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Social Justice

*Society . . . makes justice rather than unselfishness its highest moral ideal. Its aim must be to seek equality of opportunity for all life.**

WHAT IS JUSTICE?

In this chapter we will be concerned with how a society handles issues of justice as they involve the treatment of persons based on their race, sex, or age and with respect to their right to education, housing, and employment. Justice, according to Morris Ginsberg,

consists in the ordering of human relations in accordance with general principles impartially applied. . . . The central core of the idea of justice is . . . the exclusion of arbitrariness and more particularly the exclusion of arbitrary power.¹

The key to the problem of social justice, as Ginsberg's definition implies, is how to treat people's differences (race, sex, or age, among others) in a nonarbitrary way with respect to their claims for, among other things, equal housing, learning, and working in a society that assumes that well-being requires security and adequacy in all three areas.

It would be impossible to act morally without any consideration being given to the differences between persons. Credit given on an examination or rewards granted for a successful contest must be based on a demonstrated difference between those who come out on top and those who do not. It would be manifestly unjust to license every third person whose name appears in the phone book as a surgeon.

The exercise of justice is not based on the ignoring of differences but rather on the application of general principles to differences that are *relevant* and *justified* in the particular area of concern. In his elaborated defini-

*Reinhold Niebuhr, *Moral Man and Immoral Society* (New York: Scribners, 1932), p. 258.

¹Morris Ginsberg, *On Justice in Society* (Baltimore: Penguin, 1965), pp. 56, 63

tion of justice, Ginsberg stresses the importance of avoiding arbitrariness. He says that justice is

opposed to (a) lawlessness, anomie, to *capricious* uncertain, *unpredictable* decisions, not bound by rules; (b) partiality in the application of rules, and (c) rules which are themselves partial or *arbitrary*, involving *ungrounded* discrimination; that is discrimination based on *irrelevant* differences.² (emphasis added)

Ginsberg also makes a strong case for viewing the problem of justice as the problem of *power*. Injustice becomes a problem when someone is deprived by someone else's power of that to which the former has a legitimate right. In a society based on law, power primarily means the gaining of a legal right and, secondarily, the power to enforce that right. What we will examine are those issues that surround the struggle of people to gain the legal right (and the power to secure its implementation) to equal housing, education, and employment opportunities.

Since Aristotle, it has been common to distinguish between *retributive* and *distributive* justice. *Retributive* justice tries to punish the violation of someone's rights or to restore the enjoyment of a right. *Distributive* justice seeks to ensure the *fair* distribution of rights and privileges to all members of the society, taking into account only *relevant* differences. Distributive justice tries not only to provide for the equitable distribution of the means to basic human well-being but also to redress or compensate for past inequities suffered by those who have been unjustly discriminated against. As we shall see, some of the most volatile issues of justice in contemporary America occur in this latter area.

Rights

The problem of justice would not arise unless persons had some essential rights that it is the obligation of any social order to provide. In 1948 the United Nations Commission on Human Rights drew up a declaration of human rights that was adopted by the U.N. General Assembly. Among the rights it declared to be "a common standard of achievement for all peoples and all nations" were

the right to social security . . . and . . . the economic, social and cultural rights indispensable for . . . dignity and the free development of . . . personality. . . .

the right to work, to free choice of employment, to just and favourable conditions of work and to protect against unemployment . . . the right to equal pay for equal work. . . .

²Ginsberg, pp. 56-57

the right to education . . . directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom. . . .

the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.³

RACIAL JUSTICE

Racism

The aim of social justice is to ensure that these rights are not denied to persons or groups of persons for unjustifiable reasons, or where they have been denied, to redress the injuries suffered. In the United States the most glaring example of such denial has been the treatment of persons on the basis of color. There has certainly been no more long-term, festering social issue in this country since its founding than racism directed primarily against black people but also against American Indians and, more recently, people of Hispanic origin.

The cancer that produces injustice toward those of another race is racism. It is

the belief that certain racial groups are, by nature and heredity, superior to the rest of mankind and therefore justified in dominating and discriminating against inferior groups. While prejudice may be merely an attitude (conscious or unconscious), racism is a dogma, deliberately cultivated and transmitted. It purports to describe factual or even metaphysical differences within mankind. It consigns some human races to an inherent inferiority at the core of their being.⁴

Fundamentally, racism is a form of faith, a search for meaning. As George Kelsey has put it, racism is

an affirmation concerning the fundamental nature of human beings. It is a declaration of faith that is neither supported nor weakened by any objective body of fact. . . . The devotee of the racist faith is as certainly seeking self-identity in his acts of self-exaltation and his self-deifying pronouncements as he is seeking to nullify the selfhood of members of out-races by acts of deprivation and words of vilification.⁵

³Department of State, *Selected Documents*, No. 5.

⁴Roger L. Shinn, "Racism," in *Dictionary of Christian Ethics*, ed. John Macquarrie (Philadelphia: Westminster, 1967), p. 287.

⁵George D. Kelsey, *Racism and the Christian Understanding of Man* (New York: Scribners, 1965), pp. 24, 23.

