

JUSTICE IN PROCESS

A sermon preached by Galen Guengerich
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David Simon's book titled *Homicide* describes how poverty and crime devastate the ghettos of Baltimore. Late one night, Simon says, the Baltimore police descend upon a gutted row house that serves as a home of sorts to some two dozen people, mostly addicts and prostitutes. Because the house has no electricity or running water, the squalor and stench are oppressive: soiled diapers, discarded clothes, and weeks-old food litter every room of the roach-infested building.

The cops' obvious disdain for the residents has nothing to do with their poverty or the crimes they might have committed. Rather, it reflects the cops' unspoken belief that "even in the worst American slum, there are recognizable depths beyond which no one should ever have to fall." After carefully searching the house, the police begin hauling everyone to the station house, at which point a child asks if he can get something from his room before they go. It is well after midnight. "What is it you need?" a detective asks. "My homework," the child replies. The cop is incredulous. But sure enough, the boy runs upstairs and pulls a third-grade reader and workbook from the rubble. Then they head off to the precinct.

On a bookshelf at home stands a bronze statue of Justice, similar to the ones atop City Hall downtown and the Supreme Court building in Washington, D.C., only smaller. As in most depictions, Justice stands with a balance scale in her left hand to weigh the merits of the case, and a sword in her right hand to mete out punishment to the deserving. Children, when they notice the statue, usually ask why Justice wears a blindfold. We explain that Justice is supposed to be blind to who you are. What is wrong is wrong, whether you are the king or the gardener. As Aristotle said, justice is the search for a neutral standard, and law is a neutral standard.

Most of the time, we think of justice as the process of doing what the statue represents: punishing people who have done bad things and exonerating people who have not. But this is only one aspect of justice.

Taken as a whole, justice is about the character of our public world: the laws and institutions that make up our common life as a nation. Justice is not only about how we deal with crime, but also how we educate our children, tax individuals and businesses, conduct commerce, negotiate treaties, and so on. Justice is about constructing our public world so that all the individuals who live in it are fully able to do what human beings are supposed to do. In this sense, justice is as much about third-graders being able to do their homework as it is about drug dealers being punished for their crimes.

Aristotle believed the purpose of life was to achieve *eudaimonia*, a Greek word usually translated as happiness. By this, Aristotle did not mean that the purpose of life is mainly to experience pleasure or contentment. Rather, *eudaimonia* describes a state in which something has fulfilled its potential. In this sense, a drill bit is happy when making a hole in a piece of wood. A Stratocaster electric guitar is happy when sounding "Learn to Fly" by the Foo Fighters.

What is the purpose of human life? According to the ancient Greeks, we fulfill our potential as human beings by using our reason to develop excellence of character, thereby achieving the state of virtue. This resonates with our approach as Unitarian Universalists. We believe in salvation not by grace or by faith, but in salvation by character. We believe in virtue: the spiritual discipline of becoming the kind of individuals we ought to become, in order to live as human beings ought to live.

The medieval theologian St. Augustine said, famously, that the purpose of life is to love God and enjoy God forever. When it came to justice, however, this approach bred trouble. Even in nations where everyone agreed on which God to worship and which scripture to read, disagreements about laws and institutions were unavoidable. Over time, the religious wars in Europe became frequent and ferocious.

John Locke and other Enlightenment thinkers rejected Augustine's approach. They asserted that the purpose of human life is not dictated by divine revelation, but rather is determined by human reason. Simply put, Locke believed that the purpose of life is for each human being to decide what the purpose of life is.

It was in this spirit that the founders established our nation. They understood that what is unique about human beings is not our ability to conform to a divine plan, but rather our ability to decide for ourselves how to live. The Preamble to the Constitution says that in order to form a more perfect union and establish justice, we the people establish the Constitution. Not God in heaven. Not a king on a throne across the sea. Our nation was not founded by divine decree, but by human consent.

This is the point, however, where it is easy to become confused about justice and to go astray. If the sole purpose of human life is for each of us to choose our own way of life, then our laws and institutions should be completely neutral about the choices that citizens make. In other words, our political system should not encourage citizens to make good choices, but should ensure only that they are completely free to make them. This minimalist conception of justice has been the dominant paradigm in our nation for decades. In my judgment, it is inadequate.

Make no mistake: the freedom to choose our own way of life is the defining characteristic of life in a modern democracy. But to flourish as human beings, we need more than freedom. We also need good options among which to choose, and we need to know how to evaluate those options in order to decide which of them is best. Without a sense of direction, being free is another term for being lost.

In my series of sermons on virtue, I shall devote two sermons to justice. This sermon, titled "Justice in Process," describes the procedure justice promotes to ensure that all of us are maximally free to pursue whatever goals we choose in life. The second, which I will title "Justice on Purpose," will describe the goals justice pursues to ensure that all of us fulfill our potential. Put differently, the political voice of justice safeguards our freedom to pursue whatever purpose we choose in life (with everyone else having equal freedom); the religious voice of justice calls us to commit to a particular purpose.

