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EQUALITY, HIERARCHY, AND GLOBAL JUSTICE

By James M. Buchanan

I. Introduction

In any ordered society, two contrasting attitudes may describe the positions that persons take, one toward another, in evaluating and organizing their relationships, whether these be personal, social, or political. A person may consider and treat others as "natural equals," as potential players in the cooperative-competitive game who are capable of reciprocating behavior and hence deserving of respect. Or, by contrast, a person may consider and treat others as determined by classification of their positions in a "natural hierarchy," as superiors or inferiors and hence deserving of either deference or domination—a stance that may or may not be informed by ethical standards. The attitude toward others taken by any individual will embody some mix of these two contrasting positions, and, by extension, so will the social interaction structure for any particular society.

My thesis is that differences along this attitudinal dimension may make it difficult to extend precepts of justice across political boundaries because the basic meaning of justice becomes different in the two positions. A society that is primarily described by institutional structures derived from precepts for "justice among natural equals" may seem to fail when measured against criteria that apply to treatment among classified unequals. My subordinate thesis is that the societies of the United States, on the one hand, and Western European welfare states, on the other, are sufficiently distinct along the dimension emphasized to offer at least a partial explanation for differing public support for particular institutional practices, for example, the practice of capital punishment. In summary, even if put dramatically, Europe must shed remaining vestiges of medieval hierarchism before precepts for global justice can command cross-national minimal consensus.

In Section II, I discuss in more detail the attitudes noted, and I personalize the argument by relating it to familiar figures in philosophical discourse. Further, I relate the discussion both to developments in intellectual history and to the implications for institutional structures. In Section III, I examine the equivocal ethics of modern welfare states. Section IV is likely to prove controversial, since I suggest that the differing American and European attitudes toward capital punishment may find their origins in the differing public understandings of human interactions. In Section V, I discuss the more general implications of the two foundational perspectives.

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The severe limits of the inquiry here should be emphasized. My concern is with problems that may arise as precepts of justice are extended beyond political boundaries *within* the nexus of "liberal" or "decent" polities[1] that institutionally embody the existence and value of individual autonomy. More difficult issues that may emerge as globalization prompts expansion to include nonliberal peoples are simply left out of the account here.

II. Plato and Adam Smith

My concern is with how persons think about other persons in their social order—persons who are outside the genetically defined limits of tribal groupings. I limit attention to attitudes that embody recognition that other persons are units of consciousness capable of independent behavioral response. I shall not discuss the stance of the genuine moral anarchist who simply takes the presence of other persons to be a part of the state of nature—an element of empirical reality. The distinction I am concerned with is the one between equality and inequality along relevant dimensions. Are others, generally, encountered as moral equals, or are they classified, pre-behaviorally, as moral unequals?

The discussion may be personalized with reference to familiar names in moral philosophy—that of Plato, on the one hand, and Adam Smith, on the other. In the Platonic vision of social reality, the vision that has been important in political philosophy through the centuries, persons may be hierarchically classified along a spectrum of inferiority-superiority. Persons may fall anywhere along the extended spectrum, but are always hierarchically defined relative to one another in an ordered ranking, superior to inferior. In Orwellian language, some are always more equal than others.

Along almost any and all particularized dimensions, the Platonic vision, empirically, would seem to carry the day. Ordinary observation suggests that persons differ from one another in a multitude of characteristics (gender, age, race, religion, cultural heritage, physical appearance, genetic makeup, and many others that may be made possible by developments in biotechnology). Further, a scalar of sorts may be established for each dimension that allows for classification. Any identified person is older or younger than another identified person. Any person is male or female. Such differences are not at issue. The question is whether or not there exists, or should exist, a general criterion of superiority, in some relevant moral meaning, that allows for a preliminary classification of persons. Are some persons simply "better" than others? And, if so, how is the criterion of "betterness" to be defined?

[1] John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), chap. 1, pp. 11–23.

