

# Some Beliefs About Justice



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"Masters, give unto your servants that which is just and equal."  
St. Paul, *Colossians*, 4:1.

The topic of this lecture is social justice, more specifically, distributive justice. One of the good things about this topic is that one does not have to be kind to it; one has only to be just. Having twice in the past sought to do it justice without success,<sup>1</sup> I now propose to try once more. If I fail to do it justice this time—and I am sure I shall—at least it will not be for lack of trying.

Now, as Aristotle points out, one can conceive of justice as covering the whole area of morality, of moral virtue, or at least of moral rightness; Plato, Kant, and, more recently, C. I. Lewis come close to conceiving it thus. But this seems to be distributing justice a little thin. As J. S. Mill says, we must distinguish between justice and "other obligations of morality" like "charity or beneficence."<sup>2</sup> Even if, like Lewis, we refuse to regard charity or beneficence as obligations of morality, we still cannot identify distributive justice with the whole requirement of the moral. For, as Aristotle also says, the justice we are investigating is only a part of virtue, as is shown by the fact that, if a man throws down his shield in battle, uses abusive language, refuses to assist a friend with money, or commits adultery, we accuse him, not of injustice (certainly not of distributive injustice), but of cowardice, bad temper, meanness, or profligacy.

"Well," it may be said at this point, "this is true of justice as ascribed to *individuals*; there are other things that morality requires of individuals besides justice. However, all that can be required of a *society* or *state* is that it be just—that it distribute justly what it is within its power to distribute. That is, in the case of society or the state virtue equals justice, distributive jus-

<sup>1</sup> See W. K. Frankena, "The Concept of Social Justice," in R. B. Brandt (ed.), *Social Justice* (Englewood Cliffs, N.J., 1962); W. K. Frankena, *Ethics* (Englewood Cliffs, N.J., 1963), ch. 3.

<sup>2</sup> Cf. J. S. Mill, *Utilitarianism*, Ch. V.

tice." This view has a good deal of plausibility, but it raises the problems of the relation of justice to welfare and of welfare to the state, and we cannot discuss these here. Our concern now is with the question when a society or state is distributively just, not with the question whether this is all it should be.

## I.

There is one principle of distributive justice on which there seems to be general agreement, namely, that like cases or individuals are to be dealt with in the same way or treated alike, or that similar cases are to be treated similarly. Chaim Perelman calls this the *formal* principle of justice.<sup>8</sup> Now, it does seem clear that an act of distributing is at least *prima facie* unjust if it involves treating differently, or discriminating between, individuals whose cases are similar in all important respects. If my case is substantially like yours but it is treated differently, one of us has grounds for crying that injustice has been done, as any child seems to see instinctively. In this sense, the formal principle of justice does formulate a *necessary* condition of the existence of distributive justice. For justice to exist there must be regularities or rules that are followed in the distribution of what is distributed. Yet a land may be without justice even if similar cases are always treated similarly, even if it always distributes according to rules which are known. A society may have and act without fail on rules, laws, and conventions, and yet be an epitome of injustice. It depends on what the rules and conventions are. In other words, rules, laws, and conventions may themselves be unjust or incorporate injustice. They all take the form, "Treat every case of kind X in manner Y," as is required by the formal principle, but the manner specified may in fact be an unjust way of treating things of the kind in question.

Any set of rules that may prevail in a given society is a selection from among all possible rules. They classify people in terms of certain similarities and neglect others; they also neglect certain dissimilarities. They likewise select, from among the possible ways of treating people, certain ones, and they assign these ways of treatment to the different classes they define. But human beings are alike and unlike in all sorts of respects. Not

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<sup>8</sup> *The Idea of Justice and the Problem of Argument* (London, 1963), pp. 15-16.

all of their similarities and differences are important or even relevant to the question how they are to be treated, and not just any manner of treatment may be assigned to just any class of cases. Consistency is a requirement of justice, not merely "a hobgoblin of little minds"; but it is not enough, it is not the whole of justice.

In other words, the formal principle of justice does not give us a *sufficient* condition for the existence of justice. As Perelman insists,<sup>4</sup> we must also have some *material* principles of distribution, principles that tell us something more about the content of our rules, more about the similarities and differences that are to be regarded as relevant, more about what Jesus called the measures with which we are to mete and be measured to. This is what we must look for. I shall, however, not seek to give a complete and systematic account of the material principles of justice. I shall limit my discussion almost entirely to a review of some views about the nature of the most *basic* material principle of justice, and to a defense of one of them.