Racism is much harder to eradicate than prejudice because it is so oblivious to fact. Nevertheless, the defense of racism relies heavily on what the racist *alleges* to be fact. To justify discrimination on the basis of race, the racist claims (a) that there are significant differences between races and (b) that these differences are relevant in treating one race differently from another.

Part of the moral dilemma of dealing with racism is that the racist is not open to being shown that his "factual" beliefs are erroneous. Racism, as a faith, has the ability to interpret all examples that contradict its faith as *exceptions* to its unquestioned assumptions. When a racist encounters a black person who has achieved success (contrary to the racist's expectations), the racist is often heard to explain this fact as "unnatural" or as the black person's "transcending" his race or as the inculcation of "white" traits by the black person. Only the most massive exposure to contrary fact will be likely to jar the racist's deep-seated principles and fears.

The American Dilemma

America is peculiarly attuned to the dilemma of racial bias, as the Swedish sociologist Gunnar Myrdal pointed out many years ago in his book *An American Dilemma*. Americans have a strong creed, amounting to a national conscience, claiming belief in freedom of opportunity and the equality of all persons before the law. Because of this creed, Americans cannot and have not been able to dismiss as groundless the claims of black persons for equal treatment. That precisely is the dilemma peculiar to Americans. They recognize the rightfulness of redressing the injustices whites have dealt blacks and at the same time they resist paying the price such recompense demands.

Nevertheless, the persistence of the dilemma, the lingering commitment to justice for all, opens a chink in the armor of racism through which moral reflection can introduce alternative interpretations of "alleged" fact and suggestions for social change that can meet the demands of justice. But it must not be supposed that the question of justice depends entirely on a factual determination of similarities between races (or sexes) that the racist denies in his desire to be superior.

Schooling

Many racists insist that segregated schools are justified by the inferior intelligence of black persons. Although there is certainly no compelling evidence for that claim, the justice of equal and integrated schooling would not depend on the claim being either true *or* false. The overwhelming evidence seems to indicate that when black children score lower on standardized educational tests, it is because of a combination of factors, none of

which relate significantly to hereditary intelligence. Malnutrition and the crowded, stressful, impoverished, and hostile environments in which some black children grow up account primarily for their failure to perform up to educational standards to which most white children are oriented and nurtured almost from birth. But even *if* one could show that black children will learn more slowly (for whatever reasons) than white children, that fact should not affect the equity of schooling opportunities. It might, in fact, be argued that *more* attention should be given to the education of black children simply because of their environmental "handicap" (just as is the case with children handicapped by other things such as disease, birth defects, etc.). The point is that the morality of treating people equally and justly should not be made to depend solely on a factual analysis of irrelevant differences. As long as we are dealing with *persons*, differences of color, sex, or age are, according to the American creed, unimportant.

Anthropological and Historical Foundations

This is not to say that exposing people who are biased against color to factual studies setting forth the similarities of the races in all things essentially human is not important. This kind of information, once passed through the chink in the armor, may pave the way for other, more compelling forms of persuasion away from bias.

SCIENTIFIC OBJECTIVITY AND SOCIAL RESPONSIBILITY

The dilemma of the social scientists in employing the techniques and objectivity of science here is highlighted by the fact that complex social problems have historically been resolved not so much through the application of facts or principles of right or justice [as] through the effective use of economic, social, political, or military power. . . . The knowledge and advice of social scientists is sought and accepted in inverse relationship to the degree of controversy, intensity of feelings and emotions, and complexity of political, economic, and other power considerations and vested interest competitions which are involved in the particular social problem. . . . A most troublesome dilemma is faced then by those social scientists who persist in an attempt at objective study of crucial and controversial social problems. Their findings may be used as effectively by those who seek to maintain the *status quo* and to block progress . . . as by those who seek to facilitate democratic social change. . . . But the responsi-

bility of the scientist to test and retest his hypotheses, to seek his facts, and to check on the accuracy of his predictions remain in spite of—and because of—the many obstacles which he is required to face and surmount. Only through maintaining his role as an objective searcher after truth can he hope to make any contribution toward a positive resolution of the survival problems of man.

Kenneth B. Clark, *Prejudice and Your Child* (Boston: Beacon, 1955), pp. 208–209.

Kenneth B. Clark is professor of psychology at New York City College. His research work on the effects of segregation and prejudice on personality development in children played a major role in determining the Supreme Court's 1954 decision outlawing desegregated schools.

Statements from leading anthropologists such as Stanley Diamond can give the lie to the “factual” claims of racism.

