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JUSTICE AS THE VIRTUE OF RESPECT

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I. Introduction

In *Republic*, Plato distinguished personal justice from social justice, and since then, rarely the twain have met. Justice, as the fundamental virtue of social institutions, became central to political science and jurisprudence, commanding the lion's share of attention which justice has received. But the point of *Republic* was to conceive of a just society for the sake of gaining insight into what personal justice is. While political theory and jurisprudence have focused on how society needs to be structured for it to be a just society, comparatively scant attention has been paid to what is required to be a just person.[1]

The present strategy is methodologically opposite of Plato's. We agree, along with Judith Shklar (1990: 21), that the conventional account of justice as a social check on self-interest is doomed to corruption and failure. We also agree that there should be a joint investigation of personal and social justice, but the conclusion defended below is that we can learn best about social justice through investigating the nature of personal justice, whereas Plato thought the opposite is true. This inversion begins our theory of justice at the level of the individual and builds from there out to the level of political society. Yes, social justice involves institutional fairness, equality, desert, etc., but the foundations of social justice are to be found in the psychology and epistemology of individuals who are just (Bloomfield, 2021).

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[1] For an overview of the extant literature, see Lebar (2020). Before LeBar (MS), Robert Solomon's excellent but neglected *A Passion for Justice* (1995) was the only monograph on justice as a personal virtue. Solomon's, LeBar's, and my position all share the orientation of taking personal justice to be prior to institutional justice, though we have significant "in-family squabbles" over theoretical detail. In general, contra Solomon and LeBar, I do not take emotion to be fundamental to the virtue of justice. And in particular, I contrast with LeBar who, while focusing on *respect* as I do below, does not give significance to either self-respect or "appraisal respect" in his theory. He cogently argues that justice is "the equal authority to obligate" each other (§3.2), where *authority* is understood independently of *justice*. Nevertheless, I think unequal authority between people can be legitimate, in e.g., parent/child, teacher/student, expert/layperson relations, where this legitimacy must be conferred by justice. See also LeBar (2014), (2020), and Russell and LeBar (2021).

Why? Well, one reason is that the judgments and actions of an ideally just person can serve as a model for how social institutions ought to treat members of society. Consider how we expect individual courtroom judges to treat criminal defendants or how John Rawls (1971), to whom we will return, begins with the judgments of unbiased individuals behind the "veil of ignorance" in the justification for his two principles of justice. Or consider how just a society would be if its institutions were structured in a perfectly just way yet its offices were filled with unjust people.[2] Prescinding from high theory, there are important practical reasons pressing on us in contemporary times, given how unsettled Western democracy has become of late: each of us ought to be asking about our place in society and what our own personal duties and responsibilities are to at least try to make our world more just. For practical reasons too, we need a picture of personal justice that helps generate social justice.

For this particular goal, there is no better place to look for answers than virtue ethics. And we, today, are now far better placed to understand personal and social justice than Plato, for we can stand on the shoulders of the many giants who themselves have stood on his shoulders. In particular, we will be climbing atop the shoulders of Immanuel Kant, P. F. Strawson, and John Rawls, for what is most central to understanding justice writ both large and small is to see it, first and foremost, as the virtue of respect, including self-respect as an important and special case. The goal is not exegesis and the methods employed below are synthetic not analytic: ideas and concepts from various philosophers are reconstructed into a virtue theoretic account of justice.

In pursuit of this, we will first consider the personal virtue of justice as arising from two commonly distinguished forms of respect and move on to see how the relations between these two forms of respect are recapitulated within Rawls' two principles of social justice. These results will then be compared and contrasted with "social egalitarianism", which modifies Rawls' focus on distribution of goods and resources. Following this, the present view will be

[2] Elizabeth Anscombe (1957) writes in a newspaper op-ed, "…there is what I may call an anti-Platonic view of justice – anti-Platonic, I mean, in one detail. Plato seems to have thought that a just society would be one in which the people were just. But this…may conceal a fallacy; it is not at once clear whether 'just' is a term like 'healthy' (you could not call a community healthy unless its members were individually healthy) or rather a term like 'well-arranged', which obviously does not apply to the individual."

employed to explain the relation of justice to mercy and to resolve the so-called "paradox of mercy".

II. A Primer on Virtue and Respect

To understand the idea that *justice is the virtue of respect*, first recall that all personal virtues are character traits, and psychologists and philosophers now understand these to compose the subset of personality traits over which we have some control, and for which we are therefore responsible.[3] The most important virtues for the ancient Greeks were courage, temperance, justice, and wisdom because, as Terence Irwin writes, they were considered the "primary virtues to be collectively sufficient for being a good person", and that there was agreement among the ancients "that a person who has all the primary virtues thereby has the whole of virtue."[4]

Wisdom is the foundational virtue, as it determines what is of value in the world (axiology) and informs the plans and executive skills required to bring what is good into one's life.[5] Nevertheless, it will be remain in the background here. More helpful will be glosses of the "thin" accounts of courage and temperance, since even a rudimentary understanding them will help us approach justice.[6] So, take courage: we humans are mortal creatures; we can be injured

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[3] Following the psychologist L. A. Pervin (1994), we may understand a personality trait as "a disposition to behave expressing itself in consistent patterns of functioning across a range of situations" (108), and we may follow Christian Miller (2014, chapter 1) and normatively narrow the range of personality traits that will count as character traits. On such a view, character traits are those personality traits for which a person is responsible, and which also open a person to normative assessment. For extended discussion, see Jennifer Cole Wright, Mark Warren, and Nancy Snow (2021). For a contrary view with a more expansive concept of *virtue*, see Tanesini (2021).

[4] Irwin (2005b) cites here *Laches* 197e10-198a6 and 199d4-e5 (p. 91), notes that Plato also discusses these same virtues as a group in *Euthydemus, Meno, Protagoras*, and *Republic,* noting the same virtues are grouped together by Aeschylus, Pindar, Xenophon, and Demosthenes.

[5] In Bloomfield (2014b), I argue that wisdom is special because it is necessary but insufficient for the other virtues. The substantial account of wisdom I find most compelling is by Paul Baltes and Ursula Staudinger (2000). See also Swartwood (2013), Stichter (2016, 2021), Tsai (2019).

[6] Martha Nussbaum (1988: 35) introduces the idea of a "thin concept of a virtue" as an explication of Aristotle's method of distinguishing virtues:

> What [Aristotle] does, in each case, is to isolate a sphere of human experience that figures in more or less any human life, and in which more or less any human being will have to make some choices rather than others, and act in some way rather than some other. The introductory chapter enumerating the virtues and vices begins from an enumeration of these spheres (EN II.7); and each chapter on a virtue in the more detailed account that follows begins with "Concerning X...", or words to this effect, where "X" names a sphere of life with which all human beings regularly and more or less necessarily have dealings. Aristotle then asks, what is it to choose and respond

and can die prematurely and, as young children, we learn about danger and experience the fear which naturally attends it. Of course, it is easy to be confused about what is dangerous in the world and many of our fears are not justified. "Courage" names the character trait which allows us to accurately perceive, as well as possible, what is dangerous and fearful and then to manage them excellently. So, in dangerous and scary circumstances, courageous people know the right thing to do and the right reasons for doing it, and beyond this epistemic feat, they are able to actually do the right thing, if that is humanly possible, or they are willing to die trying if the situation demands it.

