

# THE ALTERNATIVE

May 2001

XXVII No. 4

Dear Reader,

Nothing is more common than someone voicing a complaint about justice. People are not hesitant to say in a loud voice that some action is unfair or unjust. And yet, nothing is more uncommon than sustained reflection on what justice is. Of course, philosophers, theologians and political theorists have written extensively on the just and the unjust. But it is not easy to find consensus on the nature of justice in writing that goes back almost three thousand years.

The newspapers and television have stories every day that involve arguments about justice. But this year has provided a number of high-profile cases in which public cries about doing the just thing have been heard. The year has gone from Bill Clinton's self-destructive pardon of Marc Rich through the inequalities of tax cut and budget, to incidents such as the sinking of the Japanese fishing boat and subsequent trial of Commander Waddle; the U.S.-China standoff on the spy plane and its crew; the bombing of Vieques near Puerto Rico; the confession of Bob Kerrey; and finally the spectacle around the delayed execution of Timothy McVeigh. In these and numerous other events, people have strong opinions about justice and injustice. What is the meaning of justice that is presumed? That question is addressed by Gabriel Moran in the following essay. How best to deal with injustices is dealt with in the second essay by Michael McDonald.

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## JUSTICE VS. INJUSTICE

By Gabriel Moran

An excellent collection of essays on South Africa was recently published with the title Justice vs. Truth. That struck me as a bad title before I read the book and then my view was confirmed by reading the essays in the book. I think that none of the fourteen authors thinks the choice is between truth and justice. Each of them struggles with how truth and justice are related within the extraordinary situation of South Africa. I examine below the South African experience of the last ten years that has stimulated new questions and (partially) new answers to the question of justice.

First, however, one needs a larger and broader background of justice to appreciate the distinctive contribution of the South African experience. In the Hebrew Bible justice is an important theme, perhaps the most important theme. The justice of God dominates the historical narrative of the Bible and the demand that Israel be faithful to the covenant. God's justice seems to refer to all things being in their proper order, an order that has somehow been violated. God says: "I will make justice the line, and righteousness the plummet." (Isa. 28:17). The Christian gospels, at first glance, do not seem to emphasize justice. They are more taken up with themes such as love and forgiveness but perhaps those themes are related to justice. In the parables of Jesus, the hearer's assumptions about equality and fairness are challenged. The prodigal son and his brother or the vineyard workers who arrive at different times seem to receive unequal treatment.

It was left to St. Paul to reflect more systematically on the justice of God and the path from sin to justice (or righteousness). Paul's elaborate construct, as developed by Augustine and Luther, has shaped the Christian understanding of what it means to be "made just." (justification). Although justification is a central Christian doctrine, I doubt that it does much for the moral life of Christians today. The contribution that Christianity could make to thinking on justice is usually buried in the archaic-sounding language of justification and righteousness. An interesting aspect of South Africa's experience is the surfacing of attitudes that are traceable to Christianity.

The modern world on the whole has fled from categories such as sin, redemption and justification. Even though biblical ideas are just below the

surface in many Western countries, philosophers and political theorists have looked for inspiration to the classical writings of the Greeks and Romans. The most influential of these works is Plato's Republic written in the fourth century BCE. The first book of The Republic asks "what is justice?" and the nine books that follow are a reply to that question. Like the parables of Jesus, Plato's dialogues are the source of unending inspiration but also intense debate. Just as Jesus' teaching has often been badly applied, Plato dialogues on the mystery of justice and injustice ended in such bad applications as fascism and communism.

A common reading of Plato is that he advocates a life ordered by abstract principles of reason. Much of "liberal" thought in modern times seems to be a search for principles of fairness to which any reasonable person would agree to abide. A problem with that premise is that not everyone acts "reasonably." Probably no one - including liberal theorists - act reasonably all the time in every situation.

Plato was not so naive as this belief assumes. He did not distinguish between reason and emotion and then advocate that we should follow reason. His psychology was far more complex. Plato thought there are three parts to the soul. He distinguished two kinds of emotions. Some such as the desire for food, sex and leisure are one-dimensional. They seek one thing single-mindedly up to a point of satiety. Other emotions, such as the urges for honor and victory, feelings of pride and attachment, are not appetites but cannot be considered rational. Why do we feel passionate about things that satisfy neither our appetites nor our reason (such as our national soccer team winning at the Olympics)?

In Plato's Republic this faculty of the soul (usually translated as "spirited") is the decisive one for achieving justice in the soul and in the city. It is this "spiritedness" that controls whether people are law-abiding or not, courageous or cowardly, cruel or kind, whether they are inclined to reason or plug their ears to its call. The Christian writer Evagrius would later identify seven of these drives (pride, covetousness, lust, anger, gluttony, envy, sloth) as the seven capital sins; that is, not sins but the source of all sins. With only a few slight changes in the wording, they could also be called the seven capital virtues.