It is sometimes said that, while the formal principle of justice is certain but empty, any material principle must be arbitrary and uncertain. We must choose one, if we are to have any system of justice at all, but our choice cannot have any rational basis, since equally valid reasons can be given for choosing another.<sup>5</sup> I shall not try to take this metaethical position by frontal attack, but, instead, will seek to bypass it by offering, not indeed a "proof" of any material principle of distributive justice, but what Mill calls "considerations determining the intellect to give its assent" to one view of justice and to withhold it from others.<sup>6</sup> That is, I shall simply try to give a rational case for one principle and against others. After all, as someone once said, the best way to answer a man who says there are no giraffes is to show him one. The only trouble about that is that one may be caught by a skeptical lion while looking for a giraffe, like the drunk who saw double and tried to climb the wrong tree.

## II.

### Aristotle's discussions of distributive justice in the *Ethics*

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<sup>4</sup> *Ibid.*, pp. 27-28.

<sup>5</sup> Cf. *ibid.*, p. 11. But see also pp. ix-x.

<sup>6</sup> *Op. cit.*, near end of Ch. I.

and *Politics* will serve as a useful basis for our inquiry.<sup>7</sup> Following his lead we may say that the typical case of distributive justice involves (1) at least two persons, A and B, (2) something to be distributed, P, (3) some basis of distribution, Q, and (4) a geometrical proportion or ratio such that

$$\frac{\text{A's share of P}}{\text{B's share of P}} = \frac{\text{A's share of Q}}{\text{B's share of Q}} .$$

Then a society is distributively just or has distributive justice in so far as it distributes P among its members in proportion to their shares of Q. Not all theories of distributive justice accept this model quite literally, as we shall see, but we can nevertheless use it in order to state the problems involved and the main ways in which they may be answered. Clearly, there are two questions:

- (a) What is P? That is, what is to be distributed?
- (b) What is Q? What is to be taken as the basis of distribution?

Different theories about the material principles of distributive justice give different answers to these two questions, especially to the second.

Actually, P, or what is to be distributed, may be almost anything, and will vary from context to context; but on all theories of social justice it will consist primarily of such things as offices, privileges, tasks, tax burdens, powers, goods, educational opportunities, vocational opportunities, and the conditions of happiness or of the good life. As for Q, or the basis of distribution, one might, of course, have different theories about the nature of Q depending on what P is; for example, if it is musical instruments that are to be distributed one might take musical aptitude or taste as a basis of distribution, but if it is college credits and grades one might, and presumably should, take performance in college courses as a basis. Even so, we want to know—and this is our main problem—what the most *basic* Q is, if there is one, on the basis of which such P's as have been mentioned are to be distributed.

In his discussion of this question Aristotle indicates that there have been three main theories of social justice: the oligarchical, the aristocratic, and the democratic theories. They

<sup>7</sup> See *Nicomachean Ethics*, Bk. V; *Politics*, Bk. III, Ch. IX, XII, XIII.

agree about what P is: offices, powers, honors, external goods, etc.; what they differ about is Q, the basis of distribution. The oligarchical theory says that Q is wealth or property, i.e., that P is to be distributed to people in proportion to their wealth; the aristocratic theory holds that Q is merit, i.e., that P is to be distributed in accordance with merit; and the democratic theory, as Aristotle conceives of it, claims that Q is simply the fact of free birth, and that P is to be distributed equally among those who are born free, but, of course, he was making allowance for slavery, and a contemporary democrat would prefer to say that Q is simply the fact of being human.