If our distinctive capacity as human beings is the capacity to reason, our goal when it comes to justice is to develop a procedure for making laws that any rational person will have no choice but to accept. John Rawls, the late Harvard political philosopher, set out a theory of justice forty years ago which has dominated the debate ever since. His approach is a variation on the problem of how to divide one piece of cake equitably between two children. The answer is that one child cuts the cake into two pieces, while the other has first choice of which piece to eat. Since the child with the

knife does not know which piece of cake she will end up with, she has maximum motivation to ensure that both pieces are as big as possible. This will happen only if the two pieces are the same size.

Using a more sophisticated version of this approach, Rawls sets out his theory of justice, which he calls justice as fairness. He imagines a group of people who will select principles of justice for their society. They meet behind what Rawls calls a veil of ignorance, which keeps them from knowing which positions they occupy in society.

What principles of justice will they choose? First, according to Rawls, they will declare a principle of equal liberty: each person is entitled to the greatest amount of basic liberty, consistent with an equal amount for everyone else. The second principle they will choose is the difference principle. It states that social and economic inequalities must be distributed to the greatest advantage of the least-well-off person. Rawls argues that people will choose this principle because they will follow what he calls the “maximin” rule: always maximize the minimum possibility. Or, in less elegant terms, if I do not know beforehand which piece of cake I will end up with, then I will do my best to divide the cake fairly.

Of course, our economic system is built on the premise that people are free to work hard and get ahead, which means securing a bigger piece of cake. Rawls is not saying that everyone’s piece of cake must be the same size, only that changes in public policy should not reduce the size of the smallest pieces or reduce the chance that people with small pieces can find ways to get bigger ones. Changes in public policy must enhance, not diminish, the prospects of the least well off.

I think Rawls is mostly right. If you and I were forced to design principles of justice for our nation or world, and we had no idea where we would end up in either, my guess is that we would do our best to upgrade the downside. I can do the math. The current odds against any randomly chosen person in the world enjoying the level of comfort and wellbeing that you and I now enjoy are at least a million to one. If we can think rightly, Rawls insists, we must at times choose and act and legislate as though we are blind to our own good fortune. Reason demands it, and justice requires it. Justice is a neutral standard, and it applies to everything: education, immigration, health care, housing, reproductive rights, and marriage equality.

Justice is about the character of our public policies as a nation. But it is also about the character of our private conduct as citizens. Some of you may remember a story told by Marian Wright Edelman during her visit to All Souls some years ago. It was about a teacher named Jean Thompson, and one of her students, a boy named Teddy Staller.

Teddy was an unattractive child, and Jean Thompson didn’t like him. He was often dirty, his hair unkempt and uncombed. Some days he smelled bad. He didn’t pay attention in class.

Jean looked at Teddy’s record. In first grade it said, “Teddy is a good boy, he shows promise in his work and attitude, but he has a poor home situation.” Second grade: “Teddy is falling behind in his work; he’s too serious, his mother is terminally ill.” Third grade: “His mother died this year. His father shows no interest, and Teddy needs help.” Fourth grade: “Teddy’s in deep waters, in need of psychiatric help, and is totally withdrawn.”

Christmas came, and all the children brought Jean Thompson nicely wrapped presents. Teddy’s gift came in an old paper bag with a rubber band around it. All of the

children began to giggle, but Jean had the good sense to open it up. She took out an old rhinestone bracelet with some of the pieces missing, put it on her arm, held it up and said, “Boys and girls isn’t this pretty!” Taking their cue from the teacher, they quieted down and agreed. She then took out a nearly empty bottle of perfume, dabbed a little bit on and said “Doesn’t it smell good!”

At the end of the day, all of the children went home except Teddy, who stopped by her desk and said, “Ms. Thompson that was my mother’s bracelet, and it looks real pretty on you, and you smell just like her.” When Teddy left, Jean Thompson asked God to forgive her. She committed herself to helping the children who were falling behind—particularly Teddy—and she did. She tutored him; and by the end of the year, he had caught with most of the children and surpassed some.

Several years later, Jean got a letter: “Dear Ms. Thompson, I’m graduating from high school, wanted you to be the first to know. Love, Teddy.” Four years later, she got another note: “Dear Ms. Thompson, Wanted you to be the first to know the university has not been easy, but I liked it. Love, Teddy Staller.” And four years later she got still another note: Dear Ms. Thompson, as of today, I am Theodore J. Staller, M.D. How about that! Wanted you to be the first to know. I am going to get married in July, and I want you to come sit where my mother would have sat, because you’re the only family I have. Dad died last year.” Jean went, and she sat where his mother should have sat.

More than four hundred years after Aristotle, the Roman legislator and playwright Seneca wrote:

This is no time for playing around. You have been retained as counsel for the unhappy. You have promised to bring help to the shipwrecked, the imprisoned, the sick, the needy, to those whose heads are under the poised axe. Where are you directing *your* attention? What are *you* doing?