

What is Justice?

An Investigation of Leo Strauss's Natural Right Proposition

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(Editor's note: The Agora editorial committee has awarded Laura Marino Rugeles the Kendall North Award for the best essay in the 2010 issue of the Agora.)

The main concern of this essay is Leo Strauss's presentation of the idea of justice in *Natural Right and History*. Although Strauss's project appears to have the character of a historical account rather than a straightforward argumentative work about justice, it is reasonable to presume that the form of his historical reconstruction contains an argument in itself. Stewart Umphrey has said that "Strauss does not say what justice is, nor does he preach justice or cry out for spiritual renewal" (32). Instead, Strauss's suggested argument is a "carefully considered hypothesis couched in further questions—like Socrates' hypothesis that virtue is knowledge—and hypotheses of this kind are doctrines in a sense; they tell us where to keep looking" (Umphrey 33). I believe this claim to be fundamentally correct. In fact, Strauss's work leaves us with projects of investigation that are pivotal to the question of justice. These projects will reveal themselves after a critical examination of Strauss' historical account.

Justice is an idea that each person can understand but hardly all can agree on. In fact, "the disagreement regarding the principles of justice... seems to reveal genuine perplexity aroused by a divination or insufficient grasp of natural right" (Strauss 100). That is indeed one of the most stubborn problems in human history. This difficulty might have made society give up on the idea of what is objectively right, what is objectively just. However, Leo Strauss urges that "the need for natural right is as evident today as it has been for centuries and even millennia" (2). Major wars and social crises in human history represent a struggle of ideas about justice, and it seems

imperative to recover the insight of natural right. Strauss suggests that in the search for an answer to the question of right, something has been lost, something that guided or grounded a quest for understanding. In fact, one of Strauss' major insights is that something was abandoned as ideas and society transformed, and we need to recover it. Thus, motivated by a momentous imperative, we can begin the analysis of justice according to conventionalism, historicism, and natural right, looking for clues about that which was lost, that which grounded the quest for understanding.

One of the basic tenets of conventionalism is that "what is good by nature shows itself... prior to all reasoning, calculation, discipline, restraint, or compulsion. Good, in this sense, is only the pleasant" (Strauss 109). The idea of the good is grounded in nature. Thus, finding what is good is a basic instinct or inclination of all humankind. This tenet is complemented by the critical claim that "the city is a multitude of human beings who are united not by nature but solely by convention" (Strauss 104). From these premises the conventionalist has the "nerve" to argue that "right is conventional because right belongs essentially to the city and the city is conventional" (Strauss 108). Justice then is conventional. It is a way to preserve the city, established for the common good (Strauss 106). Understood in this way, justice demands that every individual look after or care for others, and that goes against the more fundamental idea of the good, which is to look after oneself first. So justice, according to this view, actually goes against nature. As nature has a higher rank than any convention, then the good of the individual is more important than the idea of justice. This is the basic form of conventionalism. Strauss presents several arguments (classic natural right contentions) against conventionalism. Such arguments present serious difficulties, as we will see.

The following argument from conventionalism could be called the epistemic argument, because it is concerned with knowing natural right. Conventionalists argue that the existence of different views of justice is evidence that justice is convention (Strauss 97). However, this argument does not constitute sufficient evidence to show that natural right does not exist or that it is unknowable (Strauss 98). However, if this counterargument is to win, then there must be a way that human beings can attain knowledge of justice, which at the same time seems an unreasonable demand as “there is not even universal agreement of sensible qualities” (Strauss 98). Truly, there is disagreement about sensory experience, and there is even disagreement about scientific data, but that is not sufficient proof that knowledge of right is not possible. Strauss points out that the conventionalist argument does not work if one assumes that the knowledge of right has the character of science. According to Strauss, the purpose of science is to find the unchangeable or what truly is (99). This view of science might not be widespread today, but Strauss’ point here is that science deals with laws that are testable and fixed (within certain parameters). It is of course presumed that scientific knowledge is universal and binding in the sense that the laws apply to all entities and to all locations that qualify under certain parameters. This view would certainly give objectivity to the idea of right, but then right has to be some entity, idea, Platonic form, or principle that exists and is immutable. However, Strauss calls attention to Aristotle’s idea of the variability of justice. If the nature of things is what determines what is just, then “what is just may very well differ from city to city and from period to period” (102). Consequently, “Knowledge of what is just here and now, which is knowledge of what is by nature, or intrinsically, good for this city now, cannot be scientific knowledge... To establish what is just in each case is the function of the political art or skill” (Strauss 102). Just as a doctor knows how the body should work, the politician has to know what is good for the city or the