Revising Aristotle's scheme somewhat, we may classify theories of distributive justice as follows: (1) Inequalitarian theories hold that P is to be distributed in proportion to some Q which people have in different amounts, degrees, or forms, i.e., in proportion to some feature in which people are unequal. They are of three sorts: (a) the oligarchical theory, (b) the meritarian or aristocratic theory, (c) other unequalitarian theories, e.g., those that identify Q with blood, sex, color, height, or native intelligence. (2) Equalitarian or democratic theories hold that basically P is to be distributed equally. They are of two kinds:<sup>8</sup> (a) Substantive equalitarianism holds that P is to be distributed in proportion to Q; and it identifies Q with some feature in which all men are alike or equal. It is hard to give a good example of such a theory because it is hard to find any feature in which all men are alike and equal. That is one reason why this kind of equalitarianism finds it so difficult to answer the argument that men are not equal since there is no Q, no property, which they all have in the same amount and form. For example, they all have reason, but they have it in different degrees. They all have color, presumably in the same degree, but they have it in different forms. One might reply that all men are alike or equal in being men or in being human, but it is very difficult to make out just what property "being human" is, or whether it is a property at all, let alone one which everyone has in the same degree and form. (b) Procedural equalitarianism agrees with unequalitarianism in denying that there is any Q which all men have in the same degree and form. But it still maintains a basically equalitarian view of distribu-

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<sup>8</sup> See S. I. Benn and R. S. Peters, *Social Principles and the Democratic State* (London, 1959), pp. 108-111.



tive justice. To do this it gives up the Aristotelian model which holds that P is to be distributed in accordance with some Q. There is, it maintains, no Q of the kind required. It therefore regards equalitarianism as a "procedural" principle: Treat people equally unless and until there is a justification for treating them unequally. This is a procedural principle because it says, not that men are equal in a certain respect and therefore should be treated equally, but only that unequal treatment must be justified or defended, whereas equality of treatment needs no justification.

Before going on, I should like to say something here about the question, "Are Men Equal?" All equalitarians answer "Yes" to this in some sense, and all inequalitarians "No." But we must notice that the question has two senses, a factual sense and a normative one. In the factual sense it asks, "Is there any respect in which all men are in fact equal, any Q which they all have in the same degree and form?" In the normative sense it asks something very different, namely, "*Ought* all men to be treated as equals?" Thus there are really two distinct questions, though this is not always noticed. The real issue between equalitarians and inequalitarians is over the normative question whether all men ought to be treated equally; it is to this question that the former must say "Yes" and the latter "No." But the inequalitarians always say "No" to the factual question too, and, in fact, they rest their negative answer to the normative question at least in part on a negative answer to the factual one; they argue that men should be treated differently because they are different. Equalitarians, on the other hand, though they all say "Yes" to the normative question, may say either "Yes" or "No" to the factual one. Substantive equalitarians say "Yes," and procedural equalitarians say "No." These points are very important to keep in mind in any discussion of distributive justice.

### III.

Let us now proceed to a discussion of inequalitarian theories of the basic material principle of distributive justice. The oligarchical theory is perhaps not often espoused in so many words, but it does appear to be acted on to a considerable extent in practice, and, in any case, it is a very instructive theory to study.

It maintains, it will be remembered, that the Q in proportion to which P is to be distributed is wealth, material possessions. It takes quite literally at least the first part of the saying of Jesus,

For whosoever hath, to him shall be given,  
and he shall have more abundance; but  
whosoever hath not, from him shall be taken  
away, even that he hath.<sup>9</sup>

But, with all due respect for Jesus' real meaning, it seems reasonable to say that the oligarchical way of favoring the haves over the have-nots is a very paradigm of injustice. Such a theory of distributive justice seems to be mistaken in principle, and it is important to see why. It is mistaken, it seems to me, for this reason: because the Q which it takes as a basis for distribution is itself something that is distributed by human actions and social institutions, and hence something that may itself be or have been distributed justly or unjustly, namely wealth or property. If this point is well taken, then we may argue quite generally that no theory is acceptable which offers as its *basic* principle of distribution the principle that P is to be distributed in proportion to some Q whose distribution is itself dependent on human action and social policy, e.g., wealth, power, or social position. It also follows that even the democratic theory, as Aristotle understood it, is mistaken; for its Q was "free birth," and this, in the sense in which the Greeks took it, was something socially determined, not something one had either by nature or by one's own efforts.

It should be added that, in any case, already possessed wealth is plausible as a basis for distributing other things only if it is a reliable index of the presence of some other Q which is more reasonably taken as a basis of distribution, for example, ability, intelligence, or merit. This is shown by the fact that the defenders of oligarchy have usually argued that the possession of wealth actually is an index of something more fundamental, when they have bothered to give any argument at all.

