

Vocabulary for the Study of Religion

Volume 2

F–O

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Table of Contents

VOLUME 1

Introduction	vii
List of Contributors	viii
List of Articles	xvii
Articles A–E	1

VOLUME 2

Articles F–O	1
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VOLUME 3

Articles P–Z	1
Index	619

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WHITNEY BAUMAN

Justice

Images of Justice

It is impossible to begin an entry on justice at the beginning of the twenty-first century without acknowledging the wildly complex and troubled political and cultural context in which one might begin to speak of justice today. So much is claimed in her name. That we know her gender seems problematic for modern secular neutral universal iconophobic law. But, further, at a time when the achievement of even a minimalist version of the rule of law seems to be beyond reach, to speak of justice may seem dangerously utopian.

Justice is imagined today in paintings and sculptures on and in manifold courthouses and public buildings as a woman holding up scales in one hand and grasping a double-edged sword in the other. Most often, since about the sixteenth century, she is also blindfolded. Who is she and what are these props intended to convey? The iconography can be traced to ancient Mediterranean myths and goddesses, and together they seem to have come to represent the objectivity of the good judge, the retribution to be visited on those who violate the law, and the impartiality of the ruler who treats all before him as equal. She is the embodiment of divine and human order, law, and

custom, the personification of the legitimacy of law. Standing before innumerable courthouses, she is ubiquitous in political cartoons as well, the clichéd and stock character that can be counted on to cue mockery of the inevitable hypocrisy and arbitrariness of those who uphold the law.

Looking more closely at the statues, many ambiguities lurk in the typical image of this stately goddess. Who makes the rules she enforces? What exactly do the scales measure? What punishment is just? And more: Is it a good idea to blindfold someone with a sword? And how is she supposed to read the scales if she is blind? The brochure guide describing the twelve-foot gold-leafed statue of Lady Justice on top of the dome of the Old Bailey courthouse in London, a statue without a blindfold, explains that this deviation is justified by the fact that it is her “maidenly form” that guarantees her impartiality, rendering the blindfold redundant—and perhaps making a claim to the exceptionalism—even innocence—of English law.

Where does this iconography come from? The particular attributes that have become associated with Lady Justice are said to derive from the Babylonian images of the god Shamash and the Egyptian goddess Maat. Along with other Egyptian deities including Thoth and Osiris, Maat has been found on papyri illustrating what is called the Book of the Dead. In these scenes, the heart of an individual sits on one side of a balance. On the other side is a feather, itself another symbol of Maat, whose cosmological importance is said to denote order, stability, truth, justice, or well being. From there, one can trace Justice’s roots through goddesses both Greek and Roman, from Themis and Dike to Iustitia. The iconographical trail continues through the the archangel Michael, often shown weighing souls or brandishing a sword to ward off the dragon of Satan. By the Middle Ages, Justice (holding sword and scales) became one of several Virtues identified in presentations of the *Psychomachia*, the epic battle of Virtues and Vices for a person’s soul. Impressive recent efforts to trace the subtle and complex history of this

iconography from the medieval into the modern period can be found in the work of Jacob (1994) and Resnik & Curtis (2010).

But the singularity, ubiquity, and celebratory nature of these images of justice are modern phenomena. She emerges from the crowd of virtues in conjunction with the rise of the modern nation-state and the invention of the courthouse. Thus, Justice's blindfold is said to originate in the early modern period, first as a satiric image, mocking the capacity of judges, but then, in the exquisite logic of the state, becoming a conventional aspiration of that very state. Her blindness may be said to participate in a modernist dedication to abstraction as an ideal of law, one that conceals the pain and conflict that the administration of justice entails. (But consider the South African constitutional court, built on the site of the Old Fort Jail where Nelson Mandela and many others were imprisoned, which eschews the modernist conceit, retaining the old prison visibly in its design.)

She is not the only wielder of justice, however. All societies and cultures imagine both the quotidian order of law and an ultimate arbitration of human activities. In some cases these visions are ones of power. The god of the Hebrew Bible is also imagined as a dispenser of justice. In terrifying metaphors of storm and war, God's justice is pictured as swift and terrible and, in some sense, inscrutable and inaccessible, even arbitrary, to the human. The last judgment is extensively described in both the Qu'ran and the book of Revelation, as a final separation of the saved and the damned. Images of hell abound in Buddhist religious writings and popular literature. In other moods, these same gods are imagined as subtle and irenic enablers of peaceful human coexistence.

Justice is, in one sense, an idealist projection of a world without inequality or need, a world in which all ultimately receive their due, where all is in harmony with the cosmic order or a divine plan, where evil is vanquished and good triumphs. But justice also serves to describe the everydayness of the administration of the rule of law

and routine policing. All societies have models of human administration, exemplary rulers and codes of conduct that are to be striven for. Justice is both extolled as a virtue of individuals, rulers and citizens, and promoted as a social value, as a reasonably achievable characteristic of the good society. The world's literature is replete with tales of dreamed-of justice, of the limits of the human.