Moving on from courage, humans also have appetites, emotions, and desires, many or even most of which seem phylogenetically older than the higher cognitive abilities we evolved, in part, to help manage them. "Temperance" names the character trait that excellently manages this non-cognitive domain. Those with the virtue of temperance have developed and curated the non-cognitive aspects of their minds such that their conations do not only not hinder their flourishing (*eudaimonia*) but partly constitute it (Bloomfield, forthcoming). Temperate people have trained themselves to only desire or be tempted by what is appropriate and not otherwise, nor do they "lose their temper" in inappropriate ways. All of us, including the most intemperate of us, can learn about ourselves by attending to our emotional reactions to the world (Stocker and Hegeman, 1996), but if we want our emotions to teach us about the world itself, the world beyond our own psychologies, then our emotions must be attuned to the world as it is and not merely how we wish it were (Bloomfield, 2019). Some people love what is in fact bad or even evil, whether they realize this or not. Temperate people, on the other hand, will love what is truly good, disdain what is bad, and scorn what is evil. They will feel the right emotions at the right time to the right degree for the right reasons.

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well within that sphere? What is it, on the other hand, to choose defectively? The "thin account" of each virtue is that it is whatever it is to be stably disposed to act appropriately in that sphere. There may be, and usually are, various competing specifications of what acting well, in each case, in fact comes to. Aristotle goes on to defend in each case some concrete specification, producing, at the end, a full or "thick" definition of the virtue.

See also the quote from Pervin (1994) in footnote 3 above. Julia Annas (1993: chapter 1) employs the idea of a "thin" account while explaining *eudaimonism*. Christine Swanton (2003: 20-1) also appeals to the idea of "the field of a virtue" while discussing "The Anatomy of Virtue".

Now consider the fact that Homo sapiens, beyond being mortal and passionate creatures, are also social creatures, like ants and bees, naked mole-rats, elephants, and other primates. Not all mammals are social creatures: felines are notorious in this regard, and orangutans are far less social than bonobos or humans. The sociality of a species is based on how conspecifics relate to each other, both within the family or pack as well as among a broader social group or tribe. Mammalian species are all hierarchical to some degree from an inter-generational point of view: the youngest generation depends on the older to survive youth, implying a hierarchy. Primates are hierarchical in manifold ways. While there are occasional human hermits, the vast majority of us live together in families within communities, societies, and nations. We have always been bound to each other in myriad ways, many peaceful but too many violent. Humans are unusual in that we are capable of seeing the important ways in which we are all equals, despite our obvious differences, and once one sees the equality, much hierarchical human behavior is rightly seen as unjustified. Our social and political lives can be better or worse, so a thin account of the personal virtue of "justice" is that it names the character trait which guides those who possess it excellently through the social world of human beings.

The view of justice defended here begins with the idea that its primary function, at both personal and social levels, is to mediate who and what in the world we respect. Respect ought to mediate all our social interactions, such that when we do as we ought and succeed in treating each other respectfully, we will thereby treat each other with justice. Proper respect and injustice are mutually exclusive. If courage manages danger and fear, and temperance manages appetites and emotions, justice is the virtue which manages respect. While justice is not only a personal virtue, it begins as the virtue that allows us to properly respect ourselves and other people at all personal, social, and political levels.

This is intentionally an all-encompassing view of justice and that may be surprising to contemporary ears, but perhaps ought not to be.[7] As Mary Midgley (1994: 39) wrote, "In

[7] This Greek conception of justice is broader than what is commonly found in philosophy today, but it scholars of ancient Greece agree that justice for them, *dikaiosyne*, managed all social relations. Gregory Vlastos (1968) writes, ''I shall use 'justice' and 'just' merely as counters for *dikaiosyne* and *dikaios*, whose sense is so much broader, covering all social conduct that is morally right''. Julia Annas (1999) pursues the implications of acknowledging the proper scope of *dikaiosyne*.

general, all serious cases of cruelty, meanness, inhumanity, and the like are also cases of injustice" (see also Shklar, 1990). Despite this, it is still most common to think of justice in legal or political settings, and less common to think of it as being at play among friends or within familial settings. The reason for this is that "friendship" and "family" are typically, implicitly normative terms, so that when we conceive of *friends* and *family*, we think first and foremost about good friends and good families. The role of justice becomes readily apparent, however, when we find one friend habitually taking advantage of another, or whenever one spouse abuses another, or whenever a parent unduly favors one child over siblings. There is only a small literature on the role of justice in friendship and the family. (Standouts here are Young (1990) and Hampton (1993a).) But at a minimum, we ought to be fair and just to our friends, our spouses, and our children, and the present thesis is that this begins by respecting them properly or as they ought to be respected.

What has not been taken up in the small literature about personal justice is the way in which we ought to be fair and just to ourselves as well as others (but see Bloomfield 2011, 2014a, 2017). How many of us, despite various successes, feel like imposters and are unfairly hard on ourselves?[8] However many this may be, as Bishop Butler (1900) noted long ago, many more of us are unfairly easy on ourselves, as human beings tend to be overly partial toward themselves. People who are just, on the other hand, treat themselves fairly and they succeed in this by maintaining proper self-respect. Indeed, it is justice's Janus-face, as being both intrapersonal and interpersonal, that makes it a virtue for social creatures like us: we cannot respect ourselves properly without respecting others properly and we cannot respect others properly without treating ourselves the same way.

To begin explicating these ideas, consider how justice is conceived by Aristotle's doctrine of the mean. The doctrine itself can be glossed briefly. With the exception of wisdom, each virtue can be understood as a mean between two extremes, one of deficiency and the other of excess. So, courage is the mean between cowardice and recklessness, while temperance is the mean between gluttony and abstemiousness. And what of justice? Well, Bernard Williams

[8] For discussions of the ''imposter syndrome'' and psychologically maintaining a negative self-image see Kolligian, Jr., and Sternberg (1990) and Snyder and Higgins (1997).

(1980) once suggested that Aristotle's doctrine of the mean does not apply to justice because "one cannot be too just". Unfortunately, Williams seems to conflate two senses of "excess", distinguished by Aristotle, where one form of excess leads to vice while the other leads to supererogation (*NE* 1107a6-8). Instead, we should be guided by a different line of Aristotle's (2014), where he writes that, "acting justly is a mean between committing injustice and suffering it, since the one is having more than one's share, while the other is having less" (*NE* 1133b30). The Greeks called the primary vice associated with justice "*pleonexia*", which can be translated as "arrogation", "greed", or "taking more than one's due" (Sachs, 1998), while they had no proper term for the trait of willingly accepting less than one's due. While the following is a distinct departure from Aristotle's theory of justice, as he focuses narrowly on questions distributing resources or goods, the best way to understand the personal character trait of justice is to see it as the mean lying between arrogance and servility. Justice is seeing veridically who we are in relation to others: to see each human being, oneself included, as being a member of a kind as well as seeing each person as a unique individual.

The fundamental error of personal injustice happens at the logically reflexive level of self-respect, where arrogance involves failures of self-respect in a self-aggrandizing direction while servility involves failures in the direction of self-abnegation. Justice makes us see that morality is not an exogenous force imposing upon us but is endogenous with roots in the social nature of Homo sapiens as animals. Justice determines the proper role of self-respect in a well-lived human life. People who are just will have self-respect: they will have accurately assessed who they are, both as members of the human race and as individuals, and will respect themselves as they ought to, given who they are. As we shall see below, all other groundings of self-respect are mistaken and fraudulent.

