Chapter 4

Justice and the Law

Justice vs. Law

- Law & Justice are very different.
  - Law is often defined as the administration of justice.
  - Law may result in judgments that many feel are unjust
- Justice:
  - Is not merely doing good
  - Is not merely meeting needs
  - "Differs from benevolence, generosity, gratitude, friendship, and compassion"
  - Mediates between self-interest and generosity
  - Results from a rational acceptance of the idea that human relations must be fair

David Hume

- "Justice does not dictate a perfect world, but one in which people live up to agreements and are treated fairly"
Justice can be described as to include the concepts of:
- Fairness
- Equality
- Impartiality
- Appropriate rewards and punishments

Justice - Origins
- Origin: Greek word *dike*, which is the concept of everything staying in its assigned place or natural role.
- *Plato* believed justice was achieved by maintaining the social status quo.
  - In an ordered state, everyone performs his or her role and does not interfere with others
  - Each person's role is that for which the individual is best fitted by nature (natural law upheld)
    - Class system vs. caste system

Justice - Aristotle
- *Aristotle* believed justice was the basis of law defining it as the unwritten customs of a people that distinguish what is and what is not honorable
**Justice - Aristotle’s Thoughts**

- **Rectificatory (Commutative) Justice**
  - Called for in business where unfair advantage or undeserved harm has occurred
  - Demands remedies or compensations to the injured party
- **Distributive Justice**
  - Concerns what measurement should be used to allocate resources
  - Proportional equality: unequal people (e.g. slaves, women) get unequal shares

**Major Themes of Justice**

- **Fairness** - Inextricably tied to equality and impartiality
- **Equality** - Equity or equal shares for all
- **Impartiality** - The concept of impartiality is at the core of our criminal justice system.
  - It implies fair and equal treatment of all without discrimination or bias
  - Our symbol - Lady Justice
    - Blindfold represents impartiality towards special groups
    - Scales represent proportionally just punishments

**Major Components of Justice**

- Distributive Justice
- Corrective Justice
- Commutative Justice
**Distributive Justice**

- Concerned with the allocation (rightful possession) of the goods and burdens of society to its respective members.
  - **Rewards and benefits**:
    - Economic goods (income or property)
    - Opportunity for development (education or citizenship)
    - Recognition (honor or status)
  - **Burdens**: include who should fight in wars, who should take care of the elderly, who should pay taxes, and how much each should pay.

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**Rewards & Benefits - Education**

- The reality is that because of unequal tax bases, school districts are incredibly unequal and distribute the opportunities of education unequally.
  - Some school districts have swimming pools, and computers in every classroom, while others have donated textbooks and poorly built heated and ventilated buildings.
  - Claremont, NH decision

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**Rewards & Benefits - Affirmative Action**

- Affirmative Action attempts to provide opportunities to groups that historically have been discriminated against – blacks, women, Hispanics.
  - Now, white males feel that they are the new victims of discrimination.
  - Some feel that taking affirmative steps to increase opportunities for minority groups has simply transferred unfair treatment to another group.
  - What is acceptable to overcome previous discrimination?
Distribution Justice

- Only in a condition of scarcity does a problem arise with allocation of goods.
- Two valid claims to possession:
  - Need
  - Desert (Something that is deserved or merited, especially a punishment)
- The principles of justice involve the application of these claims to specific entitlements

Possible Standards for Distributive Justice

- Need
- Merit
- Performance
- Ability
- Rank
- Station
- Worth
- Work
- Agreements
- Requirements of the common good
- Valuation of services
- Legal entitlement

Theories of Distribution

- Egalitarian - Based on the premise of equality or equal shares for all
  - E.g. - a gasoline tax of $.10 per gallon for anyone who purchases gasoline
- Marxist - places need above desert or entitlement
  - E.g. - a gasoline tax that varies according to an individual's income
Theories of Distribution

- **Libertarian** – freedom from governmental interference in social and economic areas; individuals are responsible for own welfare
  - Merit, entitlement, and productive contribution over need or equal shares
  - E.g. – repealing the gas tax altogether
- **Utilitarian** – maximize benefits for individuals and society by balancing entitlements and needs
  - Distribution based on the most popular approach to spending
  - E.g. – Allowing people to vote on how much they want to pay for a gasoline tax

Rawl’s Theory of Justice

- Any inequalities in a society should benefit the least advantaged
  - All have an equal right to basic shared liberties
  - Social and economic inequalities should be arranged to be to everyone’s advantage
  - Decisions about distribution should be made without regard to one’s status (the veil of ignorance) because justice and fairness are in everyone’s rational self-interest

Criticisms of Rawl’s Theory of Justice

- The veil of ignorance cannot counteract human selfishness and self-interest
- Preferring the least well off is bad for society; leads to lack of incentive, decline of standards
- Rawls approach to distribution ignores desert and merit
**Commutative Justice**

- **Commutative Justice (Rectificatory)** is associated with business deals where unfair advantage or undeserved harm has occurred.
  - The process of determining fair resolution
  - "Justice demands remedies or compensation to the injured party."