Near the end of the dialogue Plato presents an extraordinary image of the soul that is meant to capture the relation among the faculties of the soul and explain why their correct ordering is necessary for justice and happiness. Imagine, he says, a man who is forced to live with a lion and a hydra inside himself. Both are good for the man to have but together they present a problem: the hydra is by nature acquisitive and domineering, and cannot be trained. The lion is stronger and potentially more dangerous but is trainable. If the man wants to be happy, he must train the lion to obey his orders and help him keep the hydra in check; if the lion is lazy or, worse, joins forces with the hydra, the man will be overcome by them and become their slave. Thus, the spirited passions are good, indeed they are essential to political and psychological health, but only if they are trained to listen to reason and to control our appetites.

When eighteenth-century theorists began to develop a theory of justice and politics, they were concerned about the control of those passions that Plato had identified. Montesquieu, Locke, Hume, Smith, Madison and the French philosophes hoped that progress in the sciences would lessen the hold of religion and make people less fanatical. They also hoped that a commercial society would distract ambition away from politics because the inflated conceptions of honor in the political world excited all the wrong passions. But the twentieth century has dashed those hopes. The attacks on the church may have seemed successful but the result has been the release of fanatical religious and quasi-religious passions. Aristocrats no longer defend their honor with dueling but their replacement by Hitler, Stalin and their recent imitators has not been progress.

These setbacks of liberal hopes for progress can lead to dangerous attitudes of defeat or despair. Stuart Hampshire, a leading theorist of the last three decades, recently published a book entitled Justice is Conflict. The title makes no sense except as an indication of the author's abandonment of hopes for a theory of justice. The author is now in search of those minimally fair procedures which he thinks every society requires.

Hampshire's main point that conflict cannot be eliminated is important for both the city and the soul. But to say that justice is conflict undercuts his main point, namely, the existence of procedures for managing conflict. Of course, if he had called the book "Justice is procedures for managing

conflict," he would have had a less catchy title. That conflict has always been with us and probably always will be is a corrective for those who hope to "soften" passion and trust in reason. Nevertheless, (human) justice is not the conflict but the attempt to manage conflict. Management not elimination is the most that humans can reasonably expect whether the conflict is metaphysical, environmental, political or psychological.

The dashing of eighteenth-century expectations is not necessarily good news for those people who wish to defend a view of justice that comes from biblical or other traditional teaching. The contemporary world needs demonstrations of justice and appropriate procedures for managing conflict. Here is where South Africa's Truth and Reconciliation Commission is a fascinating experiment. Among other things, it is a frank admission that full justice cannot be attained but that a degree of justice is worth struggling for. Because all humans are imperfect, forgiveness is an element within justice, not something added to justice or a substitute for justice. The teaching of Jesus may be more relevant to this contemporary situation than most modern theories of justice. But Christians have to move carefully in trying to make this point. In South Africa, the churches have a lot to answer for about their own past.

South Africa chose the route of a Truth Commission, later renamed Truth and Reconciliation Commission (TRC), out of both necessity and conviction. It was thought impossible to bring to trial and punishment everyone who was involved in apartheid crimes. But it was also claimed by some people that the TRC represented a better form of justice. A contrast was drawn between "retributive justice" and "restorative justice." This contrast shows up in the Final Report of the Commission where restorative justice is defined as "concerned not so much with punishment as with correcting imbalances, restoring broken relationships - with healing, harmony and reconciliation."

This ideal may be desirable but the contrast of two kinds of justice is unfortunate. The argument should be that "retribution" (a legal form of punishment) is sometimes appropriate in the service of healing and reconciliation, whereas personal vengeance has to be restrained. Instead of dismissing retribution, we need to recognize that some forms of retribution cause destructive conflict, while other forms of retribution do not.

For example, in the United States there are nearly two million people who are essentially caged in prisons. Some are there for life without parole (a total despair of reform); many others are learning to become better career criminals. While some crimes surely deserve restraint and punishment, I fail to see how our present form of retribution serves any constructive purpose. Could we not imagine retribution that would include productive work on the part of the criminal who could then be forced to make monetary or other restitution to the victim? That would not be perfect justice but it would be a lot less unjust than the monstrosity of our present system.

