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## SKILLS OF JUSTICE

*Paul Bloomfield*

On reflection, being that there are only four cardinal virtues, it is practically scandalous that justice has received so little attention from contemporary virtue theorists, both moral and epistemological. While justice has a pre-eminent presence in socio-political philosophy, where it is thought of as the most important virtue of institutions, the literature on justice as a personal moral virtue barely exists. Until recently, epistemologists have likely thought of justice as being wholly out of their wheelhouse. Miranda Fricker's *Epistemic Injustice* (2007) has thankfully changed that, and many socially minded epistemologists are now interested in the effects of epistemic injustice on society, particularly upon those who have been oppressed. Still, even here, the focus has been on epistemic injustice and its social effects rather than on a direct study of epistemic justice considered as a personal intellectual virtue, alongside, for example, open-mindedness and intellectual courage. How do just people think?

Taking justice as a character trait, in personal and not social or institutional terms, the line between morality and epistemology becomes interestingly blurred and frequently even dissolves. There are supposed to be basic differences between the two to keep them separate, in particular in their relation to voluntarism: morality is all about the choices we voluntarily make and the actions for which we can be held responsible ("ought implies can"), while beliefs are supposed to be, in an important way, involuntary. In virtue theoretic terms, this has played out as a difference between voluntary or agential judgment, on the one hand, and perceptual belief, on the other. In technical terms, this is the difference between responsibilists and reliabilists.<sup>1</sup>

If justice requires us to blur the lines between morality and epistemology, as will be argued below, it seems like this would cause conceptual confusions at the outset. There is a solution to the problem, however, to be found in thinking of justice epistemologically as a skill: locating epistemic justification in the nature of skill allows us a way to render moot the distinction between judgment and belief, between cognition within our epistemic discretion and cognition which is epistemically involuntary, however important it may remain in terms of understanding various forms of cognition and how the mind works. We will return to this set of issues at the end of the chapter.

The general way to see epistemology and morality being unified is fairly simple when we think of quintessential justice: in much the same way that we think the paradigm of courage is found in a virtuous soldier on the battlefield, the paradigm of justice can be found in a virtuous judge, sitting on a judicial bench, delivering judgments of innocence or guilt. The judge

is doing something intrinsically moral, namely rendering verdicts concerning who to hold morally responsible for what: the innocent are set free, the guilty are punished, the victims get restitution. The function of a judge is to come to a fair and accurate assessment of the situation, a just assessment, yielding a just verdict. But producing an assessment of a moral situation is an epistemic affair. So, when a judge finds a defendant innocent or guilty, this is simultaneously a moral and an epistemic act, and understanding justice as a character trait forces us to elide the traditional distinction between the two discourses, however equally normative they may otherwise be.

It is worth pointing out that it is not only judges who are involved in making this sort of judgment, we all do it regularly, whenever we assess some set of facts for the sake of forming an opinion, whenever we make a judgment. The same holds for the assessment of testimony, or deciding who to trust and who not to trust and, importantly, the same holds when we make assessments of ourselves and our standing and accomplishments in our relations to others. What we want to understand is what happens when a judge gets it right, when justice is done, and what it takes for us to be fair to others and to ourselves. When we succeed in this, the success itself is equally moral and epistemic, the very same judgment “gets it right” in both ways: it cannot be a moral success without its also being an epistemic success and vice versa.<sup>2</sup> Justice requires both moral fairness and epistemic accuracy. Still, we can analytically prise these apart, as justice can play a role in contexts that are not moral, social, or political. When scientists assess their data and make judgments based on it, their conclusions must be fair and accurate and so, at a formal level, must engage the same cognitive traits as the judge. To keep these apart, we can call “Justice” with a capital “J”, the justice that applies to moral, social, and political contexts, and “justice” with a lower case “j” will refer to the broader contexts in which the forms of justice are purely epistemic.<sup>3</sup> As we will see, justice turns out to play a unique role in all cognition insofar as the application of concepts to experience requires us to treat like cases alike, just as judges are supposed to do in the courtroom.

Even limiting our attention to Justice, the situation is more complicated than it seems, since we cannot simply attend to a distinction between getting Justice right and getting it wrong, and thereby assume that when it goes wrong, there is a failure of Justice. We can learn something substantive and direct about courage from cowardice in a way that we cannot learn about Justice from injustice. This can be seen through a brief interchange between Rosalind Hursthouse and Christine Swanton (Hursthouse 1980–81: 64; Swanton 2003: 21). Imagine an army quartermaster in charge of supplies who sells the soldiers’ chocolate on the black market for the sake of enriching herself. Clearly, this quartermaster has done an injustice to the troops. Compare her, however, to another quartermaster who is horribly and akratically gluttonous, and who binges on the chocolate for the sake of sating his need. This quartermaster also does an injustice to the troops, and from the point of view of the troops, there is no difference between the two forms of injustice. And yet, the cause of the first quartermaster’s injustice is the fact that she is an unjust person, she lacks the virtue of justice, while the second quartermaster’s injustice is caused by his incontinence, he lacks the virtue of temperance. Given these cases, it is not hard to imagine injustices being caused by gullibility, cowardice, recklessness, foolishness, obsequiousness, and many other moral and intellectual vices. So, it will be hard to get a direct insight into the virtue of Justice per se, again considered as a personal character trait, by attending to particular cases of injustice.<sup>4</sup>

If not through injustice, how then should we approach the virtue of Justice? In fact, despite the small amount of work that has been done on the topic, there are other more socially oriented approaches that have been or are being pursued and all may contribute to a full account of the matter.<sup>5</sup> Bernard Williams’ view of Justice as a virtue is a bit of a misfire, as he places it

as secondary to an independent socio-political theory of Justice, which takes it out of any kind of standard virtue theory where the normative guidance comes from the virtues themselves.<sup>6</sup> A more mainstream yet innovative approach has been developed by the legal scholar Lawrence Solum, which he calls “virtue jurisprudence”, or the study of judicial judges and which intellectual traits they ought to instantiate.<sup>7</sup> This, however, takes a narrow view of Justice as being bound by legality and our concerns are wider. In social and political philosophy, there are both more conservative and more liberal approaches to thinking of Justice in personal terms. David Schmidtz and John Thrasher consider Justice primarily in terms of “people getting their due” and understand this in terms of negative duties of non-interference (Schmidtz and Thrasher 2014: 59–74). For them, beneficence is the virtue which determines how and when to positively help others; “mere” Justice determines jurisdictions within which those agents who are in charge may act on their own discretion. Jay Drydyk’s (2012) “capability approach” is more liberal in that it takes Justice to involve not merely closing inequalities but raising the capabilities of humans. He looks broadly at how individuals may characteristically act in ways that further the ends of social Justice by, for example, taking care of the worst off as a first priority and promoting entitlements that protect everyone from social exclusion.