All of the historical and psychological evidence scrutinized by anthropologists lead to one conclusion: there is no differential capacity for the creation and maintenance of culture on the part of any population large enough to be sensibly called a race. . . . Nor has any genetically based differential capacity in intelligence among these major populations ever been established. On the contrary, the doctrine of racial equality is fully supported by scientific and historical inquiry.⁶

Historical information is also essential to the breaking down of racial bias. When people who wish to use race to defend discrimination point to the slum conditions, the poor educational performance, and the high unemployment among large segments of minority populations, it is necessary to explain how those conditions were brought about. One would need to explain how Africans were captured in their own homeland, shipped across the Atlantic like cattle, and sold through two centuries as slaves: how the will and spirit of a proud people were almost destroyed by the brutal, inhumane, degrading conditions of slavery in which slaves were treated as animals, sold as things, their families separated by callous, business-based decisions of slave owners. Even following legal emancipation, former slaves and their descendants encountered the bitter legacy of slavery from former slave owners and their descendants. For decades

⁶Stanley Diamond, “A Statement on Racism,” *Current Anthropology* 4 (June 1963), p. 323.

segregation in large segments of the country was legally enforced. Even the pretense of “separate but equal” masked the reality of unequal and separate schools, churches, lunch counters, and other “public” facilities. Employment practices were a direct reflection of the same racial bias. Black persons continually suffered low wages, infrequent job promotion, and were traditionally victims of the “last hired, first fired” syndrome.

It took years of struggle, both in and beyond the courtroom and legislative assemblies, to secure passage not only of laws prohibiting racial discrimination but also enforcement power to make those laws effective. Perhaps the Civil Rights Act of 1964 is the high-water mark of that struggle. Today there would be few, save hard core racists, who would argue publicly for a repeal of such laws or for a return to the days in which public segregation was the norm.

Housing

The struggle for social justice has not ended, however. It has shifted into more difficult areas—legally less simple and psychologically more complicated. Other values and rights, such as freedom of choice, the sanctity of the neighborhood, and recognition only on merit are being opposed to or are supplanting the values and rights connected with removing racial bias and the discrimination to which it gives rise. Although few would defend the principle that black persons, simply because they are black, should be denied jobs or schooling or homes, many persons are defending the principle that people should be free to live where and with whom they wish. It follows, they claim, that if a traditionally white neighborhood wants to preserve its “unique” character and traditions, it should not be “forced” to accept persons who, in its opinion, would counteract that character and those traditions. Claims are made that “cultural comfort” is an important ingredient in any neighborhood and that black people are more culturally comfortable in a black community and whites in a white community. Thus, any attempt to foster integrated housing is looked on as a violation of the freedom of choice of those both within the neighborhood and of those being encouraged to move in. Real estate agents have been known to “steer” black clients away from white neighborhoods on the grounds that they wouldn’t be comfortable living there.

The moral flaw in the cultural comfort argument is, of course, that while it respects the desires of a biased community to perpetuate its bias, it does not respect the free choice of a family that wishes to exercise its right to live where it wants. It also overlooks the necessity of working to achieve the kind of interracial experiences that alone can lead to genuine respect of one race for another. As long as neighborhoods do not actively work for racial integration, those in the neighborhood wind up being deprived of the excitement and joy of relationships with people of another race.

It is interesting to note that those neighborhoods that have experienced racial integration successfully have done so, at least in large measure, because the residents share other, more important things in common than race. They discover that hobbies, jobs, and other interests provide stronger bonds of friendship than racial commonalty.

Economic Factors: Busing

In this regard it is impossible to avoid the problem of economic disparity. Wealthier, more economically secure neighborhoods have less difficulty accepting a minority family if it has the same economic status as the neighborhood in general. The communities most antagonized by residential integration are those that are economically marginal or those into which minority families of low income are moving and are being subsidized to do so. White families in such neighborhoods are generally more fearful of declining property values than are similar families in wealthier communities who know that their minority neighbors can afford to "maintain" their property. The result is that much of the public conflict in racial housing occurs at the margins of the white society. (Some of the economic realities that underlie this fact are spelled out in Chapter 12.)

It could be argued that the brunt of the integration struggle is being borne by members of the black community as a whole and by the least economically secure members of the white community. This can be seen dramatically in the confrontations over integrated schooling and its attendant busing. In 1954 the Supreme Court declared separate but equal schools illegal because it turned out to be not only unequal but also a formidable obstacle to the kind of interracial contact believed by the Court to be essential to a well-rounded education. Since that decision, communities have struggled to integrate (or resist integrating) their schools.

Apart from communities that simply resist the whole idea of integrated schools, the controversy has shifted to the question of how far, and by what means, shall black and white children be brought together in the same schools. Courts generally have recognized only town or municipal boundaries as those within which such integration must occur. In order to achieve "racial balance," it has been determined by many courts that some busing of white and black children is necessary. (This is due in large measure, of course, to the segregated housing that prevails in these communities.) Many white, and some black, parents have opposed such integrationist plans not on the grounds of race, but in opposition to destroying neighborhood schools. Similar to and associated with the argument of cultural comfort in residential housing, the opposition to busing argument holds that people have a right to maintain schools in their own neighborhood. To bus a child past the closest school to one on the far side of town to achieve racial balance is, for some parents, to override a more important

right and, indirectly, to heighten racial tension and antagonism. In addition, to bus a child solely for integration purposes is, they argue, to confuse the goals of education with other, unrelated social goals.

Once again, the moral issue is related to what efforts a *de facto* (in fact) segregated society should take to bring about *de facto* integration. The moral issue is how to rank values. Those who choose to reject busing as a means toward integration must recognize that they place a higher value on convenience of travel to and from school than they do on overcoming the racial antagonism and mistrust that has infected the social order for three centuries. (It could be argued, on their behalf, that as long as the courts do not require suburban towns to integrate their schools with urban areas in which most of the minority population lives, the burden of school integration will be shouldered disproportionately by the less affluent and therefore less powerful white communities.)