Putting off the meritarian or aristocratic theory for a moment, let us look at inequalitarian views of our third sort, those taking as a basis for distribution such Q's as blood, sex, color, height, or native intelligence. These views are right in not choosing as the fundamental basis of distribution anything that

<sup>9</sup> Matt. 13:12.

is directly distributable by man or society. Instead they take as the basis of distribution some Q whose presence is due to nature (though, indirectly, through eugenics, man can do something even about the distribution of color, etc.). It seems apparent, however, that this too is a mistake. For it is reasonable to claim that the use of blood, color, height, etc., as a fundamental basis of distribution is also unjust in itself. It is fair enough to use them as a basis of distribution in certain contexts, e.g., as a basis for distributing costumes or parts in plays. But to take any of them as the most basic Q for the distribution of opportunities, offices, etc., is as unjust as taking wealth as one's basic Q, though for a different reason. The reason (the main reason, not the only one) in this case, I think, is that, if we take color, height, etc., as a basis for distributing P, then we are basing our distribution on a feature which discriminates between individuals but which the individual has done and can do nothing about; we are treating people differently in ways that profoundly affect their lives because of differences for which they have no responsibility.

The most plausible of the natural Q's just mentioned to take as a basis of distribution is native intelligence. Even native intelligence (to be distinguished here from developed intelligence) will not do, however, as our ultimate basis of distribution, though it is certainly in a better case than height or color of skin. For it is something that can be adequately detected and gauged only in the course of some kind of program of education, formal or informal, so that its use as a basis of distribution presupposes a prior equal distribution of the opportunities for such an education.

In any case, we may also say that blood, sex, color, height, etc., cannot reasonably be taken as important bases of distribution unless they serve as reliable signs of some Q, like ability or merit, which is more justly employed as a touchstone for the treatment of individuals. This again is shown by the fact that when proponents of racial discrimination and slavery have given arguments at all, they have often argued precisely that these features may be taken as signs of such more acceptable Q's.

We have mentioned merit as clearly a more acceptable Q than acquired features like wealth on the one hand or natural ones like color on the other. Shall we then use merit as our

most fundamental basis of distribution? That we should is the position of the aristocrats or meritarians, including Aristotle himself and, more recently, Sir David Ross. What do they mean by "merit?" Aristotle meant excellence or virtue, and he distinguished two kinds of excellences or virtues: intellectual ones and moral ones; Sir David, however, means by "merit" simply moral virtue.<sup>10</sup> We may therefore understand the meritarians to hold that, basically at any rate, P is to be distributed to people in proportion to their degree of excellence, intellectual, moral, or both. What shall we say of this conception of social justice?

It certainly has a good deal of plausibility. In particular, its Q does not suffer from the defects of those of the other two kinds of inequalitarianism. For merit or excellence is not something distributed (differentially) by nature without any help from the individual, as color, blood, and height are; nor is it something that can be distributed justly or unjustly by man or his social institutions, as wealth is. Only the potentialities for excellence can be provided by nature, and only the opportunities and accessories for it can be provided by society; excellence or merit itself must be achieved or won by individuals themselves. It looks, therefore, as if merit may be just the Q we are looking for. Nevertheless, I am convinced that it will not do either. I tried to show this once or twice before but now suspect that the argument I then used is fallacious.<sup>11</sup> There is, however, another argument which I hope is better. This argument is that merit cannot be the *basic* Q in matters of distributive justice, since a recognition of merit as the basis of distribution is justified only if every individual has an equal chance of achieving all the merit he is capable of (and it cannot simply be assumed that they have had this chance). If the individuals competing for P have not had an equal chance to achieve all the merit they are capable of, then merit is not a fair basis for distributing shares of P among them. If this is so, then, before merit can reasonably be adopted as a ground of distribution, there must first be a prior *equal* distribution of the conditions for achieving merit, at least so far as this is within the power of human society. This is where such things as equality of opportunity, equality before the law, and equality of access to the means of education come

<sup>10</sup> W. D. Ross, *The Right and the Good* (Oxford, 1930), pp. 135-138.

<sup>11</sup> Cf. *Ethics*, p. 40.

into the picture. In other words, recognition of merit as a criterion of distribution is reasonable only against the background of a recognition of the principle of equality; the primary basis of distribution is not merit but equality, substantive or procedural.