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It is at this point that the issue is joined. The empirically observed facts of human differences along any and all dimensions may be acknowledged alongside a denial that persons are unequal in any sense that is relevant for the organization of society. For Adam Smith, along with other philosophers in the Scottish Enlightenment, the starting point is one of natural equality. Smith's familiar reference is to the basic equality between the philosopher and the common street porter, each of whom, by inference, is fully capable of being accorded the same standing in any consideration of organizational structures.[2] For Adam Smith, and for Thomas Jefferson, who aligned himself with Smith in placing the words "created equal" in America's Declaration of Independence, there may have been a more positive assessment of the human prospect than in our more skeptical epoch. Such an assessment was perhaps reinforced by ideas that emerged from the eighteenth-century discovery of basic uniformities in human nature, which made possible the emergence of sciences of behavior, notably classical economic theory.

As an aside, it is perhaps worth noting that the classical economists were among the most vocal critics of slavery in the early nineteenth century, as opposed to the dominant literati, led by Thomas Carlyle, who based their support of slavery on the presumption of Platonic hierarchy.[3]

Despite its possible positive underpinnings, however, for Smith, and for classical liberals then and now, the primary thrust of the argument here is normative. There is no agreed-upon general criterion of moral superiority among persons, and any attempt to force a hierarchical classification scheme into the political construction of society is to be rejected out of hand. Persons are to be treated as if they are equals, regardless of the empirical reality observed, and, as equals, they are to be accorded equal standing. This message was central to the whole Enlightenment project, and it found dramatic expression in the rhetoric of the American Revolution.

Much more importantly, the basic institutions of Western political-legal order embody the presupposition of equality among all citizens/subjects. There is no hierarchical classification scheme that defines one law for one set of persons and another law for another. The bedrock principle of the rule of law is equal and universal applicability. Similarly, the universality and equality of the franchise has (over time) come to be accepted as the defining attribute of democracy. The separately defined rights that characterize the constitutional order of Western polities are themselves general rather than particular. Persons are accorded equal liberties to speak, write,

[2] "The difference between . . . a philosopher and a common street porter . . . seems to arise not so much from nature, as from habit, custom, and education." Adam Smith, *The Wealth of Nations,* Harvard Classics, vol. 10 (New York: Collier, 1909), book 1, chapter 2, pp. 21–22.

[3] For an interesting account of the debates and the role of the economists, see David M. Levy, *How the Dismal Science Got Its Name: Classical Economics and the Ur-Text of Racial Politics* (Ann Arbor: University of Michigan Press, 2001), and Sandra J. Peart and David M. Levy, *The "Vanity of the Philosopher": From Equality to Hierarchy in Post-Classical Economics* (Ann Arbor: University of Michigan Press, 2005).

assemble, exercise religion, and engage in voluntary exchanges. The presupposition of equality among all citizens/subjects is so much a part of the political-constitutional-legal fabric that it is scarcely discussed explicitly.

In a practical sense, Adam Smith seems to have won the day over Plato. Philosophically, however, the academy has never fully embraced the Enlightenment dream. The Platonic ideal of the philosopher-kings who are chosen from a hierarchical classification that separates the rulers from the ruled remained for centuries the dominating normative ideal in political theory. The obvious inconsistency between this ideal and the precepts of democracy has been widely overlooked, as modern political scientists continue to model politics as a search for "truth," often referred to as the "public good" or the "public interest," which presumably exists "out there," waiting to be discovered. At least by implication if not directly, a designated subset of the citizenry is presumed more capable of discovering political truth than outsiders who are to be subjected to its revelation in practice.