**Corrective Justice**

- Concerned with dispensing punishment
  - Determination and methods of punishment
  - "Just deserts"
    - The punishment should fit the crime
  - Two components of Corrective Justice
    - Substantive justice
    - Procedural justice

**Components of Corrective Justice**

- **Substantive Justice**
  - Based on the concept of “just deserts”
  - Involves the determination of a “fair” punishment for a particular offense

- **Procedural Justice**
  - Based on the concept of law and rules
  - Involves steps taken to determine guilt as well as punishment
Substantive Justice

- Punishment set in relation to the degree of harm incurred
  - More serious crimes deserve more serious punishment
- Remedies for wrongs (separate from the concept of punishment)
  - The offender provides compensation to the victim or the victim's family
    - Financial restitution
    - Solatium
- What is fair punishment for murder?

Philosophies of Corrective Justice

- Retributive Justice
- Utilitarian Justice

Retributive Justice

- Based on the concept of balance
  - The criminal must suffer pain or loss proportional to what the victim was forced to suffer
- An extreme form of retributive justice is *lex talionis*
  - A vengeance-orientated justice concerned with equal retaliation—“an eye for an eye”
- A milder form of retributive justice is *lex salica*
  - Allows compensation by payment or atonement
Retributive Justice - Punishment

Historically, corporal and capital punishment were used for both property crime & violent crime
- Horse thieves were hung
- The penitentiary system was developed in the 1800's and punishment became equated with the terms of imprisonment rather than amounts of physical pain

Retributive Justice - Problems

- Difficult to agree upon a fair degree of punishment in certain situations
  - Intent (Mens Rea) is also taken into account
    - The very young and the insane are said to be neither morally nor legally culpable, and to punish them would be wrong
  - Partial Responsibility
    - Compulsion
    - Coercion
    - Participation of the Victim
      - May lessen the culpability of the offender
  - Difficult to measure incarceration (most typical modern punishment) against suffering or loss

Mercy

- An element of forgiveness
  - An offender who truly deserves punishment, but is forgiven, has received mercy
- Mercy
  - Separate from justice
  - Tempers or “season” justice
  - Is not an automatic right or matter of desert
  - Derives its value from compassion
  - Requires a generally retributive outlook on punishment or responsibility
- Examples of Mercy from the courts
  - Probation
**Utilitarian Justice**

- Goal is to benefit society by administering punishment to deter future crime
  - Deterrence is the primary determinant of justice
- Punishment based on the seriousness of the crime and the deterrence value of the punishment
  - Threatened pain set higher than potential rewards
  - Balance not a consideration, thus can conflict with Retributive Justice
- Treatment is acceptable because it supports deterrence

**Procedural Justice**

- Justice is a concept of fairness; Law is a system of rules
- Procedural justice consists of laws and procedures meant to safeguard against error in the application of justice
  - The law is an imperfect system
  - Focus is on rules, not necessarily justice
  - Moral rights vs. legal rights; what is legal may not be moral

**Due Process**

- Due process is the sequence of steps taken by the state that is designed to eliminate, or at least minimize error. It includes:
  - Notice of charges
  - Neutral hearing body (jury)
  - Right of cross examination
  - Right to present evidence
  - Representation by counsel
  - Statement of findings
  - Appeal
Due Process

- Results in more accurate and just deprivations and punishments
- If we believe these rules are broken, we believe that an injustice has occurred

Exclusionary Rule - Safeguard or Vulnerability?

- The Exclusionary Rule is supposed to ensure that the state follows the correct procedure before exacting punishment by excluding illegal (“tainted”) evidence from the trial.
- The subject of criticism because it is perceived as a rule that lets criminals go free.
- One of the rationales for the exclusionary rule is that it serves as a judicial "slap" to the police departments and a deterrent against improper investigative procedure.

Exceptions to the Exclusionary Rule

- The inevitable discovery exception allows the tainted evidence if it would have been discovered without the improper procedure (Nix v. Williams [1984])
Exceptions to the Exclusionary Rule

- Good faith exception was recognized by the court in a case where the law enforcement officers thought they had a legal warrant even though the warrant was without probable cause and therefore the search was actually unlawful (United States v. Leon [1984]).

Due Process vs. Utilitarian Justice after 9/11

- Attitude before 9/11
  - Criminal behavior can be controlled, and the public kept safe, by a criminal justice system with procedural safeguards

- Attitude after 9/11
  - There is a greater risk of terrorist attacks if terrorists can be freed on procedural "technicalities"
  - What ethical questions do they raise?