IMAGES OF JUSTICE

by

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B.A., The University of British Columbia, 1991

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS
in
THE FACULTY OF GRADUATE STUDIES
(Political Science)

We accept this thesis as conforming
to the required standard

THE UNIVERSITY OF BRITISH COLUMBIA

September 1992

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Date 1 October 1992
Can we dispense with justice? This thesis seeks to defend the concept of justice against critics who characterize it as insidious, inadequate or irrelevant to human society. It will be argued that contemporary debates about justice, which have focused mainly on John Rawls' conception of liberal justice, obscure significant aspects of the concept of justice. In finding foundational flaws in Rawls' theory, some claim to have shaken the very foundations of liberalism, overlooking the fact that there is more to liberalism than Rawls. In critiquing liberalism, some claim to have defeated the idea of the indispensability of justice to human society, overlooking the fact that there is more to justice than liberalism.

Firstly, communitarians argue that justice is a cold virtue and an inadequate bond of society. Secondly, some feminists, while challenging traditional boundaries, such as the public/private dichotomy, that have been integral to liberal theories of justice, assert that justice is too harsh and biased against women. Thirdly, so-called realists in international politics argue that justice is largely irrelevant to the relations between states, or at least, secondary to the preservation of order. In place of justice, each critic offers a rival ideal, such as fellowship, care, and security, as more pertinent to human social relations. It will be argued, however, that justice is the precondition for
the pursuit of all other human ideals, and without it, such values would lose their ideal qualities.

I offer three images of justice that its critics ignore, devalue or misconstrue: justice as a bond, a boundary, and a balance. Justice in these images requires recognition of our commonality as human beings, our distinctness as persons, and our equality as moral subjects. Justice is a bond because it is what makes our societies morally coherent; without it, human societies would be indistinguishable from the vast morally incoherent world of nature. Justice is also a boundary in constituting the moral floor of society, which involves drawing limits on how we may treat others, as well as on what we may legitimately demand from others in the way of sacrifice. Finally, justice is a balance in its function as a reconciliator of conflicting ends, values and interests. The critics of justice, in conceiving of it in narrow, inadequate, or inaccurate terms, overlook the warmer, human, and basic qualities of justice that make it indispensable to human society.
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ACKNOWLEDGEMENTS

The author wishes to thank Sam LaSelva and Les Jacobs for their comments throughout the course of writing this thesis. She is also grateful to Alan Cairns, Kal Holsti, and Robert Jackson for their comments on various sections of the thesis. As well, she would like to thank Jean Hennessey from Dartmouth College in Hanover, New Hampshire for her assistance with the library. Finally, but not least, she thanks Don Munton for his love and support.
I think the first duty of society is justice.

Alexander Hamilton

For we both alike know that into the discussion of human affairs the question of justice enters only where the pressure of necessity is equal, and that the powerful exact what they can, and the weak grant what they must.

Thucydides

It is justice, not charity, that is wanting in the world.

Mary Wollstonecraft

If death defines the human condition, injustice defines the social one. There is a duty, national and international, to reduce it as much as possible. But there is no definitive victory.

Stanley Hoffmann

No justice. No peace.

Button from Los Angeles after the Rodney King trial and riots of 1992
I. INTRODUCTION

All virtue is summed up in dealing justly. Aristotle

Justice: human, political, essential

In The City of Joy an Indian peasant family's battle against natural calamity and poverty begins one summer in the countryside, where they anxiously await the monsoons to come and nourish their rice crop. Without the harvest the extended family of sixteen would be without food in a few months. The rains do not come on the predicted date, or after. Is Bhagavan, the great god, angry? they wonder. In search of mercy, the family uses a part of its meagre savings to pay the village priest to appeal to Ganesh, the god of good fortune. Still the sky remains a cruel white. The sun mercilessly scorches the land day after day, killing the infant rice crop. In desperation, the eldest son and his family journey to the slums of Calcutta, also known as the City of Joy, where those defeated by nature must weather the cruelty of human injustice.¹

Nature is not known for its fairness: some humans are done well by it, others ill, but always arbitrarily, or regardless of merit or desert. When one thinks of the sometimes pitiless visitings of nature, one becomes aware of how little is the world of man.² Justice is the hallmark of human society, for outside of it lies only Shakespeare's

¹ Lapierre, Dominique The City of Joy (New York, Warner Books, 1992)
heath, a vast morally incoherent world where justice has no meaning. Thus justice, like all virtues and vices, is particular to humanity, and while we may metaphorically use the language of justice to define acts of the gods or fate or nature, in the end, it is only human beings who can be just or unjust.

Although we may aspire to warmer virtues, justice can be seen as the moral floor of society. For while ungenerous people cannot be praised, they also cannot be condemned, falling in the moral purgatory between virtue and vice, but an unjust person has, by definition, sunk below the lowest threshold of moral decency and into the domain of vice. Even if we accept that justice is an ideal to strive for, and its opposite a condemnable moral deficiency, however, we come to a much thornier question: what is justice? An eye for an eye? Turn the other cheek? Confucius' disciple Mencius wrote that "respect for elders is Justice."³ The queen in Alice in Wonderland has her own notion: "Sentence first -- verdict afterwards."⁴ Most people would recognize justice mocked in this case. John Stuart Mill astutely observed that "justice, like many other moral attributes, is best defined by its opposites."⁵ In trying to develop images of justice, we may find images of injustice more readily accessible, illuminating

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⁴ quoted in Baker, Daniel B. Power Quotes (Detroit, MI, Visible Ink Press, 1992) p. 155
⁵ quoted in Lucas, p. 4
if not what justice means, at least what it does not mean: inhumanity, cruelty, inequity, unfairness, arbitrariness, unreasonableness, tyranny and oppression.

The images of injustice are, perhaps by definition, more dramatic than those of justice: consider, for example, Hobbes' conqueror obtaining consent to rule with a sword at the conquered party's neck. Judith Shklar introduces us to Giotto's *Ingiustizia* as a quintessential portrait of Injustice:

The face of Giotto's Injustice is cold and cruel with small, fanglike teeth at the sides of the mouth. He wears a judge's or ruler's cap, but it is turned backward and in his hand is a nasty pruning hook, not a scepter or miter. ... Around him is a gate in ruin...

The figure of Injustice is depicted as inhuman or bestial, abusive of authority, and disrespectful of limits. While there seems to be more of a consensus on what constitutes injustice, the concept of justice remains ambiguous and contentious, despite all that has been written on the subject. Not only do individuals and societies over time disagree on what justice means, some also dispute the primacy of the concept of justice in human affairs over other values, such as fraternity or love or mercy. Justice, it is argued, is not the only moral virtue nor should its primacy pertain to all types of human relationships. In many instances, especially in our personal lives, we are capable of more than justice: for example, parents are usually expected to be more than just

6 Shklar, Judith N. *The Faces of Injustice* (New Haven, Yale University Press, 1990) p. 46
to their children. Yet, if justice means "the other chap's good", it is less of a virtue where our love for another person already precludes any desire to do ill to the person or where conflicting aims are absent, but towards strangers or enemies, and especially when interests clash, to be just is to be truly virtuous.

While I want to defend the idea that justice "is the first virtue of social institutions," I also seek to broaden contemporary discussions about justice, which have suffered from a narrowness of focus on the issues of material distribution and individual rights. Recent debates about justice have dealt mainly with John Rawls' conception of justice, especially its most contentious distributive aspect, the difference principle. Yet as Iris Young argues, defining social justice in terms of distribution tends to lead to a focus on material resources and goods rather than on the structural and institutional frameworks which determine those distributions. Applying the concept of distribution to non-material things further misconstrues dynamic and relational concepts such as rights and power into static things to be individually possessed. The distributive paradigm in thinking about justice has also obscured a wide array of injustice as oppression and domination, which involve exploitation,

9 Young, Iris Marion Justice and the Politics of Difference (Princeton, NJ, Princeton University Press, 1990) chapter 1
marginalization, powerlessness, cultural imperialism, and violence.\textsuperscript{10} Young recognizes that justice "is the primary subject of political philosophy"\textsuperscript{11} but challenges liberal conceptions of justice, particularly their focus on individuals rather than social groups, on universality as generality or sameness, and on an ideal of impartiality, all of which have acted to hinder the public recognition of group difference, and to deny disadvantaged social groups full participation in public life. I agree that distributive issues do not exhaust the topic of justice, yet would also add that liberal conceptions of justice are not incapable of addressing the injustices of domination and oppression that concern Young.

Another effect of the narrow focus of contemporary discussions of justice to distributive issues is that in rejecting that paradigm, some critics have gone as far as to challenge the indispensability of the very concept of justice to human society. In this thesis, I examine various political philosophies that have made this challenge. These critics, mostly of liberal theories, have typically defined justice as merely a liberal project, overlooking the fact that justice as a concept is bigger than liberalism. Although sophisticated versions of these critics do not profess to argue against the very concept of justice, in their critiques of mainly liberal conceptions, each seems to make a distinctive mistake about

\textsuperscript{10} Ibid., chapter 2
\textsuperscript{11} Ibid., p. 3
the concept of justice; in consequence, they have overlooked its warmer, human, and indispensable qualities.

In chapter 2, I will critically assess the communitarian charge that justice is at best, a cold virtue, and at worst, a divisive value that is detrimental to the social bond. While emphasis on the "cautious, jealous virtue of justice"[^12] is said to lead only to an atomistic society, communitarians hold out an appealing alternative vision of society as a constitutive community based on the ideal of fellowship. Some strands of feminist thought will be explored in chapter 3, particularly those that, while they challenge the validity of the boundary between public and private life that has been integral to liberal theories of justice, posit a dichotomy between two competing and mutually exclusive ethics of justice and of care. The ethic of justice is defined as a male-oriented morality of abstract rights centred on the individual, while the ethic of care, argued to be more expressive of women's moral experience, is characterized as a morality of responsibility with relationships as a primary focus of moral consideration. Chapter 4 tackles the issue of justice, or the lack of it, in international politics. Due to the lack of any common ground and the pre-eminence of power in the realm of international politics, justice is often dismissed as largely irrelevant to the relations between states. At best, it can only be secondary to the preservation

of order, which is supposedly maintained through a rough balance of power between nations. In essence, these critics of justice view it as either insidious, inadequate or irrelevant to human society.

In my attempt to defend justice from these critics, I outline three images of justice which they ignore, devalue or misconstrue. Firstly, in answer to the communitarians, I assert that the concept of justice is what makes human societies morally coherent, thus it is an essential bond of society. Secondly, I will defend the need for boundaries between the public and the private dimensions of life, as well as challenge the feminist dichotomy between justice and care. Thirdly, against the balance of power theories in international politics, I offer the image of justice as a balance of competing moral goods and claims, and argue that an order based on power without justice is inherently unstable. Through these images of justice -- as a bond, a balance and a boundary -- I hope to illuminate what has faded or disappeared from contemporary discussions about justice, and show its indispensability to human society.

13 Every human society has a conception of justice, although the conceptions and their administration may be radically different, reflecting the values of each society. This is implicit in High Forehead's statement about justice in traditional aboriginal communities: "The Indian on the prairie, before there was White Man to put him in the guardhouse, had to have something to keep him from doing wrong." See Coyle, Michael "Traditional Indian Justice in Ontario: A Role for the Present?" Osgoode Hall Law Journal 24(3):605-633 (1986)
While I seek to defend the very concept of justice from its critics, this is difficult to do without reference to a certain conception of justice. It is not my purpose in this thesis to formulate my own conception of justice, nor have I adopted the conception of a single philosopher. However, the images of justice which I explore are intended to form the basis of a humanist conception of justice. I defend some liberal conceptions of the individual, of society, and their relations because I believe liberal theories have offered the most defensible conceptions of justice for modern humanity. Yet in highlighting the three images of justice, I attempt to go beyond liberal theories to illuminate the complex nature of Justice. Let us begin with the first image.

14 see Rawls, A Theory of Justice, p. 5 for a discussion of the distinction between the concept of justice and various conceptions of it.
II. JUSTICE AS A BOND

*What men value in this world is not rights but privileges.*

_H.L. Mencken_

Plato is known as one of the first philosophers to have recognized the importance of justice to the state;¹⁵ thus we read *The Republic* not so much for the particular theory of justice that Plato offers as for its main assertion of the indispensability of justice to the individual and society. Contemporary political philosophers still find much to discuss and debate in the questions which faced Socrates in *The Republic* about justice. Communitarians challenge the assertion that justice is essential for social harmony, and instead conceive of justice, especially as formulated in liberal theories, as a divisive value in society. In this chapter I will counter the communitarian challenge, and reaffirm the idea of justice as a bond, with injustice as the lack or denial of the bond of humanity. In the end, I hope to show how justice forms the basis of all human relations, creating an essential bond between individuals in their various relations.