III. The Equivocal Ethics of the Welfare State

Contemporary Western democratic welfare states embody an institutionalized admixture of the two contrasting attitudes—natural equality and natural hierarchy. As noted, the basic legal and political structures presume the absence of any grounds for differentiation among persons. At the same time, however, the politically sanctioned massive transfer programs necessarily involve discriminatory treatment, or so it would seem. The operation of such programs separates persons into classes of net gainers and net losers, with readily computable differentiation among subgroups within each of these two inclusive sets. Some mitigation of the apparent ethical contradiction inherent in the institutional underpinnings of the modern welfare state is achieved by introducing the temporal and stochastic dimensions that inform programs for collectively imposed transfers. The presupposition of natural equality among persons is not violated so long as criteria for eligibility, both for potential tax costs and transfer benefits, are defined inclusively or generally rather than discriminatorily. For example, a program that imposes taxes on current income earners to finance transfers to pensioners or retirees does not in itself involve hierarchical classification, provided that all persons become eligible for transfer benefits due to age criteria alone. Similarly, transfers to persons who become disabled may satisfy criteria of generality so long as eligibility is not arbitrarily restricted.[4]

[4] For extended treatment of the generality norm, see James M. Buchanan and Roger D. Congleton, *Politics by Principle, Not Interest: Toward Nondiscriminatory Democracy* (New York and Cambridge: Cambridge University Press, 1998).

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Many of the transfer programs of contemporary welfare states cannot, however, readily be justified based on criteria of generality. Many programs are explicitly discriminatory in the sense that persons and groups are targeted for differential treatment on either the tax or the transfer side of the fiscal account. And it is with these programs that the foundational ethical understandings may come into conflict. How can a program that is described by tax-financed transfers to designated groups—say, the able-bodied homeless in a city—be morally justified?

The immediate response to such a question invokes reference to an extension of Christian charity, involving compassion and kindness for those who are unfortunate. Such a response, in itself, seems to establish, at least implicitly, the legitimacy of the hierarchical classification, based on criteria that allow for easy separation between those who are potential recipients and those who are not. Such tax-transfer programs, as they are morally justified, as they are interpreted, and as they are administered, almost necessarily imply violation of any foundational presupposition of natural equality. And, so interpreted, these programs seem to counter the presuppositions that Western societies embody. How can transfers to the homeless, or to people with AIDS, be justified on the basis of compassion while, at the same time, these people are accorded equal standing, through democratic processes, in the determination of the extent and scope of the transfer itself?

The continuing uneasy mixture of the two ethical starting points in the modern welfare state seems unlikely to be clarified. The whole enterprise undertaken by John Rawls may be understood as a valiant effort to bring philosophical order into the discussion.[5] Rawls sought to derive basic principles of justice for a society of natural equals despite the observed facts of inequality among persons along many dimensions. The veil of ignorance became the device that shifted the discourse from the discussion of justice among unequals to that of justice among natural equals. With this construction, Rawls was able to derive a justificatory logic for redistributive transfers, exemplified in the difference principle.[6] (Unfortunately, he failed to note that this particular principle was only one among many that might emerge from agreement among the natural equals situated behind the veil of ignorance.)

The point to be emphasized is that this Rawlsian ethical construction does not, in any variant, invoke considerations of charity or compassion for those who are potential recipients of transfers on the part of those who are the critical decision makers for the collectivity. It is as if, almost literally, the contractors behind the Rawlsian veil are choosing for them-

[5] John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971); Rawls, *Political Liberalism* (New York: Columbia University Press, 1993); and Rawls, *The Law of Peoples.*

[6] On the veil of ignorance, see Rawls, *A Theory of Justice,* sec. 24. On the difference principle, see ibid., sec. 13.

selves the basic redistributive scheme to be put into place.[7] In this way, the bridge over the otherwise impassable gulf between individualized self-interest and something that might be called the general interest is crossed. Any necessity of introducing utility interdependence as a motivation for altruism in the sense of benevolence is thereby avoided.

In rather dramatic contrast at this point, the norms for the differential treatment of unequals in tax-transfer policy, as well as the institutional implementation of these norms, must rely, in some ultimate motivational sense, on the presence of utility interdependence. To exhibit charity and compassion toward those deemed eligible for differential treatment requires an acknowledgment by the individual decision maker that the well-being of others matters. In economists' jargon, the utilities of others must enter into the utility function for the individual, whereas in the Rawlsian-Kantian construction there need be no such direct interpersonal interdependence. The whole Rawlsian enterprise becomes absurd to those who approach problems of social interaction from the hierarchical perspective. How can it be meaningful to place oneself behind a veil of ignorance when prior identification is presumed? A person who thinks of himself as naturally superior or naturally inferior to others cannot reduce himself to the level of evaluation, even in some stylized exercise, that removes individualized and group differentiation. To any such person, questions of justice involve the treatment of (and by) human beings, who are acknowledged to be members of the same species but who are classified by their locations in the imagined scalar of obligation or merit.