PSYCHOLOGICAL EFFECTS OF RACISM

In any assessment of the moral ranking given to racial integration and the steps necessary to implement it, space must be given to the effects of prolonged racial prejudice, not only on those on whom it is imposed but also on those who impose it. The victims of prejudice include the discriminators and the discriminated against. The effects on the discriminated against are obvious, including the most pernicious and long-lasting: the inculcation of a negative self-image. If people are discriminated against long enough, they will eventually come to think of themselves as being what their tormentors allege they are. Any parent who has seen the effects of continual belittlement of a child knows the horrible self-hate that the child develops and that may take years to remove. As long as the overcoming of racial prejudice is not at the top of the moral agenda, the subtle but insidious destruction of bias will remain virtually unchecked.

Many people in our society do not stop to realize the injustice and cruelty they needlessly and perhaps thoughtlessly inflict by going along with, or failing to protest against, an entrenched power structure that prevents the members of various minority groups from developing their capabilities as persons. If the public schools, libraries, hospitals, and churches in a community were destroyed by fire, tornado, or other disaster, such people would say that they had suffered a great misfortune, perhaps even a calamity. Yet these same people sometimes deprive a section of the community of the use of these facilities because of race alone. And that deprivation represents an even greater destruction of one of the most valuable assets the community has: the minds and lives of some of its own members.

By their prejudice, members of a community shut themselves off in fear from the riches of encountering and learning from different persons within

the human family. The effects of such self-enclosure can be devastating on biased persons. They live in fear of difference, they constrict their behavior to avoid others, they turn inward on their own narrow view of the world. Their minds and lives become just as atrophied and sterile as the lives of those whom they segregate and oppress. The single most horrible effect of racial prejudice is that it keeps persons from encountering each other's humanity. When that happens, we touch others' lives only in the most superficial, mechanical way. If, as many philosophers and psychologists have argued, we grow as persons only when we develop open, trusting, and enriching relationships with a wide variety of other persons, then racial prejudice is both a sign and a cause of our dehumanization.

"Reverse Discrimination"

Although agreeing that racial prejudice is an evil that ultimately destroys the vitality of any community, many people are reluctant to adopt what has come to be known as "affirmative action," or what some call "reverse discrimination."

Recognizing that racial injustice can be transmitted more devastatingly by institutions than by individuals, many social agencies, including legislative bodies, have insisted that social institutions consciously and actively seek out minority employees or applicants. If, for example, admission to college is subject to scoring high on tests that give an advantage to people of suburban schooling and affluent families, an advantage denied to some by virtue of circumstances arising out of earlier or continuing racial bias, then the institutional patterns of college admission are racist. If advancement in the building trades rests on seniority, and the history of the building trades is one of craft unionism that mirrors the racial biases of earlier decades, then job opportunity in that field is colored by a racist system.

Some of the racist structures of our society are inadvertent. The relatively low percentage of minority members in the professions of law and medicine reflects the discriminatory patterns that began at the earliest levels—housing and schooling. The moral issue is how to break this stranglehold a racist, interlocking chain of institutions has on opportunities for minority persons to achieve equal access to jobs, housing, and education.

Affirmative action requires that firms, businesses, and other institutions ensure that they solicit minority applicants and that, if all other credentials are equal, minority applicants be favored for admission or employment. In other words, it is a conscious attempt to seek out and secure members of those minority groups traditionally discriminated against by employers and educational agencies.

The reaction to affirmative action has based itself on the claim that it is unjust to treat people according to anything other than their demonstrated

merit. Therefore, singling people out for "preferential" treatment on the basis of color is a denial of the very principle being used to justify the reverse discrimination in the first place. Opponents also point out that the "victims" of reverse discrimination are persons who may not individually be guilty of discrimination. White persons living in the present are being punished, in effect, for the injustices of white persons in the past. Such retributive justice is not fair because it does not seek retribution from those who were the most responsible for the crimes of injustice.

Supporters of reverse discrimination point out that members of a majority race do not, in fact, succeed in a racist society simply because of individual merit. Being white, they have a real, if implicit, advantage in securing the best housing, employment, and education. It is necessary, therefore, to undergo a period of compensation to bring blacks, as a race, up to the starting point from which the contest can be won or lost on individual merit. Unless such compensatory action is taken, the effects of racism and discrimination will persist, dooming present and future minority generations to perpetual disadvantages and injustice.

The moral dilemma is that *individual* black persons have been denied consideration on the basis of merit because of the treatment of blacks as a *group*. To undo the effects of that individual-blind discrimination, remedial or compensatory action must be equally individual-blind, at least until such time as people of all groups can be treated as individuals who are not handicapped by the effects of past group prejudice. Thus, proponents of affirmative action insist that a white person who refuses to take into account, in the name of individual merit, the bigotry suffered by black persons in the past is playing a form of moral blackmail, or perhaps moral Catch-22.