One characteristic of justice which J.R. Lucas notes is that, unlike love or generosity, which are virtues we admire but cannot expect from others, justice is "what we can insist on."¹⁶ Defining justice in consequence involves defining what

¹⁶ Lucas, p. 3
it is that we can insist on. Perhaps the most important demand one can make as a human being is not to be subjected to cruelty from others. While we must suffer the cruelty of nature as a misfortune, any cruelty exercised by humans constitutes an injustice. Cruelty is an affront against our humanity, which we share equally; in this sense, we are fundamental equals in moral worth, and can demand to be treated as equals or with fairness. As independent centres of consciousness we can demand to be treated as individuals with autonomy over our own thoughts, feelings, and actions that regard only ourselves. Because these are all things that we can insist on in common, in our capacity as autonomous and equal individual human beings, justice in this sense is nothing less than a bond of humanity. Although as individuals we possess disparate levels of real power in society, justice requires us to recognize our common humanity. In this image, justice protects us from inhumanity and cruelty.

The importance of our humanity as embodied in this conception of justice is a relatively recent development. In Homer's world of the Iliad and the Odyssey, which reflected ancient Greek views about humanity, morality, and the universe, the worth of human beings and their moral powers,

17 Because justice is a moral concept, our demands for justice are not limited by our capacities to articulate them. Indeed many victims of injustice are restricted, by internal psychology and external pressure, from voicing their claims. Our shared humanity and moral worth does not depend on any of our substantive powers.
18 Judith Shklar convincingly argues that the line between misfortune and injustice is as political as it is natural.
such as justice, did not seem very great. The Greek conception of the cosmic order was expressed through their gods, who, as depicted by Homer, were mostly indifferent to issues of morality. The world was governed not by just gods, but by amoral ones, who ruled the universe "not in men's interest, but in their own, and had no primary concern for human welfare." 19 Humans were thought to be the creation of one of the lesser gods. Although humanizing the gods reflected "the greatest audacity and pride in one's own humanity", the depiction of the gods "with human organs and human passions" 20 omitted the significance of human moral capacities. Instead, in the Iliad and the Odyssey, the mark of greatness was achieved through attaining honour, and power and prowess became the most worthy attributes for any man to possess, for they were the mark of godhood.

The quest for honour made social life in ancient Greek civilization extremely competitive and hierarchical, if not exclusive. Even issues of morality were not a public concern, but a private one:

The defense of a right was a purely private matter. He who felt aggrieved had the responsibility to take the necessary steps and the right to choose from among the available methods. His kin or his guest-friends, retainers, and followers might intervene in support but still as a private action. 21

21 Ibid., p. 117
To the extent that considerations of justice only arose between those of the same rank in the higher echelons of Greek society, issues of justice were more issues of honour than of morality. In reality, the consequence of the private enforcement of justice was of course that the weaker members of society could rarely hope to obtain any justice from the powerful.

The insignificance of human moral powers led most Greeks to hold a fatalistic view of life: "Chance, not merit, determined how the gifts fell to a man." To be born a woman or a slave was a misfortune dictated by nature. The issue of justice, or of how men dealt with the gifts fallen to them, was largely ignored in the two earliest documents of Greek civilization. It was not until Hesiod that justice became "the central problem of existence, human as well as divine." The increasing concern with matters of justice also involved a shifting of the spotlight from Mount Olympus, the lair of the gods, the heroes, and the powerful, to the world of the common man.

Justice as a bond of humanity is revealed by the portrayal of injustice as the lack of such a bond. Consider Giotto's Ingiustizia again:

...under [the figure of Injustice] we see the real character of passive injustice. There is a theft, a rape, and a murder. Two soldiers watch this scene and do nothing, and neither does the ruler.

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22 Ibid., p. 150
23 Ibid., p. 154
24 Shklar, p. 46
In this depiction, injustice is blind, but in another sense from justice; whereas justice is blind to those characteristics which are arbitrary from a moral point of view, injustice is being blind to the whole dimension of morality. Shklar points out that the unjust person is not necessarily violent or greedy but may be "morally deaf and dissociated." Indeed, justice is a bond in its recognition of that which we hold in common with others, specifically our moral worth. When someone's humanity is violated by other people, most of us can identify with it, and feel the injustice as if we had suffered it ourselves. Similarly, Rawls, in his discussion of justice as fairness, shows that acting justly toward others implicitly involves a recognition of their humanity, or commonality with ourselves:

In the same way that, failing a special explanation, the criterion for the recognition of suffering is helping one who suffers, acknowledging the duty of fair play is a necessary part of the criterion for recognizing another as a person with similar interests and feelings as oneself. 

Thus, the bond of justice is one of obligation; to do nothing in the face of inhumanity is an injustice itself, or as Shklar puts it, "a failure to mitigate suffering that could have been alleviated", even when the suffering is not caused by human actions, is to be passively unjust. Plato, in his account of the genesis of human beings and society, notes that Zeus gave

25 Ibid., p. 48
27 Ibid., p. 70
all men a share of reverence and justice, "for cities cannot exist, if a few only share in the virtues, as in the arts."\textsuperscript{28} Furthermore, those who showed no sense of justice and reverence were to be condemned as the enemies of society. As Hume once expressed, justice "is the bond of society, and without it, ... no association of human individuals could subsist."\textsuperscript{29}

\textbf{The communitarian challenge}

According to communitarians, however, the confrontational characteristic of the language of justice, especially as expressed in rights-based liberalism, reflects a false underlying conception of the person as an atomistic, asocial, and egoistic individual, incapable of allegiance to a greater entity, such as a community or nation. Communitarians argue that the dominance of individual rights in liberal theory, which have been characterized as "trumps"\textsuperscript{30} to be asserted against the majority, condemns individuals to a solitary existence. The freedom from oppression accorded to individuals in a liberal society actually enslaves them to an equally undesirable state of affairs, for as rights bearers, they must live and die alone. In a fraternal world, there would be no need for the language of rights, or justice. It is precisely because liberal society cannot provide the conditions in which fraternity would develop that justice

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\textsuperscript{28} from Plato, \textit{Protagoras} in Solomon and Murphy, p. 72
\textsuperscript{29} Lucas, p. 1
\textsuperscript{30} see Dworkin, Ronald \textit{Taking Rights Seriously} (Cambridge, MA, Harvard University Press, 1985)
occupies such a preeminent place in its theoretical foundation.

At the heart of communitarian critiques of liberal justice lurks a fundamental difference on the key issue of what best holds a society together. As Alan Ryan points out, Michael Sandel's criticism of Rawls's *Theory of Justice* relies ... on the thought that fraternity is a more important ingredient in social harmony than justice.31 In their essential assumptions about human relations, the notions of fraternity and justice seem to be mutually exclusive: fraternity presupposes common values, ends, and identities, whereas justice assumes the exact opposite. The liberal society holds justice as the prime virtue of social institutions; so long as the requirements of justice are met, individuals are free to pursue their own conceptions of the good. Yet, according to communitarian theorists like Michael Sandel, such a society fails to recognize the social identities of individuals "as members of this family or community or nation or people."32 Instead of freeing and empowering the individual, liberal society creates an "unencumbered self",

... less liberated than disempowered, entangled in a network of obligations and involvements unassociated with any act of will, and yet unmediated by those common identifications or expansive self-definitions that would make them tolerable.33

31 Ryan, Alan "Communitarianism: the Good, the Bad, & the Muddly" *Dissent* 353 (Summer 1989)
33 Ibid., p. 94
Communitarian theory posits an alternative value to justice as the basis of social order: fraternity. A constitutive community offers the individual a more profound sense of self than a liberal society, in which an alienated self is assumed in theory and reinforced in reality. Indeed, while liberal justice presupposes social conflict, communitarians offer a vision of society as a place where individuals, sharing in the ethic of community which stresses self-realization through fellowship, may experience true social harmony.

Yet as Caroline McCulloch argues in an exceptional essay, the ideal of fellowship is a problematic foundation stone of communitarian theory, for its psychological appeal and moral imperative pull in opposing directions, constituting an inner contradiction that threatens the coherence of communitarian philosophy. The psychological attraction of the communitarian vision lies in its emphasis on the privileges of membership in a community. Saying that I am an American Express card holder, for example, is a way of saying that I enjoy and bear certain benefits and burdens that those who do not have American Express cards do not share. As David Miller notes,

In seeing myself as a member of a community, I see myself as participating in a particular way of life marked off from other communities by its distinctive characteristics. Notions such as 'loyalty' and 'allegiance' make no sense unless there is an

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identifiable something towards which these attitudes are directed. 35

Yet the concept of belonging to a community naturally produces a counter-concept of not belonging, creating the problem of inter-group relations. The communitarian vision cannot escape the question of how outsiders should be treated.

The particularistic appeal of fellowship underlies Sandel's critique of liberal justice. My loyalties to my family, community, nation or people, which define who I am, are said to "go beyond the obligations I voluntarily incur and the 'natural duties' I owe to human beings as such." 36 One suspects that Sandel is dubious about the existence or validity of 'natural duties' (hence the quotes) owed to human beings qua human beings; the thrust of his argument against the liberal conception of the human subject as an abstract entity capable of being divorced from all social relationships is that such a self cannot exist. Indeed, it would be absurd to deny that we are all born into families, communities, and states, and cannot be identified without some reference to these particularities. The liberal conception of the self, however, does not deny these facts, but questions their relevance to the consideration of persons as moral subjects. Justice does not so much require that we lose our selves as it requires us to bring a fundamental aspect of ourselves -- our moral aspect -- to the fore.

35 Miller, David "In What Sense must Socialism be Communitarian?" Social Philosophy & Policy 6(2):68 (1989)
36 Sandel, "The Procedural Republic", p. 90
Sandel argues that our particular attachments "allow that to some I owe more than justice requires or even permits". 37 Indeed, we attempt in personal and intimate relationships to create a sense of togetherness, for which the language of rights and justice is ill-suited. As John Hardwig points out, we treat people who are close to us very differently from the way we treat strangers:

If you are my friend, I expect you to do more for me than respect my rights, but there are also many ways in which you do not need to respect my rights. 38

In a healthy personal relationship, there is no need for talk of rights; resorting to the use of that language is said to signify separation, foretelling the end of intimacy. The primacy of justice in liberal societies therefore is detrimental to the development of communities based on fellowship.

This leads us directly to the contradiction inherent in communitarian theory. It is clear that communitarians do not offer the ideal of fellowship as a mere privilege possessed by those lucky enough to be born into a constitutive community. On the contrary, they argue for the ideal of fellowship on moral grounds, as giving the individual more concern and respect than can be accorded to them in a liberal society, where one's views about the good life, which one may regard as constitutive of one's identity or as absolute truths, are recognized and tolerated, but not accepted by the wider
society. The prescriptive force of communitarian theory thus lies in the moral value of the ideal of fraternity. If this is true, however, what can justify the exclusion of other human beings from the community? Or as McCulloch puts it,

If fellowship is morally compelling in part because it connotes respect and concern for others, social responsibility and so on, is it not compromised when confined in expression to a particular group of people? ...If the psychological constituency of fellowship is the small, intimate and clearly demarcated community, its moral constituency would seem to be common humanity. 39

The logic of the moral imperative thus undermines the basis of the psychological appeal of fellowship. This incoherence in communitarian theory threatens its challenge to liberal theory, for if fraternity is to compete with justice as a moral value, the ideal of community can only meet its moral imperative at the cost of its emotive force.

Justice and culture

Woven into the debate between justice and community is the place and moral significance of culture in human society. The concept of culture has not received much attention in classical or contemporary liberal political theory. Critics attribute this neglect to the preoccupation of liberalism with individuals and devaluation of the social context in which they relate and gain much of their identity.

In Mary Ellen Turpel's discussion of the place of culture in Canadian political society, she advances the claim that justice and morality are culture-specific, and that different

39 McCulloch, p. 447
cultural ethics are incommensurable. Defining "cultural difference" as "irreconcilable or irreducible elements of human relations"\(^4\), Turpel argues that the Canadian constitutional system, as a creation of western history and culture, is incapable of accommodating other cultural norms within its own inevitably biased framework. This is because cultures are seen not just as manifestations of "different ways of knowing", but as constituting unbridgeable islands of "differing human (collective) imaginations".\(^4\) Thus,

> when we think of cultural differences between Aboriginal peoples and the Canadian state and its legal system, we must think of these as problems of conceptual reference for which there is no common grounding or authoritative foothold.\(^4\)

Turpel does not pretend that her conception of culture is compatible with liberal theory; indeed, with its emphasis on individual rights and its inattention to cultural integrity, liberal theory itself arose from one (western) society and culture. Her main argument has been to question why other cultures existing within a liberal state must accept the cultural (as well as political and social, for they are intricately connected in this definition of culture) authority of the dominant rights-biased framework.