It is evident that the Rawlsian construction, to the extent that it comes to inform the attitudes of those who are deriving principles of justice, opens up prospects for general agreement on such principles, whereas agreement becomes almost impossible in the alternative (hierarchical) construction. Those who classify themselves as superior beings in the social hierarchy may accept some obligation to give succor to those who are classified as inferior, but those who make up the claimant group will scarcely be acquiescent in any imposed scheme. Conflict almost necessarily emerges, not only in any practical implementation but also at the level of philosophical argument. What behavior on the part of anyone is required to meet the demand that he be "his brother's keeper"?

IV. America, Europe, and the Death Penalty

My provisional hypothesis is that the United States and the nations of Western Europe (for this purpose, including Canada) differ substantially

[7] The Rawlsian construction closely parallels that of James M. Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962), although for a quite different analytical purpose. In the Buchanan-Tullock construction, observed institutions of redistribution in post-constitutional politics emerge from consensus at the constitutional level derived basically from insurance motives.

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in the mix between the ethical foundations I have been discussing—one based on equality, the other on hierarchy. All of these countries qualify as welfare democracies, and all are described by large collectively financed transfer sectors, thereby extending the scope of political activity well beyond the financing and provision of productive state services. These transfer sectors are proportionately larger in Europe than in America, but not sufficiently so to warrant categorical distinction.

Differences in the mix between the two contrasting ethical presuppositions need exert little influence on the continuing political debates concerning the size of transfer sectors in the separate national economies. Argument may be joined related to the extension or contraction of these sectors and may proceed from either one of the two ethical positions. The advocates of welfare-state expansion may call on a Rawlsian evaluation to criticize the limits of collective redistribution, invoking the presumption of natural equality of persons behind the veil of ignorance. Other advocates may base their criticism of observed margins on more direct claims to the effect that those who are privileged in the natural hierarchy are obligated, on grounds of charity and benevolence, to support extended collective aid to those who are naturally inferior. And, of course, a similar comparison applies to the other side of the continuing political debate. Supporters of contraction in the size of the transfer sector (or opponents of further extension) may base their arguments on either one of the two ethical positions: the position that postulates natural equality or the one that postulates, explicitly or implicitly, natural hierarchy.

Things may become quite different, perhaps dramatically so, when we shift our attention to discussions and evaluations of collectively imposed punishments for violations of the law. Whereas the differing implications of the two ethical presuppositions seem rather innocuous in discussions about changes in the size of the welfare state, these implications may become major barriers to mutual understanding in treatments of punishment. In the setting of interaction among persons as imagined by Smith, Kant, and Rawls (the world of natural equality), the principles upon which the institutions of punishment are established emerge either from a disembodied impartial spectator or from a stylized contractual dialogue. No person is identifiable in advance as a potential transgressor, but each also recognizes that some persons (possibly including himself) may become such transgressors. These principles, this "constitution," is chosen and put in place *before the fact*, before any violation of law occurs. In this conceptualization, neither the disutility (or utility) of those who impose the punishment nor the disutility of those who are punished, *after the fact* of law violation, enters into the calculus. Indeed, those who are punishing and those who are being punished are by definition indistinguishable at the previolation stage when the institutions are put in place.

As noted previously, this idealized construction provides a bridge that allows individual self-interest to be reconciled with something like a

general interest. Punishment institutions emerge from a setting in which persons are not asked to or required to evaluate other people. Postviolation utilitarian considerations, whether involving some aggregation in the classical sense, or evaluations restricted to the level of individual participants in the process, have no place in the logical structure. A person who violates a law suffers the previously agreed penalty; he has no recourse in pleas to the benevolence or compassion of others who abide by the law.

