

JUSTICE

a discussion paper

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What is justice? A dictionary may give a short definition, but definitions are not exhaustive. Plato wrote the *Republic*, a whole book, in an attempt to provide an extended definition. He had to make a mental construction of an idealized society to show what it is. Justice and civilization go together. When we do not have justice civilization will wither. Saint Paul pointed out that where civilization does not exist there is no concept of justice;

"For until the law sin was in the world; but sin is not imputed when there is no law." (*Romans 5:13*)

"Where no law is, there is no transgression" (*Romans 4:15*)

"For as many as have sinned without law shall also perish without law" (*Romans 2:12*)

and "...without law sin was dead" (*Romans 7:8*)

When a civilization emerges its members begin to realise the need for justice to keep it cohesive, and therefore that laws must be formed to facilitate this. By contrast, in the animal kingdom the law of the survival of the fittest applies. Nature, 'red in tooth and claw', seems unfair. Thus, although the herbivore does not provoke the carnivore, the lion would starve if it could only lie down with the lamb. In nature life means death, and death means life. One creature has to exploit another to satisfy its needs. However, with people it is recognised that in a civilized society each citizen is born with equal rights, that no one has the right to usurp the rights of others and to exploit them.

In the *Republic* Plato said that justice was "giving each man his due". However, our contemporary legal system does not always do this. Those victims who seek justice are often accused of seeking revenge, and one commentator has even said that sometimes justice means the same thing as revenge. Revenge is different from justice because it often means seeking *more* than one's due. Revenge can mean venting one's anger until it is exhausted, and those that wreak such wrath often indulge in overkill. Fear of future conflicts can breed rage, the person with the upper hand and the technical means may seek to neutralise his enemy permanently so that he will not be threatened by that enemy ever again. This is evidenced by the frequent attempts at genocide amongst various ethnic groups now that the means of mass destruction are so readily available. Hatred and fear then breed more fear and hatred. Revenge can be sought for imagined slights, or it can be sought because an intended victim has dared to stand up for their rights and fight back. The vengeful do not seek to always give each person their due.

So what do people want when they seek justice? They seek true remorse from their transgressor, that is all, for without remorse forgiveness is difficult. Remorse for their wilful or thoughtless and uncaring actions which have caused suffering to others. But often they do not get it, legal shenanigans deny them of this. Denying the victims their right to seek justice is to heap injustice upon injustice. Consider the Rituals that happen after a road death; solicitors advise the offenders that they should not apologise to or even contact the dead person's

relatives as this could be seen as an admission of guilt. Relatives often complain that the offender has not even had the decency to contact them, to not enquire whether or not the death, through the imposition of funeral expenses or the loss of the breadwinner, is causing the family financial difficulties. They feel that it is a callous unconcern.

Consider those cases where the offender does contact the relatives, but instead of doing it to show concern it is done to harass the relatives in subtle or not so subtle ways. Some real examples of this are; the drunk driver who three times sent the bill for damages to his own vehicle to the widow of his innocent pedestrian victim; then there were the people who each day deliberately parked their vehicle in front of the house of the victim's mother, knowing that she knew it was the same vehicle that had killed her son; and lastly there was the offender who got his mates to bash up the brother of his victim. The mentality behind this behaviour appears to be that if you feel guilty over something you have done you can desensitise yourself to guilt by continuing to kick the heads of your victims.

However, guilt should not be confused with remorse. This can best be illustrated by comparing various hypothetical situations within a family. Consider for example, if you were changing the battery in your car and you momentarily left the bottle of battery acid where your young child was able to reach it and the child was subsequently burnt. This would leave you feeling terribly guilty and remorseful because of your negligence. Then consider the situation where an older child committed a particularly act and in punishing him the parent unintentionally broke the child's arm. The parent would feel some guilt and remorse but would also feel that it would not have happened if the child had not provoked the parent. Now consider the case of a child reaching adulthood who challenges his dictatorial father's authority and a violent fight ensues, resulting in the son's death. In the latter case the father may feel that his actions were justifiable. In these cases the more wilful the act, or the more *guilty* the father is of a wilful act, the less remorse he feels.