It is worth mentioning, in view of the many recent discussions of "the distribution of education," first, that, strictly speaking, society cannot distribute education but only the means and opportunities for education, and, second, that it cannot distribute these in accordance with excellence or merit, since the achievement of excellence or merit presupposes a process of education. To this it may be replied that educational means and opportunities are to be distributed, not equally, but according to capacity. But then we may rejoin by pointing out that people's capacities can be determined only by educating them in some way, and that basic educational means and opportunities must therefore be distributed equally, since all must be given an equal chance to show their capacities if their capacities are to be used as a basis for determining their shares of other things. It follows, of course, from such premises, that a program of merit scholarships is fully just only if all of the candidates have had equal educational opportunities of the relevant kinds, though it may be a good thing anyway, as I believe it is.

None of what I have said is meant to imply that merit is not an acceptable basis of distribution in some contexts. I believe, indeed, that it is just to recognize and reward merit or excellence in certain ways; I have been trying to show only that merit cannot reasonably be regarded as our most *basic* criterion of distribution, as meritarians think. Excellence is an excellent thing, but, if it is not taken to be its own sole reward, we must all equally be given the chance to attain it so far as we are able.

In this discussion I have been identifying merit with excellence, intellectual or moral; but there are, of course, other things that it may be taken to mean, e.g., contribution to society or to the welfare of mankind, and it may be proposed that we should employ one of these things as our basis of distribution. What I have just said applies, however, to these further forms of merit also; they may be acceptable as secondary grounds of distributive policy, but they will not do as primary ones. It should be added that at least one of the reasons for rewarding

merit in these and other forms is that doing so is useful, i.e., conducive to the public good. But to argue that merit should be rewarded because it is *useful* to do so is not yet to show that *justice* requires us to reward it. What is useful may be right to do, but it is not *ipso facto* a requirement of justice, though it need not be unjust either. This *may* be one of the meanings of the puzzling parable of the workers in the vineyard.

It may be objected that we have been neglecting an important theory of social justice, one which may have more subscribers, if we count both sides of the Iron Curtain, than any other, namely, that the just society is that which takes from each according to his ability and gives to each according to his need. This theory sounds like a form of inequalitarianism, since it is obvious that people's abilities and needs differ widely. It may, however, be contended that it presupposes a basic equalitarianism, and this contention seems to be supported by the fact that those who accept the theory mean to be equalitarians at least in principle. One of the good things about this ability-need theory, whether one accepts it or not, is its recognition that duties and tasks are to be distributed, as well as opportunities, rights, and goods. But what is involved in the notion that tasks are to be distributed according to ability? Not a belief in inequality, but precisely the reverse. For we do not treat people equally if we ask of them exactly the same performance. To some a given task is easy, to others it is difficult, and hence, to ask the same of everyone is actually to treat them unequally, asking sacrifices from some that others are not required to make. To ask from each according to his ability, then, is to ask the same *proportionate* effort and sacrifice from each, in an effort to leave all as nearly equally well off as possible. In the same way, since needs differ, to give equally to all does not entail giving exactly the same thing to each. Shakespeare is surely unjust when he tells us in *The Merchant of Venice* not to trust

The man that hath no music in himself,  
Nor is not moved with concord of sweet sounds,

but it would not be unjust to give such a man a pair of skis when everyone else is being given a violin or a set of the latest Beatles recordings. To give to each according to his need is, again, to make the same *proportionate* contribution to the welfare of each, in an effort to make all as nearly equally well

off as possible. The ability-need theory is therefore reasonable only if it presupposes an equalitarian goal or ideal.

#### IV

If what has been said is correct, then we may reasonably regard inequalitarian views about the basic material principle of distributive justice as unsatisfactory, even if we cannot claim to have "disproved" them. The basic principle is that of equality, as Aristotle's democrats thought. Merit and other Q's which men have unequally may serve acceptably as secondary criteria of distribution, but the basic framework must be the principle of equality. This we may now state. It is the principle that matters are to be so disposed, i.e., P is to be so distributed, that everyone has an equal chance of achieving the best life he is capable of. This is the foundational principle of social justice. Of course, to apply this principle we must have some defensible conception of what the good life is, and which lives are better than others, and these are not easy matters; but they must be left for another occasion.