These socio-political accounts are extremely helpful for understanding the range of phenomena they intend to capture, and it has long been thought that Justice is essentially a social phenomenon. While Fricker (2007) does treat Justice as a proper intellectual virtue, she only discusses this insofar as epistemic Justice is seen as the “anti-prejudicial virtue”: it prevents “identity prejudice”, or prejudice against a person as a result of that person’s social type, since it “neutralizes prejudice ... in judgments of credibility” (p. 92), and this keeps it well in the social world. Michael Slote (2007) discusses the virtue of Justice from the perspective of the ethics of care and empathy, arguing that Justice is caring about the social good, which again is helpful as far as it goes, but does not move us much closer to an understanding of Justice’s epistemology.<sup>8</sup>

In virtue theory, it is common to distinguish the self-regarding virtues of courage and temperance from other-regarding virtues where Justice is the prime example. Nevertheless, there is something undoubtedly true when Philippa Foot says, “if justice is not a good to the just man, moralists who recommend it are perpetrating a fraud” (1978: 125–6). So, if we disagree with those like Callicles and Hume’s Sensible Knave, and assume that Justice really is an excellence of character, then it must be a benefit to its possessor and therefore cannot be only interpersonal but is also in part intra-personal. The lesson here is that how we judge and treat others does not swing free of how we judge and treat ourselves. Justice is manifested in social circumstances in groups of either two or more, but it is also monadic or reflexive: just as we can be fair or unfair to others, we can be fair and unfair to ourselves, and indeed there are reasons to think we cannot succeed in being fair to ourselves if we are unfair to others, and vice versa. So, Justice is a self-regarding virtue as well as an other-regarding virtue.<sup>9</sup>

If we assume that Justice is limited to socio-political contexts, we will fail to cast it as broadly as a true virtue theory requires, and as it was understood by the ancient Greeks. By attending to Justice in its most general sense we can begin to comprehend a basic epistemology for it which allows us to see (all) justice as a skill (and not just Justice as a skill). It was the ancient Greeks who first determined that Justice was one of the four cardinal virtues. Their word, “*dikaiosyne*”, which we translate as “Justice”, is the virtue that mediates all social or interpersonal relations.<sup>10</sup> Thus, we expand our conception of *Justice* beyond the judicial or socio-political realm of interacting fellow citizens to include a sense of Justice or fairness that can be found in good friendships and even in familial relationships.<sup>11</sup> The cardinal virtues, Justice included, all begin with the self’s relation to the self, and extend out to others from there: from family, to friends, to “fellow

members of the tribe”, to all of humanity.<sup>12</sup> Virtue begins in our character, in our psychology and our will, and as such, it is the basis for both our autonomy and our sociality.

Skills come more clearly into the picture because among the ancient Greeks there was a general consensus, including Socrates, Plato, the Epicureans, and the Stoics, that all the virtues are skills. And even Aristotle, who denied that the virtues are skills, acknowledged that the virtues are very similar to skills, since they are learned or acquired in the same way that skills are. Famously, he writes, “[W]e become builders by building and lyre players by playing the lyre. So too we become just by doing just actions, temperate by temperate actions, and courageous by courageous actions” (Aristotle 2000: 1103a29–1103b3).<sup>13</sup> That is, even if the virtues are not skills, they have the same (or a very similar) epistemology as skills. Aristotle and his followers were alone among the ancients in rejecting the thesis that the virtues are a proper subset of skills, however, and the thesis that they are skills has been picked up and developed by a few contemporary philosophers, most notably, Julia Annas and Matt Stichter.<sup>14</sup> One way of developing this thought is to note that becoming an expert in any skill, including the virtues, requires some amount of practical rationality (*phronesis*), the sort of experiences just indicated by the quote from Aristotle, as well as a mastery of the *logos* of the skill, or its intellectual structure or logic.<sup>15</sup>

So, Justice, understood broadly as *dikaioσύνη*, will also fit this pattern. Expertise in being Just will require practical rationality, or the general ability to solve practical problems, as well as requiring experience in life with both fairness and unfairness. For our purposes here, however, we will best approach Justice as a skill by first understanding its moral psychology, so that we can see how the Just agent acts in comparison to those who fail in this trait, and thus how Justice figures into moral, social, judicial, and political philosophy. From there, we can move onto looking at Justice’s purely epistemic aspects, as seen in justice (note the lower case “j”), and by giving the beginnings of an analysis of its *logos*. And what we find, upon looking into this *logos*, is that epistemic justice can be seen even more broadly than in the combination of inter- and intra-personal relations: in the most general terms, the virtue of justice is present in any context in which we find someone exercising “good judgment”.

We can begin to see how Justice fits into a person’s moral psychology by asking whether or not justice fits into Aristotle’s doctrine of the mean, as answering this question takes us to the heart of *Justice*. Williams (1980) argues that Justice does not fit the model of a mean between extremes, because one cannot be “too just”. This, however, is uncharacteristically off the mark for Williams, as this is not how the doctrine of the mean works: one does not become reckless by being “too courageous” nor does one become a “stick-in-the-mud” and incapable of having fun by being “too temperate”. Rather, as Aristotle says, “[J]ustice 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” (Aristotle 2000: 1133b30).<sup>16</sup> The ancient Greeks took the canonical vice of Justice to be *pleonexia*, which is often translated as “greediness”, but involves all those circumstances in which one arrogantly takes more than one’s due.<sup>17</sup> They saw the opposite of this trait, characteristically taking *less* than one’s due, as being so contrary to how they understood human nature that it did not have a name. This, however, seems like too narrow of view of humanity, as we now know of how abject humility, servility, and adaptive preferences can lead people to willingly accept less than they deserve.