The implications of her argument, however, do not bode well for the continued unity of most modern states, which have

\(^4\) Turpel, Mary Ellen "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences" in Boivin, Michelle et al. (eds.) *Canadian Human Rights Yearbook* (Ottawa, University of Ottawa Press, 1990) p. 13

\(^4\) Ibid., p. 4

\(^4\) Ibid., p. 14 (emphasis mine)
culturally heterogenous populations. The logical conclusion of the incommensurability of cultures and the fusion of the cultural with the political realm is that different cultures must form their own separate political communities. Her essential argument posits, ultimately, that there is no way that a non-aboriginal person can be made aware of or sensitive to the aboriginal 'way of knowing'. While Turpel criticizes the Canadian constitutional system for its cultural "ignorance, insensitivity, and incommensurability,‖ the assumption of the irreconcilability of cultural knowledge, in effect, precludes the relevance of the first two arguments. It also precludes any discussion of justice between cultures, for without some common grounding, such as a recognition of our shared humanity, relations between different human cultures would resemble the relations we have with non-human objects and beings, which we value instrumentally for our own good, but which we do not recognize as moral entities, and hence, as deserving equal respect or moral consideration. It would seem that Turpel's conception of cultural difference would result in practices which she wants to condemn, such as cultural hegemony and exploitation. Indeed Turpel protests against liberal conceptions of justice because she perceives them to constitute a form of cultural domination aimed to produce a uniform, homogeneous citizenry. Yet justice does

43 Ibid., p. 44
44 Iris Young's book is also mainly concerned that liberal conceptions of justice require a denial of difference, in their quest for a mythical conception of impartiality and
not necessitate a denial of our differences; on the contrary, the need for justice presupposes diversity in society.

Clearly, Turpel's conception of culture betrays a deep scepticism about the existence of that entity called a 'human being' or 'humanity'. Indeed, Turpel attacks the notion of human rights as being culture-specific as well; the rights paradigm that assumes the atomism and division of individual human beings is antithetical to the emphasis in native culture on communal harmony. Yet, although certain rights may be divisive, human rights, by virtue of their recognition of a common humanity, and thus, their applying equally to all humans, may be the only basis upon which one may demand equal respect and consideration from 'others'. Even as rights make distinctions between persons, their recognition of our commonality also unites us beyond the particular and arbitrary confines of our family, culture, community, or nation. Without a conception of human rights, we would live in isolated communities, and instead of having individual islands bridged by a common recognition of our humanity, we would have social islands without such bridges to other communities. Such a world may in fact be less fraternal between societies and cultures, though each may have more internal cohesion.

In leaving a moral void between cultures, Turpel's argument makes the issue of the treatment of outsiders extremely problematic. One implicit assumption of her case is universality, and have thus perpetuated the oppression and domination of certain groups in society.

45 Ibid., p. 33
that people can only get justice from people of their own culture. Thus aboriginals can only get justice from other aboriginals. One may logically conclude from her argument that one should not leave the culture into which one is born, since one would suffer from being misunderstood in any other culture that, inevitably, cannot share one's 'way of knowing'. But this is to place individuals at the mercy of their cultures, for if there can be no common morality between cultures, one's cultural community would constitute the final arbiter of morality. In this situation, an individual dissenter would not be able to appeal to any moral standard outside of her cultural community. Yet cultures are not isolated moral enclaves, for culture, while it may be the sum set of beliefs, customs and institutions that constitute a way of life for a group of people at a particular time, is not synonymous with morality, which consists of a coherent standard of right and wrong against which cultural beliefs, customs and institutions may be evaluated.

Justice as the basis of human relations

In Plato's Protagoras, men living together without knowledge of the "art of government" threatened to destroy each other, or disperse and risk being destroyed by wild beasts. Fearing the extinction of the race, Zeus sent Hermes

46 The incommensurability of cultures thesis would also seem to be highly problematic for native peoples who do not share one culture and language, but are quite culturally diverse themselves.
47 see Waldron, Jeremy 'Nonsense Upon Stilts' (New York, Methuen & Co., 1987)
to bring to humanity "reverence and justice to be the ordering principles of cities and the bonds of friendship and conciliation."\textsuperscript{48} Clearly, communitarian theory is not the first political theory to concern itself with the problem of social harmony. Its depiction of justice as a corrosive on the social bond, however, reveals the narrowness of its conception of justice.

Contrary to viewing justice as a cold and divisive force in society, Pierre Trudeau captured the image of justice as a bond when he said, "Justice to me is a warm spirit, born of tolerance and wisdom, present everywhere, ready to serve the highest purposes of rational man."\textsuperscript{49} The just society would not be an unfeeling society; on the contrary, it would be "the most humane and compassionate society possible."\textsuperscript{50} In theory, individuals could be held together by force or love, for example, but relative to justice, force is undesirable and an affront to one's humanity, while the bond of love or sentiment seems unattainable in any large and diverse group. The bond of justice is not as deep as that of love, nor is it as superficial as one created by force, but it is a basic bond which is necessary for an individual to "identify with society, feel at one with it, and accept its rulings as [one's] own."\textsuperscript{51}

\begin{itemize}
  \item \textsuperscript{48} from Plato, \textit{Protagoras} in Solomon and Murphy, p. 72 (emphasis mine)
  \item \textsuperscript{49} Trudeau, Pierre \textit{Conversations with Canadians} (Toronto, University of Toronto Press, 1972) p. 42
  \item \textsuperscript{50} Ibid., p. 42
  \item \textsuperscript{51} Lucas, p. 1
\end{itemize}
Communitarians, however, are sceptical that a liberal theory of justice, with its foundation of individual rights, can be a basis for lasting and meaningful human relations. Underlying the communitarian critique of rights is the concept of a "constitutive" community, which is said to give individuals a more substantive citizenship through which they may realize those "expansive self-understandings that could shape a common life". The liberal view of morality is criticized for its individualism: as an end-in-itself, as a self-originating source of valid claims, the liberal self is "installed as sovereign, cast as the author of the only moral meanings there are." Far from liberating and empowering individuals, rights are seen to subject human beings to a fate of profound isolation from each other, constituting a form of internal oppression. Rights form a hard shell around the individual self which, although designed to protect it from external domination, only serve to prevent the full development or hatching of the individual self that is possible in a constitutive community. In a rights-based world, we would all be condemned to an anonymous, embryonic existence from birth to death, without ever reaching our full individual potentials.

Sandel argues that the ethic of rights-based liberal justice, far from facilitating the bond of friendship, only produces persons "incapable of constitutive attachments" and

52 Sandel "The Procedural Republic", p 87
53 Ibid., p. 87
hence "wholly without character, without moral depth"; such persons are also incapable of forming deep friendships. He laments that, given the liberal conception of the self,

\[\text{however much I might hope for the good of a friend and stand ready to advance it, only the friend himself can know what that good is.}^55\]

Independent from concrete aims and ties, the liberal individual is denied "those qualities of character, reflectiveness, and friendship that depend on the possibility of constitutive projects and attachments." I would like to counter Sandel's claim with an example from real life.

Recently a good friend of mine, in her early twenties, revealed to me that she was pregnant after being in a relationship with someone she had known for less than a year. I reacted as if something terrible had happened to her. Knowing her youthful, fun-loving and care-free nature, I was deeply concerned that she was not aware of and would be overwhelmed by all the responsibilities of raising a child. After realizing that she had decided, in consultation only with her partner, to continue with the pregnancy, I played devil's advocate until an abortion was no longer possible, appealing to her to consider her own potential for growth and how having a baby at this time might hinder it, her inexperience in relationships (for this was her first serious affair), and so on. I strongly felt that keeping the child was the wrong thing for her to do at this time, but she

54 Sandel, *Liberalism and Its Critics* p.172-3
55 Ibid., p. 173
56 Ibid., p. 174
decided to do so, and a few months ago, gave birth to a beautiful healthy girl. She is clearly quite happy if a bit anxious, as is natural, about her new role as a mother. Furthermore, we are still good friends.

To recognize our separateness as persons does not mean that we are incapable of deliberating with friends, nor does it make one indifferent to their welfare, or incapable of attempting to persuade them of the rightness or wrongness of their decisions. Sandel seems to suggest that a friend who does not accept one's opinion has a "flawed" self-image, to which, if we are friends, we should defer. It is true that we are not always the best judges of our own interests, and lack objectivity in thinking about our own problems. Yet friendships which rely on one party to defer every time there is a disagreement seem to me to be the shallowest type imaginable. True friendship surely lasts despite such conflicts and differences of opinion; to recognize and respect these differences in life plans, rather than to just defer to them as if they were something to be lamented, is to recognize that our friends have separate identities from us, without which friendship would become merely a self relating to itself.58

57 Ibid., p. 174
58 Moral conflicts and differences are, of course, another matter. For example, if I believed that a human fetus had an alienable right to life, and my friend had decided to have an abortion, our friendship may not have endured that difference of opinion regarding a fundamental moral question. In the actual situation however, our friendship or its continuation was never the issue.
Aristotle asserted that "friendliness is considered to be justice in the fullest sense";\(^5^9\) the unjust, furthermore, are incapable of friendship, just as in the worst political systems, such as tyrannies, there is little justice or friendship to be found. This is because both friendship and justice rely on a certain kind of commonality between the parties involved. In tyrannies "where there is nothing in common between ruler and ruled there is no friendship either, just as there is no justice."\(^6^0\) Although Aristotle distinguishes between three kinds of friendship, based on utility, pleasure, and goodness, he clearly considered only the latter type to be true friendship. Friendship founded on goodness is based on mutual affection, which involves choice, and thus "proceeds from a [moral] state:"

...when people wish what is good for those whom they love, for their sake, it is not from a feeling but in accordance with a [moral] state.\(^6^1\)

Thus what bonds friends together is not necessarily similar life experiences, or common identities, but a shared sense of morality. Thus, far from being mutually exclusive concepts, friendship (or fellowship) and justice are interconnected concepts.

It should also strike us as a truism that no matter how well we may think we know someone, she is, ultimately, the only person who should decide what is best for her, even if

\(^{60}\) Ibid., p. 278
\(^{61}\) Ibid., p. 267
she decides, in our opinion, wrongly. For no matter how well we may admit that someone knows us, in the end, do we not want the final say over decisions that affect our lives in significant and direct ways? That the choice of action remains ours, rather than that of our friends or family or community, is integral to our sense of individual moral agency and dignity. To respect our friend's decision, no matter how wrong-headed we may think it to be, is to respect her as a conscious, purposive, autonomous and responsible agent.

In *The Kitchen God's Wife*, for example, a woman tells the story of how her mother came to be married to a man many years her senior who had already had five wives, three of whom were still living. When the narrator's mother was young in the early twentieth century, she fell in love with a revolutionary named Lu. Her mother disapproved and, after consulting with a good friend of her dead husband, decided to make a contract with him to "take the bad daughter of his old dead friend and make her his second wife." Individuals who lack the ability to relate to others by their own choice, invariably are forced to relate to others by someone else's choice.

Jeremy Waldron argues in an exceptional essay that individual rights, far from being detrimental to human community, are essential to the creation of new strands in the existing web of social relations. Impersonal rules and rights form "some basis on which individuals or groups can

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reconstitute their relations to take new initiatives in social life without having to count on the affective support of the communities to which they have hitherto belonged.° Waldron points to the story of Romeo and Juliet, whose tragedy seems to be caused by ill fortune, but which actually results from the inability of the two lovers to have their relationship recognized due to the existing antagonism between their families. Without a "framework of public or impersonal law" through which their marriage could be validated, they resort to feigning death as a way to escape the confines of the existing community, and establish their own prohibited relationship. The tragic ending, however, shows the vulnerability of individual human beings when, for whatever reason, they decide to leave the set web of relations. Without rights which recognize their individual powers of separation and connection, they lack the power to create their own strands; once they depart from the existing web, they risk falling to their deaths. At best they are like spiders that have lost the ability to produce more threads. At worst they are like flies that an alien web has caught. Thus Romeo and Juliet discover that there "is no world without Verona walls." Individual rights, by empowering and protecting those who seek to forge new social relations, are necessary to

64 Ibid., p. 632
65 Shakespeare, William Romeo and Juliet (Essex, England, Longman Group, 1985) 3.3.17
the continued enrichment and expansion of the web of human relations.