Today justice is also investigated by experimental psychologists as one of those human practices that are hard-wired through the process of evolutionary biology. Studies have shown that fairness satisfies a basic need, one perhaps not limited to humans, but present in other mammals as well.

The Justice of the Philosophers

The elaboration of philosophies of justice, a specification within a broader field of moral and political philosophy, spans the history of philosophy and can only be broadly gestured to in a short article such as this one. (The interested reader is urged to consult a source such as the Internet-based *Stanford Encyclopedia of Philosophy* for a detailed introduction to various philosophies of justice.) Furthermore we live in a time in which active engagement with and re-thinking of these philosophies is lively, global, and ongoing—and arguably only in its infancy. The role of religious ideas and institutions in these philosophies is patent—and yet hotly debated.

Justice has been theorized by philosophers as an attribute and aspiration of individuals, institutions, and societies. It has been thought of differently in small scale, in pre-modern societies, and in modern states. And philosophers have differed about whether justice is a natural or an artificial attribute of humans; whether justice is the result of natural sympathy or moral development; and whether justice is better founded in autonomy and universality and rights, or in interconnectedness and caring, historical and personal. The most pressing issue regarding justice in the world today is how justice and the legitimacy of government is to be understood on a global scale.

Among virtue ethicists, justice is considered largely as depending on the motivation of the individual, so that the just society is one made up of just individuals, that is, individuals whose motivations are just. Classically speaking, then, for Plato, for example, the just individual is someone whose soul is guided by a vision of the good. The just city is dependent on just individuals. For Aristotle, too, justice begins in the virtue of individuals but is further modulated by situational factors that are external to the just individual. Such an approach focuses less on intent and more on the object of human action, on the deserving person. Communities are just when individuals receive benefits according to their merits: this desert-based conception of social justice then treats the virtue of individual justice as a matter of being disposed to respect property and promote just social arrangements. The link between the morality of the individual and of the human community, and how one might measure and further the justice of that community as a whole, continues to be the subject of unresolved debate.

Significant reflection on the possibility of justice in modern societies, and how that might be achieved, emerged in the early modern period. Natural law theorists such as Thomas Aquinas (1225–1274) understood justice to proceed from the correspondence of individual conduct and social arrangements to universal generalized conceptions of justice that are only imperfectly codified in the rules of religions and societies, codes that are subject to correction by natural law as perceived through the operation of human reason. However, beginning with Thomas Hobbes (1588–1679), who was reacting to the religious wars of early modern Europe, justice depends critically on the sovereignty of the then emerging nation-state. Man in his natural state is not just. Justice is only created by public, enforceable, authoritative rules; injustice is whatever those rules forbid, regardless of their relation to morality. For John Locke (1632–1704), individuals should be understood to have natural rights to life, liberty and property, rights which precede the formation of

the state. Human society then depends on a social contract by which individuals conditionally transfer rights to the state to enable human flourishing, a transfer that can be withdrawn through revolution if the social contract is not honored.

Scottish philosopher David Hume (1711–1776) importantly questioned the capacity of human rationality to produce benevolence assumed by most earlier philosophers, arguing rather that judgments about virtue and rightness depend on our inborn capacity for sympathy. According to the utilitarian, justice requires the maximization of the total or average welfare across all relevant individuals. This may require sacrifice of some for the good of others, so long as everyone's good is taken impartially into account. Jeremy Bentham (1748–1832) and John Stuart Mill (1806–1873) developed utilitarian theories of human flourishing.

While all of these thinkers, and many others, continue to form the basis for thinking about justice today, much of contemporary political theorizing about justice today begins with *A Theory of Justice* by liberal political philosopher John Rawls. Rawls did not believe that human sympathy could form the only basis for a comprehensive theory of justice but that justice required further political work and commitment. Rawls argued that justice, and especially distributive justice, is a form of fairness resulting from an impartial distribution of goods among equal citizens. Rawls set out two principles of justice: each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all; and social and economic inequalities are to be arranged so that they are both to the greatest benefit of the least advantaged, consistent with the just savings principle, and attached to offices and positions open to all under conditions of fair equality of opportunity. Rawls's theory distinguishes two kinds of goods, liberties and social and economic goods, and applies different distributions to them: equality between citizens' liberties, and equality unless inequality improves the position of the worst-off for social and economic goods.