Such a view of Justice allows us to see it as a mean between arrogance and servility, as it requires seeing oneself for who one truly is, not more, not less; it requires having an accurate measure of oneself, and thereby what one is due and what one is not due. These are Justice’s self-regarding aspects. Expanding from the first-person point of view, Justice requires knowing oneself and others well enough to discern what everyone deserves, from circumstance to circumstance.

Socrates' intellectualism about virtue aside, knowledge is not by itself sufficient for right action, and when it comes to Justice what is required is that people actually respect themselves and each other as they deserve. And thus, it is having knowledge of oneself and others and respecting everyone properly that leads to Just outcomes. The respect involved is of two kinds, recognition respect and appraisal respect, now familiar in the literature (Telfer 1968; Darwall 1977). Recognition respect involves the recognition of a person as a person, and not as a thing or an "it", so as to establish a base-line level of treatment that all people unfailingly deserve, while appraisal respect is based on appraisals of the differing characters and accomplishments of individuals. The former respects what we all have in common while the latter respects what makes us each unique. Respecting properly is necessary for acting Justly. Notice that both forms of respect rest on accurate judgments of the people being assessed: the recognition in "recognition respect" is an epistemic achievement, while the appraisals in "appraisal respect" require evaluation and judgment. Justice, at its base, is the virtue of people who respect themselves as fundamentally neither better nor worse than other people, and as such lies at a mean between those who arrogantly think they are better than others, or deserve more for simply being who they are, and those who are servile, or who have a surfeit of humility, and therefore see themselves as being "less than", or not as worthy of being treated with the respect that others deserve. What characterizes Justice, as it figures in moral, social, judicial, and political philosophy is that it requires one to take proper account of oneself and of others in deciding what to do: one must avoid improper partiality to oneself and one must recognize other people as people and treat them with the respect and consideration they deserve.

So far, this begins to articulate the position of *Justice* as a character trait in the landscape of moral psychology. But as noted above, the intellectual virtue of justice (small "j"), has a cognitive role to play in many cases where respecting other people is not germane. We can begin our investigation of this general intellectual virtue by noting that the most fundamental principle of the *logos* of justice has been described in many ways but is captured succinctly by the idea of "treating like cases alike".<sup>18</sup> In political philosophy, this is expressed through the "rule of law". In jurisprudence, this is expressed by the concept of *stare decisis*, or the rule of precedent, while in general metaphysics it is captured by a fairly weak form of supervenience, whereby the good judgment of a case supervenes upon the facts of the matter: differing judgments ought to be grounded in a difference in cases.<sup>19</sup> These are all parts of Justice, but in fact "treating like cases alike" has a far wider range of application than moral, social, judicial, or political contexts, and an even deeper cognitive import. This was touched on in an early work of John Rawls, though unfortunately, it seems that he never embellished the idea. Nevertheless, he wrote:

One can view this principle [what would come to be his "first principle of justice"] as containing 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 (a principle which follows from the concept of a judgment of any kind).<sup>20</sup>

Rawls 1957: 654

It is the final parenthetical phrase here that should capture our interest. Why does "treating like cases alike" follow from the concept of *judgment*? A Kantian answer to this will be suggested below, but as Kant also realized, the thought actually goes cognitively deeper than what happens as a person forms a judgment.<sup>21</sup> All judgment involves a fairly sophisticated kind of cognition, and treating like cases alike is more basic than that: one can see how the employment of concepts in cognition necessitates treating like cases alike. In order for me to possess the concept of a *dog*, I have to be able to judge dogs as being dogs; were I, on one

occasion where the lighting is good, and I have adequate time, etc., to categorize a pig as a dog, this would count against my possession of the concept of a *dog*. Concepts are useless unless they are employed consistently across cases, and this consistency is what is captured by the idea of “treating like cases alike”. So, while Rawls’ point is that all judgment formation requires that like cases be treated alike, the more general point is that all concept application, all identificatory and re-identificatory judgments of the form “*x* is *f*” ought to manifest the essence of justice.

Concepts are like rules in that they govern how the items of sensibility are to be cognitively categorized. In this sense, “concept application” is another name for categorization. And this is the sense in which all cognition and epistemology are normative: from the cognitive and epistemic points of view, things can go well (judging a dog to be a dog) or things can go badly (judging a pig to be a dog). And here we are able to see the role of “treating like cases alike” as necessary but insufficient for making *valid judgments*, where *validity* comes in because of the truth-preserving inference involved in identifying some *x* to be *F*. So, from the centrality of *justice* to the process of concept application, we move to its centrality to the process of judging and what used to be called the “faculty” of judgment in general. The concept of *judgment* has famously played a large role in the history of philosophy, particularly in early modern philosophy, and there are various conceptions of it. For our purposes, Kant’s view of the matter is particularly helpful. If we take a basic Kantian claim of his First Critique, that the faculty of understanding “deals with concepts” (Kant 1998: A130/B169), then in the section of that work entitled, “On the logical use of the understanding in general”, he writes: “We can, however, trace all actions of the understanding back to judgments, so that the understanding in general can be represented as a faculty for judging” (1998: A69/B94). And he elaborates later in the section entitled, “On the transcendental power of judgment in general”: “If the understanding in general is explained as the faculty of rules, then the power of judgment is the faculty of subsuming under rules, i.e., of determining whether something stands under a given rule (*casus datae legis*) or not” (A132/B171).

So, the nominal “power of judgment” or acts of “judging”, taking the verb to be basic, is manifest in the application of a rule to a case. Primarily, judging is something that one does.<sup>22</sup> This is an importantly normative matter: it can be done well or poorly. Whatever one thinks “objectivity” amounts to, it will be objectively better to have good judgment than bad. If one judges well, then one first chooses the correct rule to apply to the case and then correctly applies it, treating like cases alike.<sup>23</sup> The essence of judgment is the essence of justice. In its broadest cognitive understanding, the personal virtue of justice simply is having good judgment, and so, from the point of view of pure virtue epistemology, there is arguably no intellectual virtue more central or important than that of justice.