A related objection to affirmative action is that it tries to "legislate morality." It is argued by some that no legal action can change attitudes. Unless there is a genuine heartfelt desire to enter into loving relationships with members of another race, no amount of legal coercion can produce the love necessary to sustain those relationships.

Morally, such a position, according to its critics, confuses love with justice. The enactment of justice does not require or depend on a loving relationship between those from whom justice is demanded and those to whom it is due. If love is demanded before justice is done, it might never be done because the human heart cannot be manipulated or fully trusted. Many black persons, during the civil rights struggle, said to those white persons who resisted the implementation of justice because their hearts had not yet been moved: "We don't want your love or sympathy, we simply want your heels off our necks so that we can rise and stand alongside you. *Then*, we can talk about love!" If love is made a condition of justice by those who preside over injustice, it usually is masquerading as paternalism or resistance. In fact, many black groups insist that it is more important for them to appreciate their own traditions and "peoplehood"

before they can enter into interracial dialogue with integrity. Only justice can provide the necessary foundation for building the mansions of love. Otherwise, love is built on the sand of exploitation and control of one group by another.

Summary

In the final analysis, the case for equal and just treatment of members of different races, in all areas of public life, but most especially in housing, education, and employment is not morally problematic. The real difficulty lies not in arguing the justice of the case but in getting individual and institutional behavior to *be* more just. It is not even primarily a problem of creating more laws against racial discrimination; the problem is enforcing the laws that now exist more stringently and consistently. Perhaps the greatest tribute to America's moral conscience that the American dilemma reveals is that Americans discriminate against minority racial groups either with a guilty conscience or with elaborate, obviously self-serving rationalizations that mask explicit bigotry or racism.

SEXUAL JUSTICE: THE RIGHTS OF WOMEN AND SEXUAL MINORITIES

There is a much less guilty conscience and fewer attempts to fabricate rationalizations to disguise deep-seated prejudice in the case of discrimination directed against women and people whose sexual preferences are not, statistically, normal. As the racist argument about the alleged inferiority of black persons fades slowly away, arguments about the alleged inferiority of women and homosexual people are beginning to be heard more openly, claiming that women, and homosexual people, in particular, are to be treated differently from males and heterosexual people because they *are* different in *relevant* ways. Part of the recent public discussion about these areas of injustice is due to the heightened awareness by women and homosexual people of being its victims. Because of the courageous and persistent struggle of black persons for their rights, other groups have become conscious about ways in which they believe they have been historically and systematically denied rights. We might almost say that the decade of the 1970s was the decade of "rights consciousness."

The Liberation of Women

Many women, particularly in America, are claiming that they have been just as much victims of unjust discrimination as black persons. In support

of their claim they point to laws in the various states that have the cumulative effect of denying women the same rights as men in securing and keeping jobs, establishing bank accounts, purchasing homes, and being paid equally for similar jobs. As Kate Millett puts it:

Oppressed groups are denied education, economic independence, the power of office, representation, an image of dignity and self-respect, equality of status, and recognition as human beings. Throughout history, women have been consistently denied all this, and their denial today, while attenuated and partial, is nevertheless consistent.⁷

Feminists like Millett point to such statistics as the difference between the median incomes of full-time working men and women (in 1973: men—\$7,664; women—\$4,457); their status in the civil service (women comprise 86 percent of the lowest grades and only one-tenth of 1 percent of the highest grade); and their representation in the more prestigious professions (women make up only 9 percent of all professors, 3.5 percent of lawyers, 7 percent of medical doctors, and 1 percent of engineers).⁸

Of even more importance than statistics to many women is the subtle but insidious and pervasive atmosphere of male domination in which women live and in which young girls and boys are brought up. They point to the nurturing of girls toward certain kinds of behavior and vocations from the earliest days of infancy. Girls are taught to play with dolls and to be submissive, while boys are encouraged to play with trucks and to be aggressive. Sex “roles” are, from very early on, part of the assimilated expectations children develop and live by. (See Chapters 5 and 10 for a fuller discussion of the nature of sex roles and human identity.)

The Relevance of Sexual Differences

The basic moral issue at stake here is the *relevance* of sexual differences between men and women. Racist claims about black persons aside, the appeal to *nature* is more frequently made to justify discriminatory treatment of women and homosexuals than is any other kind of appeal. It is argued that women, for example, are by nature more capable of raising children and maintaining the tranquillity and order of a home than are men. They are more tender, sensitive, passive, peaceful, and emotional than men and should, therefore, be encouraged to restrict their activities to those areas in which their virtues can be applied. Traditionally, the areas into which men should go and dominate are those that require the application of the “natural” male

⁷Kate Millett, “Sexual Politics: A Manifesto for Revolution,” in *Radical Feminism*, eds. Anne Koedt, Ellen Levine, and Anita Rapone (New York: Quadrangle, 1973), p. 365

⁸Quoted in Thomas Mappes and Jane Zembaty, eds. *Social Ethics: Morality and Social Policy* (New York: McGraw-Hill, 1977), p. 116.

