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By Russell Kirk

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The word "justice" is on everyone's lips nowadays, and may signify almost anything. We hear the cry "Peace and Justice!" from folk who would destroy existing societies with fire and sword. Other folk fancy that *perfect* justice might readily be obtained by certain financial rearrangements—as if anything in this world ever could be perfected. One thinks of the observation of William James: "So long as one poor cockroach suffers the pangs of unrequited love, this world will not be a moral world." At the end of the twentieth century, the liberal mentality demands justice for roaches, too.

All confusion about the meaning of the word "justice" notwithstanding, the latest edition of the *Encyclopedia Britannica* contains no article under the heading "Justice." Yet there is a succinct article about justices of the peace, of whose number I once was one, before the state of Michigan swept away that high office. My lecture today may be regarded as the attempt of a fool, rushing in where the angelic Britannica fears to tread. Yet possibly the nature of justice may be apprehended by a mere quondam justice of the peace: for the fundamental purpose of law is to keep the peace. "Justice is the ligament which holds civilized beings and civilized nations together," said Daniel Webster at the funeral of Justice Joseph Story, in 1845; and so say I today.

I propose in this series of four lectures to discuss first the signification of this word "justice"; in my second lecture, to examine natural law; in my third, to deal with criminal justice; in my concluding lecture, to quarrel with certain notions of justice that have been much puffed up during recent years. In the twenty-first century of the Christian era, will *justice* signify anything more than the state's rigorous enforcement of its edicts? Such questions I hope to raise in your minds.

Nowadays, near the close of the twentieth century, moral and political disorders bring grave confusion about the meanings of old words. As T. S. Eliot wrote in "Burnt Norton"—

> Words strain,
> Crack and sometimes break, under the burden,
> Under the tension, slip, slide, perish,
> Decay with imprecision, will not stay in place,
> Will not stay still. Shrieking voices
> Scolding, mocking, or merely chattering,
> Always assail them.

Conspicuous among such venerable words, in our era often abused and misrepresented, is this necessary word *justice*. Today I am attempting to purify the dialect of the tribe—to borrow another phrase from my old friend Eliot, who endeavored lifelong to rescue words from the clutch of the vulgarizer or of the ideologue.

Permit me first to offer preliminary descriptions or definitions of this word *justice*. Jeremy Taylor, in the middle of the seventeenth century, wrote that there exist two kinds of justice. The one is commutative justice, or reciprocal justice, expressed in Scripture thus: "Whatsoever ye would that men should do to you, even so do to them." In Taylor's words, "This is the measure... of that justice which supposes exchange of things profitable for things profitable, that as I supply your need, you may supply mine; as I do a benefit to you, I may receive one by you.... "

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The other kind is distributive justice, expressed in this passage from Romans: "Render to all their dues; tribute to whom tribute is due, custom to whom custom, fear to whom fear, honor to whom honor; owe no man anything but to love one another." Upon this Taylor comments, "This justice is distinguished from the first, because the obligation depends not upon contract or express bargain, but passes upon us by some command of God, or of our superior, by nature or by grace, by piety or religion, by trust or by office, according to that commandment, 'As every man hath received the gift, so let him minister the same one to another, as good stewards of the manifold grace of God.'"

But perhaps, ladies and gentlemen, I proceed too fast; I shall have more to say a little later about the Christian concept of justice. Just now a little about the classical idea of justice. The classical definition, which comes to us through Plato, Aristotle, Saint Ambrose, and Saint Augustine of Hippo, is expressed in a single phrase: *suum cuique*, or "to each his own." As this is put in Justinian's *Corpus Juris Civilis*, "Justice is a habit whereby a man renders to each one his due with constant and perpetual will." Aristotle instructs us that the prevalence of injustice makes clear the meaning of justice. Also Aristotle remarks that it is unjust to treat unequal things equally—a principle to which I shall return in my later lectures. Of the *virtue* called justice, Saint Augustine declares, "Justice is that ordering of the soul by virtue of which it comes to pass that we are no man's servant, but servants of God alone."

Upon such ancient postulates, classical or Christian, rests our whole elaborate edifice of law here in these United States—even though few Americans know anything about the science of jurisprudence. For public order is founded upon moral order, and moral order arises from religion—a point upon which I mean to touch later in this talk of mine. If these venerable postulates are flouted or denied—as they have been denied by the Marxists in the present century, and were denied by sophists in Plato's time—then arbitrary power thrusts justice aside, and "they shall take who have the power, and they shall keep who can."