This insertion of respect into the analysis of *justice* brings Kant to the rescue of Greek philosophy which had not properly grasped the fundamental equality of people and held, rather, that some subset of humans, namely adult, male citizens of Athens, are inherently superior to everyone else. Kant introduced egalitarian *respect*, which includes self-respect, as well as duties to the self, into the subject matter of modern moral philosophy. Arrogance and servility are failures of self-respect. "Arrogance" is being understood here in terms laid out by

Robin Dillon in her excellent essay "Kant on Arrogance and Self-Respect" (2004), while "servility" can well be understood through Thomas Hill's essay "Servility and Self-Respect" (1973) and Jean Hampton's "Selflessness and Loss of Self" (1993b).[9] Dillon argues that arrogant people are wrong about their self-respect in two ways: they have deceived themselves into believing, first, that they command more respect than they actually do and, second, that their standard of judgment on these matters is veridic. Servile people are most readily captured by Hill's examples of the "Uncle Tom" figure and the "subservient wife", both of whom wrongly accept their subordinated position as being proper and correct for them despite its self-disrespecting implications.

One need not reject virtue ethics for Kantian deontology to appreciate Kant's leap past the Greeks by bringing respect to the center of moral philosophy. Understanding justice as a virtue of people and institutions, we should expect it to be capable of not just of ubiquity but plenitude as well, and respect functions in that role perfectly: respect is not some kind of limited resource, like manna from Heaven, but rather can and ought to be the free lifeblood of all social and political life. As noted, Kant is exceptional for recognizing moral duties to the self. For our purposes, what will help us see the relations most clearly between justice and respect, on the one hand, and personal and social justice, on the other, will come by attending to an important distinction between two kinds of respect and juxtaposing this distinction with Rawls' two principles of justice.

Before we get there, however, we first need a "Basic Distinction" about the cognitive act of judging or evaluating and, second, a rudimentary understanding of *respect*. The Basic Distinction is not meant to be a deep point of metaphysics, but it is meant to be based on ontology and perfectly general: if we wish to judge or evaluate a particular item which is a token of a type, then we must first recognize the type to which the token belongs and only then can we appraise the particular characteristics of the individual token. First, we judge the item to be a knife, then we can judge it qua knife. The features of the type yield the standards by which

[9] On arrogance, see also White Beck (1960); Tiberius and Walker (1998) and Tanesini (2021). On servility, see also Tanesini (2021). For an interesting take on servility, through the example of ultra conservative "alt-right" women who are propogandists for this misogynistic (racist, etc.) cause, despite the way it deepens their subordination, see Llanera (2023).

we judge the token. When it comes to judging or evaluating a person, we need first to take account of the ways in which that individual is similar to ourselves and to everyone else and then, after, we must account for the ways that the individual is different than the members of the relevant contrast class. Only then are we in a position to render judgment. There are the ways in which all human beings are the same – we are Homo sapiens, born of women as helpless babes, cut us and we bleed, etc. – and then there are the ways in which each of us is unique and different than all others.[10] The Basic Distinction of course applies in the first-person case. So, for me to assess myself, I must understand what I have in common with you, my fellow human beings, then I must understand what makes me be me, as the unique individual I am. You are in the same situation as I. Each of us, as individual human beings, is equally similar to everyone else in uncountably many ways; nevertheless, each of us is unique.[11]

As for our rudimentary understanding of *respect*, we may begin by thinking of it as a *reactive attitude*, as these are discussed by P. F. Strawson in his famous essay "Freedom and Resentment" (1962).[12] Strawson's view, obscure as it is, is far from the final word on these attitudes and the sense in which they are "reactive", but it is a good start. Like resentment, respect has, at least, two kinds of objective correctness conditions which are relevant here. First, consider resentment. Imagine Noah wrongs me but I incorrectly think it was Jonah who did the deed. I intend to resent whomever it was that wronged me, or Noah, but instead I mistakenly

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[10] For a greater understanding of the ways in which all humans are the same, see the anthropologist Donald Brown's (1991) long list of "universal human traits" found in every human culture.

[11] If we assume that natural kinds have essences, then the Basic Distinction between characteristics of types and tokens is orthogonal to a distinction between essences and accidents. Of course, many characteristics of a type will be aspects of its essence, but many characteristics of the type might have been otherwise. And some characteristics of a token might be essential to that token. Each of us has DNA essential to who we are, and if we are not identical twins (or one day clones), then our particular DNA is unique to us. This relation of token to type recapitulates at the level of DNA: within DNA, parts of it determine the type we belong to and other parts distinguish us as individuals (and other parts are "junk DNA").

[12] It is worth noting that the scope of Strawson's (1962: 191-2) reactive attitudes extends to basically all social relations and can be seen as having the same as the scope of Greek *dikaiosyne*. He writes:

> We should think of the many different kinds of relationship which we can have with other people – as sharers of a common interest; as members of the same family; as colleagues; as friends; as lovers; as chance parties to an enormous range of transactions and encounters. Then we should think, in each of these connections in turn, and in others, of the kind of importance we attach to the attitudes and intentions towards us of those who stand in these relationships to us, and of the kinds of *reactive* attitudes and feelings to which we ourselves are prone. In general, we demand some degree of goodwill or regard on the part of those who stand in these relationships to us, though the forms we require it to take vary widely in different circumstances.

resent Jonah. So, we can distinguish "fitting resentment", wherein I succeed in resenting the person I intend to resent, from "mistaken resentment", wherein I fail at this. The same form of objectivity applies to respect: if someone performs a virtuous act, I could mistakenly respect Ruth for doing it when it was Esther who actually did the virtuous deed. Notice the same distinction applies when people lie about who they are: I respected Lance Armstrong for his Tour de France wins, only to find out he was doping, when I deemed my own respect to have been mistaken. In fact, I never fittingly respected Armstrong himself, but rather only mistakenly respected a false image of who he is. For any X, respecting a false image of X is not fittingly respecting X.[13] Notice the distinction between fitting and mistaken respect will come in degrees, like the distinction between success and failure. Importantly, for respect and self-respect, this is a normative distinction: one ought to have fitting and not mistaken (self-)respect.

And as for the second kind of objectivity that attaches to respect: we cannot infer from someone's sincere claims about who they respect to conclusions about who they respect. A traditional husband may sincerely claim to respect his subordinated wife and yet treat her disrespectfully in all sorts of ways, many of which may be unconscious or subconscious. This would show that he does not fittingly respect her as he claims, regardless of what he may sincerely think. Fitting respect is not just lip service: to fittingly respect people, one must not merely claim, however sincerely, to respect others but must actually treat them respectfully (barring cases of mistaken identity, etc.). We cannot simply infer that X fittingly respects Y simply based on X's sincere claims.

Importantly for what comes below, self-respect is just a special case of respect and so, these two objectivity conditions apply to self-respect as well. Imagine I built what I call my "self-respect" on the sincere belief that I am the greatest philosopher since Kant. If I did as imagined, if I respected myself based on what I merely wished were true but is not, then surely my self-respect is as mistaken as my respect for Lance Armstrong was, based as it is on a false image of myself. Therefore, people can be wrong about whether they have self-respect: insofar as people engage in self-deceit, their self-respect is mistaken and not fitting; if people respect

[13] My use of "fitting" is meant to be colloquial and generic. For an overview of *fittingness* as a technical term, see Howard (2018), and for a virtue theoretic conception of *fittingness*, see Yao (2023).

who they wish they were but are not, their self-respect is mistaken. And the second objectivity condition applies too: I may sincerely claim to have self-respect but unconsciously engage in self-disrespecting behavior that undermines my claim (Bloomfield 2014a, 2017). (Hereafter, unless noted, the terms "respect" and "self-respect" will be used for "fitting respect" and "fitting self-respect".)