virtues: aggressiveness, initiative, hard-headed rationality, and a desire for competition. In a classic statement of the complementary roles and traits of men and women, Horace Bushnell (a nineteenth century Protestant-American clergyman) put it this way:

[T]he sexes have a complementary relation. . . . The male is the force principle, the female the beauty principle . . . one is the forward, pioneering mastery, the out-door battle-ax of public war and family providence; the other is the indoor faculty, *covert*, . . . complementary, mistress and dispenser of the enjoyabilities. Enterprise and high counsel belong to one, also to batter the severities of fortune, conquer the raw material of supply; ornamentation, order, comfortable use, all flavors, and garnishes, and charms to the other. . . . Happily, it is just as natural to women to maintain this beautiful allegiance to the masterhood and governing sway-force of men, both in the family and the state, as we could wish it to be.⁹

Although many people might not use Bushnell's quaint form of expression, the sentiments he reveals are shared by large segments of contemporary society. Morally, one must begin by asking whether the differences between men and women he enumerates are really there. It is interesting to note that he ends his comments by acknowledging his (the male) wish that women be subject to the masterhood of men. Whenever self-interest is called on to support a claim of moral supremacy, the observer is warned to look out for a less than objective moral argument.

Second, even if the differences can be substantiated, one would have to ask whether they are natural or artificial. We all know that what one generation or culture sometimes calls natural is experienced by another generation or culture as quite alterable by human choice. It was once considered natural to walk and unnatural to fly or natural to marry at the age of twelve or thirteen and to die before the age of forty. Many so-called natural traits and expectations are the result of social and cultural conditioning rather than innate, biological restrictions. We should be particularly suspicious of defending "natural" inferiorities in others when it is to our own advantage to do so.

Third, when natural differences can be sustained, such as the ability of women to conceive and bear children, one must ask whether those differences justify the kinds of discrimination directed against women in areas of employment, housing, self-support, and so on. How does a woman's child-bearing capacity relate to her qualifications for admission to law school or for equal pay for work similar to that being done by a man? It is in this area that we find some of the most articulate arguments supporting discrimination based on sex differences. One such argument holds that biologically men are more aggressive than women. Given this fact, women

⁹Horace Bushnell, *Women's Suffrage: The Reform Against Nature* (New York: Scribners, 1869), pp. 14, 51-54.

would be subjected to failure and frustration if they are prepared equally with men for jobs that place a premium on aggressive behavior.

[M]ost women would lose in such competitive struggles with men (because men have the aggression advantage), and so most women would be forced to live adult lives as failures in areas in which the society had *wanted them to succeed*. . . . The biological element will manifest itself in any economic system . . . the possible varieties of political-economic systems are limited by, and must conform to, the nature of man.¹⁰

In other words, because sex role distinctions are biologically grounded, it would be immoral to encourage women to go "against the grain." The result of such encouragement would be not only frustration at tilting against biological windmills, but also a diminution in women's sense of well-being. In addition, since a society works best when all its functions are performed at peak efficiency, women would do society a disservice by striving for jobs for which they are not naturally best suited.

To all these arguments it can, of course, be replied that they beg the question of which traits are inherited and which are culturally conditioned. In addition, they confuse the status of biological generalizations (*if true*) about an entire sex with the moral justification of denying to every individual within that group the right to attempt, by merit, what the group as a whole is believed incapable of doing. It may be true, for example, that students who study for a test are more capable of succeeding on it, but this generalization should not be used to justify denying someone who has not studied the right to take the examination. In responding to the argument that some sex roles are inevitable, Joyce Trebilcot argues that:

What is inevitable is presumably not, for example, that every woman will perform a certain role and no man will perform it, but rather that most women will perform the role and most men will not. For any individual, then, a particular role may not be inevitable. Now suppose it is a value in the society in question that people should be free to choose roles according to their individual needs and interests. But then there should not be sanctions enforcing correlations between roles and sex. . . . Indeed, if individual freedom is valued, those who vary from the statistical norm should not be required to conform to it.¹¹

In any attempt to justify sexual discrimination, the burden of proof should lie with those who benefit from such discrimination. Their task should be to show how sexual differences make a practical difference to the

¹⁰Steven Goldberg, "The Inevitability of Patriarchy," in Mappes and Zemby, pp. 140-141.

¹¹Joyce Trebilcot, "Sex Roles: The Argument from Nature," *Ethics* 85, no. 3 (April 1975), pp. 249-255 (Chicago: Univ. of Chicago Press, 1975), as found in Thomas A. Mappes and Jane S. Zemby, eds., *Social Ethics: Morality and Social Policy* (New York: McGraw-Hill, 1977), p. 146. Reprinted by permission.

area in which the discrimination occurs. And even if some arguments can be made persuasively in general, room should always be left for the singular individual who shows by deed that he or she is not impeded by the sexual trait in question.

It is the business of reason, though always involved in prejudice and subject to partial perspectives, to aspire to the impartiality by which such claims and pretensions could be analyzed and assessed. Though it will fail in instances where disputes are involved and complex, it is not impossible to discover at least the most obvious cases of social disinheritance. Wherever a social group is obviously defrauded of its rights, it is natural to give the assertion of its rights a special measure of moral approbation.¹²

The Rights of Sexual Minorities

In addition to the rights of black persons and women, the rights of “sexual minorities” are receiving a great deal of attention today. Persons who wish to relate exclusively or primarily to members of their own gender are claiming that the laws and mores of the larger society frustrate their right to fair employment, housing, and acceptance into many social organizations.