common good. To know this is to know what is just. Nevertheless, there is a difficulty here. If, as Aristotle asserts, “All natural right is changeable” (Strauss 157), then how are we going to obtain objective truth? Each way of characterizing justice seems to have advantages and disadvantages. Let us see if we can produce a verdict.

If justice could be known in a similar way as a scientific fact is known, it would very likely provide principles or laws that could readily work in any circumstance. The characterization of science as dealing with objective truths, and not with subjective appearances, and the inclusion of justice as a scientific fact both imply that we would be able to identify what is objectively just as opposed to what is subjectively right. Now, if we imagine that we have found a universal principle of justice, we should be able to imagine how to put it into practice. But how can a single principle or fact provide a solution to such different and complex situations that we find in the world? In the light of this problem, Aristotle’s idea seems to be more plausible. If justice is knowledge of what is good for the city, then it points towards the practicality of the idea of justice. Unfortunately, the epistemic problem persists. How would we know what is good for the city? Furthermore, if what is good for one city is totally opposed to what is good for another, then we would have to accept relativism. A verdict is impossible at this point. Let us then proceed with the investigation and analyze the argument from another kind of conventionalism: Epicureanism.

Epicurus thinks that “justice never is anything in itself... it is a kind of compact not to harm or be harmed” (46). The Stoics’ criticism of Epicureanism was that the Epicurean wise man, if immune from detection or punishment, will commit injustice whenever he may profit from it (Vander Waerdt 402). However, Strauss does not present this moral argument. He presents a more general critique of hedonism. The classics claimed that “the good is essentially

different from the pleasant, that the good is more fundamental than the pleasant” (Strauss 126). Pleasures are connected with wants, but wants precede pleasures. Therefore, wants are more basic, but the different kinds of desires are not just a “bundle of urges; there is a natural order of wants” (Strauss 126). Any being has wants or inclinations as part of its nature, and human nature is no exception. In light of this teleological understanding of nature, the good for any being is to accomplish its main purpose (Strauss 127). From the analysis of human nature, natural right determines that the good life for a human being is the life of human excellence or virtue. Nevertheless, this understanding of human nature cannot provide the idea of justice. The idea of justice and the idea of man are compatible but different ideas (Strauss 145). Indeed, we all can see human beings and ourselves, but we cannot “see” justice. Virtue (justice being a virtue) exists as “an object of aspiration and not as fulfilment” (Strauss 146). If virtue is not something we find already realized, then it exists as an idea, and human beings can only try to capture that idea in order to realize it. For this reason, human beings do not seem to agree on what justice is. Thus, we make the distinction between human nature as it is on the one hand, and the perfection or virtue of human nature on the other (Strauss 146).

If we accept the previous claim, that is, if we cannot look at human nature to find out what justice is, the investigation needs to start with people’s opinions. The most common opinions are “that justice is good and that justice consists in giving to everyone what is due to him” (Strauss 146). The latter option requires that justice be independent of the law as the law can be foolish or harmful. In this sense, justice must involve giving to everyone what is due to him according to nature, but not everyone knows what is good for man in general, nor for every individual in particular. Therefore, we can only experience justice when wise men are in absolute control (Strauss 147). The wise man knows what is good for each individual according to his or

her nature. What each individual does and possesses should be in accordance with his or her nature. Accordingly, justice exists in a society in which “everyone does what he can do well and in which everyone has what he can use well” (Strauss 148). In this kind of society each person has an opportunity that corresponds to his or her merits. The hierarchy of this society will “correspond strictly to the hierarchy of merit and merit alone” (Strauss 148).