So it is also with acts that cause death or injury outside the family. The grosser the negligence or intent, the less remorse is shown. The offender finds ways to justify his own actions to himself. He may do this so successfully that he will repeat the offence over and over again. He feels that he is acting within his rights. But guilt is not equivalent to remorse. Thus we have a paradox: the less intent that a person has had the more remorse they feel. Those with full intent do not often say "If only I had..." They do not give themselves these options. As far as they were concerned, given the predetermined events, they had no option, that they were acting within their rights, or that it was up to their victim not to be in their way when they exercised their rights.

But what happens in court? It is par for the course that defence counsel claim that their client feels genuine remorse. Yet the family of the victim often see the offender smiling and sniggering in court. He may show lack of remorse by

slandering his victim; the dead cannot defend themselves. And what justice can the family expect when defence counsel say such things as "many people are out on the road, drunk behind the wheel and never having an accident, but my client was just unfortunate in that he accidentally killed someone."? Or the instructions from the bench to the jury that "it is of no matter to this court that someone died, your duty is to determine whether or not the defendant is guilty of dangerous driving."? The death is *central* to the case!

It is because such deaths and injuries occur that such laws are made. It is the *raison d'être* for these laws. If such deaths, injuries and damage did not occur there would be no point in having such laws, except to raise revenue for the government. It is because of the reason such laws are made that people should not be excused for breaking them. The death means that the implications of these laws have been realised; the goddess of luck should not be invoked in order to let criminals go free. The family situation can also be used here to draw an analogy; suppose that you were in conflict with a member of your family and they attempted to do something against you, but they failed because you foiled them. You would find it easier to forgive them if they failed than if they had succeeded. You would probably say to yourself that no harm was done, or "all's well that ends well", notwithstanding that the *intent* of the person you were in conflict with was the same in both possible circumstances. If the family member had succeeded in their action against you you would not say "If he had failed I would have forgiven him so it is only logical that I should forgive him just as readily when he succeeds."

Yet in essence this is the argument used in court and many do go scot-free. And what remorse is shown when defendant and counsel break into wide grins and shake hands in congratulation (an obscene act when done in front of the victim's family)? What justice can a family expect when the bench rules that certain evidence (or even witnesses if a witness is a relative of the victim) is inadmissible because it may emotionally prejudice the jury? In court the victim's family expect the jury to be presented with the whole truth and nothing but the truth, *not* the half-truth. And what can they expect when they learn that the defendant is given the latitude to refuse to give evidence, or if he does give evidence to perjure himself with relative impunity?

They expect that if the offender is truly remorseful for what he has done (as opposed to just feeling sorry for himself) he would tell himself that he deserves to be punished and should plead guilty. Yet they know that they could never be sure he is remorseful unless an adequate penalty is imposed on him. Some crimes are too heinous to be atoned for in this life, hence people such as the murderers of Anita Cobby or Sian Kingi could never receive an adequate sentence from the present legal system. Or take the case of Moors murderer Moira Hindley, who in partnership with Ian Brady sexually molested, tortured and murdered a number of young children. Yet about a decade after being sentenced she was reported as saying that she had paid her debt to society and

should be released. The fact that she had said this shows that she does not have enough remorse for what she has done, it only shows that she is feeling sorry for herself. If she were remorseful she would constantly remind herself that her victims would never be able to enjoy the freedom of life that she now seeks, those years of freedom that she robbed them of and can never pay back.

What can people think of a justice system that fines a sum of money on one person who drove while drunk but did not happen to kill anyone, yet lets another one go who did kill someone while in the same state? And what can they think when they see a shop-lifter heavily fined, but a killer go free? They can only think that law and justice are far removed from each other. And if an offender does spend a short time in gaol, what justice is there when his incarceration means that at meal times he is fed a three course meal devised by a nutritionist, is allowed to watch television, make phone calls and read books, magazines and newspapers, and even undergo tertiary education all at the tax-payers' expense. Added to this is the contact visits he can have with his wife or designated de facto wife, whereby he can indulge in fornication once a fortnight. In contrast, the victim's family are left to permanently suffer grief, often suffer the loss of a breadwinner so that life from then on is a series of financial difficulties, and that most times the family is also left with the indignity of paying off funeral expenses - paying for someone else's mistake. Maybe they feel that justice passed away quietly some time ago without hardly anyone knowing. They did not see that justice was done, only that justice was done in. Buried with the other victims.