Given the Basic Distinction between judging similarities and differences among tokens of a type, and these objectivity conditions for respect, we can now turn to more familiar ground. While Stephen Darwall's (1977) terminology has become accepted jargon, the distinction he drew between two kinds of respect was first discussed by Elizabeth Telfer (1968): there is "recognition respect" and "appraisal respect", though the interpretation of these here will depart somewhat from how Telfer and Darwall introduced them. Recognition respect is the respect we give to something in virtue of the type or kind of thing it is.[14] If we are walking in the forest and we see a bear and recognize it as a bear, we will then, if we are not foolish, treat it with the sort of respect which is appropriate for humans to show bears. And the same can be said for when humans engage with each other, as the social creatures we are. Bears are not moral agents, but human beings inviolably are, and we ought to recognize each other and respect each other as such. Treating a human being as something other than a human being is both a factual and a moral error.

There is of course great debate over which features of human beings make us worthy of moral consideration. Kant identified non-natural phenomena such as free will, rationality, autonomy, and our noumenal selves as essential to our having the moral status which human beings enjoy. Naturalists may appeal to human nature or humanity or to a constellation of traits to do the same work, as does Jeremy Waldron in his persuasive essay, "The Profoundly Disabled as our Human Equals" (2017). The theory of justice as the virtue of respect can be neutral across these different metaphysical theories of moral agency, or whatever it is that we have in common

[14] Note that this is to be contrasted with another sense of the term "recognition". The sense intended here is "re-cognition", in the sense of recognizing a face as someone one knows. There is another, more power-oriented and political sense of "recognition", in which recognition confers upon the recognized something it did not previously have. For example, the *OED* defines one use of the term as, "the process by which one state declares that another political entity fulfils the conditions of statehood, and that it is willing to deal with it as a member of the international community." For an excellent discussion of this latter sense of the term, see Honneth (2021).

which makes us each ontologically recognizable as a *person*, as opposed to some other kind of thing. The existence of these different theories need not concern us here, given that they are all meant as answers to the same question: what justifies us in recognizing ourselves and other human beings as objects of moral respect and consideration. Skeptics might deny the existence of an answer to this question, but all other parties to the debate agree that there must be an answer, even if we cannot agree on what it is.[15]

So, if recognition respect focuses on those aspects of ourselves which we all have in common, appraisal respect focuses on those aspects of ourselves which distinguish each of us from each other. The Basic Distinction implies there are both the qualities which we all share and the qualities which make me be me and you be you. Appraisal respect requires us to appraise the characters of people, their accomplishments, and particular actions, respecting them as we ought.

If we put these two kinds of respect together, we are able to morally assess people as individuals and thereby determine how much respect we ought to give them. No one ought ever to receive less than the level of respect that is due to all human beings, as a result merely of recognizing people as people, but how much more than this least common denominator of respect a person ought to receive is based on appraisals of that person as an individual.

Given this, we can begin to see how respect is related to justice by considering more closely how respecting others is related to self-respect. One might think that these can come apart and that, for instance, I can have self-respect without respecting other people and I could respect other people without respecting myself. In lieu of a full discussion, an introduction to the interrelated nature of respect and self-respect will show that how we treat others cannot be understood correctly without attending to how we treat ourselves, and vice versa (again, see Bloomfield 2011, 2014a, 2017). A foundational principle of justice, to which we will return below, requires us to "treat like cases alike", and applying this to respect of others and to self-

[15] Nor need the existence of this answer imply that human beings or other animals are the only items fit for moral respect and consideration; as Darwall (1977: 38) writes of recognition respect, "The law, someone's feelings, and social institutions with their positions and roles are examples of things which can be object of this sort of respect".

respect, we get the conclusion that respect requires judging both ourselves and others according to the same standards.

Imagine I think of myself as a moral and just person and I base my self-respect partly on that basis when, in fact, I arrogantly treat other people as inferior or subordinate. If I treat myself (and perhaps those I love or identify with) like someone who has self-respect and treat others worse than that, then in fact I treat myself better than I treat everyone else, which shows that I am not the moral and just person I think I am and shows that my self-respect is mistaken and not fitting, despite my sincere claims. To help see this, let's take a toy example: Imagine a teacher with blond hair who, intentionally or unintentionally, favors students with blond hair. The teacher actually grades blond students against the school-wide standard but, intentionally or unintentionally, holds non-blond students to a higher, more demanding standard, so they uniformly do worse than blond students. The teacher is manifestly, though not equally, unjust to all the students. The non-blond students are more deeply disrespected, as they are innocents being punished, and there is little more unjust than this, while the blond students are being led to believe that they do better than they actually do compared to their peers, so their self-conception is thereby proportionally distorted, making their self-respect proportionally mistaken. Notice, perhaps surprisingly, that the blond students are disrespected by the teacher despite the fact that they are being judged using a standard which would otherwise be fair and just. The same logic leads the high school teacher Tim Donahue (2023) to conclude that, of students in a class, "If everyone gets an A, no one gets an A." And the same logic led Martin Luther King, Jr. (1963) to write, "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."

What are we to say of the blond teacher? Well, the teacher's grading is unjust. The toy example is not meant to show that all injustice is the result of arrogance or servility, as acts which result in injustice can be due to weakness of will involving cowardice, gluttony, foolishness, etc. But, on a virtue theoretic account, being an unjust person, someone who knowingly or unknowingly applies a double standard to a single group, is the result of departures from justice toward either arrogance or servility, and it will be helpful to see the case

from this point of view. The present view holds the blond teacher to be arrogant and committing fundamental errors in respecting students. Regardless of whether or not the teacher is aware of using two standards to grade one class, the charge of arrogance is borne out by the fact that the teacher thinks the grades are fair and just.[16] Regardless of intentionality, the teacher self-deceptively thinks all the students are getting the correct grades, or the ones they ought to get. Notice two distinct self-deceptions: (i) the teacher falsely believes the job to have been well done and (ii) the teacher falsely believes that the standards against which the job measures as "well done" are the correct standards to be using. These are the same two kinds of self-deception which Dillon (2004) marks as characterizing arrogance (see above) and it is easy to imagine this teacher basing their mistaken self-respect (in part) on how "fairly" they grade their students.

The toy example is meant only to illustrate how one cannot be fair to some without being fair to all and, crucially, applies to the purely first-person case too: how I treat myself does not swing free of how I treat others, and vice versa, such that if I use different standards for myself than for others, then *no one* is being treated with justice. The toy example stems from the teacher's arrogance, but similar conclusions follow from servility: if servility leads an expert to defer to a non-expert on some important matter within the expert's bailiwick, the non-expert is not being treated with justice assuming, ceteris paribus, it is wrong for experts to defer to non-experts about such matters. Keeping in mind the points from above about fitting versus mistaken respect and self-respect, we can see that treating oneself as either better or worse than others prevents one's self-respect from being fitting; arrogant and servile behavior inhibits self-respect regardless of what one may subjectively think. And if justice is the mean between arrogance and servility, then justice is necessary for fitting self-respect.

To recap the basics for justice as the virtue of respect: human beings are the same in a variety of ways in addition to our individual differences. The ways in which we are the same are the basis for recognition respect including self-respect, and the differences between us are the basis for appraisal respect including self-respect. Fitting self-respect requires respecting an accurate assessment of the self, regarding both what we share with others and what

[16] Of course, it is possible for teachers to hand out grades which they know to be unjust. The disrespect for the students in such cases is even worse than falsely thinking they are just.

differentiates us, whereas respecting who we wish we were but are not will yield only mistaken self-respect. Just people are excellent at respecting who and what ought to be respected *tout court*, including themselves. As courageous people are experts in handling danger and fear, and temperate people are experts at managing their appetites and emotions, just people are experts in respect which allows them to treat people as they ought to be treated.