Criteria for evaluating the observed institutions of punishment are strictly procedural. Did these institutions emerge from a constitutional consensus? Or, failing this, could they have emerged from the judgments of a genuinely impartial spectator or from some idealized contractual agreement among natural equals? Put in this way, it seems evident that any observed set of institutions is one among many that might qualify under these procedural norms. There is no unique solution that emerges.[8] Nevertheless, the criteria remain sufficiently robust to rule out punishment that is differently applied to differing groups of law violators, regardless of utilitarian measurements.

In contrast, consider now the theory of punishment that is grounded on the presupposition of natural hierarchy rather than that of natural equality. On its face, the whole conception of equality before the law, the rule of law itself, does not sit well with those who view the human spectrum in hierarchical terms. If, indeed, persons can be classified on some scalar of inherent superiority-inferiority, the legal treatment accorded different persons and groups would be different, on almost any criterion of acceptability. And such differentiation in treatment would, of course, extend to participation in collective decision making. There is no logical basis for universal and equal franchise under the Platonic vision of human society.

At best, therefore, there is an uneasy accommodation between the stance of those who adopt the hierarchical starting point and the established institutions of Western democracies, all of which embody the rule of law in its varying manifestations. The ethical disjuncture here comes to the foreground of discussion when the institutions come into operation, and notably when these institutions imply that law violators should be subjected to punishment, after the fact of law violation itself. The very act of breaking the law allows for a classification between the lawbreakers and "others," and the more or less natural reaction is to treat the first group differentially and to determine levels of punishment that seem to be dictated by considerations of post-act utility, that of the law-abiders and the lawbreakers as aggregated in some fashion. Levels of punishment that might have been agreed upon in the stylized "constitutional" setting, in which persons behind the veil of ignorance consider themselves or are considered equal as potential lawbreakers, may lose effective force if the

[8] See James M. Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan* (Chicago: University of Chicago Press, 1975), for extended discussion of the argument in this section.

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dialogue is opened up for post-act judgments, whether privately assessed or collectively determined. Compassion and charity for those who have come to be personally identified as criminals must enter into such judgments; the anonymity made possible by the construction of the veil can no longer be fully effective.

The two contrasting ethical positions may generate predictably differing attitudes toward punishment in particular cases, with the subsidiary hypothesis that, in the twenty-first-century moral environment of Western democracies, lawbreakers are likely to suffer less onerous punishment when the ethical mix tends toward the Platonic as opposed to the Smithian-Kantian-Rawlsian position. Compassion toward those classified as "inferior" may be dominant in modern ideas and practices, perhaps reversing attitudes that may have described earlier epochs.

The argument may be exemplified in contemporary attitudes toward capital punishment, where European and American positions seem to differ substantially. Surface examination of the public as well as academic discourse would seem to suggest that Europeans, generally, condemn the institutions of capital punishment, which they consider to be the heritage of the quasi-anarchistic, pre-civil environment of the frontier society that was America. By contrast, in the United States, there is no general consensus on the appropriateness of the death penalty, either at the level of open discussion or in legal practice (some of the American states allow for capital punishment; others do not).

Americans might argue, in contraposition, that European attitudes and practices embody residues of the medieval heritage, which did involve classification of persons and groups into classes, movement among which, occupationally and geographically, remains relatively difficult. Any overt effort to derive principles from a world-of-equals perspective would seem to violate basic understandings of the human interaction process. That is to say, the attempt to impose the natural-equality presupposition on human reality would be more "jarring," and hence less effective, than in the American setting.

Absent such a perspective, however, how could the basic principles that guide punishment be derived? Clearly, what is left here is some Benthamite utilitarianism that must take into account a calculus of utilities, positive and negative—a calculus that recognizes that persons differ from one another in their prospects for law violation, in their compassion both for those who are victims and for those who themselves break the law, and in their post-act utility reactions on observation of punishment itself. Persons will, of course, differ along each of these, and other, dimensions, but it is not surprising that, for many, capital punishment, even for the most heinous crimes, would not secure approval in this mind-set. What seems surprising, to Americans, is the consensus that Europe appears to have attained on what seems, at best, to be a stance upon which reasonable persons may disagree.