It is true that justice cannot replace affection: Romeo and Juliet probably would have liked to have their parents' blessings, but it is precisely when affection fails that justice is needed to enable individuals to control their own lives. This does not mean that we must choose between having either affection or justice from those with whom we have an enduring relationship; rather, in such complex and lasting relations, we need only to determine the proper boundaries between justice and affection. Without a structure of impersonal rights in their social world, Romeo and Juliet are left at the mercy of their feuding families.

It should be noted that the specific kind of freedom which they are denied is the power to begin relationships of their own choice. The communitarian characterization of rights as divisive of community and only conducive to the creation of "atomistic, primarily egoistic, and asocial" individuals thus ignores the social nature of rights. In his discussion of the Canadian Charter of Rights and Freedoms, for example, Samuel LaSelva observes that far from devaluing social membership, all of the rights contained in the Charter "either presuppose or are membership rights. ... In all these cases those who assert their rights under the Charter do so to regain or to protect their membership in Canadian society, and

66 Hardwig, p. 446
not because they consider society unimportant." LaSelva, Samuel V. "Does the Canadian Charter of Rights and Freedoms Rest on a Mistake?" Windsor Yearbook of Access to Justice 8:229 (1988)

68 See Ralph Ellison's Invisible Man (New York, Vintage Books, 1989) for the black experience in inter-war America, prior to civil rights legislation.

69 Lucas, p. 1
III. JUSTICE AS A BOUNDARY

The public and the private worlds are inseparably connected... The tyrannies and servilities of the one are the tyrannies and servilities of the other.  

Virginia Woolf

Justice as a boundary places limits on our actions toward others. Thus, when someone does something blatantly wrong, we speak of that person as having crossed a line. In the film The Big Easy, a police detective working for a corrupt department in New Orleans realizes that by living on the thin grey line between right and wrong he had eventually stepped squarely into the domain of the black. The unjust person is not only morally dissociated from humanity, but also insensitive to limits. Plato's unjust man is the despot, whose passions overflow their rightful place and are "enthroned in absolute dominion over every part of the soul",\(^70\) shadowing reason and his better self. In Heart of Darkness Mr. Kurtz is described as a man without restraint: "he had made that last stride, he had stepped over the edge."\(^71\) Kurtz, like all tyrants, ceased to recognize boundaries and limits, especially the moral ones. If the figures of injustice are more dramatic than those of justice, it is perhaps because an intrinsic quality of justice is moderation.

Justice also involves making distinctions between different types of social relations. For example, parental

\(^70\) Plato, The Republic p. 298  
\(^71\) Conrad, Joseph Heart of Darkness (New York, Bantam Books, 1986) p. 120
authority may be appropriate in parent-child relationships, but unjust if applied to the civil or political realm where adults relate. This raises a different but related view of justice as a boundary that forms, not a moral floor that constrains our negative actions (and in some cases, inactions) toward others, but a moral ceiling of sorts on the demands that we can legitimately make of others in the way of sacrifice. Thus while we may expect parents to love their children, we do not expect the same of strangers. Similarly, utilitarianism and other consequentialist moral theories have been criticized for allowing "that one may always do what would lead to the best outcome overall," even if it means that some individuals' or their interests do not get due consideration.

While justice as a bond focuses on our common humanity, justice as a boundary emphasizes the distinction between persons:

the other chap is not merely a human being like myself, but a separate individual, with his own point of view and own interests that are distinct from mine.  

The conception of individual human beings as autonomous and equal, morally responsible actors necessitates a distinction between the personal and the political, or the public and the private. This boundary demarcates the legitimate spheres of state and social action and individual freedom. It lies behind the most well-known of liberal separations, that

73 Lucas, p. 4
between the church and the state, just as it informs the appropriate boundary between justice and affection.

Communitarians challenge the liberal emphasis on the importance of justice precisely because it makes distinctions between persons, the public and the private, the individual and society. Positing that fellowship makes a better bond of society than justice, they view the liberal dichotomies as pernicious to the conditions under which fraternity would flourish. Thus, the communitarian vision, by aiming to eliminate all sources of conflict by denying the divisions within our selves, our values, and our ends, needs to eliminate the circumstances in which justice becomes pertinent. This entails the end of politics as we know it, or "a conception of politics in which conflict or disagreement has no place." It may be argued that communitarians offer, not a political theory, but a vision of human society that has proven to be utopian in the past.

Isaiah Berlin notes that central to western images of utopia has been "the notion of the broken unity and its restoration." The communitarian concern for fellowship reflects an identification or, at least, sympathy with this theme. The main characteristic of a utopia, however, is the

impossibility of its attainment on earth: the word "Utopia" comes from the Greek ou meaning "not", and topos or "place".\textsuperscript{77} In this regard, the utopian strands of communitarian theory ignore a fundamental boundary between that which is fit for this place, and that which belongs to the 'not-place'.

To sustain communal harmony, communitarianism needs to draw its own distinctions, the main one being between insiders and outsiders. Out of logical necessity, "justice to an outsider matters far less, as a matter of morality, than the bonds of community solidarity."\textsuperscript{78} The arbitrariness of the distinction, however, makes it highly problematic, from a moral point of view. In the end, the communitarian ethic permits and may indeed require sacrificing the rights of individuals inside the collective to due consideration, in order to preserve the ideal of fraternity. Furthermore, communitarianism does not abolish all conflicts but, in effect, pushes them and the issue of justice outside the community, raising the issue of justice between communities.

Justice as a boundary involves assessing what and where distinctions need to be made. The focus on different conceptions of the public and the private raises interesting questions about a number of other key distinctions: the personal and the political, the natural and the socially constructed, a misfortune and an injustice. These distinctions have been central to feminist challenges to

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\textsuperscript{78} Shklar, p. 44
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liberal theories of justice. In this chapter, we will examine the classical Greek conception of the public/private dichotomy, and its significant impact on gender relations in Greek society. Feminist critiques of the dichotomy between public and private life will be critically assessed, as well as the dichotomy between justice and care posited in some feminist theories. I will argue, in the end, that the classical devaluation of the private realm and its allocation of women wholly into that sphere of activity is inconsistent with a humanist conception of the public/private dichotomy.

Justice as a boundary is perhaps, at the same time, the most and the least concrete of the three images: it draws hard lines which it is unjust to erase, but rather than presenting us with a specific picture, it merely defines borders, and sets out some rules. For example, one may draw on the paper, but not on the desk. One may use crayons, felt pens, pencils, and so on, but not somebody else's blood. All materials are to be shared, except that piece of paper on which one has made one's mark. Justice as a boundary ultimately acts to protect individuals from social and political tyranny and oppression.

Injustice results, clearly, not only when no limits or boundaries are set, but when the line is drawn in the wrong place. Unjust distinctions have been made with the effect of oppressing certain segments of society and excluding them from considerations of justice. We only need to look at anti-discrimination rights such as those expressed in the Canadian
Charter of Rights and Freedoms to note how many illegitimate grounds for discrimination have existed and continue to threaten the equality and uniqueness of individuals in society: "race, national or ethnic religion, colour, religion, sex, age or mental or physical disability." 79 Emphasis on these distinctions necessarily entails the denial of other morally significant boundaries, such as the individuality of persons as opposed to groups. Women in ancient Greek society, for example, were thought to be naturally inferior, and were thus excluded from participation in politics. In this case, the artificial boundary created between men and women served to undermine the true distinction between persons; viewed as a group, women's individuality was denied, and viewed as the property of their husbands, women's autonomy was equally forfeited.

Feminist challenges to the public/private dichotomy

Not surprisingly, feminist philosophy has offered one of the most challenging critiques of the public/private dichotomy. The distinction between private and public life is integral to a liberal conception of just relations between the individual and society, and the state. As Michael Walzer notes, this separation creates "the sphere of individual and familial freedom, privacy and domesticity." 80 Carol Pateman argues that this dichotomy "is, ultimately, what the feminist

80 Walzer, p. 317
movement is about. Similarly, Susan Okin observes that while feminists of differing philosophical persuasions are divided on a number of key issues, they all agree on "the indefensibility of the traditional dichotomy between the public and political and the private and personal." This is because notions of 'public' and 'private' have historically been intricately bound to definitions of 'man' and 'woman', and have contributed to the subordination of women to men in the family, and their exclusion from direct and equal participation in politics and the wider society.

While 'the personal is the political' has become the quintessential feminist slogan, feminists of a liberal or radical persuasion again differ in their interpretation of its meaning. Liberal feminist critiques of the dichotomy between the public and the private have centred on one conception of the division, which relegates family life, and with it, women, to the private sphere. They note that the sphere of 'familial freedom' and 'domesticity' created by the separation of public and private life has not led to individual freedom or privacy for most women. In essence, their attack is on the patriarchal conception of the public and the private, and they show the inconsistency of that conception with fundamental liberal principles. Radical feminists, however, see in the issue of sex inequality a more fundamental challenge to the

81 Pateman, Carole *The Disorder of Women* (Stanford, CA, Stanford University Press, 1989) p. 121
entire liberal conception of the relationship between the individual and society. Thus radical feminism brings the issue of women's subjection into a wider debate between liberalism and other political theories, such as Marxism and communitarianism. As Catharine Mackinnon writes, "In liberal feminism, the personal is distinguished from the collective; in radical feminism, it comprises it." This is because boundaries have often reflected, not morality or justice, but essentially power relations, which have then been legitimized by conceiving of them as morally required distinctions.

The ancient Greeks conceived of the public and the private as direct but unequal opposites; the one realm could not be defined without relation to the other, yet whereas participation in the public sphere was regarded as a mark of true humanity, private life was at best tolerated out of necessity. The public realm was one of equality and freedom, of speech and action, and of cultivation of the "highest and most human of man's capacities". In contrast, the private sphere was one of inequality, of slavery and mastery, of silence and of the provision of the most basic human needs.

As a realm of necessity, the private could not be judged good or bad. Life in the polis, however, constituted the good life, which according to Aristotle, was "good" so far as it transcended the daily physical requirements for survival,

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84 Arendt, Hannah *The Human Condition* (Chicago, University of Chicago Press, 1958) p. 38
including freedom from manual labour and the natural cycle of birth and death, and "was no longer bound to the biological life process."85 Thus, the private realm was seen as a world of deprivation of, essentially, freedom from nature, and all that it imposed on the actions of thinking men. Although "to have no private place of one's own meant to be no longer human",86 for humans had necessities, unlike perhaps the gods, the aspiration of the Greeks was to transcend their natural condition. Implicit in this conception of the natural was a normative judgement which pitted nature against humanity, so that to be truly human one had to conquer nature.

Women were relegated to the private or hidden realm because their lives were considered to be "'laborious,' devoted to bodily functions."87 Although Hannah Arendt observes that one's occupation was a greater determinant of one's place in the social hierarchy than one's birth, for women, whose function was socially determined in effect from birth by their gender, this distinction seems less useful. Yet as Carole Pateman notes, "biology, in itself, is neither oppressive nor liberating".88 The Greek conception and evaluation of the place of woman and woman's work in society were intricately related to the cultural debasement of nature; woman's 'natural' inferiority stemmed not from nature, but from the Greeks' ethical judgement of nature.

85 Ibid., p. 37
86 Ibid., p. 64
87 Ibid., p. 72
88 Pateman, p. 126
To be born a woman in Greek society was thus a misfortune, for she, as a whole, was relegated to the private sphere. Public life was unattainable to her by definition; the polis was reserved for males only. The perception of women as natural inferiors also deprived them of freedom, for the Greek conceptions of freedom and equality were inextricably linked:

To be free meant both not to be subject to the necessity of life or to the command of another and not to be in command oneself. It meant neither to rule nor to be ruled. 89

Political and social equality, freedom, and the good life were thus all denied to women because of their biology, or more accurately, because of the social debasement of nature and identification of women with their natural function as child-bearers. Freedom, however, was clearly not only denied to women in the private sphere, it was also denied to men in their capacity as rulers of the household. Thus for men, "the meaningful social relationships and the strong personal attachments were sought and found among men." 90

The appeal to nature as the justification for the exclusion of women from political life, and their subjection to men within the household, is typically characterized by feminists as a tenet of patriarchalism. Thus out of Greek thought sprang the conflicting theories of patriarchalism and liberalism, neatly reconciled through the formulation of a boundary between the public and private spheres of life, which

89 Ibid., p. 32
90 Finley, p. 138
acted as a wall that confined women, children and slaves to the household and denied them access to the political realm, but which did not pose any kind of barrier to the movements of free men.

