more sacred thing than policy, and that the latter ought only to be listened to after the former has been satisfied? By no means. The exposition we have given of the nature and origin of the sentiment, recognizes a real distinction; and no one of those who profess the most sublime contempt for the consequences of actions as an element in their morality, attaches more importance to the distinction than I do.

While I dispute the pretensions of any theory which sets up an imaginary standard of justice not grounded on utility, I account the justice which is grounded on utility to be the chief part, and incomparably the most sacred and binding part, of all morality. Justice is a name for certain classes of moral rules, which concern the essentials of human well-being more nearly, and are therefore of more absolute obligation, than any other rules for the guidance of life; and the notion which we have found to be of the essence of the idea of justice, that of a right residing in an individual implies and testifies to this more binding obligation.

The moral rules which forbid mankind to

hurt one another (in which we must never forget to include wrongful interference with each other's freedom) are more vital to human well-being than any maxims, however important, which only point out the best mode of managing some department of human affairs. They have also the peculiarity, that they are the main element in determining the whole of the social feelings of mankind. It is their observance which alone preserves peace among human beings: if obedience to them were not the rule, and disobedience the exception, every one would see in every one else an enemy, against whom he must be perpetually guarding himself. What is hardly less important, these are the precepts which mankind have the strongest and the most direct inducements for impressing upon one another. By merely giving to each other prudential instruction or exhortation, they may gain, or think they gain, nothing: in inculcating on each other the duty of positive beneficence they have an unmistakable interest, but far less in degree: a person may possibly not need the benefits of others; but he always needs that they should not do him hurt. Thus the moralities which protect every individual from being harmed by others, either directly or by being hindered in his freedom of pursuing his own good, are at once those which he himself has most at heart, and those which he has the strongest interest in publishing and enforcing by word and deed. It is by a person's observance of these that his fitness to exist as one of the fellowship of human beings is tested and decided; for on that depends his being a nuisance or not to those with whom he is in contact.

Now it is these moralities primarily which compose the obligations of justice. The most marked cases of injustice, and those which give the tone to the feeling of repugnance which characterizes the sentiment, are acts of wrongful aggression, or wrongful exercise of power over some one; the next are those which consist in wrongfully withholding from him something which is his due; in both cases, inflicting on him a positive hurt, either in the form of direct suffering, or of the privation of some good which he had reasonable ground,

either of a physical or of a social kind, for counting upon.

The same powerful motives which command the observance of these primary moralities, enjoin the punishment of those who violate them; and as the impulses of self-defence, of defence of others, and of vengeance, are all called forth against such persons, retribution, or evil for evil, becomes closely connected with the sentiment of justice, and is universally included in the idea. Good for good is also one of the dictates of justice; and this, though its social utility is evident, and though it carries with it a natural human feeling, has not at first sight that obvious connection with hurt or injury, which, existing in the most elementary cases of just and unjust, is the source of the characteristic intensity of the sentiment. But the connection, though less obvious, is not less real.

He who accepts benefits, and denies a return of them when needed, inflicts a real hurt, by disappointing one of the most natural and reasonable of expectations, and one which he must at least tacitly have encouraged, otherwise the benefits would seldom have been conferred. The important rank, among human evils and wrongs, of the disappointment of expectation, is shown in the fact that it constitutes the principle criminality of two such highly immoral acts as a breach of friendship and a breach of promise. Few hurts which human beings can sustain are greater, and none wound more, than when that on which they habitually and with full assurance relied, fails them in the hour of need; and few wrongs are greater than this mere withholding of good; none excite more resentment, either in the person suffering, or in a sympathising spectator. The principle, therefore, of giving to each what they deserve, that is, good for good as well as evil for evil, is not only included within the idea of justice as we have defined it, but is a proper object of that intensity of sentiment, which places the just, in human estimation, above the simply Expedient.

Most of the maxims of justice current in the world, and commonly appealed to in its transactions, are simply instrumental to carrying into effect the principles of justice which

we have now spoken of. That a person is only responsible for what he has done voluntarily, or could voluntarily have avoided; that it is unjust to condemn any person unheard; that the punishment ought to be proportioned to the offence, and the like, are maxims intended to prevent the just principle of evil for evil from being perverted to the infliction of evil without that justification. The greater part of these common maxims have come into use from the practice of courts of justice, which have been naturally led to a more complete recognition and elaboration than was likely to suggest itself to others, of the rules necessary to enable them to fulfil their double function, of inflicting punishment when due, and of awarding to each person his right.

That first of judicial virtues, impartiality, is an obligation of justice, partly for the reason last mentioned; as being a necessary condition of the fulfilment of the other obligations of justice. But this is not the only source of the exalted rank, among human obligations, of those maxims of equality and impartiality, which, both in popular estimation and in that of the most enlightened, are included among the precepts of justice. In one point of view, they may be considered as corollaries from the principles already laid down. If it is a duty to do to each according to his deserts, returning good for good as well as repressing evil by evil, it necessarily follows that we should treat all equally well (when no higher duty forbids) who have deserved equally well of us, and that society should treat all equally well who have deserved equally well of it, that is, who have deserved equally well absolutely. This is the highest abstract standard of social and distributive justice; towards which all institutions, and the efforts of all virtuous citizens, should be made in the utmost possible degree to converge.