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I should emphasize that the death penalty, even if restricted to the most heinous crimes, need not describe the stylized outcome of the contractual process conducted by reflective persons situated behind a veil of ignorance, or even the judgment of Smith's impartial spectator. Such a penalty may or may not emerge, as current American discourse and practice suggest. The point of emphasis is, rather, that the death penalty cannot, *ex nihilo*, be ruled out as being inconsistent with principles of justice derived from the presupposition of natural equality.[9] To Americans, the extent to which the death penalty, as such, is emplaced in the institutions of punishment becomes a matter for continuing political dialogue, which proceeds within the presupposition that, by their very existence, the institutions in place imply at least tacit consent. There is nothing that seems to warrant the apparent consensus that describes modern European attitudes in this respect.

V. Conclusion: Implications for Global Justice

Unless it is derailed by the still unresolved and wholly unexpected emergence of terrorism, globalization, in a meaningfully descriptive sense, will proceed apace, as driven by technology as well as efficiency. Increasingly, persons and groups will find it advantageous to interact, economically and socially—to "trade"—with other persons, groups, and organizations beyond the confines of historically defined political units. The movement toward integration of the world economy seems inexorable.

This movement toward inclusiveness of the whole economic nexus will necessarily be accompanied by an increase in relevant "border crossings," in which the legal structures of separate political units come into conflict. Contractual arrangements which are valid under some systems will be invalid under others. Persons who would be deemed to be law violators in one country may not be so judged in another. Citizens in one jurisdiction may seek asylum in others. Damage claims against value produced in one country may be challenged, if such claims are mounted from outside the national limits.

These and many other institutional frictions must bring with them increased demands for more widespread agreement on some set of international conventions. Attention must increasingly be paid to problems of formulating principles for "global justice." Conflicts will be exacerbated

[9] Many will recall the TV miniseries *Lonesome Dove* based on the novel by Larry McMurtry, *Lonesome Dove* (New York: Simon and Schuster, 1985). In the narrative, Gus and Woodrow, former Texas Rangers, are driving a herd northward across the Great Plains to Montana. Along the way, they capture a gang of horse thieves, among whom, to their surprise, they find their former Ranger colleague, Jake Spoon. They proceed to hang Spoon, along with the other horse thieves, because such thievery is a capital crime. They show no compassion for their friend and treat him no differently from his partners in crime. Nor does Spoon himself expect to be treated differently; instead, he acquiesces in his fate. He has broken the law; he accepts the consequences.

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and agreement on enforceable conventions will be made more difficult to the extent that the mix between the two ethical foundations for interpreting social interaction varies from one country to another. Institutional practices or the lack thereof which seem to violate precepts of justice derived largely from the hierarchical perspective may be broadly acceptable from the procedurally derived base of presumed natural equality.

Conflicts seem especially likely to arise as the economies of developing countries come to be more fully integrated into the world nexus. Practices that cannot be condemned by the generality norms inherent in the natural-equality framework of evaluation may fail to pass muster when evaluated by the more substantive criteria invoking treatment of identified unfortunates. For example, labor standards, or the absence thereof, which are applied without discrimination may yet be deemed "unjust" by those who cannot share, even conceptually, in the veil-of-ignorance experiment as it might be carried out within the developing country itself. This putative extension of the European welfare-state norms for "justice" is, of course, reinforced by the protectionist coalitions who rely on such arguments for domestic political purposes.

For any level of discourse, it remains always difficult to reconcile considerations for justice among equals with considerations for justice among unequals. Such difficulties surface more or less necessarily in any treatments of "global justice." The argument of this essay may be summarized in the claim that potential conflict across national political boundaries will be lessened only to the extent that the Enlightenment presupposition of man's natural equality, applied among the citizens of each separate nation-state, comes to dominate, and ultimately to sublimate, the Platonic vision of natural hierarchy.

Economics, Center for Study of Public Choice, George Mason University

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