For what it is worth, it may be pointed out that at least one leading meritarian, Aristotle, sometimes seems to presuppose the principle of equality just stated. For example, he regards slavery as justified because he believes that there are people who can enjoy the best lives they are capable of only if they are slaves of some master. In fact, more generally, he seems at his best to define the ideal state as one in which each member enjoys the highest happiness—the most excellent activity—he is capable of attaining.

To avoid misunderstanding, I should add that I do not mean to suggest that no extra attention should be given either to handicapped persons on the one hand, or to gifted individuals on the other. I have no wish to attack enterprises like Project Head Start, fellowship programs, etc. All that the principle of equal justice requires is that everyone be given an equal chance to enjoy the best life he is capable of, but it may be that doing this entails our giving what seems to be extra attention to certain sorts of people. Such attention seems extra only because it involves more effort or money, but it is not really extra (unjust), since it is necessary if we are to make the same *proportionate* contribution to the best life of everyone. Some peo-

ple simply are by nature harder to help on their way, and others easier, and we are, therefore, not unjust if we put more effort or money into helping some than we do into helping others, as long as all are enabled to make the same *relative* advance toward the good life.

One might object here that social justice consists, not in making possible the same relative advance for everyone, but rather in bringing everyone up to the same absolute level. One might contend, for example, that it is unjust for society to put anything extra into its gifted individuals until all the others, whether handicapped or not, have been brought up to the highest level possible for them, and that even then it is not unjust if it does not do anything extra for them. To deal with this objection we must distinguish two things a society might do for its members: (1) it might provide them with a certain level of material goods, (2) it might promote a certain level of goodness of life for them. These two things may overlap, but they are not the same. I am somewhat inclined to agree that society should try to make available to everyone the same general level of material possessions, at least up to a certain point. But material possessions are only externally connected with goodness of life, and it is the latter that society should be mainly concerned with. Now, some people just *are* capable of leading better lives than others; these are, in fact, the "gifted" ones. Should not society, in justice, do what it can to help these members achieve the best lives they are capable of (provided it also helps the others), at least after and perhaps even before the others have reached their peaks? A few remarks may perhaps serve to guide further thinking on this matter.

(a) It certainly seems only just that they should be helped, if necessary, at least *after* the less gifted have reached their peaks. We must remember, however, that a just society will also be a free one, and that in a free society such individuals can and will do much to help themselves. (b) It is obviously conducive to the good, not only of the gifted individuals, but of others, if the gifted are aided even *before* the others have gone as high as they can. For, like Plato's rulers, they can then put their gifts to the social use of helping the others. (c) It would seem clear, at any rate, that a just society must at least *permit* exceptional individuals to realize themselves, in so far



as this is compatible with others' doing so. (d) Since a just society must provide the utmost freedom for each individual consistent with the freedom and welfare of others, it must even run the *risk* that some, in seeking their own best life, will endanger those of others. (e) In practice, perhaps, any society that seeks to be just must work on two fronts all the time: that of making *possible* the achievement by the gifted of the best lives they can attain *and* that of making *sure* that others also are so positioned as to be able to attain the best lives open to them by virtue of their potentialities.

## V.

Now, having steered the good ship Justice safely through the straits of inequalitarianism into the haven of equalitarianism, we must ask what side of the harbor we are to anchor on, that of substantive or that of procedural equalitarianism. As was indicated earlier, the difficulty in substantive equalitarianism is that there seems to be no factual respect in which all human beings are equal, no Q which they all have in the same degree and form. (There is the further point that, even if there were such a Q, it still might not follow that all men ought to be treated as equals; but this is balanced by the fact that, if there is no such Q, it also does not follow that men ought not to be treated as equals.) As Benn and Peters put it,<sup>12</sup>

. . . if we strip away [from human nature] all the qualities in respect of which men differ, what is left? . . . we are left with an undifferentiated potentiality. . . . 'Human nature' implies a varying potentiality for a certain limited range of qualities . . . ; it is not another quality that all men possess equally, on account of which they should in some positive way be treated alike.

Benn and Peters conclude that equalitarianism must take a procedural form.<sup>13</sup>

. . . What we really demand, when we say that all men are equal, is that *none shall be held to have a claim to better treatment than another, in advance of good grounds being produced*. . . . Understood in this way, the principle of equality does not prescribe positively that all human beings be

<sup>12</sup> *Op. cit.*, p. 109.

