

Reflection

JUSTICE WEDDED TO MERCY

Law and Religion Paving the Way to Freedom

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The end of law and religion is nothing but justice, but justice qualified by mercy. It is, perhaps, the way to freedom and it is in this sense law and religion become forces of freedom. Before we go into the conglomeration of justice and mercy, it is good to know the term justice in all its nuances. Ever since men have begun to reflect upon their relation with each other and upon the vicissitudes of human lot, they have been pre-occupied with the meaning of justice. There have been several terms and explanations offered to clarify justice but nothing seems to convey it in its fullest sense. Among all these, even today, the most endearing is that of Aristotle's – "giving each man his due." But justice is not just doing right; it consists in a certain moral disposition or state of character. A firm and perennial disposition is the moral attitude, or habit without which justice cannot manifest itself. It is not merely a matter of facile intuition, but an intuition ripened by experience or an intuition constantly and perseveringly cultivated.

This view of justice is similar to the Beatitude: "Blessed are they who do hunger and thirst after righteousness." Justice, then, is equated with righteousness – not merely a human but a divine perfection. This is, again, akin to the Hebrew concept of God revealed in the Old Testament, for the Psalmist says: "Justice and judgment are the habitation of thy throne." The end of the Law that was handed over to the Israelites through Moses was to lead people into righteousness.

Another important aspect of justice is its social reference. It is a social virtue. It is social because it arises out of, and expresses itself in, obligation towards others – giving the other what is his/her due. This was one of the reasons why Aristotle placed justice in the forefront of all moral goodness – because it is exercised not for one's own sake but for another's benefit. When two or three meet together, when nations come together this

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question of justice arises. Is justice, then, an altruistic virtue? Is the exercise of a moral principle "towards another" necessarily altruistic? To these questions some would say that the altruistic nature of justice come from the fear of suffering injustice. This, then, leads us to the reciprocal nature of justice. Assuming that man is a political animal, the sense of justice and injustice becomes a necessary and fundamental attitude of consciousness. This, in simple terms, means that man's existence makes him aware of his own claims on life and an equal claim on life by others which, in fact, lead to a constant need of adjustment. This realization becomes an integral part of his intellectual and moral being. This adjustment is nothing but the reciprocity of justice – a give and take process. In this give and take process, law and religion act as guides. Law ensures that this give and take is smoothly worked out and religion tries to make one to grow from egoism to otherness. This concept of otherness of justice is what Immanuel Kant envisaged when he defines Republic as "a social community of being, each of which is reciprocally end and means to the other."

The function of justice is to maintain or restore equilibrium in human affairs. What we see in society in terms of events, chances, characters, aptitudes, possessions, aspirations, claims – all the innate attributes of human personality – are, in the way of nature, unequal. In order to make co-existence amidst all these inequalities, some regulative is necessary, that is, to preserve the measure of balance. But to attain this equilibrium, unfortunately, we do not have any common denominator. It is here the role of religion becomes prominent. By religion what is meant here is not the institutionalized religion, but the religious sense which resides in each man and which propels one to be just. This religious sense helps men to see the light of reason in the imperfect codified laws and men see this light strangely in different ways. In common legal parlance, this light of reason is nothing but the legislative intent of enacted laws. When this light of reason, given by the religious sense of men, is shed upon manmade laws; laws become the idea under which each man's power of action can exist in harmony with the power of action of others. This can pave the way to freedom, that is, a way to co-exist amidst all the realities of human inequalities. It is this religious sense that helps the practice of 'justice-according to law' possible and then the dream of equality before law and equal treatment before law is realized.

Now, let us take this debate a little further: whether this equilibrium that justice tries to bring in really leads one to freedom? Indeed, it is a

pestering question that is to be answered. This doubt creeps in, because there are occasions when this equilibrium seems remote; or what one notices in real life is inequality everywhere and the equilibrium dreamt is in doll-dreams. Man, being weak in mind and body, in whatever way he tries to be religious, he often feels that justice has not been done to him. Here one is prompted to think, whether justice in the strict sense is enough to lead one to freedom. The answer, perhaps, is not. Justice has to be modified with mercy. Mercy has always stood as high in the moral scale as justice – indeed even higher. Aristotle himself placed greater value on equity than on strict justice. Even in the Old Testament, where justice wears a stern, not to say vengeful aspect, we read: “What does the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God.” So it is clear that justice has to be wedded to mercy and this mercy includes patience to be heard. It is one of the earliest precepts of civilized jurisprudence and the basis of the fundamental rule of natural justice that “*Audi Alteram Partem*,” which means “to hear the other party.” This maxim of natural justice simply means that the deciding officer should have the patience to hear the party and should not venture to any punishment without the accused being heard. As observed by Fortescue J., “the laws of God and man, both give the party an opportunity to make his defence, if any.” The first and best example for this patience is found in the Garden of Eden where our first parents sinned against God. God did not straight away order an expulsion from the Garden rather he took patience to hear what Adam and Eve had to say in defence of themselves. This episode also confirms that it is not strict justice that God demands but justice tinged with mercy which invariably involves the patience to hear. When it is not strict justice that God wants, how can we conclude that justice alone can lead us to freedom?

In the New Testament, this concept of justice wedded to mercy is more clearly exposed. There are several remarkable instances which seem to show that Christ declined any office of earthly justice simply because it was not guided by mercy and he believed that true justice lay with his Father and that justice is not strict justice but justice wedded to mercy. The best example is the woman caught in adultery. Strict justice by the laws of Moses demanded to stone her to death. The Lord, however, gave a new nuance to this justice by colouring it with mercy. It seems here that justice seems to receive less than its due. In the parable of the labourers in the vineyard, was it just that the last should be the first and first last? Did not

Martha have a reasonable cause to complain that she had received less than justice? Again, it is impossible not to feel some sympathy with the elder brother in the parable of the prodigal son, who had justice on his side when he complained that demerits had the advantage over merit. In all these situations, the Lord has only one answer – the Justice of his Heavenly Father – a justice in which love and mercy dominate, a love which asks to forego one's own right, a mercy which compels the Good Samaritan to tarry a longer for the sake of the wounded. So, justice in the eyes of the Lord is one step ahead.

How can this concept of justice wedded to mercy be put into practice in the day-to-day application of civil and criminal laws? According to Aristotle, "the law has to deal in generalities and cannot foresee any particular case which may demand some relaxation of an otherwise salutary rule." This amounts to the exercise of the faculty called 'discretion'. But very often this 'discretion' degenerates into caprice. The exercise of discretion must come from one who demands justice. In Shakespeare's play, *The Merchant of Venice*, we have the beautiful exposition of this discretion. Strict justice allows Shylock to have a pound of flesh from the breast of Antonio. Here Portia steps in with the plea of mercy:

Though justice be thy plea, consider this
That in the cause of justice, none of us
Should see salvation: we do pray for mercy
And that same prayer should teach us all to render
The deeds of mercy.

The justice that Shylock demands is not salvific and when it is not salvific, it cannot be liberative. It is only justice wedded to mercy that can lead both Shylock and Antonio to salvation or to liberation. The plea here is to forsake one's interest so that the other may have life. For this kind of a liberative justice, a liberal interpretation of the law is required; an interpretation which confirms the fact that law is for man and not man for law. It is justice that demands the travel of an extra mile when only one mile is asked for, or it is the readiness to offer one's coat too when only one's shirt is requested for. When this type of a concept of justice wedded to mercy is materialized, justice is not just giving the other his due, rather it is giving more than his/her due. It is only in this understanding of justice that one can attain freedom of the children of God – a blissful state of mind, an emancipated state of existence.