But this great moral duty rests upon a still deeper foundation, being a direct emanation from the first principle of morals, and not a mere logical corollary from secondary or derivative doctrines. It is involved in the very meaning of Utility, or the Greatest Happiness Principle. That principle is a mere form of words without rational signification, unless

one person's happiness, supposed equal in degree (with the proper allowance made for kind), is counted for exactly as much as another's. Those conditions being supplied, Bentham's dictum, "everybody to count for one, nobody for more than one," might be written under the principle of utility as an explanatory commentary. The equal claim of everybody to happiness in the estimation of the moralist and the legislator, involves an equal claim to all the means of happiness, except in so far as the inevitable conditions of human life, and the general interest, in which that of every individual is included, set limits to the maxim; and those limits ought to be strictly construed. As every other maxim of justice, so this, is by no means applied or held applicable universally; on the contrary, as I have already remarked, it bends to every person's ideas of social expediency. But in whatever case it is deemed applicable at all, it is held to be the dictate of justice. All persons are deemed to have a *right* to equality of treatment, except when some recognized social expediency requires the reverse. And hence all social inequalities which have ceased to be considered expedient, assume the character not of simple inexpediency, but of injustice, and appear so tyrannical, that people are apt to wonder how they ever could have been tolerated; forgetful that they themselves perhaps tolerate other inequalities under an equally mistaken notion; of expediency, the correction of which would make that which they approve seem quite as monstrous as what they have at last learnt to condemn.

The entire history of social improvement has been a series of transitions, by which one custom or institution after another, from being a supposed primary necessity of social existence, has passed into the rank of a universally stigmatized injustice and tyranny. So it has been with the distinctions of slaves and freemen, nobles and serfs, patricians and plebeians; and so it will be, and in part already is, with the aristocracies of color, race, and sex.

It appears from what has been said, that justice is a name for certain moral requirements, which, regarded collectively, stand higher in the scale of social utility, and are

therefore of more paramount obligation, than any others; though particular cases may occur in which some other social duty is so important, as to overrule any one of the general maxims of justice. Thus, to save a life, it may not only be allowable, but a duty, to steal, or take by force, the necessary food or medicine, or to kidnap, and compel to officiate, the only qualified medical practitioner. In such cases, as we do not call anything justice which is not a virtue, we usually say, not that justice must give way to some other moral principle, but that what is just in ordinary cases is, by reason of that other principle, not just in the particular case. By this useful accommodation of language, the character of indefeasibility attributed to justice is kept up, and we are saved from the necessity of maintaining that there can be laudable injustice.

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

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

7. Justice as Desert

HENRY SIDGWICK

Henry Sidgwick (1838–1900), a British moral philosopher, developed a complex and sophisticated account of utilitarianism. He was educated at Cambridge University, where he received an appointment. However, in 1869 he resigned his appointment because of religious doubts. In 1883 he was reinstated as the University's first secular professor of philosophy. His greatest work is *Methods of Ethics*, in which he outlines three methods of ethical thinking: intuitionism, individual hedonism (egoism), and universal hedonism (utilitarianism), which he attempts to reconcile into a comprehensive system.

In the selection before us, Sidgwick analyzes the concept of justice, first examining it as Law. He rejects this as an adequate definition of justice, since some laws are unjust and we apply the concept to situations where no laws exist. Next he examines the claim that "Justice is Equality," a claim he reduces to "impartiality in the observance or enforcement of general rules allotting good and evil to individuals." But this only gives us a formal criterion—bad laws can be impartially enforced (e.g., slavery for unpopular minorities). Next, Sidgwick proposes the idea that justice consists in freedom, in allowing people to do what they want, so long as they don't infringe on the rights of others. But this individualist notion, important though it be, seems too negative and does not give us a firm basis for social construction. What is needed is a deeper ideal. Here he proposes the ideal of *gratitude*, "the natural impulse to requite benefits" (along with its opposite, *resentment*, as the impulse to requite harms), as the primitive foundation upon which a theory of justice as desert may be founded, one balanced by freedom, but, complimenting freedom, as creating obligations between members of society. Nevertheless, Sidgwick avers, this ideal suffers severe problems in institutional application.

We have seen that in delineating the outline of duty, as intuitively recognized, we have to attempt to give to common terms a definite and precise meaning. This process of definition always requires some reflection and care, and is sometimes one of considerable difficulty. But there is no case where the difficulty is greater, or the result more disputed, than when we try to define Justice.

Perhaps the first point that strikes us when we reflect upon our notion of Justice is its

connection with Law. There is no doubt that just conduct is to a great extent determined by Law, and in certain applications the two terms seem interchangeable. Thus we speak indifferently of 'Law Courts' and 'Courts of Justice,' and when a private citizen demands Justice, or his just rights, he commonly means to demand that law should be carried into effect. Still, reflection shows that we do not mean by Justice merely conformity to Law. For, first, we do not always call the violators