<sup>13</sup> *Ibid.*, pp. 110-111; cf. M. Ginsberg, *On Justice in Society* (Pelican Books, 1965), p. 79.

treated alike; it is a presumption against treating them differently, in any respect, until grounds for distinction have been shewn. It does not assume, therefore, a quality which all men have to the same degree, which is the ground of the presumption, for to say that there is a presumption means that no grounds need be shewn. The onus of justification rests on whoever would make distinctions. To act justly, then, is to treat all men alike except where there are relevant differences between them. . . . Presume equality until there is reason to presume otherwise.

With some qualifications, I am inclined to agree with this view of the matter. It still seems reasonable, however, to ask why we should adopt this procedural principle in the case of *all* the beings who are *human*, if they are not equal in any factual sense. The answer, I think, has two parts. (1) One part is that it seems to be a rule of reason to deal with similar things in similar ways. Thus, inductive reasoning may be thought of as depending on a presumption that we are to make similar assertions about similar things, unless we have evidence to the contrary. To quote Perelman:

The fact is, the rule of justice results from a tendency, natural to the human mind, to regard as normal and rational, and so as requiring no supplementary justification, a course of behaviour in conformity with precedent.<sup>14</sup>

This view may be substantiated somewhat by reference to the work of Piaget on the moral judgment of children.<sup>15</sup> But it does not suffice as an answer to our question. For, as we saw, and as Perelman recognizes, this rule of reason—treat similar cases similarly—is purely formal. Besides, even though, in our geological inductions, we must presume that what is true of one rock is true of others unless there is evidence to the contrary, we hardly need draw the conclusion that, in our behavior, we ought to *treat* all rocks in the same way unless we can show good reasons for treating them differently. Why then should we treat all *human* beings equally until we have good reasons for not doing so? (2) The reply, it seems to me, must be that human beings are different from rocks, they have desires, emotions, and minds, and are capable, as rocks are not, of having lives that are

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<sup>14</sup> *Op. cit.*, p. 86. For the point I am borrowing, see pp. 79-87. Cf. J. N. Findlay, *Language, Mind and Value* (London, 1963), p. 250.

<sup>15</sup> Jean Piaget, *The Moral Judgment of the Child* (New York, 1948). Perelman refers to Piaget's *Apprentissage et connaissance*, p. 42.

good or bad. It is this fact that all men are similarly capable of experiencing a good or bad life, not the fact that they are equal in some respect (if they are), that justifies the presumption that they are to be treated as equals. With this, somewhat hesitantly, I drop anchor on the procedural equalitarian side.

## VI.

Many problems remain, but we can take up only two of them, and then only briefly. (1) An equalitarian might hold, not only that justice requires us to treat all human beings equally (in the sense explained above, in which giving A a violin and B a pair of skis may be treating them equally, not in the sense of treating them exactly alike), but that any departure from equality, any unequal treatment is *ipso facto* unjust and wrong. But few equalitarians have had the temerity to espouse this position, nor have I, though I should point out that it is much more plausible to maintain that it is never just or right to treat people *unequally* than that it is never just or right to treat them differently. If one does not adopt this position, however, one must allow that unequal treatment is sometimes just or right, that the differences between people sometimes justify treating them unequally. And then the question arises: what differences between humans justify treating them unequally? What differences are relevant to questions of distribution? This is not an easy question, and it is sometimes felt that the relevant differences are so many and so various as to render the principle of equality of no effect. An unequalitarian must answer the question, too; but he *could* say that all differences are relevant, if not, prove why not; whereas the equalitarian must claim that the relevant differences can be limited in some way. Now, I have already intimated that in various kinds of context various kinds of considerations are relevant to questions of distribution, e.g., that differences in height or color of skin may be relevant to decisions about the distribution of costumes and roles in plays. In a sense, then, if we abstract from context, the variety of relevant considerations, like that of evil spirits, is indeed legion. In another sense, however, each context determines what considerations are relevant and limits them; not all considerations are relevant in all contexts. Differences in sex, color, height, or dramatic ability may be relevant to decisions about

casting players, but they are not always relevant; indeed they seem obviously irrelevant to most questions of social policy of the kind that a theory of distributive justice is primarily concerned to provide for. For such questions, I suggest, the relevant features of people are not such things as color, height, and the like, but only those features that bear, directly or indirectly, on the goodness or badness of the lives of which they are capable, for example, differences in ability or need.