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All these brief definitions require explanation. But for the moment I pass on to the common understanding, the common sense, of the meaning of *justice.* All of us here present, I suppose, entertain some notion of what justice signifies. From what source do we obtain such a concept? Why, very commonly, from observation of a just man or a just woman. We begin by admiring someone—he may be some famous judge, or he may be an obscure neighbor—who accords to every person he encounters that person's due. Just men, in short, establish the norm of justice. When I began to write my book *The Conservative Mind*, I discovered that the abstraction "conservatism" amounts to a general term descriptive of the beliefs and actions of certain eminent men and women whom we call "conservative" because they have endeavored to protect and nurture the Permanent Things in human existence. So it is with justice: in large part, we learn the meaning of justice by acquaintance with just persons.

In the ancient world, the most just of men was Solon, Athens' lawgiver, poet, and hero. As Solon wrote of his reform of the Athenian constitution—

> Such power I gave the people as might do,
> Abridged not what they had, nor lavished new;
> Those that were great in wealth and high in place
> My counsel likewise kept from all disgrace.
> Before them both I kept my shield of might,
> And let not either touch the other's right.

To each class, that is, Solon gave its due, and so preserved the peace: that is social justice.

But we need not turn to the pages of Plutarch to discover just men: they are not an extinct species, though perhaps an endangered one. I think of my grandfather, Frank Pierce, a bank-manager in Plym-

outh, twenty miles north of Detroit. He was the leading man of Lower Town (now called Old Town), near the railroad yards—not because he was either rich or charismatic, but because he was just. Justice, of course, is one of the cardinal virtues; and like the other virtues, justice is said to be its own reward—which is well, the virtue of justice seldom earning material rewards. When a member of the town council, my grandfather refused to supply water free of charge to the town's principal industrial plant, on the grounds that if the factory couldn't pay water bills, who could? For that offense, the firm's president swore he would have Pierce discharged by the bank; but the bank's president happening also to be a just man, my grandfather's livelihood was not swept away. My grandfather's counsel was sought by everyone in the Lower Town who needed advice; and his kindliness even moved him, on occasion, to extend interest-free personal loans, from his own pocket, to young married couples who could not meet the requirements for loans from the bank. (His salary was two hundred dollars a month.) I do not mean that he was indiscriminately sentimental; not at all. On the several occasions when robbers invaded his branch bank, he successfully repelled them, at great risk: for the just man defends vigorously whatever is entrusted to his charge, and sets his face against the lawless. He was just to children, too: taking me on long walks, during which we talked of everything under the sun, but rapping sharply on the dining-room table when I waxed impudent at meals—I immediately abashed and repentant. By watching this kindly paterfamilias, and listening to what he said, I came to apprehend justice quite early. For Frank Pierce gave every man his due, without fear or favor.

In every society, from the most primitive to the most decadent, there are found some persons, like my grandfather, whom everyone recognizes as just. (Even bank-robbers and kidnappers—for he was kidnapped once by desperados—remarked that Frank Pierce was a just man.) From what source do such just men and women derive their habits or principles of justice?

Are they familiar with jurisprudential theories? Only rarely: even most judges on the bench nowadays are not well grounded in the philosophy of law. My grandfather, who possessed a substantial library—perhaps the only library in Plymouth's Lower Town—read history, but not philosophy or law.

Are their concepts of justice learnt in church? Not so, ordinarily. My grandfather never attended church: he came from a family that began as Pilgrims to Massachusetts and gradually moved through all the American stages of the dissidence of dissent. He never read the Bible at home. He inherited Christian morals, but not Christian faith in the transcendent.

Do they create for themselves a rough-and-ready utilitarian scheme for the administering of justice, founded principally upon their private experience of the human condition? Only infrequently, I think; for most of them would subscribe to the maxim of Benjamin Franklin, "Experience is a hard master, but fools will have no other."