The public/private distinction revisited

The modern conceptions of public and private have changed considerably following a reassessment of the relationship between human beings and the natural world. Romanticism, which glorified nature, spontaneity, and self-expression, defined humanity not in opposition to nature, but as a part of it. Since nature was seen as our connection to the divine, freedom lay not in the suppression, but in the manifestation of the natural. This view arose, as Hannah Arendt notes, initially as a protest against the stultification of individuality by social pressures of conformity. Thus the modern notion of privacy was asserted first not against the state, but against society.91

The private realm is now seen as the realm of freedom, not from nature, of which we are a part, but from other people, and from the coercive power of the state.92 Whereas the polis was the arena through which men made their unique contributions, in modern times, the private sphere harbours those parts of us which are unique and personal. The

91 Arendt, p. 38
92 This change may reflect the diminishing control of the natural environment on our lives, compared to a relative increase in the power of society and state over the individual.
recognition of each person's individuality and equality in moral worth is antithetical to the hierarchical structuring of social relations based on gender, race, or religion, or "the length of one's toes."\(^{93}\) As John Stuart Mill puts it, more eloquently, "the peculiar character of the modern world ... is, that human beings are no longer born to their place in life ... but are free" to pursue their own ideals about what constitutes the good life.\(^{94}\) Liberal notions about the individuality and equality of human beings thus directly oppose the hierarchical view of human beings and their relations that is fundamental to patriarchalism: "In theory, liberalism and patriarchalism stand irrevocably opposed to each other."\(^{95}\)

Some feminists argue, however, that the theoretical opposition of patriarchal and liberal values has had no practical effect on the real lives of women, who still suffer gender-specific problems in societies that profess to be liberal. It seems logical to conclude, as Pateman does, that "the attempt to universalize liberalism ... in the end ... inevitably challenges liberalism itself."\(^{96}\) Yet it is not clear that the conception of the public/private or 'public/domestic' dichotomy which she and other liberal feminists oppose is a truly liberal conception. In the final

\(^{93}\) Okin, Susan Moller Justice, Gender, and the Family (U.S., Basic Books, 1989) p. 171
\(^{95}\) Pateman, p. 120
\(^{96}\) Ibid., p. 118-119
analysis what liberal feminists have exposed is not the incoherency of liberal theory itself, but the remnants of patriarchal assumptions in liberal theory and practice. A coherent liberal view of the public/private dichotomy differs radically from a patriarchal or gender-biased one, which is the target of feminist critiques. Thus, while sex inequality does occur in alleged liberal societies, liberal theory cannot be used to justify it.

Radical feminists challenge the foundations of liberal theory rather than its patriarchal vestiges. They view liberalism as an ideology that masks the substantive inequalities which exist between men and women, and the continued subjection of women in the socio-economic realm. The liberal distinction between the public and the private is seen as a myth; the personal is the political, literally. Adopting the language of collective struggle, radical feminists appeal to women as a group to revolt and end their own oppression. The fusion of the personal with the political, however, creates a problem, for even though the collective with which women are asked to identify is no longer the patriarchal household, but other oppressed women, the reality of women's lives is as complex as that of men's and it seems implausible for them to identify their whole person with only one aspect of their identity. Invariably for socialist feminists, this problem is manifested in the question of "which struggle is 'the real class struggle'". 97

97 Mackinnon, p. 49
feminists may also argue that seeing women as a collective is to adopt the lens of the patriarchal eye, for although women may be treated unjustly as a group it is precisely the denial of their individuality which is unjust. Thus "what is a woman?" may be ultimately the wrong question for a liberal to ask, for a liberal is first and foremost a humanist.

We may begin towards a justification of a liberal conception of the dichotomy between public and private life by admitting that as individuals, with separate bodies and minds, we all have a need for privacy. For example, we all need to be able to shed our various public masks. For women, this includes being free from the roles within the family that are sometimes most demanding, such as being a mother or wife. We also need privacy to shape our own identities and enhance our mental capabilities through introspective thought and imagination. Privacy is furthermore fundamental to the development of personal as contrasted with impersonal relations. As Charles Fried argues, privacy is integral to our humanity, for it is only in "a context of privacy" that we may develop those relations which make us human: "respect, love, friendship and trust. ... [P]rivacy is the necessary atmosphere for these attitudes and actions, as oxygen is for

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98 de Beauvoir, Simone, H.M. Parshley (translator) *The Second Sex* (New York, Vintage Books, 1974) p. xv. This question is also raised in Mackinnon, p. 38
99 Okin, Susan Moller "Gender, the Public and the Private" in Held, David (ed.) *Political Theory Today* (Cambridge, Polity Press, 1991) p. 87-89
Privacy, in the modern sense of the word, is "the control we have over information about ourselves," which we give voluntarily as gifts to those we trust, love, or befriend. This does not deny that determining the boundaries of the personal, or the context of privacy, is not itself a political question. In this sense, the feminist assertion that 'the personal is political' holds true; recognition of a human individual right to privacy involves placing limits on the scope of public power.

George Orwell's *Nineteen Eighty-Four* depicts a world without privacy, where individual human beings struggle to retain their individuality and humanity while under the omnipresent eye of Big Brother. Its protagonist Winston Smith's first tangible act of defiance against the public world of 1984 is to keep a secret journal of his private, and thus, forbidden thoughts. Living in an atmosphere of mutual suspicion and fear, and devoid of trust, Winston is resigned to a life without personal integrity and without true intimacy with another person, until he meets Julia, another non-conformist. Together, they struggle to create a private world of their own, hidden from the stultifying glare of the state. We feel their humiliation when Winston and Julia learn that none of their secrets have remained private. In such a world

101 Ibid., p. 209
102 Orwell, George *Nineteen Eighty-Four* (New York, Harcourt, Brace and Company, 1949)
without privacy, their relationship is untenable, just as Romeo and Juliet could not survive in a world devoid of public rules and rights. It should be noted that it makes no difference whether the information obtained by the Party about Winston is used to harm or to benefit him. The invasion of his privacy is itself detrimental to his integrity as a person, for by denying him control over information about himself, it denies him the freedom to define himself to others.

Clearly, although women were relegated to the 'private' realm of the Greek household, they did not have any privacy, in the modern sense of the word, for they did not own themselves. It is not just that they were the property of their husbands, but more fundamentally, they lacked the power of self-definition, for their characters and abilities were determined for them by the patriarchal ethics of Greek society. It is the right to this type of privacy that is consistent and required by a liberal theory of justice. The patriarchal assumptions implicit in the traditional structure of family life and its characterization as a 'private realm' beyond the reach of the state have been successfully challenged by feminists through their critique of the public/domestic dichotomy.103 Ultimately, women merely want to be perceived and treated as individuals, as having the

103 As Susan Okin points out, the state already does influence the structure of the family: "The issue is not whether, but how the state intervenes." Okin, Justice, Gender, and the Family  p. 131
freedom to develop their own natures out of the vast potential of human nature, and to choose their own roles and their own lives. It is only with this freedom that they can be held morally accountable for their actions. Not only does this freedom entail the destruction of barriers against their participation in all aspects of public life, it is also essential to their having a private one.

**Justice and the ethic of care**

A prominent strand of feminist theory challenges the emphasis on individual separateness and boundaries that is said to inform liberal discussions of the self and of morality. The language of justice is said to reflect male norms and biases, and thus, to be inappropriate in expressing the moral development of most women, who use a different moral vocabulary centred on the concept of care. Carol Gilligan notes that whereas prevailing theories in psychology on human moral development focus on autonomy of the self, and an appeal to universal, general, and abstract principles such as rights to solve moral conflicts, her study of women's morality reveals a different emphasis, on relationships as integral to the self, on concrete responsibilities, and on particular contexts when resolving moral problems.\(^\text{104}\) The ethic of justice is thus equated with a morality of separation, rights, and rules, and the ethic of care with a morality of connection, responsibility, and contextualization.

\(^{104}\) Gilligan, Carol *In a Different Voice* (Cambridge, MA, Harvard University Press, 1982)
The dichotomy between care and justice is, perhaps, not as novel as it may seem, for a version of it has accompanied the traditional conception of the separation between public and private life. There has existed, as Gilligan points out, two moral orientations,

one traditionally associated with masculinity and the public world of social power, the other with femininity and the privacy of domestic interchange.105

The devaluation of the care perspective in morality can be traced to the historical deprecation of the private realm, which included not only its subjects, but also their labour and ethics. Emotion, feeling, and particularity were considered appropriate in relations within the family but in the public relations between citizens, their expression signified weakness. Freud would later adopt this dichotomy in concluding that women "show less sense of justice than men, that they are less ready to submit to the great exigencies of life, that they are more often influenced in their judgements by feelings of affection or hostility".106 Just as women were considered to be only suited for a life of domesticity, their unsuitability for public life stemmed from the belief that they lacked the moral dispositions required to deal justly with others in the public realm.

Although Gilligan challenges the supremacy of the 'justice' paradigm by formulating an equally valid moral orientation that stresses feeling, relationship, and

105 Ibid., p. 69
106 quoted in Gilligan, p. 7
responsibility, she also refutes the idea that women are incapable of adopting or do not need the justice perspective. Indeed, Gilligan's main point in her somewhat misnamed book, *In a Difference Voice*, is that men and women need both perspectives to reach full moral development. She terms the ethics of justice and of care "the ideals of human relationship"[^107] and concludes in her book that "[d]evelopment for both sexes would therefore seem to entail an integration of rights and responsibilities through the discovery of the complementarity of these disparate views."[^108] While, in general, Gilligan found that men needed to be more sensitive to the care perspective, she also showed that women needed to develop a greater appreciation for the ethic of justice in order to do justice to themselves. For example, women who were interviewed while deciding whether to have an abortion presented the problem of the conflict between self-interest and altruism in stark terms. Some women equated taking their own interests into consideration as being necessarily immoral; they naturally found self-sacrifice to be the only moral option available to them. Yet Gilligan notes that those women who made decisions that accorded with their own sense of self, and did not feel compelled to sacrifice their own interests or silence their own points of view, were not being selfish, but "only honest [and] fair."[^109] Indeed while women often recognize the rights of others to consideration, it would seem

[^107]: Ibid., p 63
[^108]: Ibid., p 100 (emphasis mine)
[^109]: Ibid., p. 85
inconsistent to deny that they themselves have rights to the same consideration. Because caring for others sometimes requires the sacrifice of one's own legitimate interests, it must be given voluntarily, if we are to respect the image of justice as a boundary that distinguishes between persons.

Gilligan's work shows that there is a difference between a study on moral psychology or how people think about morality, and one on moral philosophy or what are the nature and principles of morality. A study of how women think about themselves and about moral questions may reveal, not so much a different ethics, as a psychology that reflects the social norms and expectations of how women should think about themselves and their moral responsibilities. For example, although most women are said to regard themselves as "selves-in-relation" 110 this may be the result of social conditioning which expects women to think about the needs of others before they think about their own. It is no wonder that with such an emphasis on maintaining connections and relationships, and the denial of the legitimate interests of the self, women are, more than men, in danger of "sacrificing the integrity of the self" 111 for this is ultimately the cost of involvement in some relationships. Abused women, for example, often cite their responsibility for maintaining the integrity of the family or the relationship as a reason for not leaving the abuser, inevitably exposing themselves to further injury.

111 Ibid., p. 7
Rather than hailing this as a women's morality, I would suggest that it betrays a symptom of women's subjection.

Clearly, the dichotomy between justice and care reveals the inadequacy of a conception of justice solely centred on rights and devoid of the notions of obligation and compassion. By confining the concept of justice to a male-dominated mode of moral discourse, the impression is given, even if unintentionally, that justice is a male virtue and women should not be concerned with obtaining justice. Ultimately, the exclusion of care from the concept of justice is a conclusion derived from the patriarchal devaluation of women and the domestic realm.

Justice engages our feelings of empathy and compassion as much as it requires our powers of reason and objectivity. Our personal relations do not have an exclusive claim to the virtue of care; the public realm cannot function justly without humanity, which includes feeling and emotion. Yet certain affective ties can indeed blind our sense of justice in issues that influence those with whom we have a close connection. This is why we do not let relatives of a victim serve as jurors in the trial or sentencing of an accused, just as we do not allow those closely associated with the accused to be jurors either. The emotions and feelings which inform a sense of justice differ from those which we develop in love; justice first and foremost requires a compassion for human dignity and integrity.
The universality of this feeling has been criticized as a norm of the public domain that does not speak to the moral experience of most women. Yet we may use a scenario devised by developmental psychologist Lawrence Kohlberg to note how the sense of humanity informs our sense of justice, and how our particular affections or hostilities can cloud our moral judgment. Kohlberg's dilemma involves a man named Heinz who is unable to afford a drug for his ill wife, who will die without it. The dilemma is whether Heinz should or should not steal the drug. One woman named Claire interviewed by Gilligan recognizes the injustice of giving the druggist's right to sell the drug priority over the saving of a human life. Most importantly, when asked whether Heinz should steal the drug even if he does not love his wife, Claire appeals to the notion of humanity and disregards the particular feelings that Heinz may have for his wife in affirming her prior decision: "The stranger is still another person belonging to that group, people you are connected to by virtue of being another person." If the psychological appeal of the ethic of care is its emphasis on connection with and inclusion of others, its moral imperative surely must extend to those who do not have our affections, or worse, are the objects of our hostilities. That indeed, is what justice requires. Justice does not so much require that we not care about others as it does require us to show consideration for those whom we may

112 Ibid., p. 25-26  
113 Ibid., p. 57
be, at best, indifferent, and at worst, hostile. The type of care which justice demands may not be the kind we give to those whom we love, but may be better viewed as a special kind of consideration, especially of the other's humanity, interests and status as a moral being. Without this prior type of consideration, any deeper caring would indeed be impossible. Thus justice is a fundamental basis for the ethic of care.