(2) The last question is somewhat different, and may be put roughly by asking, "Why should we be just?" More accurately put, it is this: why is justice, conceived as treating people equally in the sense explained, right?<sup>16</sup> One traditional answer is that of the deontologist in ethics, namely, that justice or equality of treatment is right in itself, as keeping promises is, or telling the truth. Another standard answer is that of the utilitarian, that justice or equal treatment is right because it is necessary for or at least conducive to the greatest general good or the greatest general happiness. As between these two views I should say that the first is essentially correct and the second mistaken. I should like, however, to propose a third mediating possibility. If we ask what the Ideal state of affairs would be, then, as far as I can see, the deontologist and the utilitarian can both accept the following statement:

The Ideal is that state of affairs in which *every person* (or perhaps every sentient being) has the best life he is capable of.

If this formulation of the Ideal is correct, as I believe it is, then we can plausibly argue that justice in the sense of equal treatment is right because it is a constitutive condition of the Ideal. For then, as Bentham declared, it is an essential aspect of the Ideal that everybody be counted as one and nobody as more than one. In the Ideal, as thus formulated, everyone is equally well off in the sense that everyone has the best life he is capable of, which is all that can reasonably be asked for. An even more ideal equality would be realized, it is true, in a state of affairs in which everyone had the ideally best life or at least the best life that any human being is capable of; but such a state of affairs would be wholly impractical and Utopian as an ideal. It could

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<sup>16</sup> Meritarians have a corresponding question: why is justice, conceived as treating people according to their merits, right? They too can give either deontological or utilitarian answers.

only be wished, not worked, for. Logically, of course, one could reject even the more practical Ideal sketched in my statement, since "questions of ultimate ends do not admit of proof";<sup>17</sup> but it is hard to believe that anybody would in fact reject it if he were fully informed and completely reasonable,

. . . whose even-balanced soul  
From first youth tested up to extreme old age,  
Business could not make dull, nor passion wild;  
Who saw life steadily, and saw it whole. . . .<sup>18</sup>

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<sup>17</sup> Mill, *op. cit.*, opening sentence of Ch. IV.

<sup>18</sup> Matthew Arnold, "To a Friend."

The E. H. Lindley Memorial Lectureship Fund was established in 1941 in memory of Ernest H. Lindley, Chancellor of the University of Kansas from 1920 to 1939. In February 1941 Mr. Roy Roberts, the chairman of the committee in charge, suggested in the *Graduate Magazine* that

the Chancellor should invite to the University for a lecture or a series of lectures, some outstanding national or world figure to speak on "Values of Living"—just as the late Chancellor proposed to do in his courses "The Human Situation" and "Plan for Living."

In the following June Mr. Roberts circulated a letter on behalf of the Committee, proposing in somewhat broader terms that

The income from this fund should be spent in a quest of social betterment by bringing to the University each year outstanding world leaders for a lecture or series of lectures, yet with a design so broad in its outline that in the years to come, if it is deemed wise, this living memorial could take some more desirable form.

The fund was allowed to accumulate until 1954, when Professor Richard McKeon lectured on "Human Rights and International Relations." The next lecture was given in 1959 by Professor Everett C. Hughes, and has been published by the University of Kansas School of Law as part of his book *Students' Culture and Perspectives: Lectures on Medical and General Education*. The selection of lecturers for the Lindley series has since been delegated to the Department of Philosophy. The following lectures have been published, and may be obtained from the Department at a price of fifty cents each.

1961. "The Idea of Man—An Outline of Philosophical Anthropology."  
By José Ferrater Mora, Professor of Philosophy, Bryn Mawr College.
1962. "Changes in Events and Changes in Things."  
By A. N. Prior, Professor of Philosophy, University of Manchester.
1963. "Moral Philosophy and the Analysis of Language."  
By Richard B. Brandt, Professor of Philosophy, Swarthmore College.
1964. "Human Freedom and the Self."  
By Roderick M. Chisholm, Professor of Philosophy, Brown University.