Well, then, how *do* just men and women apprehend the meaning of justice? From tradition, I maintain: from habits and beliefs that have long persisted within family and within local community. Aristophanes, contradicting Socrates, argued that virtue cannot be taught in schools or by tutors: rather, virtue inheres in old families. I believe that to be especially true of the cardinal virtue called justice. Or this tradition of justice, families and communities aside, may become known through private reading, perhaps: anyone who attentively reads the great Victorian novelists, say, cannot well escape absorbing, even if unaware of his acquisition, principles of personal and social justice. More obvious, if more rare nowadays, is the influence of the Greek and Roman classics toward forming an affection for justice. Until well into the nineteenth century, Cicero was studied in every decent school; and this passage from that statesman-philosopher implanted an apprehension of the nature of justice:

> Law is the highest reason, implanted in nature, which commands what ought to be done and forbids the opposite. This reason, when firmly fixed and fully developed in the human mind, is law. And so they believe that law is

> intelligence, whose natural function it is to command right conduct and forbid wrongdoing. They think that this quality has derived its name in Greek from the idea of granting to every man his own, and in our language I believe it has been named from the idea of choosing.

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In short, there exists a literary tradition expounding the idea of justice. The most recent popular example of this tradition is to be found in an appendix to C. S. Lewis's little book *The Abolition of Man*. Therein Lewis sets side by side, drawn from various cultures, illustrations of the Tao, or Natural Law. He groups these precepts or injunctions under eight headings: the law of general beneficence; the law of special beneficence; duties to parents, elders, ancestors; duties to children and posterity; the law of justice; the law of good faith and veracity; the law of mercy; the law of magnanimity. Everywhere in the world, in every age, Lewis is saying, wise men and women have perceived the nature of justice and expressed that nature in proverb, maxim, and injunction.

At this point one may inquire, "Are you implying that just men and women find in religious doctrines—Hebraic, Christian, Moslem, Hindu, Buddhist—the fountains of justice?" Yes, I am so reasoning. The sanction for justice will be found, ultimately, in religious insights as to the human condition, and particularly in Revelation. Our so-called "Western" concepts of justice are derived from the Decalogue, Platonic religious philosophy, and the teachings of the Christ. Somewhere there must exist an authority for beliefs about justice; and the authority of merely human, and therefore fallible, courts of law is insufficient to command popular assent and obedience.

It does not follow, however, that all just men and women recognize the ultimate source of ideas about justice, or appeal to that ultimate source. My grandfather never read a line that Saint Thomas Aquinas wrote, though his understanding of justice accorded well enough with what Aquinas expresses so convincingly in the *Summa*. To my grandfather the justice-concepts of the Hebraic and classical and medieval cultures were transmitted through British and American moral, legal, and literary traditions, and through long custom and habit within his family and within the small-town American communities where he had lived. If pressed as to why he held a certain understanding of the word "justice"—indeed, he once compulsorily engaged in a dialogue on that subject with a rather Nietzschean desperado intent on persuading my grandfather to open his bank's safe—I suppose that Frank Pierce would have replied, "Because good men always have so believed." *Securus judicat orbis terrarum, bonos non esse qui se dividunt ab orbe terrarum in quacunque parte terrarum*, Saint Augustine of Hippo instructs us—"The calm judgment of the world is that those men cannot be good who, in any part of the world, cut themselves off from the rest of the world." The word justice implies obligation to others, or to an Other.

Thus far I have been describing the concept of justice that prevailed in the Western world down to the closing years of the eighteenth century. Behind the phrase "to each his own" lay the beliefs that divine wisdom has conferred upon man a distinct nature; that human nature is constant; that the idea of justice is implanted in the human consciousness by a transcendent power; and that the general rule by which we endeavor to do justice is this: "to each man, the things that are his own."

What is meant by this famous phrase? To put the matter very succinctly, the doctrine of *suum cuique* affirms that every man, minding his own business, should receive the rewards which are appropriate to his work and duties. It takes for granted a society of diversity, with various classes and interests. It implies both responsibility toward others and personal freedom. It has been a strong protection for private property, on a small scale or a great; and a reinforcement, for Jews and Christians, of the Tenth Commandment. Through the Roman law, this doctrine of justice passed into the legal codes of the European continent, and even into English and American law.

Injustice, according to this doctrine, occurs when men try to undertake things for which they are not fitted, and to claim rewards to which they are not entitled, and to deny to other men what really belongs to those other men. As Plato puts it, in *The Republic*, quite as an unjust man is a being whose reason, will, and appetite are at war one with another, so an unjust society is a state afflicted by "meddlesomeness, and interference, and the rising up of a part of the soul against the whole, an assertion of unlawful authority, which is made by a rebellious subject against a true prince, of whom he is the natural vassal—what is all this confusion and delusion but injustice, and intemperance and cowardice and ignorance, and every form of vice?"