And how is this related to skill and its acquisition? We can continue to take our cue from Kant. He takes a pessimistic view of the pedagogy involved in teaching the skill of good judgment, but it is nevertheless properly seen as a developed use of talent:

[T]his is also what is specific to so-called mother-wit, the lack of which cannot be made good by any school; for although such a school can provide a limited understanding with plenty of rules borrowed from the insight of others and as it were grafted onto it, nevertheless the faculty for making use of them correctly must belong to the student himself, and in absence of such a natural gift no rule that one might prescribe to him for this aim is safe of misuses. A physician therefore, a judge, or a statesman, can have many fine pathological, juridical, or political rules in his head, of which he can even be a thorough teacher, and yet can easily stumble in the application, either because he

is lacking in natural power of judgment (though not in understanding), and to be sure understands in abstracto but not distinguish whether a case in concreto belongs under it, or also because he has not received adequate training for this judgment through examples and actual business. This is also the sole and great utility of examples: that they sharpen the power of judgment.

1998: A133–4/B172–3

The lack of this natural gift is called by Kant “stupidity” and “such a failing is not to be helped” (1998: A133/B172). This might well infuse virtue epistemology, in general, with elitism, which may nevertheless be more excusable than it is in virtue ethics: not everyone may be capable of perspicacity regardless of how good their will might be. There are fools and geniuses and in most cases no amount of work or effort will change a genuine fool into a genius. Now, some psychologists do think that we can, by dint of effort, “grow” our intelligence (Dweck 2016). The thought is that, at some non-metaphorical level, the brain works like a muscle insofar as it can be trained or developed to function better. Perhaps this is true, and if so, then there would be some degree of responsibility we would have to assume for our intelligence. Nevertheless, those sadly lacking in intellectual capacity will not become geniuses no matter how hard they work. So, while it is epistemically elitist to say that some have a better sense of judgment than others, it is justly egalitarian to note that this gift or talent only makes a difference for appraisal respect, and when it comes to recognition respect, no form of arrogant elitism is justifiable.<sup>24</sup> Regardless of intellectual standing, everyone’s opinion should be treated with respect, even if, in the end, it is rejected. We all have whatever abilities we have and, still consistent with egalitarianism, each of us ought to do as much as we can with what we have.

As for applications of what Kant says to the skill of justice, many are obvious.<sup>25</sup> The importance of experience and the use of examples in learning, or how it “sharpens” the judgment, has already been touched upon in the discussion of Aristotle’s general epistemology of virtues and skills (we become builders by building, etc.). If we understand discourses, such as medicine, the law, and statesmanship, (roughly) as sets of rules to follow, then the ability to have intellectual understanding of a discourse and yet be unable to apply it practically to cases is a familiar phenomenon, however unfortunate it may be. Slightly different is the way in which the raw talent for making good judgments in general is one thing, while the application of this talent to different and particular areas of discourse is another. Thus, there seems to be a formal difference between the role that justice plays in good judgment, understood in complete generality, and the role it plays in moral contexts wherein substantive questions of Justice arise. We expect, for example, scientists to make fair and accurate judgments about their data and not, for example, to draw conclusions that go beyond what the data supports. This is to apply justice to the rules of good scientific practice. In this way, we can see justice in non-moral contexts, a form of epistemic justice which transcends even the broadly understood *dikaiosyne* of the ancient Greeks. Of course, good judgment is also necessary in moral contexts as well: this would be to address once again Justice and not merely justice, and the substantial principles of Justice comprising its *logos*.

The entire *logos* of the intellectual virtue of justice is unsurprisingly going to be broader and more complicated than can be adduced in a single essay. If we wish to understand good judgment more fully in the broad sense, we will have to attend to how it relates to consistency in general, to the skills of basic reasoning and what philosophers teach to undergraduates under the guise of “critical thinking”, with the canons of logic in the background. Further canons are also at play: in purely jurisprudential thought, there are a variety of principles and informal canons for interpreting the law, and we should expect to find similar canons



in justice writ large (Scalia 1997). We presume innocence, while guilt must be proved; there is the “rule of lenity”, for example, which says that when a rule, or a statute, or treaty is ambiguous, the ambiguity is to be resolved in favor of the defendant, etc. (Note that there is a distinction between the skills involved in designing a legal system and those involved in implementing it.) The relation of justice to the other virtues is also a large and difficult matter. We should expect some virtues to be plainly subordinate to justice, such as honesty, loyalty, and mercy.<sup>26</sup> As noted above, *phronesis* or practical rationality is necessary for the moral virtues, and so it is necessary for Justice; it might well be the case that *sophia* or theoretical wisdom is needed for justice. But a moment’s reflection will reveal that distinguishing Justice and justice from either practical wisdom or theoretical wisdom would be one of the most sublime intellectual tasks imaginable: what is wisdom if not excellence in judgment?<sup>27</sup> So, while we have already made a start, we are far from a full understanding of the *logos* of either Justice or justice. Still, there is one other crucially important aspect of the intellectual virtue of justice that should be brought to the fore.

We can begin here again with an early slogan from Rawls, when he claims that “essentially, justice is the elimination of arbitrary distinctions” (1957: 653). It seems clear that if I, as a professor, give better grades to those students who have brown eyes rather than some other color, then I am allowing an arbitrary distinction to improperly affect my judgment. And, obviously, all sorts of prejudice and bigotry are the result of letting arbitrary distinctions affect one’s deliberations. Here, we may reference back to Fricker’s view of justice as the “anti-prejudicial” virtue, but we should take “prejudice” in the widest sense possible, that of prejudging any kind of case (colloquially, “judging a book by its cover”), and not just involving cases of what she calls “identity prejudice” aimed at people. But clearly, the difficulty in “eliminating arbitrary distinctions” is in how to apply it: which distinctions count as arbitrary? There is obviously no simple answer. Notice that in order to understand what an “arbitrary distinction” is between cases, we must first have a grasp of what it is for one thing to be like another, we need an account of *similarity*, and understanding similarity is an on-going question in metaphysics.<sup>28</sup> Beyond understanding similarity, there is the issue of what *relevance* or *salience* is, as these are the relevant contraries of *arbitrariness*.<sup>29</sup>

Despite not having a complete account of the “salient/arbitrary” distinction, one way of saying something helpful here comes by way of a discussion of impartiality and partiality. There is proper and improper impartiality, where improper impartiality can be seen as a kind of “strict moralism”, or being “moralistic” in the pejorative sense, and proper and improper partiality, where forms of improper partiality are forms of “bias” or “prejudice” understood generally. We can be improperly impartial when mercy or indulgence is apt and we can be improperly partial toward ourselves and loved ones. Figuring out when to be impartial and when to be partial can lead to the most difficult problems in morality, though arguably it is the virtue of Justice that properly determines the answer. Our most famous archetype of Justice is as being blindfolded, and impartiality is of course correct for judges sitting on the bench, officers of the law, or umpires, referees, and similar authorities who are required to deliver fair judgments regardless of whether it is strangers or loved ones who fall under their authority. Any form of prejudice, bias, or partiality in these cases is most clearly improper.