Of all the three areas considered under the rubric of social justice, the issue of the rights of homosexual people is one that elicits the greatest degree of passion. It is certainly the area about which there is the greatest hesitancy in speaking. A majority of Americans probably regard homosexual relations as “perverse,” “disgusting,” dangerous for their children, “promiscuous,” and “unnatural.” It is this last charge, of being unnatural, that is the foundation on which the most powerful arguments against homosexuality have been built. Implicit in and central to the argument is the assumed link between an act’s being unnatural and therefore immoral.

The “Natural”

The most common of such arguments, natural law, is summarized in Thomism (deriving from the thought of Thomas Aquinas; see Chapter 4). It claims that the created order has built into it certain purposes for its various parts. The purpose of the eye is to see, of the mind to think, of the stomach to digest. When a thing does not perform its primary function, it is unnatural or perverse.

It is not always clear in this kind of argument whether it is the damage done by the unnatural functioning of something that is the cause of its being immoral or whether there is something immoral as such about an

¹²Niebuhr, p. 236.

“unnatural” functioning. Within a Thomist framework, the unnatural is a sign of disorder, a violation or perversion of the natural order as it was intended by God to function. As such, the unnatural is defective. Inasmuch as sin is regarded as a defect, a rupture of the natural purposes built into the created order, the unnatural, being defective, is therefore sinful.

One essential assumption on which this argument is built is that each thing has a *primary* function. Another essential assumption is that it is possible, by reason, to discover this primary function. Thus, it is claimed, reason knows that the primary function of the sex organs is to procreate. Any alternative use of the sex organs, if it frustrates or subordinates their primary purpose, is sinful and consequently falls under moral censure (and therefore under moral and civil laws). Thus, masturbation, homosexuality, or any kind of heterosexual intercourse that *deliberately avoids* procreation (such as that which employs contraceptives) is unnatural and morally wrong.

Those who reply to this argument usually do so by questioning its fundamental assumptions. They argue that the unnatural may be nothing more than a statistical abnormality. It may be unnatural to run the mile in under four minutes or to play the violin at three years of age. Although in comparison to the normal functioning of the created order these acts may be surprising or upsetting, one would hardly call them immoral. It might also be pointed out that many medical devices used to sustain life are unnatural inasmuch as they are unusual interventions into the natural processes of the human body. Nevertheless, they are by all standards declared to be morally praiseworthy. Thus, it is not unnaturalness as such that is problematic, but rather an unnaturalness that has certain consequences.

This pushes the opponent on to the next assumption in the argument based on unnaturalness: that each thing has a primary function and that obstruction of that function frustrates the thing’s essential nature. The first reply is to ask whether it is self-evident or rational to assume a single overriding function for something. Hands can be used to grasp (perhaps their original, biological function), but also to clap, to stroke, to paint with, to make fists out of, and so on. Is stroking an unnatural use of the hands? Applying that argument to the sex organs, opponents of the unnaturalness argument point out that sex organs can certainly be used for procreation (and are uniquely suited for that), but they can also be used for giving pleasure and for showing affection. Why would one of these functions be declared primary and the others unnatural when not subordinated to it?

MORALITY AND THE PERVERSION OF NATURAL ENDS

If a man “perverts” himself by wiggling his ears for the entertainment of his neighbors instead of using them exclusively for

their “natural” function of hearing, no one thinks of consigning him to prison. If he abuses his teeth by using them to pull staples from memos—a function for which teeth were clearly not designed—he is not accused of being immoral, degraded, and degenerate. The fact that people *are* condemned for using their sex organs for their own pleasure or profit, or for that of others, may be more revealing about the prejudices and taboos of our society than it is about perceptions of the true nature or purpose or “end” (whatever that might be) of our bodies.

Burton Leiser, “Homosexuality and the Unnaturalness Argument,” from *Liberty, Justice, and Morals*, Burton Leiser (New York: Macmillan, © 1973), as found in *Social Ethics: Morality and Social Policy*, eds. Thomas A. Mappes and Jane S. Zembaty (New York: McGraw-Hill, 1977), p. 219.

Burton Leiser (b. 1930) is a philosopher whose works include Custom, Law, and Morality and Liberty, Justice and Morals. He has taught at State University College at Buffalo and at Sir George Williams College in Montreal.

Opponents of the unnaturalness argument claim that certain acts have been declared “unnatural” because of the *effects* of the alternative uses of a thing, not because these uses are unnatural as such. But once the argument has shifted to a consideration of the effects of an act, the charge of unnaturalness is not sufficient to condemn the act as immoral. At this point, those who wish to avoid condemning homosexuality as evil look to the affection, trust, and fulfillment they claim exists between homosexual people. The trauma or pain felt by homosexual people they attribute not to the sexual relationship but to social attitudes of hostility and rejection.