Edmund Burke re-expressed this doctrine of "to each his own" when, in his *Reflections on the Revolution in France*, he wrote of *true* natural rights: "Men have a right to the fruits of their industry, and to the means of making their industry fruitful. They have a right to the acquisitions of their parents, to the nourishment and improvement of their offspring, to instruction in life, and to consolation in death. Whatever each man can separately do, without trespassing upon others, he has a right to do for himself; and he has a right to all which society, with all its combinations of skill and force, can do in his favor."

And yet in Burke's own time, there arose a very different idea of justice, the Utilitarian concept, expounded by Jeremy Bentham. From Bentham's jurisprudence there is descended the powerful present-day school of legal thought that we call legal positivism or legal realism. Positivistic jurisprudence arose in alliance with nineteenth-century nationalism and with scientific mechanism and materialism. To the legal positivist or realist, laws are the commands of human beings merely. There exists, for the positivist, no necessary connections between law and morals, or between law as it is and law as it ought to be. The positivists' legal system is a closed, logical system without need for referring to social aims, policies, or moral standards. So-called "moral judgments," to the positivists, are "value judgments" merely: and value judgments cannot be established or defended by rational argument. This positivistic understanding of justice and law looms large in American courts today.

But in this lecture I do not have time to analyze the strengths and weaknesses of legal positivism. For the present, I do no more than to point out that nineteenth- and twentieth-century positivism stands in harsh opposition to both the classical and the Christian understanding of justice and law. In Catholic universities, at least, some defense still is offered of the Augustinian virtue of justice and the venerable theory of natural law.

It is my purpose in today's remarks to state the classical and the Christian concept of justice, as opposed to the positivists' denial of any source for justice except the commands of the sovereign state. And I will touch glancingly upon the connections among religion, justice, and law. (Justice and law are not identical, though they may be closely related: in a good commonwealth, law is an attempt to maintain standards of justice, so far as that may be achieved in a bent world.)

All law is derived from the religious understanding—that is, all law in the traditional societies of the West; law in totalist states is another matter entirely. Moses came down from Horeb and did justice upon criminous Israelites: the prophet as lawgiver. Solon reformed the laws of Draco: the religious poet as lawgiver. When law is divorced from the moral sanction of religious convictions, presently the law is corrupted by passion, prejudice, private interest, and misguided sentimentality.

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The church is concerned with the inner order: the order of the soul. The state is concerned with the outer order: the order of the commonwealth. Between state and church, nevertheless, relationships are ineluctable. Among these relationships is an understanding of justice.

Such relationships took shape in the West so early as the fifth century of the Christian era. We perceive them in the connections between Augustine, Bishop of Hippo, and his friend Boniface, Count of Africa. In theory, all Christians of the West believe in separation of church and state—though sometimes that principle has been more honored in the breach than in the observance.

The church recognizes the necessary end of the state, and so submits to the state's laws. Because of human sinfulness, the Fathers of the Church taught, the state is ordained of God. As best it can, the state restrains the three chief forms of lust: cupidity, the lust for possessions; the *libido dominandi*, the lust for power; and sexual lust, the abuse of the gift of procreation. When the state is enfeebled, these lusts work the ruin of the person and the republic.

So it is that the church, even in Roman imperial times, has taught obedience to civil magistrates. Saint Augustine reasoned that the good citizen, the believing Christian, should obey every command of the state, save one: an order to worship false gods and to serve Satan.

Yet church and state have different ends, though both uphold justice. There runs through the history of Christianity the doctrine of the two swords: the church's sword of faith, the state's sword of secular justice.

Knowing that this earthly existence is not the be-all and end-all, the church holds that perfect justice is in the power of God alone, beyond the confines of time and space. In this world here below, we mete out justice as best we may. Sometimes we err in our administering of justice; it cannot well be otherwise; we are not perfect or perfectible creatures.

To apprehend the church's stand on mundane justice, it is desirable to make distinctions between crime and sin. A crime is an act or omission which the law punishes on behalf of the state, whether because that act or omission is expressly forbidden by statute, or because it is so injurious to the public as to require punishment on the ground of public policy.

A sin is a transgression against moral law, with that law's divine sanctions. It is God, not the State, who punishes or forgives sins.