South Africa differed from South American countries that tried Truth Commissions. The South African decision was carried out by lengthy parliamentary deliberation. It was decided to grant amnesty to individuals not to groups. And the main condition of amnesty was the individual's full public disclosure of his or her crimes. Amnesty was the key concept here and one that continues to be controversial. A total amnesty is incompatible with justice; not all who applied were granted amnesty. I think that "amnesty" is an unavoidable but unfortunate word. Amnesty comes from the same word as "amnesia," loss of memory. But amnesty is the opposite of amnesia; it is a recovery of memory, a search for the truth in the past.

Amnesty is a form of plea bargaining which absolves the perpetrator of legal liability for specific crimes about which he or she tells the truth. By waiving the right to a trial the plea bargainer waves protection against unfounded accusations. In the proceedings of the TRC there were no cross-examinations; victims and their oppressors testified to the truth as they saw it. People who insist that every criminal should be indicted, tried and punished are probably unaware that most people in the U.S. who are accused of crimes are never brought to trial.

Perhaps the TRC would have been wise to keep its original name; truth is what it could mandate; reconciliation is what may follow upon the truth. The state cannot dictate all the elements of reconciliation. Specifically, the state cannot require contrition and apology on the part of the oppressor. Nor can the state pressure the victim to offer forgiveness. The final report praises "the magnanimity of those who should by rights be consumed by bitterness and a lust for revenge." That contrast jumps too quickly over

other feelings such as passionate anger. I don't think many people would praise a "lust for revenge" but they still might desire appropriate punishment and they might not be ready to forgive. One woman, on hearing the testimony of the man who killed her husband, was asked if she could forgive the man. Speaking slowly through an interpreter she said: "No government can forgive." Pause. "No commission can forgive." Pause. "Only I can forgive." Pause. "And I am not ready to forgive." That woman seems to me to get it right; she does not deny forgiveness is part of reconciliation; but she is the only one who can determine when that will happen.

Although Archbishop Desmond Tutu often referred to "restorative justice" as African in origin, the elements of confession, contrition, apology and forgiveness bear a Christian stamp. That fact is not surprising given that two of the main architects of the TRC were Alex Boraine, former head of the Methodist church and Desmond Tutu the Anglican Archbishop. The Archbishop did set a tone at Commission meetings that encouraged contrition and forgiveness. But there was danger of these personal feelings, even if genuine, overshadowing other steps to finding the whole bitter truth and acknowledging people's anger. A black woman from South Africa in one of my classes this semester was extremely skeptical of the TRC and particularly the way it has played in the U.S. news media. She was especially skeptical of the church's role. It is praiseworthy that the church finally found its voice of opposition to apartheid. But Christian churches in South Africa have to be modest for a while in claiming to bring about reconciliation.

What is to be learned by the rest of us, whether we are Christian or not? First, the government has to use some imagination and courage in designing structures that will be exercised fairly. But these structures, whether courts or commissions, cannot of themselves bring about justice. Mercy, forgiveness and reconciliation are essential to justice but only the individual who was harmed controls those passions. The individual has the right not to forgive yet. What the government can do is restore a sense of dignity to victims (dignity is not something you feel but a way you are treated). Reconciliation is a never ending process because humans can never get it quite right.

## PARTICULAR OR UNIVERSAL?

By Michael McDonald

A challenging question is whether it is more effective to appeal to domestic or international standards in denouncing such intolerable practices as torture, slavery and genocide. Often appeal to local shared understandings has the practical advantage of touching a government or political movement more deeply than an appeal to international standards, for the appeal to international standards can be portrayed as alien and evasive, especially to collective autonomy. Nonetheless, appeals to international standards, imperfect as they are, are ways of reminding violators of human rights that we share a globe and, despite a great many differences, we share a number of important values, in particular abhorrence of the gratuitous infliction of pain and degradation of human beings.

There is a deep temptation to search for one right answer to these questions. Globally we face conflicts between international and domestic standards, and even within communities we argue over appropriate interpretation of shared understandings. Alternatively, the dispute between universalists and particularists could be phrased in terms of who is the self in the human right to self-determination. Different cultures foster different notions of the self. There is an urge to seek some abstract vantage point - what the nineteenth-century utilitarian Henry Sidgwick labeled "the point of view of the Universe" - from which one could assess all the different community-constituting understandings of the world today.

I do not think that there is such a vantage point. We should seek overlapping consensuses to address the differences in perspective we inevitably find on moral issues. But there is something else as well: we can from our different perspectives talk to each other and, as we must, live together in a world that is increasingly fragile. Our community-constituting understandings are not fixed or immutable; they can and do evolve with changed circumstances or they perish. If we can live together peacefully, and collectively address our increasingly common problems, we will come to have a deeply felt, shared global understanding that spans and yet is sensitive to those cultural differences that make us who we are.