It was long thought that Justice, or even morality as a whole, always demands strict impartiality, until the 1970s when Michael Stocker and Bernard Williams wrote about the ways in which strict moral impartiality leads to forms of self-alienation or “moral schizophrenia” in Stocker’s terms: a break between the values that we accept as right and proper and the so-called “demands” of impartial morality (Stocker 1976; Williams 1973, 1981, 1985).<sup>30</sup> To take an example of Charles Fried which Williams made famous in this context:

[S]urely it would be absurd to insist that if a man could, at no risk or cost to himself, save one of two persons in equal peril, and one of those in peril was, say, his wife, he just treat both equally [impartially], perhaps by flipping a coin. One answer is that where the potential rescuer occupies no office such as that of captain of a ship, public health official or the like, the occurrence of the accident may itself stand as a sufficient randomizing event to meet the dictates of fairness, so he may prefer his friend, or loved one. Where the rescuer does occupy an official position, the argument that he must overlook personal ties is not unacceptable.

Fried 1970: 227

The implications for our discussion of justice seem obvious. Absent some official capacity that places special duties upon people, it seems fair and just to allow personal connections to affect one's deliberations in a way that would count as biased or partial from a perfectly impartial point of view in which all people are treated equally.

The difficulty with this approach is in determining what counts as an "official capacity". Consider, for example, the role of *being a parent*, which in a variety of ways, many of them legal or social, counts as an "official capacity". There are certainly some situations in which being the parent of a child justifies all sorts of partiality toward the child in comparison to how a parent treats the children of other adults: without any injustice at all, I buy Christmas gifts for my children but not the next-door-neighbors' children; I rightly only go to parent/teacher meetings for my children and no one else's. If, however, I do my neighbors a favor by offering to watch over their children one evening, and a fire breaks out in my house, it is surely wrong of me to steadfastly think only partially and purposefully save my own children first and the neighbor's children only if there is time. The responsibility I have taken on involves an imperative to treat my neighbor's children as if they were my own. Or, taking a different example, if I have many children, it is unfair and unjust of me to regularly and arbitrarily favor one child over the others.

The present issue is not, of course, to settle upon principles by which we can always determine when a distinction is arbitrary. As has been noted, doing so would require a better grasp of *similarity*, *salience*, and *arbitrariness* than we currently have, not to mention *partiality* and *impartiality*. Perhaps more to the point is that, as has been much discussed, virtue theory is not rule governed in a way that allows for recursive procedures to determine the correct answers to moral problems (Hursthouse 1999; Annas 2011). The *logoi* of the virtues are not codifiable. So, even if these theoretical terms were clearly defined, they would not yield substantial principles or rules that we could unthinkingly follow; at best, we could get "rules of thumb" or *pro tanto* rules. Exercising good judgment requires keeping an eye out for those cases that are genuine exceptions to the rule. Some salient distinctions will only be discerned by the wisest of judges.

This can be modeled in the jurisprudential context. Legally, the methodology behind treating like cases alike is to appeal to a combination of law and precedent in the history of the court with a legal and moral theory that is supposed to make sense of these laws and precedents and to tell us, in future cases, when the precedent applies.<sup>31</sup> As Ronald Dworkin puts it, individual precedents have "gravitational force" on a decision, depending on how salient they are to the case under consideration. Jurisprudential genius is found in the ability to apply precedents with strong gravitational force to cases in which there are no superficial similarities whatsoever. Similar methods are at least sometimes acceptable in situations demanding justice in the purely epistemic sense: e.g., the scientific method requires treating like cases alike and looks for law-like similarities between seemingly diverse phenomena which could reveal deep truths about nature. But often in moral situations, we come up on novel situations without precedent: moral situations can be so complex that they become (at least for all intents and purposes) unique, and

there is certainly no guarantee of a precedent to which one might appeal. At moments such as these, it will only be those who are truly just and wise who will have the insight to know the right thing to do.

Albeit briefly and in conclusion, the epistemology of such “insight” is the final topic to be addressed, as it brings us back again to skills. “Insight” is, perhaps, a better term than “intuition”, but both words bring in the large recent literature on “dual processing”, fast vs. slow thinking, emotional reactions vs. rational reflection, etc. From the point of view of general epistemology, a parallel debate exists between internalists and externalists, and in virtue epistemology in particular, between perceptual belief vs. agential judgment and reliabilists and responsibilists. The suggestion is not that these debates all map the same distinctions, nor cover the same range of issues. Rather, it is that they are all concerned with how much and what kind of access we have to our desiderative procedures, and how access bears on the justification of the cognitive output. With regard to epistemic justice per se, we might ask which view of the process of making just judgments is best, though we should not expect there to be one right answer for all judgments about justice (or Justice). If we have to judge whether or not to trust a stranger quickly, this is obviously going to be a case of fast thinking: we have to go by gut feel. There is now evidence suggesting that we learn how to make judgments such as these in non-conscious ways, using “encoding algorithms” to learn relations between facial expressions and behavioral traits (Lewicki et al. 1992). On the other hand, there are more difficult judgments involving Justice which are likely to be best made through cool and conscious reflection, such as whether or not a defendant is guilty of a crime. These are judgments that are supposed to hold up to public scrutiny, and so the justification for the judgment should be explicitly rendered. These various judgments of people we do not know personally, assessing their trustworthiness or their guilt, need not stay distinct: my gut feelings can inform my considered judgment, though they ought not to have such influence without considering other non-conscious processes such as implicit bias or self-deception (Holroyd 2012). There is even some evidence for the idea that slow *non-conscious* processing produces the best results for some kinds of judgments about justice: in judgments requiring comparisons of complex options, evidence indicates that it can be helpful to be distracted from thinking about the problem for a significant number of minutes or even “sleeping on it” (Ham et al. 2009).<sup>32</sup>