Not all sins are crimes. We have it on the authority of Saint Paul that the greatest of the theological virtues is charity. Therefore uncharitableness is a great sin; yet lack of charity is not an offense at law. A man may be all his life snarling, sneering, contemptuous, envious, abominable in his language toward his wife, his children, and others to whom he owes obligations—that is, perfectly uncharitable; yet he will run no risk of being haled before the bar of criminal justice. The uncharitable may be dealt with at the Last Judgment. But mundane courts of law do not touch the sinner unless his sins result in violence or fraud or substantial damage to others. The state is unconcerned with sins unless they lead to breaches of the peace, or menace the social order. This separation of function accords with the doctrine of the two swords.

Quite as the state—that is, the constitutional state—does not lay down religious dogmata in recent times, so the church does not decree the laws of mundane justice, as expressed through courts of law. When the church has endeavored to impose its doctrines through the operation of the state's criminal law, the church has erred.

I have been speaking of orthodox Christian doctrine, interwoven with principles of law in America, Britain, and many other countries—interwoven, that is, until recent decades. But great confusion has fallen upon us in these years near the end of the century. Increasingly, the state—aye, the democratic state, too—separates itself from the religious understanding of the human condition. And a good many churchmen abandon Christian realism for a sentimental humanitarianism.

Let me remind you of the true signification of this word "humanitarianism." Properly defined—and this is the definition one still finds in the Oxford English Dictionary—humanitarianism is the doctrine

that Jesus of Nazareth possessed a human nature merely, not being divine; and, by extension, the doctrine that mankind may become perfect without divine aid. A humanitarian is a person totally secularized in his convictions. Yet erroneously many people use "humanitarian" as a term of commendation. "He was a great humanitarian," they say of Albert Schweitzer. That charitable and heroic man, a professing Christian, would have rejected indignantly that label.

Now what has this distinction between humanitarianism and charity to do with justice? The point is this: the humanitarian denies the existence of sin, declaring that what we call "sins" are not moral matters at all, resulting instead from circumstance, faulty rearing, or social oppression. In the view of the humanitarian, sins—and crimes, too—are the work of "society"; and sinners and criminals are victims, rather than unjust offenders. Such reasoning is the consequence of holding that man and society may be perfected through mere alteration of social conditions, without the intervention of divine grace.

The humanitarian frequently proclaims his abhorrence of severe punishments—perhaps of any punishments. Why? First, because of his illusion that no human being possesses the ability to make moral choices. Second, because of his horror of inflicting pain. He leaves no ultimate justice to God, because he fancies that no God exists. The mere preservation of one's comfortable earthly life is his obsession, he fancying that man is not made for eternity.

On the other hand, the humanitarian fulminates against those who disagree with his principles. Thus there occurs the phenomenon called "the humanitarian with the guillotine." (The recent French film called *Danton* sufficiently illustrates this ferocious love of all humankind.) As Edmund Burke put it, speaking of the humanitarian Jacobins, men who today snatch the worst criminals from the hands of justice tomorrow may approve the slaughter of whole classes. Humanitarian apologies in our own time for butchery by communist revolutionaries sufficiently suggest the persistence of this curious intolerant humanitarianism. The ideologue need merely proclaim that his object is universal happiness here below, and he is approved uncritically by the humanitarian. As Solovyev wrote, the banners of the Anti-Christ will bear the legend, "Feed men, and then ask them of virtue."

In this disordered age, when it seems as if the fountains of the great deep had been broken up, our urgent need is to restore a general understanding of the classical and Christian teaching about justice. Without just men and women, egoism and appetite bring down a civilization. Without strong administration of justice by the state, we all become so many Cains, every man's hand against every other man's. The humanitarian fancies himself zealous for the life impulse; in reality, he would surrender us to the death impulse. The humanitarian's visions issue from between the delusory gates of ivory; justice issues from between the gates of horn.

Public instruction that ignores both our classical patrimony and our religious patrimony may fail to rear up just men and women. Positivist jurisprudence that denies any moral order and any religious sanction for justice may end in a general flouting of all law. We prate of "peace and justice" in a dissolving culture, without apprehending tolerably the words we employ. "Shrieking voices/ Scolding, mocking, or merely chattering,/ Always assail them." These are the voices of the ideologue, the neurotic, and the nihilist, pulling down the old understanding of Justice, "to each his own."

"Justice is a certain rectitude of mind, whereby a man does what he ought to do in the circumstances confronting him." So Thomas Aquinas instructs us. At every college and university, the doctors of the schools ought to inquire of themselves, "Do we impart such rectitude of mind? And if we do not, will there be tolerable private or public order in the twenty-first century?"

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