This brings us to the charge that the ethic of justice, with its emphasis on general and abstract rules, does not pay enough attention to particular contexts. Yet as Jean Racine once observed, "Extreme justice is often unjust." Even in law, the paradigm of rule-governed justice, the concept of equity has played an essential supplementary role. Aristotle notes that equity, while not identical to one type of justice, is nevertheless just: "equity is just, but not what is legally just: ... it is a rectification of law in so far as law is defective on account of its generality." Law requires this flexibility in order to be humane and just. Indeed we view legal justice, or strict adherence to the letter of the law, sometimes as a great injustice due to its consequent inhumanity, which goes against the spirit of all good laws. The impartiality and generality of justice thus does not require a complete ignorance of particular contexts;

114 translation quoted in Baker, p. 153
116 Aristotle, *Ethics* p. 199-200
the task of justice is to distinguish within a given context those aspects which are significant from a moral point of view, and those which are morally arbitrary or irrelevant. However, as F.W. Maitland observed, "Equity [in English common law] was not a self-sufficient system, at every point it presupposed the existence of common law."\textsuperscript{117} This is because no moral orientation can be coherent without a set of general rules to which one can appeal in order to assess the moral significance and priority of certain factors and values in a particular situation.

As Socrates asserted long ago, both men and women require "temperance and justice."\textsuperscript{118} The separation of justice and care is thus misleading and invites a misconception of justice as uncaring or indifferent to the well-being of others. This contradicts all intelligent conceptions of justice, from the ancients to the moderns. Plato, for example, saw the roots of injustice in the natural disposition of most individuals toward an "excessive love of self" which caused "all sins in every case."\textsuperscript{119} For Aristotle, justice is a "complete virtue" because "the person who has justice is able to exercise virtue in relation to another, not only in what concerns himself; for many are able to exercise virtue in their own concerns but unable in what relates to another."\textsuperscript{120} Clearly justice, as primarily an other-regarding virtue, presupposes connection

\textsuperscript{117} quoted in Allen, p. 218  
\textsuperscript{118} Okin, Women in Western Political Thought, p. 21  
\textsuperscript{119} quoted in Ibid., p. 28  
\textsuperscript{120} from Aristotle, Nicomachean Ethics in Solomon and Murphy, p. 41
with others. Atomistic individuals have no chance to be just, for justice requires social interaction through which its quality as a virtue may be expressed. Individuals without a sense of self, however, are also not predisposed to valuing justice, for in denying their own rights to due consideration as autonomous and equal individuals, they in effect deny their own rights to justice.

Recognizing the embeddedness of each self in a web of human interaction does not necessitate a denial but an awareness of the distinction between 'self' and 'other', and the proper boundaries of each expressed through a distinction between private and public life. In summary, justice does not require the abolition of the public/private dichotomy; rather, it requires recognizing the individual human need for privacy, as well as eliminating the arbitrary and superficial distinctions in nature and capability between men and women that comprised Greek patriarchal thought. That "self and other are interdependent" may be a part of the human condition; the question of justice is to query the moral dimensions of that connection, as the image of justice as a boundary does.

The distinction and interdependence between self and other give rise to the issue of conflict between individuals. While justice requires the recognition of fundamental distinctions and boundaries, in presupposing connection and interaction between distinct persons, justice must have

121 Gilligan, p. 74
something to say about the resolution of disputes that may arise between individuals, between individuals and their communities, and, especially in the modern world, between communities. This brings us to the third image of justice.
IV. JUSTICE AS A BALANCE

My rule in international affairs is, 'Do unto others as they would do unto you.'

Richard Nixon

Plus 10 percent.

Henry Kissinger

Conflicts may be settled in different ways: one is to eliminate the opposition, another is to harmonize the conflicting parties' interests so that they no longer clash. The bond of justice, however, involves neither the suppression nor the attunement of conflicts, but a reconciliation of competing interests, claims and moral goods. As del Vecchio asserts, justice in its function as an adjudicator establishes between "the acts and claims of several persons ... their due limits and harmonious proportions". 122 In this sense, justice is a balance. The issue of justice thus presupposes conflict, and is therefore especially pertinent in the political realm, which is essentially about conflict. Indeed, one of the main tasks of ancient and modern political philosophy has been to attempt to answer the question of how to reconcile the individual with society.

Liberal theories of justice have been preoccupied mainly with the issue of conflicts between individuals in society, but have paid little attention to the issue of justice between states. There are several reasons for this perceived limitation of liberal theory. Firstly, the liberal emphasis on individualism has not accorded with the recognized ultimate

unit of agency or responsibility in international politics or law, which has traditionally been the state, and not individual human beings. Secondly, and more significantly, world politics often seem analogous to the Hobbesian state of nature, a state of war or anticipation or preparation for war, where "nothing can be Unjust" for "notions of Right and Wrong, Justice and Injustice have there no place." Consequently, conflicts between states have been settled not by appeals to principles of morality, but mostly through the use of force; might has often determined right. Finally, recent liberal theories of justice have been preoccupied with distributive questions. Thus where the existence of a society of states is still quite a contentious idea in some international theoretical circles, attempts to apply Rawls' theory of justice to international relations seem to miss some a priori fundamental unresolved questions about justice between states. Yet it seems to me that liberal theory is especially pertinent to the relations between juridically sovereign and equal states. In this chapter we will critically examine the realist tradition in international relations, specifically its preoccupation with war and the conditions of peace, and its proposed remedy for international instability. In the end, I will go beyond realism in asserting the possibility and necessity for a humanist conception of justice in world politics.

The image of justice as a balance raises the issue of who or what has weight in the scales. Liberal theory posits individuals as equal and autonomous beings capable of forming their own life plans, as self-originating sources of valid claims, and as morally responsible agents.\textsuperscript{124} Thus every individual in liberal society is a subject of justice, and subject to it. Indeed, the question of justice would hardly arise if, for example, humans were viewed as indistinguishable sheep, with no moral powers, discordant interests, or self-generated claims, for the issue of justice only becomes relevant in a situation of conflicting demands. The striking fact of human history is that the liberal assertion of the freedom and equality of all human beings, and thus the subjection of human social relations to criteria of justice, is a relatively recent development.

In classical Greek society considerations of justice were confined to a small group of men -- "the heroes, the princes, and the heads of great households"\textsuperscript{125} -- who were considered equals, and hence able to insist on justice from each other. Women, children and slaves, considered to be natural inferiors, could be treated with love or mercy or indifference, but they could not be treated with justice, insofar as justice is defined as a quality specific to relationships between equals. The insignificance of the common man was reflected in Homer's epic poems, which made

\textsuperscript{124} See Rawls, \textit{A Theory of Justice}
\textsuperscript{125} Finley, p. 151
little mention of those who neither counted in battle nor in council.\textsuperscript{126}

The place of the subjected and their access to justice is revealed in a passage of \textit{The Odyssey}, where Odysseus uses the scepter, a symbol of authority, as a club against Thersites, an inferior who had spoken out of turn, and critically, against the aims of the king. From Odysseus' point of view, striking Thersites with the sceptre was fit punishment for violation of proper procedure in the assembly. However, to Thersites, who, as part of the rank and file of Greek society, was given no voice in the assembly, Odysseus' actions were not the expression of authority, but of raw power.

The display of decent behaviour towards one of lower rank was not an implicit recognition of some common humanity shared by both parties, or an assumption of basic equality between them, but was solely out of regard for one's own moral character. For example, cruelty against animals is condemned not because animals are seen as equal in moral worth to human beings, but because there is something inhuman about cruelty. In other words, the act of degrading someone often has the effect of humiliating the humiliator. Although Odysseus did not drive Thersites "naked and weeping from the assembly",\textsuperscript{127} as he had threatened, the fact that he could make such a threat, and probably perform it with impunity, means that his restraint was a show of mercy, not justice.

\textsuperscript{126} Ibid., p. 120
\textsuperscript{127} Ibid., p. 118
The rank and file of Greek society, denied participation in the political life of the polis, and treated as appendages and supports to the powerful, could not identify with a society made for the heroes, princes, and heads of great households. Ultimately, they could be treated "as nothing in its eyes." Those who did not even own themselves could hardly make demands for justice. The extension of justice to all members of society involved a revolution in the perception of human beings as no longer differentiated by nature into inferiors and superiors but as born fundamentally equal in moral worth, and thus, owed equal consideration. Whereas in the world of Homer, ordinary men and women had to endure the acts of princes and heads of households as they suffered acts of nature or the gods, once the equality of all human beings was acknowledged, justice could no longer remain a privilege of the powerful, but became a right of the common man.

Justice as a balance serves to reconcile the competing interests, claims, and moral goods held by all members of society. We have seen that justice is distinct from other virtues; it is also not synonymous with other values, such as liberty and equality. Not everyone wants to be on the side of freedom or equality or fraternity, yet practically everyone wants to be seen on the side of justice, or at least, no one wants to be seen on the side of injustice. Justice does not directly compete with these other values, but acts as a reconciliator between them. While many have argued that what

128 Lucas, p. 11
we have a right to as human beings is liberty or equality, perhaps what we ultimately have a right to is justice, and just liberty,\textsuperscript{129} and just equality. It is as components of justice that these values become empowering values to the individual, instead of enslaving ones. Without justice, equality would degenerate into tyranny, and liberty into licence, the very antitheses of justice. In essence, liberty without justice is no liberty at all, for justice provides the conditions under which it and other values can be considered to be moral values at all in society.

Justice as a balance acts as a check against inequity and unfairness. More than the other images, this one shows that justice has more to do with processes, than with results. It is concerned with everyone getting a fair shake, and not with everyone getting the same deal or the same share. Being accorded due consideration does not mean getting one's way. Yet if one has any respect for one's own worth, justice is the only thing that can reconcile one to an adverse decision.

**Power and justice**

Some may argue, however, that all this talk about reconciling interests and claims fairly is merely talk, expressing a delusion that obscures how conflicts in society are actually settled. Justice, as Thrasyvichus so succinctly put the challenge, "means nothing but what is to the interest

\textsuperscript{129} As Joseph Joubert (1754-1824) put it, "Liberty! Liberty! In all things let us have justice, and then we shall have enough liberty." See Peter, Laurence J. *Peter's Quotations* (New York, Bantam Books, 1979) p. 275
of the stronger party." In the end, power determines all. This view of justice is clearly antithetical to the image of justice as a balance. Much of The Republic is concerned with refuting Thrasymachus' assertion; Plato affirms, on the contrary, the strength and desirability of justice, and the impotence and misery of the unjust. When Robert Nozick argued that political philosophy is concerned primarily with physical aggression, he narrowed substantially the scope of political philosophy to one type of power. Still, it does remind one that the fundamental questions of political philosophy have to do with power. If justice has seemingly gained the upper hand in the internal workings of some states, nowhere is power more arrogant and justice more feeble than in the relations between them.

In international politics, thinking, feeling, purposive and responsible human beings seem, moreso than in any other realm, to be "slave to fate, chance, kings, and desperate men". Justice in world politics has often been viewed as, if not undesirable, then unobtainable. Interstate relations, it is argued, are determined by elements and forces beyond human control, and take place in the realm of Shakespeare's heath, the vast amoral chaos unaffected by human agency. Those who typically characterize the arena of interstate

130 Plato, The Republic p. 18
131 Nozick, Robert Anarchy, State, and Utopia (New York, Basic Books, 1974)
relations as a Hobbesian state of nature, in which egoistic states with no common authority above them, and no common morality between them, pursue their self-interests, the most fundamental of which is survival, argue that justice can have no place in international affairs.