This is serves as the foundation of social justice because our fundamental, factual, ontological recognition of others as both equal to and different from ourselves should be sufficient to motive us to seek standards and procedures so that everyone treats each other based on the fitting respect we mutually acknowledge between us. One might think that how much we ought to respect others depends in part on contingent, up and running social institutions, but this is true only if those social institutions are themselves just: institutions are just only when they fittingly respect those living under their purview. Notice that institutions are never accidently just, so when they are just it is because they were devised by just people who understand how people ought to respect each other. So, the claim is not that a scheme of fair distribution or a standard of social justice can be derived from the notion of *fitting respect* all by itself, but rather that when just people interact with each other, they will respect each other well and that, when the need arises, this will lead them to do the work to derive and accept mutually agreeable standards of social justice as normatively action-guiding for them – this would yield social justice.[17] Just people need no veil of ignorance; just people have no interest in "gaming the system", usurping power, or oppressing others. The claim is that a group of ideally just people would be capable of designing an ideally just society.

III. Rawls and Respect

Social justice must be consistent with this and built upon it to accommodate the full complexities of the conventional institutions which structure human social life. These

[17] One could read the history of political philosophy as a tug-of-war between egalitarian communitarians who take commonalities among humans as fundamental and the libertarian individualists who emphasize human differences. The claim that justice is the virtue of respect implies that the just person knows how to balance these concerns against each other. There will be situations, like when the enemy is invading, where it is right to prioritize the community over the individual and other situations, involving for example privacy, parental, and reproductive rights, where the individual and not the community ought to have final authority.

institutions can be more or less just, based on how respectfully the institutions treat those whose social lives they structure. If, for instance, social institutions allow for slavery, chattel property, or other forms of systematic oppression, then they are not giving everyone in society the respect they ought to give. The more social institutions treat people differentially based on arbitrary differences between them, the more unjust and disrespecting they will be to everyone involved. Most of the disrespect will obviously be directed toward those who are oppressed but, as Frederick Douglass (2016) notes, those who are the oppressors of others are also harmed by those very institutions: slavery harms slave-owners. In present terms, this is because they engender arrogance in oppressors, an exaggerated sense of entitlement, and mistaken bases for self-respect. All injustice harms every party involved to one degree or another.

It is at this point that we can bring in John Rawls' theory of social justice. Again, the idea is not to engage in Rawlsian exegesis as clearly Rawls was not concerned with personal justice, and this fact likely explains why Rawls denies that justice can be derived from respect on the second to last page of *A Theory of Justice* (1971).[18] Notwithstanding this, the present claim is that the virtue of *personal justice* is based upon *respect* and *self-respect* and that *social justice,* including our understanding of *fairness*, is based upon *personal justice*. The claim is that personal justice is necessary but not sufficient for social justice. It is necessary because there is no chance that unjust people could or would develop just social institutions, but it is sufficient if only because institutional racism can be unintentional. Still, the basic structure of social justice recapitulates the basic structure of personal justice when it is based on respect.

Of course, Rawls does place great emphasis on self-respect as a "primary good" of people, yet he says significantly less about respecting others.[19] He does discuss "respect" and "mutual respect", but not nearly with the emphasis he gives to self-respect and only briefly once

[18] Rawls writes, "without the principles of right and justice, the aims of benevolence and the requirements of respect are both undefined; they presuppose these principles already independently derived" (p. 586). But the present claim is not that we can "define" "the requirements of respect" without a theory of justice, but merely that *justice* cannot be conceived unless it is set against a background in which the concept of *respect* is already playing a role. For excellent discussion of Rawls on self-respect, see Kramer (201: chapter 7).

[19] In *A Theory of Justice,* Rawls mentions "self-respect" on 78 pages of the book while mentioning "respecting others" and "mutual respect" on 17 pages.

gestures toward the relation of self-respect to mutual respect.[20] And his writing on self-respect unfortunately does not distinguish it adequately from self-esteem.[21] But his work is relevant here because his theory of the social justice of institutions is based on two principles which are related in ways analogous to how recognition respect is related to appraisal respect. We understood this relation earlier as being captured by the Basic Distinction between those aspects of an individual which are common to all members of that individual's kind and those which distinguish that individual as an individual.

The Basic Distinction is captured by Rawls' (1971: 60) two principles of justice. To rehearse these quite briefly:

> First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.
>
> Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.

The first principle lays out a principle of equality between people: society ought to acknowledge the basic ways in which all people are alike and this ought to establish a baseline level of equal treatment for all its members based on the ontological fact that members of a society are fundamentally all people who deserve to be recognized and treated as such. Rawls (1971: 256) explicitly invokes Kant when explaining the "duty of mutual respect" which justice requires, defining it (1971: 337) as "the duty to show a person the respect which is due to him as

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[20] Rawls (1971: 179) acknowledges the relations between self-respect and respect when he writes:

> [O]ne may assume that those who respect themselves are more likely to respect each other and conversely. Self-contempt leads to contempt of others and threatens their good as much as envy does. Self-respect is reciprocally self-supporting.

But he does not, to my knowledge, take up these points anywhere else in his writings.

[21] Rawls (1971: 440) writes:

> We may define self-respect (or self-esteem) as having two aspects. First of all, as we noted earlier (§ 29), it includes a person's sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one's ability, so far as it is within one's power, to fulfill one's intentions.

Telfer's 1968 essay on self-respect was published in *Philosophical Quarterly* before *A Theory of Justice* and it is a shame that Rawls did not distinguish self-respect from self-esteem nor attend to Telfer's distinction between recognition and appraisal self-respect.

a moral being".[22] Given this, we can see how Rawls first principle of justice is grounded in the sort of recognition respect that is the foundation of the personal virtue of justice.[23] This is explicit in an essay from 1957 where, with regard to what would become Rawls' first principle of justice, he (1957: 654) writes that it "contain[s] the principle that similar cases be judged similarly, or if distinctions are made in the handling of cases, there must be some relevant difference between them".[24]

In the second paragraph of that 1957 essay, Rawls writes, "Essentially justice is the elimination of arbitrary distinctions…" and in the fifth paragraph of *A Theory of Justice*, citing H. L. A. Hart's *The Concept of Law*, he writes:

> Those who hold different conceptions of justice can, then, still agree that institutions are just when no arbitrary distinctions are made between persons in the assigning of basic rights and duties and when the rules determine a proper balance between competing claims to the advantages of social life.

One way to conceive of recognition respect is that transgressions against it are necessarily based on arbitrary distinctions being drawn between people qua people. Whatever makes it correct to give any of us "basic rights and duties" makes it correct for everyone to have the same as well, as demanded by recognition respect.

Rawls' second principle establishes hierarchies of offices within institutions, such that the distribution of benefits, which attach to these offices and not to their occupants, must be to everyone's advantage. The first part of the second principle refers to "the expectations of representative individuals" (1971: 64) who occupy the offices to justify the distribution of the benefits, while the second takes off from the "traditional phrase" that "careers are open to talents" (1971: 66) which, by itself, leads to "natural liberty" (1971: 72) or unjust and "callous

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[22] Rawls cites Kant's remarks on moral education in the Second Critique (part II) as well as work by Bernard Williams (1962, reprinted 1973) and Lewis White Beck (1960) to justify the idea that Rawls' position expresses Kant's aim to establish "an ethic of mutual respect and self-esteem" (p. 256).