The Effects of Homosexuality

If homosexuality is to be condemned and its practitioners discriminated against justifiably, its effects must be shown to be harmful either to others or, in some peculiarly significant way, to the homosexual him- or herself. At this level of debate, there is a great deal of contradictory evidence. Some claim that, psychologically, homosexuality is damaging to the personality; others claim it is and could be even more fulfilling if the larger society accepted it as a legitimate form of love and affection. (But it is not our purpose to treat these arguments here.)

The debate also considers the effects of homosexuality on those who are not homosexual people. Parents fear that their children will be attracted to a homosexual life style if it is permitted to be advocated or practiced publicly. Does a homosexual have a right, in the name of social justice, to hold any job for which he or she has the qualifications, regardless of sexual orientation? Perhaps the most sensitive of such jobs, in the eyes of many, is the school teacher. Does a society, out of fear or dislike of an unnatural or, to many, a morally repugnant sexual preference, have a right to restrict the opportunities of those who have such a preference? To defend such discrimination, one would have to show that a belief in and practice of homosexuality outside the classroom is more damaging than a teacher's belief in and practice of political opinions that are not statistically normal. As long as the teacher is not using the classroom to propagandize or proselytize, it is not clear why his or her personal beliefs and life style should be of any concern to his or her students or their parents.

Even if a majority of persons believed that the unnatural is immoral because it perverts God's intended primary purpose, it would be hard to justify civil action taken on the basis of that belief. The assumption in question is not universally held and involves some distinctive theological principles. In a democratic society, the use of such principles to justify a form of discrimination against practices that have not been *self-evidently* shown to be harmful is inappropriate and indefensible.

It would certainly be appropriate for the society to restrict the degree to which persons, no matter what their sexual orientation, can solicit or attract others to their position. While heterosexuality is approved by most Americans, even ardent heterosexuals are prohibited from rape, public displays of heterosexual intimacy, prostitution, or propositioning minors. The same restrictions should be placed on homosexual activity without making the further move to restrict the legal, social, and employment opportunities of homosexuals.

A TRIBUTE TO JUSTICE

In this chapter we have looked at injustice as the denial of basic civil rights to black persons, women, and homosexuals. A common thread that runs through the various arguments used to justify discriminatory treatment of the three groups has been the belief that all three suffer from some "natural" inadequacies. It is a tribute to the power of the ideal of justice that those who wish to exclude blacks, women, and homosexuals from equal treatment by the law in significant areas of social life feel that they have to do so by appealing to something as fundamental and nonarbitrary as nature. Whether nature displays the exact kind of inadequacy they claim, and whether a natural difference (when it exists) is sufficient to justify different social and legal treatment is another matter. We have seen alternative arguments presented by both sides.

A society may never agree completely on what is just in each and every situation in which injustice is perceived. But it is far better to debate the issue with both sides committed to the notion that justice should be “the exclusion of arbitrariness and, more particularly, the exclusion of arbitrary power.” When the need for debate ends, the commitment to the search for justice also dies, and in its place is born the monster of prejudice, caprice, and self-interest, unchecked by the restraint of countervailing power manned by the forces of fairness, equity, and right.

CHAPTER REVIEW

A. What is justice?

1. Justice is the ordering of human relations in accordance with general principles impartially applied. It excludes arbitrariness.
2. Justice seeks to secure rights. Basic human rights have been identified by the U.N. Commission on Human Rights.

B. Racial justice

1. Racism is the denial of rights based on skin color. It affirms the inferiority of a racial group.
2. The American dilemma is that Americans have a creed that forbids racial discrimination and a history of racism.
3. Factual information about racism can be helpful in overcoming it.
4. Segregated housing reveals some of the moral dilemmas of combatting racism. Freedom to choose where to live is a right that sometimes conflicts with the need for integrated housing as a step toward racial harmony.
5. Busing to achieve racial integration in the schools has generated great controversy and revealed some economic disparities that affect which white communities bear the greatest burden of busing.

C. Psychological effects of racism

1. Racial prejudice harms not just those discriminated against but also the prejudiced person who lives in fear of the other. The single most horrible effect of racial prejudice is that it keeps persons from encountering each other's humanity.
2. One remedy designed to counter the effects of prolonged discrimination is “reverse discrimination” in which the racial group discriminated against is given special attention in order to allow it to catch up with the majority.

D. Sexual justice: the rights of women and sexual minorities

1. Women in this country have been the victims of unjust discrimination in education, employment, and status.
2. Sexual differences between men and women as grounds for different treatment have been advocated by some. Opponents of this position have denied that sexual differences are relevant and have insisted that individuals be treated on their merits.
3. Sexual minorities have suffered discrimination as well as provoked much public concern.
4. The significance of what is "natural" in relation to what is moral underlies much of the discussion about homosexuality and its treatment under law.
5. The effects of homosexuality on others and on homosexuals themselves must be considered in the debate on social justice for homosexuals.

E. A tribute to justice

1. The use of differences and "unnaturalness" pervades the arena of social injustice. But through the principle of excluding arbitrariness, a society can check the danger of prejudice, caprice and self-interest prevailing over social justice.

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