Hedley Bull makes the interesting observation that the language of power has traditionally been used to describe relations between states: "great powers and small powers, alliances and spheres of influence, balances of power and hegemony". ¹³³ This implies that substantive power is the driving force in international relations. All states are equal but some are more equal than others. The attempt to order international relations in terms of justice rather than naked power faces, first of all, this battle over terminology.

Realism, however, is not only an explanatory theory of international politics; it also prescribes principles and mechanisms to mitigate the disorder that characterizes interstate relations. Its solution to the domination of weak powers by the powerful, and the development of a global hegemony, is the concept of a balance of power, "a state of affairs such that no power is in a position where it is preponderant and can lay down the law to others." ¹³⁴ The image of a balance of power depicts states "less as pieces on a chessboard than as weights in a pair of scales," ¹³⁵ evoking

¹³⁴ Bull, p. 101
¹³⁵ Wight, Martin Power Politics (New York, Holmes & Meier, 1978) p. 168
the image of justice. Bull argues that the balance of power is what makes the principle of reciprocity practicable in international relations, and is the precondition for the efficacy of the other 'institutions' of international society: international law, diplomacy, great power management, and war. Yet power, military, economic, or social is a very finite and dynamic quality, and states' preoccupation with these types of power, either with acquiring, preserving, or defending them, have led to a view of international politics as a zero-sum game, characterized by competitive, unstable and hostile relations. Thus there is a cost to power politics, as it is commonly termed, and that is, paradoxically, the lack of security.

It may be argued that stability is not the ultimate aim of the balance of power: "The chief function of the balance of power ... is not to preserve the peace, but to preserve the system of states itself." Indeed wars may be fought in order to preserve the balance of power, which serves to protect the independence of states, and to prevent the development of a global tyranny. Yet the assumption that the preservation of the states system justifies the numerous injustices that inevitably result from war itself requires justification, if the balance of power is to be understood as a normative rather than a purely descriptive principle. States, being artificial constructs, can only have moral

136 Bull, p. 106-7
137 Ibid., p. 107
significance as instruments for the attainment of some human good, such as self-government or peace. In fact the balance of power has been valued mainly for its contribution to security in international relations.

Realists may argue, however, that due to the absence of a common morality among states, only a balance of power is possible. Yet states do articulate a common moral vocabulary through international law and society: the notion of state sovereignty, for example, is unintelligible outside of the context of a society of states, which presupposes a common moral vocabulary. Heads of state implicitly recognize this in advocating their state's interests. As James Mayall notes:

Foreign policy ... has never been inspired by altruism, let alone by mere self-interest but by 'interest considered right'. ... [S]tatesmen ... are as concerned with their position within a wider moral community as they are with the pursuit of self-interest. 138

If the realist assumption that there is no common morality among states were true, heads of states would hardly resort to the sometimes outlandish efforts they do to justify their actions to the rest of the international community. As Bull observes, quoting Vattel, even war, an activity which may seem to be least representative of the notion of society, needs justification, however contrived, and "those who wage war without pretext of any kind [are] 'monsters unworthy of the name of men,' whom nations may unite to suppress." 139 This is

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139 Bull, p. 46
because states rely on a common morality for their very existence.

For Bull, however, the lack of agreement on what justice means, or what type of justice should have priority, makes the issue of justice highly problematic in world politics. It cannot be denied that 'justice' is a loaded term, and has been used by statesmen from Greek demagogues to Hitler to Ronald Reagan to Saddam Hussein to rally support for their causes, which may have very little to do with justice for individual human beings, or their state. Furthermore, the language of justice, which asserts rights and implies wrongs, seems confrontational, versus the language of interests, which may be negotiated.

Yet while justice as a boundary involves drawing firm lines and distinctions, justice as a balance involves the reconciliation of conflicting interests, values, and moral claims. Justice in this sense usually applies to a process rather than an end-result. Thus the mediation of disputes, of which international society has a long tradition, involves justice, which differs from legal justice. The European society of states in its infancy, Adam Watson notes, developed a system of congresses, open to interested sovereigns, where peace treaties between warring parties were concluded, and

"supplemented by agreements on general rules and

140 The problem of the emotive use of language in politics seems to be a different topic in itself, and does not lie within the scope of this thesis, which is concerned more with the substantive rather than the symbolic use of justice in politics.
institutions.\textsuperscript{141} Without such mechanisms and institutions through which interstate conflicts can be settled peacefully, every conflict becomes a potential pretext for war, where the issue quickly turns into one of survival, and life becomes "solitary, poore, nasty, brutish and short"\textsuperscript{142} for individual men and women, if not for states.

The balance of justice requires a different kind of balance than that offered by the principle of balancing power; it requires us to weigh the morally relevant factors of each case, and to discount precisely those factors, such as the social, political, military, and economic power, which are irrelevant to the merits of the case. We associate the scales of justice most commonly with the judicial system. If someone escapes punishment for a crime because they are wealthy, or have political connections, we usually say that they have escaped justice. Thus in the scales of justice, the substantive inequalities of the parties are overridden by their equality as moral powers, which endows each with an equal right to due consideration. Clearly, while raising the issue of justice in world politics may carry with it some risks, it is more dangerous, and inaccurate, to argue that justice is irrelevant to the relations between states.

Particularly in international society, an often deeply-divided society whose members share no consensus on matters from religion to economic systems, justice as a balance is all the

\textsuperscript{141} Bull, Hedley and Adam Watson (eds.) \textit{The Expansion of International Society} (Oxford, Clarendon Press, 1984) p. 25
\textsuperscript{142} Hobbes, p. 97
more crucial to the stability and indeed, the practical existence of the social order, as well as the continued existence of states as states.

Order and justice in international relations

Hedley Bull perhaps most effectively challenged realist assumptions about the nature of international politics by arguing that elements of society do order the anarchic interaction between states. Anarchy in this case merely means the absence of a central overriding authority, and not the absence of common norms, rules, or order. Although Bull successfully refutes crude realist characterizations of the relations between states, he poses another more challenging view against the indispensability of justice in international affairs. Against justice, he pits a competing value as more paramount in international life: order.

It should be noted that Bull's main preoccupation is with war and the conditions of order or peace. Demands for justice or "just change" -- for the individual human being ("individual or human justice"), in terms of a world common good ("world or cosmopolitan justice"), or even between states ("interstate or international justice") -- are seen, in this context, to conflict with order or stability, as it is preserved by the states system and its social institutions. The realist argues that in the case of conflict, the dictates of order must override considerations of morality. We must

143 Bull, The Anarchical Society p. 77-98
accept living with a greater degree of injustice in the world of states than we may commonly tolerate within our own societies.

Bull argues that the roots of the primacy of order in international society can be found in the basis of all social life. Order is defined as "a pattern of human activity that sustains elementary, primary or universal goals of social life:" security from violence, the keeping of promises and agreements, and the settlement of possession by rules of property.¹⁴⁴ Rules which serve these goals are held to be valuable primarily because of their "order-maintaining functions."¹⁴⁵ Yet the definitive goals of social life observed by Bull may be 'elementary, primary and universal,' not mainly because of their contribution to order, but because they are requirements of a core concept of justice. They may consequently produce and maintain order in society, but it is questionable whether they can be derived solely from a concern with order as such, without at least an equal concern for justice. Not all kinds of order are conducive to the maintenance of social life. As Bull himself states,

The order which men look for in social life is not any pattern or regularity in the relations of human individuals or groups, but a pattern that leads to a particular result, an arrangement of social life such that it promotes certain goals or values.¹⁴⁶

Clearly, then, an order has no intrinsic value apart from the goals or values it promotes. If the fundamental goals of

¹⁴⁴ Ibid., p. 5
¹⁴⁵ Ibid., p. 60
¹⁴⁶ Ibid., p. 4
social life are derived not from order but from justice, it follows that Bull's argument for the goals of international society must also be evaluated in terms of their contribution to justice.

This would require a critical assessment of what he has termed the 'institutions' of international society: states themselves, the balance of power, international law, diplomacy, the great powers, and war.\footnote{Ibid., p. 71} Bull's defence of the existing international order, on normative grounds, is based on a prior acceptance of the justice it provides, or as he put it himself, the "proponent of order takes up his position partly because the existing order is, from his point of view, morally satisfactory, or not so unsatisfactory as to warrant its disturbance."\footnote{Ibid., p. 97} Clearly, any argument for an international order already assumes answers to the questions of (1) who may obtain justice in international society, and (2) what kinds of justice, if any, may be obtained.

The interrelatedness of the concepts of order and justice seems to make Bull's discussion of the conflict between the values of justice and order somewhat incoherent, for we have already noted that integral to any order is a conception of justice. In that context, however, he is using 'order' not to mean "a pattern of human activity that sustains elementary, primary or universal goals of social life",\footnote{Ibid., p. 5} but in a different and simpler sense, as peace or stability, or the
absence of conflict. International society is synonymous with order in the first sense, but not with the latter.\textsuperscript{150}

Bull's failure to distinguish the two ways in which he uses the word 'order' causes theoretical confusion; his "implicit defence of the states system, and more particularly of that element in it that has been called international society"\textsuperscript{151} does not derive from any intrinsic value in international society and its 'institutions', but only from their contribution to peace and stability in world affairs. The reality of power and the lack of mechanisms in international society for its control indeed places the issue of war and peace high on the agenda of world politics. Certain tenets of international law such as the duty of non-intervention have been premised on the assumption that international chaos constitutes the ultimate injustice. It is thus often argued that justice must be secondary to order and security. However, one may want to ask: security for whom? In reality, even when states have maintained their territorial integrity, men and women within them have not been able to claim the same security. There exists a whole realm of human insecurity deriving from civil wars, wars of liberation, and abuse of sovereign power, that international law does not address. In some cases, the sanctity of boundaries guaranteed by the society of states has resulted in a permanent state of insecurity for those who live within those borders.

\textsuperscript{150} Indeed, war is an institution of international society, according to Bull.
\textsuperscript{151} Ibid., p. 318
In the end, Bull admits to agreeing with Mazrui on the point that peace has only a derivative value:

Mazrui writes that 'the importance of peace is, in the ultimate analysis, derivative. Taken to its deepest roots, peace is important because "the dignity and worth of the human person" are important.' \(^{152}\) Indeed many civil wars are not primarily struggles for power, but struggles for justice, or just treatment. This is not to say that the end of every revolutionary movement or civil struggle is justice. It seems plausible, however, to suggest that the roots of civil strife and revolutionary sentiment in a population may be found in perceptions of unjust treatment by the wider society, or state. As Aristotle noted in his analysis of the genesis of revolutions, the general cause "is always a passion for some conception of equality, which is held to be involved in the very idea of justice." \(^{153}\) The occurrence of separatist violence within states, which Bull admits has become a more common threat to states than violence from without, \(^{154}\) should indicate the priority of values such as justice over peace, or at least, that order without justice has little value and, it may be convincingly argued, is inherently unstable.

**Human rights versus sovereign rights**

Even if it is agreed that justice is not only relevant, but indispensable, to international society, a much thornier

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152 Ibid., p. 97
154 Bull, p. 197
question arises: "Justice for whom?"155 Classical international law, as the regulator of international society, recognized only states as its subject; in the scales of international justice, only states carried any weight. International politics resembled the politics of exclusion that defined ancient Greek social life. Until the expansion of international society encompassed the world's entire population and territory, European states, endowed with juridically equal sovereign powers after the Treaty of Westphalia in 1648, pursued honour and prestige through extremely competitive interaction for those peoples and territories considered to have no sovereign power, and hence, no rights to equal consideration in the scales of justice between states. Colonized peoples were considered inferior or sub-human, and were paternalized or exploited, like children or animals, but were not treated as equals, and hence, never with any justice. International society further resembled ancient Greek society in that issues of morality were considered to be private matters; in the absence of common institutions for the resolution of conflicts, states could only hope to rely on their allies, ideological friends, and satellites to support their actions in response to perceived injustice.

In classical international law, the state has assumed the status of the individual as a right and duty bearing unit.

Liberalism's two major tenets -- individualism and egalitarianism -- are manifested internationally in the characterization of states as separate but equal sovereign units, with equal rights which they possess by virtue of their statehood and their membership in the society of states. Yet as Joseph Nye points out, "Justice among states would not necessarily produce justice for individuals." Thus, while classical international law recognizes the distinction between states, it has, as a result, traditionally failed to recognize the distinction between persons. The recognition of basic human rights in international law, propelled by the 'crimes against humanity' that were committed during the Second World War, has made explicit the tension between the morality of states and human or cosmopolitan morality.