However, this argument against Epicureanism leaves us with problems no less critical than the previous epistemic argument. If justice is not found in human nature, then the Stoics’ objection, which originally is levelled against conventionalism, but this time seems to apply against the view of natural right as Strauss describes it, is unavoidable: if justice is not a natural inclination of human beings, why would “the man untroubled by conscience or fear of punishment... refrain from the basest acts of injustice when his self-interest is at stake”? (Vander Waerdt 403). I call this the motivational objection. If we do not have justice built up as part of our reason, then it is difficult to see why we would be motivated to act in a just way other than out of pure fear of law enforcement. Strauss has shown that a possible answer lies in the understanding of the good. The good for human beings is the life of excellence. The man who accomplishes this goal is a man of virtue, a wise man. If, on the other hand, we accept that only wise men know what is good for each person in the city, then a modified Stoic objection applies: there are no constraints about what the wise might consider good, and if the wise man leans towards a utilitarian conception of the good¹, then there is room for actions that we might consider immoral, e.g. sacrificing a few innocent lives for the survival of the majority. As S. B. Drury has argued, “Strauss’s claim that the ‘exceptions are as just as the rules,’ resembles a

¹ Strauss points out Aristotle’s idea that the meaning of justice is not limited to the principles of commutative and distributive justice. The just is the common good and this is prior to the distributive justice. The common good includes the survival and independence of the political community (Strauss 160). Justice then has a utilitarian connotation as the morality of the actions is secondary to the idea of the survival of a group.

utilitarian view more closely than a Machiavellian one. It seems . . . that this way of speaking allows us to do injustice with a clear conscience” (308). However, Strauss identifies a point of diversion between natural right and Machiavelli’s idea of right:

Machiavelli denies natural right, because he takes his bearings by the extreme situations in which the demands of justice are reduced to the requirements of necessity, and not by the normal situations in which the demands of justice in the strict sense are the highest law. . . . The true statesman in the Aristotelian sense, on the other hand, takes his bearing by the normal situation and by what is normally right, and he reluctantly deviates from what is normally right only in order to save the cause of justice and humanity itself. (162)

Certainly, extreme situations like terrorism call for not only extreme measures but also extreme care not to violate the rights of innocent people, so under certain circumstances, the principles of justice might indeed need to be violated. Nevertheless, in more normal circumstances the statesman is still called to judge what is just and thus what is good for the people, so in normal circumstances, the Stoic objection still applies.

The other difficulty in this argument is related to an epistemic question. In order to determine the hierarchy of ends, we need to know human nature. How can we know human nature? It cannot be through pure observation. From observation, one would be entitled to say that evil is part of human nature. If evil is part of human nature, then it would be legitimate and good that a person pursues his or her interests despite harming others. That view certainly seems incorrect, so when we speak of human nature, we seem to speak of some ideal. Perhaps an analogy taken from Plato’s theory of the Forms² could help. We see the form of a triangle in a piece of paper, in a rock, in a wall, or on the ground, but when we think of what a triangle is, we

² *Republic* 509d-511e. Reality is divided between the visible (images or appearances) and the intelligible (the forms, first principles). The visible is an imitation of the intelligible.

have some ideal in mind. The form has three perfect lines joined together in places with no dimension, called points. The triangles we see in nature are only models of the ideal form. What does the ideal form of a perfect human being look like? Let us suppose it looks like a person who lives his/her life according to reason. Would a scholar or a scientist or a very successful business man fit the ideal of a perfect human being? What if despite all his or her accomplishments, this person behaved immorally and enslaved others or stole their property? Does this kind of person still fit the ideal? Certainly not. Thus, life according to instrumental reason is not a sufficient description of a person who has achieved excellence. It seems that we need to add certain moral characteristics. Perhaps a person who treats others fairly fits the ideal much better. However, if justice or fairness is not part of the human nature and if justice is merely based on opinions, then why would we include it as part of a perfect human being?