Notice that this last bit of data suggests that for some deliberations, fast thinking is not sufficient, but neither is slow thinking if this is identified with reflection: some cognitive processing happens best at a slow, calm pace, but when, for periods of time, the deliberation is unconscious, it happens automatically. As introspective and consciously thoughtful as experts may be, there is a great deal of expertise to which even the most consummate of experts do not have access. Their skills are not explained fully by either reliabilists or responsibilists, externalists or internalists, considered in isolation.

While these problems about access have been flummoxing epistemologists for quite some time, thinking of justice as a skill provides a neat solution.<sup>33</sup> Consider the differences between learning a language as a child at mother’s knee and doing so as a college student in a classroom. Since being able to speak and understand a language is a skill, what we see here is that there are two distinct ways to acquire a single skill, both of which may lead to its mastery. But the differences in access to the knowledge involved is obviously great: people do not need explicit knowledge of the rules of grammar for the languages we learn as children, while for adults learning a second language, the rules of grammar have to be learned by rote and understood explicitly. There is no reason, however, to say that one way of knowing a language is better or more justified than the other: the only thing that matters is how fluently one communicates in the language, exactly how one does it is irrelevant. The conclusion to draw from this is

that if we ground our concept of *justification* in skills, then questions about access fall away. Skillful behavior will be justified, independently of whether or not one can cite the grounds of one's justification. This is not to suggest that there are not interesting, important, and empirical questions about how much access we have to our various mental processes, how well experts can understand their own expertise, but that these questions no longer bear on the analysis of *justification* per se. This is not, of course, to claim that there will be no cases in which a person's judgment requires an articulated justification for it to hold sway among others, especially in cases of disagreement. But giving justifications is different than being justified, and the former is most important only if we want others to agree with us or we want them to do things our way. If that is not an issue, then neither is the ability to articulate reasons, other than to aid in auto-didactic learning. The requirement of "articulating one's reasons" primarily plays a social and not a purely epistemic role. So, if we adopt virtue epistemology as our method for developing an account of justification, and accept the thesis that the virtues are skills, then we have a unified and unifying theory of epistemic justification which ought to command more investigation and exploration. It would be epistemically unjust to do otherwise.<sup>34</sup>

### Notes

- 1 This is one of the few differences that divide these camps. For responsibilism, see, e.g., Linda Zagzebski, *Virtues of the Mind* (Cambridge: Cambridge University Press) 1996; Jason Baehr, *The Inquiring Mind* (Oxford: Oxford University Press) (2011). For reliabilism, see e.g., Ernest Sosa, *A Virtue Epistemology* (Oxford: Oxford University Press) 2007; John Greco, *Achieving Knowledge* (Cambridge: Cambridge University Press) 2010. For discussion of the differences between these two types of theory, see Heather Battaly, "Virtue Epistemology", *Philosophy Compass* 21 July 2008, doi.org/10.1111/j.1747-9991.2008.00146.x.
- 2 Is this in fact a unity and there is no difference between morality and epistemology here or is the relation more like that of renates to cordates? I do not know.
- 3 There might be some reason to think that the purely epistemic form of justice should be thought of as something like "fair-mindedness". This is how Jason Baehr (2011) uses the term, "Fair-mindedness is a matter of judging or using reason in a consistent or even-handed manner" (p. 24), though he says little else substantive about it. Linda Zagzebski (1996) seems, however, to see fair-mindedness as a moral virtue, "Intellectual prejudice, for example, is an intellectual vice, and the virtue that is its contrary is fair-mindedness, but clearly we think of prejudice as a moral failing and fair-mindedness as a morally good quality" (p. 148). In the end, she takes no stand on whether a moral and an intellectual virtue can be a single character trait. In the end, cases like that of the judicial judge lead one to conclude that it is the judge's intellectual virtue of justice that is being applied to moral context, and this leads me to use one word "justice" for both the intellectual and moral virtues, distinguishing them only by the case of the "J".
- 4 Arguably, Fricker (2007) misses this point. On page 4, she identifies "identity prejudice" as the "central" cause of epistemic injustice, where "identity prejudice" is prejudice against a person as a result of that person's social type. Then, on page 92, as she introduces the "anti-prejudicial virtue", the particular purpose of which is that it "neutralizes prejudice in ... judgments of credibility". In identifying this virtue, she writes, "Let us call it (what else?) the virtue of *testimonial justice*". But if I downgrade your testimony because I am fearful of people like you and those of your social group, then my prejudice and the injustice I do to you is caused by cowardice and not injustice. For more on this see my "Epistemic Temperance", *American Philosophical Quarterly* vol. 56, no. 2: 109–124 (2019).
- 5 There is one paper on Aquinas' view of justice, similar in spirit to the present essay, by Stewart Clem, "The Epistemic Relevance of the Virtue of Justice", *Philosophia* vol. 41: 301–311 (2013). Clem's paper is, however, more focused on applications, such as the role of justice in assessing testimony, than it is to an investigation of the general logos of justice itself. Another paper on how Aquinas' voluntaristic view of justice focuses on its relation to the will is Jean Porter, "Dispositions of the Will", *Philosophia* vol. 41: 289–300 (2012).
- 6 Bernard Williams, "Justice as a Virtue," in *Essays on Aristotle's Ethics*, A. O. Rorty (ed.) (Berkeley: University of California Press) 1980.