Liberal rational theories of justice founded in the social contract and the state, and its formal instantiation and enactment through the courts, have their critics, including those who find justice necessarily outside the state and its logics. Karl Marx (1818–1883) criticized liberal theories of justice based in rights, arguing that such theories underemphasized the interconnectedness of people. He famously said that capitalism led to the exploitation of the worker. Communism would ask of each according to his ability and give to each according to his need. Interpreters of Marx differ as to whether this image of a society of perfect distribution describes a society without a need for justice or one in which justice would be achieved. Contemporary communitarians, including various heirs to the socialist and communist politics, also seek to turn away from individuals and toward the community as a measure and site of justice.

Critics of rights talk such as Mary Ann Glendon (1938–) have argued that rights talk itself, in its tendency to a rhetoric of conclusiveness, leads to communal conflict.

Justice is also theorized specifically with respect to punishment for crime. Modern theories of criminal justice tend to combine both modes of retribution exacted by the community for the criminal's breach of the social contract, most recently visible in the victim's rights movement, with rehabilitative theories of punishment founded in social scientific theories of the human, which focus on policies of re-integration of the criminal into the community. In societies suffering in the aftermath of violent social change as well as in the context of ordinary criminal activity, reconciliation is posited as a theory and practice of justice that looks forward to a future just society in such practices as truth and reconciliation commissions as well as more private practices of recompense and repair.

An Anthropology of Justice

The justice of the modern state strives to eliminate discretion and arbitrariness in the name of equality. Process substitutes for virtue or sentiment,

bureaucracy for the favoritism of gender, race, and class. In post-revolutionary France, judges were firmly subordinated to the state in an attempt to banish their inevitable corruption.

Anthropologists and others over the last several decades have radically provincialized this largely Euro-American story. In his *The Anthropology of Justice*, Lawrence Rosen describes the shifting figure of the qadi in western jurisprudence, beginning with quotations from an English and an American judge:

Some forty years or so ago Lord Justice Goddard of the English Court of Appeals, faced with a case in which the discretion of a lower-court judge could justifiably have led to either of two diametrically opposed results, remarked that “the court ... is really put very much in the position of a Cade under the palm tree. There are no principles on which he is directed to act. He has to do the best he can in the circumstances, having no rules of law to guide him.” Lord Goddard's words were echoed a few years later by Justice Felix Frankfurter when he remarked that the United States Supreme Court is not a “tribunal unbounded by rules. We do not sit like a kadi under a tree dispensing justice according to considerations of individual expediency.” (Rosen 1989: 58)

Rosen's description of the actual operations of law in a qadi court in Morocco in the 1980s offers another reading of justice founded in the cultural logic of Moroccan Muslim society, one that holds up a mirror to and performs a critique of the modernist ideal of blind justice. Justice, it is suggested, is founded rather in the cultural correspondence between assumptions about humans and how they do and should act and the decisions of the court. The Moroccan qadi, in Rosen's telling, works to put the litigants back into a position to “bargain for reality,” in Rosen's felicitous phrase. The rules of evidence, the law enforced, the procedures of the court, the principles of judging, all

tend towards an image of justice as one of cultural coherence and engagement rather than of blindness and impartiality. Legal anthropology and sociology of law of the last quarter-century extend and complicate this picture, widening the lens to include the impossibility of justice in the cultures of globalization and late capitalism. If the image of justice represented by Lady Justice is most grotesquely parodied in the law of the postcolony, as John and Jean Comaroff have argued, where legal and constitutional fetishism supports apocalyptic levels of corruption and violence, then what are the proposed successors to the failure of the nation-state and of Lady Justice as the guarantor of rights? Religion seems to offer two answers, one local and one global and encompassing. In his *In My Father's Court*, Isaac Bashevis Singer recreates for the reader the small-time rabbinical court, the Beth Din, administered by his father in prewar Warsaw. The chapters describe the 'cases' that came before his father, brought to him by those who lived in his immediate neighborhood, questions about marriage and divorce, obligations to the poor, and of kosher regulation. In his Author's Note, Singer exhorts the reader:

The Beth Din was a kind of blend of a court of law, synagogue, house of study, and, if you will, psychoanalyst's office where people of troubled spirit could come to unburden themselves.... It is my firmest conviction that the court of the future will be based on the Beth Din, provided the world goes morally forward instead of backward.... The concept behind it is that there can be no justice without godliness, and that the best judgment is one accepted by all the litigants with good will and trust in divine power. The opposite of the Beth Din are all institutions that employ force, whether of the right or the left. (Singer 1991: viii)

For Singer, like Rosen, justice is to be found in religious law administered close to the ground. Various proposals for alternative religious legal jurisdictions are based in part on such claims.

However, religion today also stakes a claim for universal justice. Transnational religious and quasi-religious movements today might be seen as one location for a renewed imagining of a just society for all.

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Kingship

→ Divine Kingship

Kinship

Kinship, one of the universals of human societies, involves systems of reciprocal social relations. All societies conceptually organize societal members, to one degree or another, through structured, reciprocal systems of relations (Lévi-Strauss 1969 [1949]). The relations making up a kinship system