[23] Notice that criminals in prison have less liberty than what is allotted by Rawls' original position. And notoriously, Rawls does not use the word "immigration" once in *A Theory of Justice*, as he is only concerned with freely participating members of a society, all in good standing. Recognition respect requires social institutions to treat criminals and migrants as people, even if they are not granted the same political/institutional rights as citizens in good standing with society. Criminals and non-citizens retain all of their human rights.

[24] For more on the relation of justice to "treating like cases alike", see also Berlin (1955-6); Wasserstrom (1964). J. B. Schneewind (1996) discusses Clarke on the principle, noting without reference in a footnote that Cumberland also comments on it.

meritocracy" (1971: 100). Rawls therefore modifies this in the second part of the second principle requiring "the further condition of the principle of fair equality of opportunity" (1971: 73) to elide these effects of class distinctions which make "natural liberty" unjust. One way to understand the import of the second half of the second principle is that these offices are to be open to all for the sake of attaining many goods, two of which concern us here and were also highlighted in that early 1957 paper: first, that a person is "wronged" by being prevented from occupying an office for arbitrary reasons, and second, that the offices will be occupied by people who are most fit or capable of executing the responsibilities of that office (1957: 654-5). Rawls makes it clear in *A Theory of Justice* (1971: 73) that he thinks that "those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success". In this way, we can see that Rawls thinks that justice requires us to attend to those aspects of people, their talents and abilities, which distinguish them as individuals, and that each person ought to have the equal opportunity to attain a position in society which is commensurate with who they are as individuals. One way to conceive of appraisal respect is that transgressions against it are necessarily based on arbitrary distinctions between individuals qua individuals. If, *per impossible*, two actual situations were identical in all respects, then they should necessarily be judged and treated the same way. But since no two situations are exactly alike, individual differences must be appraised as such. To be excellent at such appraisals and to act on them is part of being just.

The claim here is not that what we call today "appraisal respect" is sufficient to generate Rawls' second principle of justice. Rather, the claim is that the second principle could not function to help structure society as it does without appraising individuals as individuals, above and beyond the ways that all individuals ought to be recognized as equals. There is a clear analog obtaining between how Rawls' two principles of institutional justice are related to each other to the relations of recognition respect and appraisal respect, as these feature in the personal virtue of justice. In each of these pairs of ideas, we find that just judgments of individuals, whether from a personal or an institutional standpoint, require both that we take stock of the kind of thing these individuals belong to, namely that we recognize them as people or moral agents, as well as taking stock of what differentiates them as individuals. We can

model how institutions ought to treat those living under their auspices upon how individuals ought to treat each other, and both of these are based on respect. Respect is *the* necessary ground of all justice, be it personal or social: respecting well may not be sufficient for all justice, as specialized knowledge would be required to implement a just economic system. But a just system does not get off the ground unless it treats those it engages with respectfully. Respect is not merely necessary for justice, but grounds it. *Therefore, justice is the virtue of respect*.

IV. Social Egalitarianism

It will be helpful to orient the present position and Rawls' theory of distributive justice with a more recent view of justice treating it primarily not as a constraint on the distribution of goods and resources but rather as the result of treating all people as equals, which entails, among other effects, avoiding or eliminating social oppression of all forms. Much to the detriment of theories of justice, most of them have followed Aristotle (2014, book V) in thinking that questions of distribution are the primary the domain of justice. It is little noticed how squarely and how inappropriately this makes justice begin with economics, as good economics yield felicific distributions of goods and resources to the greatest benefit for all. While this certainly sounds like a good result and something to work for, this certainly does not imply that distribution or, more broadly economics, is the right place to start a theory of justice. Indeed, it is putting the cart before the horse. However, pressing they may be, we need not attend to the familiar problems consequentialist theories have in accounting for justice: justice is not merely ending up with the best distribution of good and resources but is primarily concerned with the structure of the social context within which the distribution occurs (Norman, 1997; Wolff, 1998; Anderson, 1999; Scheffler, 2003). Most importantly, in all social circumstances, power must be balanced so that it cannot be used by some to oppress others (Young, 1990). Specifically, this would prevent the erection of social hierarchies which oppress or keep down those who are currently low in the hierarchy.

"Social egalitarianism" or "relational egalitarianism" is the view that society ought to be based on principles which hold that "all competent adults are equally moral agents" while repudiating "distinctions of moral worth based on birth or social identity—on family

membership, inherited social status, race, ethnicity, gender, or genes. There are no natural slaves, plebeians, or aristocrats" (Anderson, 1999, p. 312). And to a significant extent the view of justice as the virtue of respect would yields the same results as social egalitarianism: all moral agents receiving equal respect expresses the same idea that we find in recognition respect and in Rawls' first principle of justice. It is by recognizing and respecting all moral agents as fundamentally equal that we extirpate social injustice and the oppression caused by structural hierarchies.

As necessary as this fundamental equality is for justice, it nevertheless does not seem sufficient for it. To return to the Basic Distinction, there are the ways we are the same and the ways in which we are individuals, and social egalitarianism expresses proper respect for those ways in which we are all the same. But social egalitarianism has little to say about what makes us different from one another. Well, that is only half true. Social egalitarianism rightly insists that society be structured so as to foster those who are born or who end up with physical or psychological disabilities or challenges which make life harder for them. This would be guaranteed if everyone was assured a "bottom line" equality ruling out oppression. But social egalitarianism has less to say about how to treat those who excel in ways that make outsized contributions to society. If anything, there seems to be a tendency to downplay individual contributions. In basic agreement with Rawls on this point, Anderson (1999: 321-22) writes:

> From the point of view of justice, the attempt, independent of moral principles, to credit specific bits of output to specific bits of input by specific individuals represents an arbitrary cut in the causal web that in fact makes everyone's productive contribution dependent on what everyone else is doing… Michael Jordan could not make so many baskets if no one kept the basketball court swept clean.

At some level, this is certainly correct and important. The myth of the "self-made man" is absurd given how dependent humans are on their elders until they are old enough to presumptuously fool themselves into thinking they are "self-made". No one can make significant contributions to human society without necessary help along the way, as such contributions depend on a division of labor allowing people to focus and become experts in what they are good at.

Given this, and the natural and reasonable tendency of those who are successful to protect their success, Anderson (1999: 326) is surely right that:

> The degree of acceptable income inequality would depend in part on how easy it was to convert income into status inequality... The stronger the barriers against commodifying social status, political influence, and the like, the more acceptable are significant income inequalities.

And obviously the mind-numbingly gross levels of inequality today represent an unjust distribution of income.

Nevertheless, at another level, we ought not to undervalue or discount the contributions of individuals and Anderson seems wrong to suggest that we cannot ever make relative assessments of individual contribution. Imagine we are part of a tribe with enough hunters for two hunting parties, the members of which are not fixed. Over time, it becomes apparent to all that one of us is a preternaturally good hunter: regularly, reliably, whichever party this person hunts with is more successful than the other party. In such cases, contra Anderson, we can "credit specific bits of output to specific bits of input by specific individuals" and we all ought to give this good hunter the increase of benefits which is fitting for their outsized contribution. It would be a failure of appraisal respect, a failure of justice, to do otherwise.