So far I have identified some critical problems in the natural right position. It appears that the views of natural right do not prevent it from being aligned with relativism or utilitarianism, but natural right denies that relativism is true, and it must also deny that utilitarianism is true; otherwise, it would accept that justice is only a convention. At the center of this problem lies the dilemma between the immutable and the mutable. Immutability is the basis of objectivity, universal truth. Mutability gives feasibility because in practical situations flexibility is necessary to deal with changing circumstances. Is there a middle ground? Strauss comments that Plato and Aristotle recognized that the demands of justice vary, but that admission did not lead them to either absolutism or relativism. They held this view: “There is a universal valid hierarchy of ends, but there are not universally valid rules of action” (Strauss 162). Natural right seems to leave us with the task of investigating what man is, including the essential and immutable and also the mutable and practical.

Historicists have given up that investigation. Historicists have concluded that there is no single idea or concept of right that is eternal or immutable (Strauss 12). This conclusion arises not from historical evidence but from a “philosophical critique of the possibility or knowability of natural right” (Strauss 12). The emphasis is in the critique of human thought. There is only a possibility of genuine knowledge within certain limits: knowledge is only possible within a certain historical moment. The historicist view should not be confused with scepticism. Sceptics claim that human beings can never be certain about assertions of reality because these assertions are arbitrary. Nevertheless, the position of historicists is that prevailing assertions of different civilizations at different times are not arbitrary (Strauss 20), precisely because they are objective in the specific moment in history. Steven Smith pinpoints Strauss’s response to this position: “[Strauss] thinks that this ‘historical consciousness’ or the belief that all thought is necessarily tied to a specific historical situation” is the “first and most fundamental obstacle” to the recovery of the world of pre-scientific opinion (Smith 95). Historicist arguments in their radical form claim that all thought, all understanding requires a frame of reference, but we do not choose that frame of reference; it is given to us by fate (Strauss 27). For example, if I had been born in 1947 in a town in Germany, the circumstances of the moment would have constituted my horizon and that would have been my fate. Accepting this frame of reference is my choice: “We are free in the sense that we are free either to choose in anguish the world view and the standards imposed on us by fate or else lose ourselves in illusory security or in despair” (Strauss 27). According to this claim, the ideas we have about ourselves or about justice are tied to fate, and the different views throughout history are all legitimate.

One of the problems of radical historicism is that it is paradoxical. If historicism is true, then it reveals a truth about views of the past or the future, but by its own claim, historicism

cannot say anything about the past or the future because it cannot transcend time. Nevertheless, the main problem of historicism is the assumption that all historical ideas about human beings and justice are true. We certainly could say that they are binding or lawful or even well-founded, but we must also ask whether state laws and historical conceptions of humanity are good or just. The moral problem arises, so the mere question about the goodness or justness of the different views seems to necessitate a universal, eternal idea of “good” or “just.”

Perhaps now, after having analyzed the different ideas of justice without finding a conclusive argument, we should ask why we accept or recover natural right. If justice is immutable, we are presented with an epistemic problem. If justice is mutable and practical, then it is difficult to avoid relativism. Considering the value of natural right, we could reject both propositions. On the one hand, if justice is immutable, perhaps we need to investigate what it means to know it. Perhaps the epistemic problem would disappear if we understood the project of knowing reality. Thus, we might require a review of what we consider knowledge. Indeed, that was Socrates’ project. On the other hand, if justice is mutable and practical, we do not need to accept the kind of radical relativism proposed by historicism. This point of view absolutely requires the understanding of human kind because it is here that relativism might be defeated. In fact, that was Aristotle’s proposal. Understanding nature and its basic principles has allowed human beings to find solutions in varied circumstances. Understanding human nature is the necessary condition to find solutions to the complex and varied problems of societies. We need to presume that human nature or the human soul provides a firm ground for justice. I suggest that this is Strauss’ proposition: we should recover philosophy so that we can understand knowledge and human nature. The wise statesman is to understand both if he or she is going to determine

what is right for the city, community, or country. Otherwise, the statesman is only governing in an arbitrary way.

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