- 7 Ronald Dworkin's character of the judge he calls Hercules, in *Taking Rights Seriously* (1977), could easily be seen as the start of this project, while virtue jurisprudence per se has been led by Lawrence Solum and Colin Ferrally. See Solum's "Virtue Jurisprudence: A Virtue Centered Theory of Judging", *Metaphilosophy* vol. 34, no. 1/2: 178–213 (2003) and Colin Farrelly and Lawrence Solum (eds.) *Virtue Jurisprudence* (New York: Palgrave MacMillian) 2008.
- 8 Slote, *The Ethics of Care and Empathy* (Abingdon: Routledge) 2007, chapter 6.
- 9 This argument is expanded upon in my "Justice as a Self-Regarding Virtue", *Philosophy and Phenomenological Research* vol. LXXXII, no. 1: 46–64 (2011).
- 10 Gregory Vlastos 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" (see his "The Argument In The Republic that 'Justice Pays'", *Journal of Philosophy*, vol. LXV, no. 21: 665–674 (1968). Julia Annas pursues the implications of acknowledging the proper scope of *dikaiosyne* in *Platonic Ethics: Old and New* (Ithaca: Cornell University Press) 1999.
- 11 For a conception of justice within marriage, see Jean Hampton, "Feminist Contractarianism", in *A Mind of One's Own*, edited by Louise Antony and Charlotte Witt (Boulder, CO: Westview Press) 1993a, and for a discussion of how we can be unfair to ourselves, see Hampton's masterful, "Selflessness and Loss of Self," *Social Philosophy and Policy* vol. 10, no. 1: 135–165 (1993b).
- 12 For the extending circle metaphor, see the quote from Hierocles in *The Hellenistic Philosophers* vol. 1, edited by Anthony Long and David N. Sedley (Cambridge: Cambridge University Press) 1987, p. 349.
- 13 *Nicomachean Ethics*, translated by Roger Crisp (Cambridge: Cambridge University Press) 2000. Aristotle's arguments against the virtues actually being skills are not strong and depend upon thinking of skills as crafts, such as carpentry. For example, he claims that the virtues are focused on the performance of actions while skills are concerned with the production of objects, even though this ignores those skills, such as playing a musical instrument like the lyre, which is all about performance and has no concrete product. For an extended critique of Aristotle's arguments on this score, see my *Moral Reality* (New York: Oxford University Press) 2001, pp. 92–102.
- 14 See Annas "Virtue as a Skill," *International Journal of Philosophical Studies* vol. 3, no. 2, 1995: 227–243, and *Intelligent Virtue* (New York: Oxford University Press) 2011; Matthew Stichter, "Ethical Expertise," in *Ethical Theory and Moral Practice* vol. 10, 2007a: 183–194, and "The Skill Model of Virtue" in *Philosophy in the Contemporary World* 14: 39–49 (2007b); "Virtue as Skill", in *Oxford Handbook of Virtue*, edited by Nancy Snow (New York: Oxford University Press) 2018. See, too, my "Virtue Epistemology and the Epistemology of Virtue," *Philosophy and Phenomenological Research* 60 (1), 2000: 23–43, "Some Intellectual Aspects of the Moral Virtues", in *Oxford Studies in Normative Ethics* vol. 3, edited by Mark Timmons (Oxford: Oxford University Press) 2014a, and *Moral Reality* (2001: ch. 2).
- 15 For an argument concluding that practical rationality is necessary but not sufficient for the virtues, see my "Some Intellectual Aspects of the Cardinal Virtues" in *Oxford Studies in Normative Theory* vol. 3, edited by Mark Timmons (Oxford: Oxford University Press) 2014a. I develop this tripartite account of a skill in my *Moral Reality* (2001), chapter 2. For more on the epistemic role of *logoi* in virtue, see Jessica Moss, "Right Reason in Plato and Aristotle: On the Meaning of Logos", *Phronesis* vol. 59, no. 3: 181–230 (2014).
- 16 *Nicomachean Ethics*, translated by Roger Crisp (Cambridge: Cambridge University Press) 2000.
- 17 For more on pleonexia, see David Sachs, "Notes on Unfairly Gaining More: Pleonexia", in *Virtues and Reasons: Philippa Foot and Moral Theory*, edited by R. Hursthouse, G. Lawrence, and W. Quinn (Oxford: Oxford University Press) 1998. See also my "Justice as a Self-Regarding Virtue" (2011).
- 18 A wonderful example of this kind of thinking can be found in an unpublished note of Abraham Lincoln's from 1854, in which he wrote,

If A. can prove, however conclusively, that he may, of right, enslave B. — why may not B. snatch the same argument, and prove equally, that he may enslave A?—You say A. is white, and B. is black. It is color, then; the lighter, having the right to enslave the darker? Take care. By this rule, you are to be slave to the first man you meet, with a fairer skin than your own. You do not mean color exactly?—You mean the whites are intellectually the superiors of the blacks, and, therefore have the right to enslave them? Take care again. By this rule, you are to be slave to the first man you meet, with an intellect superior to your own. But, say you, it is a question of interest; and, if you can make it your interest, you have the right to enslave another. Very well. And if he can make it his interest, he has the right to enslave you.

Basler 1953: 222–223

- 19 For the jurisprudential discussion, see, e.g., H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon) 1961, ch. VIII; for the supervenience of judgments on facts of the case, see R. M. Hare, “Universal Prescriptivism”, in *A Companion to Ethics*, edited by Peter Singer (Oxford: Blackwell) 1991, p. 456.
- 20 “Symposium: Justice as Fairness”, *Journal of Philosophy* vol. LIV, no. 22: 653–662 (1957). Rawls was not the first to make this observation. For example, Isaiah Berlin, “Equality”, *Proceedings of the Aristotelian Society* vol. 56: 301–326 (1955–6); Richard Wasserstrom mentions the point in reference to rationality in “Rights, Human Rights and Racial Discrimination”, *Journal of Philosophy* vol. 61: 628–641 (see pp. 634–635); J. B. Schneewind quotes Clarke on the issue, noting without reference in a footnote that Cumberland also comments on it, see *Proceedings and Addresses of the American Philosophical Association*, vol. 70, no. 2: 25–41 (1996).
- 21 Kant writes,

Thinking is cognition through concepts. Concepts, however, as predicates of possible judgments, are related to some representation of a still undetermined object. The concept of a body thus signifies something, e.g., metal, which can be cognized through that concept. It is therefore a concept only because other representations are contained under it by means of which it can be related to objects. It is therefore the predicate for a possible judgment, e.g., “Every metal is a body”.