There is a tendency among egalitarians to try to reduce outsized contributions by individuals to their unearned "natural talent", as if their unusual *abilities* were somehow unearned, despite the evident fact that natural talent can be fostered or squandered. The world should, and egalitarians do, weep for the talent squandered by oppression. But when great natural talent is fostered, when talented people are allowed to do the work that moves them, great achievements can occur which are beyond the capacity of perhaps anyone else. And it is no wonder that we respect and honor such achievements: take the 100 most important innovators in human history, whomever they might be, and imagine how different the world would be if they had died at birth. The mind boggles. To continue with Anderson's example, though she could have pointed to Mozart or Einstein, etc.: while the vast majority of people can sweep a floor, the exceptionally competent expert is far, far rarer, and Michael Jordan worked incredibly hard to become as good as he did: whatever talent he was born with was only

necessary but not sufficient for his achievements.[25] Justice demands that individual differences in contribution are recognized for what they are and are given proper appraisal respect, not merely because we all instrumentally benefit from the achievements of the best of us but, more importantly, because these achievements signal human excellence, which is valuable in itself.[26]

Indeed, in the tradition of virtue ethics, there is a distinction from Aristotle (2006, book VI, chapter 13) between "natural virtue" – say, the "natural courage" of the bold child – and "real virtue" or fully developed virtue, in which the virtuous character trait has been mastered to the point of becoming "second nature" to the virtuous person. Like being virtuous, outsized contributions are achievements based on the development of natural talent which takes hard work, making it fit for appraisal respect.

So, equality is only half of justice, as the other half recognizes differences between people. To the degree that egalitarians think they are giving a complete theory of justice, which is captured by the single idea of equality, they have only given half a theory. Justice requires a theory which respects the differences between people, as much as it respects the ways we are the same. The point could be made by way of distinguishing unjust from just hierarchies, a distinction social egalitarians would not deny, though they do not emphasize it. Unjust hierarchies are those which egalitarians focus on, and rightly so: hierarchies based on family or religious membership, social status, race, gender, etc. Just hierarchies are those we can find in a courtroom with a presiding judge who is just, and, more prevalent, those existing between parents and children, teachers and students, doctors and patients, experts and laypeople, etc. On the present view, oppression is the outcome of oppressors, those with a "will to power",

[25] See Huddleston (2020), for evidence of Jordan's extraordinarily hard work. Much the same point about effort and ability is made by David Schmidtz (2006) in reference to Robert Nozick's (1974) discussion of another basketball player, Wilt Chamberlain.

[26] In Anderson (2012: 44), she cites Dewey and distinguishes "the good, the right, and the virtuous", claiming that egalitarians evaluate inequality from all three perspectives. Judgements of goodness are first personal and subjective, based upon "one's felt attraction to an appealing object". Citing Darwall (2006), she claims judgments of rightness, including claims about justice, are second personal. Judgments of virtue are third personal, from the perspective of an observer or judge. It is hard for a virtue theorist to parse these claims, as they seem to beg so many theoretical questions about virtue, normative ethics, and metaethics. Most relevant for the present discussion: assuming questions about self-respect also questions about rightness, how are judgments of self-respect second personal? If justice is not a virtue, either of a person or a social institution, what is it? How can judgments about justice and injustice be different than judgments about virtue and vice?

arrogantly disrespecting those they oppress. So, despite some differences, the present view agrees with social egalitarianism in its rejection of any hierarchy which leads to oppression, which is indubitably a *sine qua non* for social justice.

There is a final similarity between justice being captured by social egalitarianism and the idea that it is the virtue of respect. And this is that both see justice as fundamentally *not* a question of distribution. As noted, these egalitarians think we should be focused on the social context within which distribution occurs, as justice is more than merely coming up with a correct distributional scheme (or the best consequences). Institutions cannot be considered just unless the process by which their outputs are generated are themselves just. On the virtue side, what is important is that, however desirable and valuable respect is to human beings, respect is not a "finite resource" to be distributed: giving people proper respect is free, so "distribution" in the standard sense is rightly secondary. And like social egalitarianism, it is not sufficient for justice to give the right people the right amount of respect unless those people get that correct amount of respect *for the right reasons*. Justice requires more than a just outcome, it requires a just process. So, if justice is the virtue of respect, justice is relational, but not strictly egalitarian.

V. Justice and Mercy

An independent argument for concluding that justice is the virtue of respect is how well it explains a perennially perplexing aspect of justice, namely its relation to mercy and equity. Mercy occurs at the level of personal judgment while equity occurs at the institutional level. Whether personally or institutionally, how can it be just to be more lenient in punishment to some and not to others given that justice requires us to treat like cases alike? The answer begins with the classical idea, going back to Plato's *Statesman* and *Laws*, that mercy and equity are aspects of justice and ends by seeing how the puzzling relationships between justice and mercy/equity can be explained by the idea that justice is the virtue of respect.

Following John Tasioulas' (2003) excellent discussion of the "paradox of mercy", we can begin with a quote from Seneca (1995: 160) on *clementia*:

> [I]t can ... be called a 'tendency of the mind to leniency in exacting punishment'... We might speak of mercy as 'moderation that remits something of a deserved and due punishment'. The cry will go up that no virtue ever gives anyone less

> than is his due. But everyone realizes that mercy is something which 'stops short of what could deservedly be imposed'.

Justice requires that we treat like cases alike, yet mercy, which is at least sometimes morally permissible, allows for discrepancies between punishments, such that some "stop short" of others despite the similarity between cases. This has led some, like Tasioulas, to conjecture that mercy is its own virtue, or is perhaps an aspect of the virtue of charity, or is at least distinct from justice, so that the determination of how much to punish in a particular case will involve resolving a conflict between the virtues of justice and mercy. But positing conflicts between virtues should be a last resort, as there are theoretical reasons for thinking that all individual virtues operate within a single system of values, determined by wisdom, which mutually conduce toward flourishing.[27] If so, there are reasons to think justice and mercy do not pull in opposing directions.

The most difficult theoretical issue for understanding mercy's relation to justice is to explain why, in certain circumstances, the mitigation of punishment seems appropriate, while it never seems appropriate to aggravate or enhance punishment for symmetrical reasons. While mercy may inveigh toward mitigating punishment for a guilty person who has had a horribly abusive upbringing, it never seems appropriate to increase or aggravate punishment for a guilty person simply because that person had a wonderful upbringing. To use a visual metaphor, we expect the balances of justice to work symmetrically and reciprocally, but it seems like mercy tips the scales in only one direction. There seems to be nothing about the virtue of justice which could account for this asymmetry.

Martha Nussbaum (1993) gives one form of answer which is persuasive, even if incomplete. It goes beyond explaining why we do not have a mode of justice which is the opposite of mercy and gives general reasons for why we would not want uniformly strict retributive justice in every instance. Nussbaum suggests that the asymmetry is the result of the fact that, well, actual life for human beings is hard and presents challenges which are beyond some to meet and survive with their moral characters intact. These challenges can be the result

[27] For more on whether or not virtues conflict, see Irwin (2005).

of bad luck or bad upbringing or provocation or sheer ignorance, and because these challenges are often the cause of immoral or criminal behavior, justice should acknowledge this, which is a source of mercy. To use Nussbaum's example, there are certainly cases of parricide and incest which are the result of wicked hate but there is also the case of Oedipus who committed these acts unwittingly, and it would be unjust to fail to acknowledge the difference.[28]

As persuasive as this may be, nevertheless, Tasioulas is correct to criticize this line of Nussbaum's argument for making the reasons to look for mitigating circumstances be contingent upon how the actual world happens to be when it seems like justice *always* demands that we look for reasons to mitigate punishment, regardless of circumstance. The asymmetry of mercy deserves a principled response, not one based on contingencies differentiating cases. Tasioulas does not, however, respond to a better argument of Nussbaum's. She (1993: 101) writes:

> [A strictly] retributive attitude [or an absence of mercy and equity], even when in some sense justified, is not without its consequences for the human spirit. A person who notes and reacts to every injustice, and who becomes preoccupied with assigning just punishments, becomes, in the end, oddly similar to the raging ungentle people against whom he reacts. Retributive anger hardens the spirit, turning it against the humanity it sees.