While there have been many advocates of either the preeminence of human rights over sovereign rights or vice versa, few have attempted to reconcile the moral imperatives of each. The concept of human rights postulates that individuals have rights by virtue of their humanity, irrespective of their social status in society, or of their citizenship in a particular state. By definition universal, the notion of human rights seems to seriously challenge the concept of state sovereignty. Human rights advocates typically point to the amorality of the concept of state sovereignty, for states are artificial constructs: "States

156 Nye, Joseph S. Nuclear Ethics (New York, Free Press, 1986) p. 30-31
and boundaries exist, but their existence does not endow them
with moral significance. "157 The lines on the map have been
drawn as a result of wars and conquests, geography and other
circumstances, which are arbitrary from a moral point of view.
With its monopoly on coercive power, the state, armed with
sovereign rights, may become a highly arbitrary force
determining the fate of individual lives. The concept of
right would in effect serve to justify might, instead of
regulating or proscribing it. Thus, David Luban has
criticized the concept of sovereignty as "morally flaccid, not
because it applies to illegitimate regimes, but because it is
insensitive to the entire dimension of legitimacy."158

Yet 'sovereignty' is not an unambiguous term; like other
concepts in political philosophy, its definition is open to
debate. In a humanist conception of justice, the concept of
state sovereignty has moral meaning only as an expression of
the fundamental human right to self-government. As Luban puts
it, "the rights of states are derived from the rights of
humans, and are thus in a sense one kind of human rights."159
In other words, the right of sovereignty resides in the
people, and not in the state per se. Thus, we can accept the
sovereignty of states as an expression of people's right to
self-government, or to political independence.160 While the

157 Ibid., p. 32
158 Beitz, Charles R. et al (eds.) International Ethics
159 Ibid., p. 201
160 This notion of popular sovereignty only developed in the
late 18th century; before then, the term 'sovereignty' was
synonymous with the right to make war and peace. The
The realist paradigm assumes a 'hard' conception of state sovereignty, viewing state boundaries as impenetrable walls, while the cosmopolitan model of international relations holds that state frontiers must be made of porous matter. This 'soft' conception of sovereignty challenges the characterization of states as isolated moral enclaves, but it does not necessarily challenge the existence of states as vessels of self-government. Indeed, as argued by Mayall, sovereignty is the basis of the freedom of states without which there can be no way of subjecting state actions to normative criteria. It is only because states are sovereign that they can be held morally accountable for their actions.

The hard conception of state sovereignty ultimately misinterprets the concept of rights. This is crucial to the discussion of whether human rights and the sovereignty of states are inherently opposed to each other. On one level, having a right constitutes having a justification for acting in a certain sphere. If one has a right to something, one is generally immune from criticism for exercising that right. But having a right to something does not preclude moral judgements about how one exercises one's rights. For example, I may have a right to drive my own car, but I can be

principle of sovereignty, in practice, restricted the resort to the use of violence to sovereign authorities, so that "all the subjects of a sovereign power were stripped of the right of war and had to submit all their disputes to peaceful arbitration." Nardin, Terry N. and David R. Mapel (eds.) Traditions of International Ethics (Cambridge, Cambridge University Press, 1992) p. 30
161 Mayall, p. 5
criticized for driving recklessly. Thus, conceptually, a theory of rights must be spatial: rights create arenas of moral opportunity and responsibility for individuals and states or define legitimate spheres of action. But they do not fill that space with any moral content. Thus, one may distinguish between having a right to do something, and doing the right thing:

To say that X has a right to do A (where A is perhaps a selfish action) is quite different from telling him that A is the right thing to do.\(^2\)

Similarly, proponents for absolute sovereign rights seem to suggest that how a sovereign authority exercises its right to govern the population which falls within its territorial jurisdiction cannot be criticized. Yet it is clear that we may accept the validity of a state's right to territorial integrity, without automatically assuming that there is then no way to judge the choices or actions of a sovereign within its own jurisdiction. The notion of human rights may be just one moral standard against which the exercise of sovereign rights may be evaluated.\(^3\)

The "progressive 'humanization' of international rules"\(^4\) marks an advancement toward a more humanist conception of justice in world politics, spurred by the ascendancy of a humanist conception of justice in domestic politics. When sovereignty meant nothing more than the right

\(^{162}\) Waldron, "Nonsense Upon Stilts" p. 192
\(^{163}\) Another standard which has arisen to challenge how sovereigns exercise their rights is our duties to the environment.
\(^{164}\) Nardin and Mapel, p. 29
to wage war and peace, it lay with kings or princes or emperors alone, who felt no moral imperative to consult their subjects about the use of their right. That conception of sovereignty belonged to a world made for the powerful -- kings, princes, and emperors -- but not for the common man. The world has advanced to the stage where a vocal, if not large, number of people are pressing for states of the world to recognize the rights of their citizens as human beings, which in effect, is a demand for a humanist conception of justice. If a large portion of the world's population seems mute on this point, it should not be assumed that they are satisfied with the status quo, for their silence may be borne of fear and powerlessness rather than contentment.165

It is highly debatable, however, that the pursuit of justice for individual human beings would necessitate the demise of the state-centric model of international relations, or that the abolition of the states system would automatically lead to justice for all, as some cosmopolitanists seem to assume. Formulating the practical terms of human organization on this earth does not negate the task of formulating the moral terms of their association; both, however, are inextricably linked. Whether we are organized into families, tribes, villages, ethnic groups, city states, nation states,

165 It has been argued in a world more conscious of the dignity of cultures that the imposition of a human rights standard that originated in the West on such a culturally diverse world smacks of cultural imperialism. Yet it is interesting to note that those who use the cultural imperative to justify cruelty, tyranny, and inequity are usually the perpetrators of such injustices, rather than the victims.
multicultural states, confederations, or under one world
government, the issue of justice, although it may become more
complex, remains inescapable.
V. CONCLUSION

Ideals are like stars: you will not succeed in touching them with your hands, but like the seafaring man on the desert of waters, you choose them as your guides, and following them you reach your destiny.

Carl Schurz

Justice as an ideal

When we look around us in the world today we may notice the images of justice, or their opposites, in our own society, and other societies. When we witness the senseless beating of another human being, as many of us did on television during the riots in Los Angeles following the Rodney King trial, and the perceived miscarriage of justice, we muster the three images of justice: we protest against the cruel treatment which no human being deserves, we say of the perpetrators, that they have overstepped the bounds of morality, and we condemn the unfairness of choice of victim who did nothing to deserve any kind of punishment. Blatant injustice can instil in one a sense of, if not what justice means, then what it does not mean.

Whereas communitarians depict justice as too pessimistic a standard for constitutive communities of human beings, and whereas some feminists view justice as too uncaring and biased against women, realists regard it as too optimistic for imperfect humanity. The road to utopia, as Isaiah Berlin noted in a different context, is paved with the massacre of other ideals, and leads inevitably to "suffering,

166 Indeed we also witnessed it in the video-taped assault on Rodney King himself by Los Angeles police officers in March 1991.
Critics of justice often point to the numerous injustices in the world as evidence that justice is an impracticable ideal, like Ivan Karamazov saving newspaper clippings on the torturing and maltreatment of children to prove that there is no God. Yet the fact that no human society has ever fully realized its ideals in practice does not mean that ideals do not shape its institutions, or guide the conduct of its members. Indeed, the idea of injustice is unintelligible without the idea of justice. In fact, every human society has a conception of right and wrong; no society can subsist without a conception of justice. Each of the three critics of justice examined in this thesis offers a value that supposedly competes with justice as a moral ideal. Yet without justice, the ideals of fellowship, care, and security are impossible to attain, and indeed lose their ideal qualities. Justice constitutes the moral floor of society, and is the precondition for the pursuit of all other human ideals.

Shakespeare illuminates this point well in King Lear, a play primarily about justice: its unintelligibility in the natural world or universe, and its indispensability, if not pervasiveness, in human relations. The play's action is rife with injustices. A father who is king demands shows of love from his children in return for a share of the kingdom. The adult children, once they have obtained power, do not do justice to their father as a father or even as a human being.

167 Berlin in Porter and Vernon, p. 142
by sending him out into the heath, literally the wilderness beyond human society, where a human being amounts to nothing more than "a poor, bare, forked animal".\textsuperscript{168} Those who have the power are obeyed, such as Lear when he possessed it, and such as he found, to his disadvantage, when he lost it. The wicked sisters in power, not satisfied with their shares of the kingdom, plot to overthrow each other, and eventually initiate a war. Good is not rewarded, and vice is not punished. Without justice, personal ideals such as love and social ideals such as peace are lost. Throughout the play, various characters appeal to the gods to "show the heavens more just."\textsuperscript{169} When justice is done, the gods are credited with the triumph of good over evil. Yet in fact, there is no divine, only human, intervention.

By exposing the myth of a morally coherent universe, events in the play impress upon us the significance of human actions in the "little world of man",\textsuperscript{170} for the absence of a moral power in the universe paradoxically gives humans moral opportunity and responsibility. When a captured Cordelia, the only daughter to do justice to her father and to herself by refusing to bow to his immature display of power, remarks to her now equally oppressed father, "We are not the first / Who with best meaning have incurred the worst,"\textsuperscript{171} we realize that the tragedy lies not in the lack of just gods, but in the

\textsuperscript{168} Shakespeare, \textit{The Tragedy of King Lear} 3.4.107-8
\textsuperscript{169} Ibid., 5.4.36
\textsuperscript{170} Ibid., 3.1.10
\textsuperscript{171} Ibid., 5.3.3-4
failure of humans to act justly towards each other. Thus justice is not a utopian concept as the international realists would have us believe. It is an ideal which requires no superhuman efforts and will for its attainment, unlike supererogatory acts, but it cannot be effected without human will and effort, and these are what are most lacking when injustice is done.

**Giving justice its due**

The disturbingly menacing portrait of Injustice by Giotto reminds us that while the just person may not necessarily be a happy person, as Plato tried to assert, and while the just society may not be the perfect society, a primary motivation for seeking justice may be the fear of injustice. Whereas Giotto's *Ingiustizia* instils fear in our hearts, his *La Giustizia* does not particularly appeal to our emotions: Justice is "a calm and majestic woman"\(^{172}\) who looks directly at us but without expression. The picture radiates with symmetry, unlike the profile of Injustice. Her hands are held out like a balance; in them virtue is rewarded and vice, punished. Bordering the figure of Justice is an elegant arch in prime condition. Below her, in sharp contrast to the scenes of cruelty and indifference that underlay Injustice, we see people at leisure, enjoying themselves with conversation, dance and music, and each other's company. In this portrayal

\(^{172}\) Shklar, p. 103
we can see the images of justice as a balance, a boundary, and a bond.

The critics of justice examined in this thesis do not give justice its due. Communitarians ignore justice as a basic bond that allows individuals to identify with each other and their society; feminists devalue the importance of justice as a boundary that, in recognizing the distinctness of persons, is integral to individual human respect and dignity; realists overlook justice as a balance that reconciles conflicting interests, ends and values. The conceptions of justice critiqued by these theories are often so narrow that if one were to accept their characterizations, one would surely be against justice. Clearly, however, the concept of justice is indispensable as long as individual human beings are independent centres of consciousness, purpose and agency, and continue to live in association with each other.

Although Shklar comments that Justice "may not be a real person at all, as Injustice certainly is with his lupine face," one wonders which figure is least human, one who may lack emotion, or one with "fanglike teeth at the side of the mouth." In fact, both portray human beings in our capacities for justice and injustice: for example, both the bestial face of a man abusing his wife or children, as well as the circumspect pose of a judge deciding a case belong to human beings. The abusive man or woman, when sober and calm,

173 Ibid., p. 103
174 Ibid., p. 46
does not look inhuman, nor is the judge incapable of laughing with his or her children. In essence, humanity is responsible for both justice and injustice. Even Giotto, who lived in more religious times than ours, recognized that angels and devils had nothing to do with whether humans acted justly or unjustly. In "giving injustice its due", Shklar may not be recognizing the equally powerful, if not dramatic, and concrete images of justice.

The City of Joy, where we began this discussion about justice, is about "an unregarded man," Hasari Pal, and it is ultimately for people like him that justice is most essential, which is another way of saying that justice is essential for most of us. Justice demands that the claims of those who are easily disregarded, the weaker members of society, who are often prone to silence and invisibility, receive due consideration, are heard and seen, and are given the same regard as the interests of the socially, or politically, or economically powerful. The elevation of the significance of justice represents an elevation in the worth and dignity of human beings, as moral beings, irrespective of our social status. At the same time that justice empowers humanity, it also holds us accountable for our actions and inactions, and for that part of the world which is subject to human control. Giving justice its due is, ultimately, to give humanity and individual human beings their due.

175 Ibid., p. 15
176 Roland Joffe, director of City of Joy, the movie, phrased it this way in an interview on CBC radio, April 19, 1992
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