*Kant 1998: A69/B94*

- 22 The reasons to take the verb “to judge” to be basic are twofold: first since this allows for the normativity of “judging well” and “judging badly”, and second because the virtues themselves must be character traits of agents and not mere outputs: one might exhibit “good judgment” in a case by getting the right response as a “one-off” or by accident. Judging well, however, does not happen by accident. For more on this see Roger Crisp, “A Third Method of Ethics?”, *Philosophy and Phenomenological Research* vol. 90, no. 2: 257–273 (2015).
- 23 I’m grateful to Matthew Stichter for pointing out this distinction here. One may note that this makes things difficult for legal pragmatism or some forms of legal realism: it seems backwardly inapposite to first render a verdict of innocence or guilty and only after that search for a rule to cover the case.
- 24 Obviously, issues of moral luck abound. For discussions of elitism in virtue theory see Julia Driver, *Uneasy Virtue* (Cambridge: Cambridge University Press) 2001, and my *Virtues of Happiness* (2014), pp. 230–231.
- 25 Kant’s theory of moral reflection or conscience is explicitly built on the idea of a judge in a courtroom. Exploring this would take us too far afield, but the juridical aspects of Kant’s Critiques are central to his project. See Allen Wood, “Kant on Conscience”, in *Kantovski Sbornik* (Kaliningrad) 2009; Marijana Vujošević, “The Judge in the Mirror: Kant on Conscience”, *Kantian Review* vol. 19, no. 3: 449–474 (2014).
- 26 For more on this see David S. Oderberg, “On the Cardinality of the Cardinal Virtues”, *International Journal of Philosophical Studies* vol. 7, no. 3: 305–322 (1999); see also my “Virtues as Excellences”, MS.
- 27 Thanks to Heather Battaly for discussion on the difficulty of this point. There are, of course, other ways to conceptualize wisdom. For example, Matthew Stichter argues that wisdom is inherently moral and does not extend to other non-moral contexts. As a brief response, one might ask what we should think, on this view, of the actions of wise people when they are not in moral situations? Why not say they are wise throughout their lives, if the patterns of thought and experience garnered through morality have application outside moral contexts? Surely, we want to say that Einstein had *theoria*. If a farmer uses wisdom to raise children, might there not be an application of these skills of care and “tending to” which are applicable to his crops? I see no loss of meaning in “practical wisdom” or “practical rationality” if it is extended to non-moral contexts. The issue in the end may be semantic. See Stichter, “Practical Skills and Practical Wisdom in Virtue”, *Australasian Journal of Philosophy* vol. 94, no. 3: 435–448 (2016).
- 28 David Lewis takes similarity as a primitive notion in his *On the Plurality of Worlds* (1986). A classic treatment of similarity can be found in David Armstrong, *A Theory of Universals* (Cambridge: Cambridge University Press) 1980. A sample of more recent work on the issue is Ben Blumson, “Two Conceptions of Similarity”, *Philosophical Quarterly* vol. 68, no. 270: 21–37 (2018).
- 29 This problem is most famously familiar to Kantian ethics, given their reliance on universalizability based on relevant descriptions. See, for instance, chapters 2 and 3 of Onora O’Neill, *Acting on Principle* 2nd edition (Cambridge: Cambridge University Press) 2014; chapter 2 of Mark Timmons, *System and Significance* (New York: Oxford University Press) 2017. For an article on how epistemic salience figures

- into virtue generally, Richard Yetter Chappell and Helen Yetter-Chappell, “Virtue and Salience”, *Australasian Journal of Philosophy* vol. 94, no. 3: 449–463 (2016). For a theory of virtue epistemology, similar to a skill analysis as discussed here, which rests on a notion of “explanatory salience”, John Greco, “Knowledge and Success from Ability”, *Philosophical Studies* vol. 142: 17–26 (2009). In general philosophy, the issue centers itself on *salience*, yet typically it employs salience rather than gives an analysis of it. But see, J. Mehta, et al., “The Nature of Salience: An Experimental Investigation of Pure Coordination Games”, *American Economic Review* vol. 84: 658–673 (1994), and a response to this by Gerald Postema, “Salience Reasoning”, *Topoi* vol. 27: 41–55 (2008).
- 30 Stocker, “The Schizophrenia of Modern Ethical Theories”, *Journal of Philosophy* vol. 73: 453–466 (1976); Williams, “A Critique of Utilitarianism”, in *Utilitarianism: For and Against*, co-written with J. C. C. Smart (Cambridge: Cambridge University Press) 1973, pp. 77–150; *Moral Luck* (Cambridge: Cambridge University Press) 1981, chap. 1; and *Ethics and the Limits of Philosophy* (Cambridge, MA: Harvard University Press) 1985, chap. 10.
- 31 I do not mean to imply that the role of precedents and how they are used in the law is uncontentious. The view glossed in the text is from Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press) 1977. See his discussion of the ideal judge, whom he names “Hercules”, in chapter 4.
- 32 Some data suggests that we learn, in part, some tasks while we sleep. For example, psychologists Daoyun Ji and Matthew Wilson write of rats learning mazes:

One reason for calling such a learned information structure a representation is that it exhibits information-value-sensitive processing that is substantially independent of current experience or context. During episodes of REM sleep after a day of training in a maze, a rat’s acquired spatial representations of the maze can be observed to be repeatedly re-activated.

*Ji and Wilson 2007: 100–101*

See also, A. S. Gupta, M. A. A. van der Meer, D. S. Touretzky, and A. D. Redish, “Hippocampal Replay Is Not a Simple Function of Experience,” *Neuron* 65: 695–705 (2010).

- 33 An earlier development of this following argument can be found in my “Virtue Epistemology and the Epistemology of Virtue”, *Philosophy and Phenomenological Research* vol. LX, no. 1: 23–43 (2000).
- 34 Matthew Stichter gave me comments on a draft of this chapter for which I am grateful. Also, I’d like to thank the following people for their helpful comments and discussion: Teresa Allen, Heather Battaly, Jeffery Brian Downard, Georgi Gardiner, Nathan Kellen, Yuhan Liang, Bill Lycan, Michael Lynch, Lionel Shapiro, and Ufuk Topkara.

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