This moves the discussion in the right direction, involving the moral psychology inherent in humans: justice requires mercy for without it, justice would become inhumane. The result of strict retributive justice, for both individual judges and institutions at large, would be an immoral hardness of heart, a callousness which is contrary to the spirit of justice and morality as a whole. Each of us owes it to ourselves to find and cultivate mercy in our hearts, if only because, when we see the repentant and miserable criminal, we should humbly acknowledge to ourselves that "there but for the grace of God go I".[29] And beyond this personal effect of mercy,

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[28] To use Strawson's (1962: 191) example, "If someone treads on my hand accidentally, while trying to help me, the pain may be no less acute than if he treads on it in contemptuous disregard of my existence or with a malevolent wish to injure me. But I shall generally feel in the second case a kind and degree of resentment that I shall not feel in the first.".

[29] As quoted by Nussbaum (1993), Seneca (1995: II.28.1) says, "If we want to be fair judges of all things, let us persuade ourselves of this first: that none of us is without fault. For it is from this point above all that retributive anger arises: 'I did nothing wrong,' and 'I did nothing.' No, rather, you don't admit to anything".

no one would want to live in an inhumane society which always imposes draconian retributive justice. Notice these same arguments about inhumanity inveigh against inflicting greater penalties on criminals with good upbringings than on those with bad upbringings. So, there are good practical and moral reasons for adopting an asymmetry between mitigation and aggravation.

But more needs to be said about how the negative consequences of lacking mercy and equity can be explained from within the theory of justice itself; they must be justified in principle and not merely by the negative psychological effects of their absence. Nussbaum follows the classical response to this problem by attending to the differences between justice, or *dikaiosunē*, and equity, or *epieikeia*, thereby incorporating equity into justice. This project is begun by Plato, developed further by Aristotle, and later by Aquinas.[30] What is needed is a distinction between "general justice" and "particular justice". When laws are written and policies adopted, these are done from a general point of view. Humans cannot write comprehensive laws against various specific crimes, or certain types of action, which foresee and delineate every possible way that a law could be broken and/or every possible reason for breaking it; if only for pragmatic reasons, laws must be generic to avoid these problems. And there may be generic reasons for sticking with a strict retributive punishment in certain cases, for instance, where crimes are especially heinous or the social need to deter future crimes takes precedence over mercy in a particular case. No one has a right to mercy. There is no reason, however, to take this generic form of justice to be the final word or arbiter of what is right or just in every case, and this is where particular justice or equity steps in. By developing a case-sensitive, nuanced form of justice, in which the particular history of the criminal and the circumstances of the crime are considered, we end up with a better or higher form of justice or, if you will, a more just form of justice. Given the case, particular justice can justify merciful mitigation of punishment. Whether or not judges ever have a duty to be merciful, there are times when it would be unjust to not grant it. This is the point of considering the example of Oedipus. If one worried that mercy lessens or weakens justice, this is to see it the wrong way around: in fact,

[30] For discussion of these issues as Aquinas approached them, see Porter (2016).

equitable justice is a higher or more perfected form of justice. This is why mercy is not its own virtue but should be seen as incorporated into the virtue of justice as a perfection of it.

But notice, however, that these considerations are driven by empirical and pragmatic limitations on the human ability to comprehend and write laws capable of instantiating an equitable system of justice. Understanding justice as the virtue of respect gives us a principled and not merely a pragmatic explanation of the complicated relations between justice and mercy.

We begin by going back to the Basic Distinction between judging an item first by recognizing what type it belongs to and then appraising it based on standards which apply to that type. Given what we have seen in the contrast between recognition and appraisal respect, a particular human being can be appropriately recognized and judged qua human being as well as appraised qua the individual human being that person is. Miscarriages of justice, such as failures of due process, merit clemency on purely generic grounds, but again as noted in the case of Oedipus, there can also be particular yet justified grounds for clemency.

We respect each other generically by recognizing each other as people who are moral agents, and we can respect each other as individuals based on our appraisals of each other as individuals. Note that recognition respect is a prerequisite of appraisal respect but not vice versa: we can recognize a person as a person without appraising that person as an individual, but we cannot appraise a person as an individual without first recognizing that individual as a person. So, the relationship between these two forms of respect is asymmetrical, and this asymmetry explains (i) the relation of general justice to particular justice, as well as explaining (ii) why we ought to always look for reasons to mitigate punishment and we ought never to look for reasons to aggravate it.

Regarding (i), general justice is the justice found in the texts of the law and, as noted, sometimes this will be sufficient for justice as well: to use a familiar Greek analogy, a medical textbook will often be sufficient for doctors to cure patients. General justice does not need particular justice to exist and will be, in some cases, sufficient: as noted, if crimes are especially heinous or there is a social need to deter future similar crimes, the convicted criminal's personal history is (typically) moot in determining a sentence. But again, as noted, while general justice may sometimes be sufficient, it will often be a blunt and crude tool; on its own, it lacks nuance.

Nevertheless, notice that all competent adults are capable of judgments of general justice: this is why a jury trial "by one's peers" is considered just.

Particular justice takes general justice as its starting point, much like doctors take medical textbooks as their starting point. General justice can exist without particular justice, but not vice versa; institutions first determine general laws, then these are applied in particular cases. This asymmetry obtains for the same ontological reasons already discussed between judging types and judging tokens of a type. First, we determine the general kind of crime, and only then can we compare one particular instance of the crime to other instances of it. So, the asymmetry between general and particular justice recapitulates the relation between recognition and appraisal respect. Therefore, thinking of justice in terms of respect allows us to explain why (general) justice and mercy (particular justice) are related to each other as they are.

And regarding (ii), we can explain the asymmetry between mitigation and aggravation of punishment. There are standing reasons to try to mitigate punishment but no such reasons to aggravate it. Why? Because general justice determines baseline punishments, including maximums, for various offenses. General justice is based on a generic conception of defendants as people, recognizing them as moral agents who can be held accountable if they are found guilty of transgressing positive law. What justice absolutely demands is that we do not punish people as if they are things less than people; punishments must respect the general humanity of those who are punished. General justice sets the baseline standard of penalty for a crime, a range of punishments, where punishing more severely than the maximum is always unjust. General justice therefore need not account for the individuality of a particular criminal.

Particular justice requires appraising individuals as individuals and not merely as "moral agents" or members of a kind. Thus, nothing can come from particular justice which could require us to contravene general justice and aggravate punishments beyond how they are canonically determined within general law. To do so would be to contravene baseline standards for respecting humans which ought never to be contravened. Particular justice can, however, mitigate punishment as the particular facts of people's lives and circumstances can positively affect what sort of punishment is correct for them. Thinking of justice in terms of how recognition respect is related to appraisal respect allows us to explain why punishments ought

never to be aggravated beyond general, canonical law while they may be mitigated by particular considerations which justify mercy. This solves or rather dissolves the paradox of mercy and constitutes an independent argument for concluding that justice is the virtue of respect.[31]

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