

## Chapter 6

### Justice

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#### Questions

### Introduction

In 1.2 *Dancing the legal dance*, Mary Todd was upset because she thought that by declaring that the 12-year-old was not sexually abused, the Juvenile Court judge invited more sexual abuse. The girl had accused her father of sexual abuse and taken it back in open court, in front of her father, and Mary thought that if the judge had looked at the child's situation in and of itself, he would have investigated further. She thought it was only because he required that the girl's story match her sister's that he made the legal finding he did. She thought it 'so unfair that the 12-year-old should be treated differently because she has a sister.' She thought the 12-year-old was not being treated justly because any other child in such a situation, but without a sister, would have been treated differently.

We all know that hearings in Juvenile Court are imperfect. The proceedings may fail to protect someone who is being abused or may penalize someone who is not abusing. Mary thinks that the judge made a mistake and that the judicial system is wrong because it allows such a finding. The procedure, she thinks, should err on the side of protecting the innocent when the innocent are abused children, not on the side of protecting the guilty. So, she thinks, the procedure is unjust.

Mary thus has at least two complaints about injustice in *Dancing the legal dance*.

First, she thinks the judge has not treated like cases alike because he has treated the 12-year-old in a different way than he would have had she not had a sister. He has failed to be just even if the system as a whole is just. Second, she thinks the system itself is unjust because it allows for such a judgment, forcing the child to be abused again to get justice rather than protecting her in case she had been abused. She is in effect applying our method of tracking harms and asking of the judge, 'Why didn't he consider the consequences of what he decided? If he had, he would have realized that he is setting up a situation in which the younger daughter will have to be abused -- harmed -- again in order to restrain the father.' Laying out the alternatives, in other words, and assessing their consequences makes it obvious, Mary thinks, that the judge ought not to have acted as he did.

But Mary also objects to the judge and the system not supporting the family well, but letting it drift apart. She thinks this is happening because the mother was developmentally disabled and the family was African-American and poor. Mary thought that the mother did not know how to make use of the system to help herself or her children, but, more important, she thinks that the nature of the system makes those in it less willing to help because it was 'a family of that nature.' It is an unjust system, she thinks, when those in need of help are not helped as much because they belong to a particular class, or a particular race, or have particular personal characteristics (see the Code of Ethics 6.04(d)).

So Mary thought the legal procedure unjust and the social system in which it is embedded unjust as well. It was in response to these difficulties that she decided to work against the judge's reelection. Her hope, presumably, was that replacing him would produce a judge who was more just.

Almost every case we have examined raises issues of justice, and we shall need to sort out and examine at least two questions.

(1) Is the system as a whole just or unjust?

Apartheid in South Africa is a good example of an entire system that was unjust. But there is a second issue:

(2) Is a particular act (or omission) within a system just or unjust?

When Mary complained about the judgment made by the judge, she was objecting to a particular judgment, saying that it was unjust. But when she complained about the racism she thought was motivating those who failed to act, she was complaining not just about the acts of individuals within the system, but about the injustice of the system itself.

A particular act or practice may be unjust without the whole system in which it occurs being unjust, and, vice versa, a whole system may be unjust but still have within it just acts and practices. So we need to distinguish questions of social justice, concerning the system as a whole, from questions of particular justice.

For both we must distinguish between formal and substantive principles of justice and between various forms of procedural justice. These distinctions will be made as we work our way through a case which raises an issue of particular justice.

## **1. Particular justice**

Consider the following case:

### 6.1 *Still waiting after all this time*

An agency had the opportunity to provide an Employee Assistance Program (EAP) for a number of local businesses. In such programs, businesses contract with agencies to provide such services for their employees as substance abuse or mental health counselling.

When asked whether the agency struggled with the issue of its serving fewer clients if it took on EAP clients, the director, David, responded by saying that without EAP clients, the agency would be serving fewer clients. With EAP clients, the agency has the potential to see more clients at 'full-cost reimbursement.' 'In fact,' he said, 'we're treating all the clients exactly the same. The clients we had are still on the waiting list, and we are seeing the EAP clients. Those who pay up-front get quick service, and those who cannot continue to wait, just like before. It's just like the health-care system.'

David does not see any ethical issue in his agency's providing an EAP. He says that when his agency takes on EAP clients, nothing has changed and so no injustice has been done to the agency's other clients. He says, 'We're treating all the clients exactly the same.'

If adding an EAP does not change the way anyone is being treated, and allows the agency to serve more clients, and to get paid fully for doing so, who could be harmed? What could be unjust? Such a combination seems too good to be true, and it is. But if we are to understand fully David's response, we must distinguish between formal and substantive principles of justice.

#### **a. The formal principle of justice**

We all remember cases where we felt that we were being treated unjustly because we were being treated differently than someone else when we thought we should be treated the same. A colleague has a larger office, or more secretarial help, for instance. We can also empathize with the experience of having others being treated the same way we are treated when we think they should be treated differently. A new employee for the agency is getting just what you are getting even though you have been there for a number of years. We all are familiar with such feelings. Lying behind them is what is called the formal principle of justice, namely, that like cases ought to be treated alike and unlike cases ought to be treated unlike.

Any attempt to justify what appears to be unjust treatment always appeals to the formal principle of justice. When you complain that your case is unlike someone else's who is being treated the same way you are, or is like someone else's who is being treated differently, the form of response is always the same. Those you are complaining to will claim that the case you think is different is not (really) different, or the case you think is the same is not (really) the same. So your supervisor argues that the office of your colleague just looks larger, but is not really, or that it is larger, but that more has to go into it and the colleague really has no more room than you do, or that the colleague's situation is different from yours because the colleague has a different kind of work, requiring meeting with more people at a time than you do, say, and so requiring a larger office. We are all familiar with such responses, having given and received similar ones ourselves, and, in each case, an implicit appeal is made to the formal principle of justice.

Yet this principle only tells us that like cases should be treated alike and unlike

cases, unlike. It does not say which are like cases and which cases are unlike. This principle demands that we be consistent, but we can be consistent and still be unethical.

For instance, if some colleagues were consistently treating clients differently because of their skin color, they would satisfy the formal principle of justice. They would be treating like cases alike and unlike cases unlike because, on their racist view, persons of the same color are alike and persons of different color are different.

We may ask what good the formal principle of justice can be when it is consistent with such injustice. How can the formal principle be important for justice if we can satisfy it and still have racism, for instance? The answer is that treating like cases alike and unlike cases unlike is necessary for justice, but not sufficient. We need to add a substantive principle of justice to tell us what we are to count as like and unlike.

But the formal principle of justice has an ethical bite even without the addition of a substantive principle of justice. Thus, one implication of it is that whenever you make a decision, you have to worry not simply about making the right decision in the particular case you are concerned with, but also in all relevantly similar cases. So if you grant an exception to a client, saying, for instance, that the client does not need to list all resources for a particular form, you have to worry, first, about what has happened in the past in similar cases and, second, about what will happen in the future in similar cases.

The first worry is that those who were treated differently in the past will have a right to complain. Is the present case different enough to justify having treated them one way while treating the present client a different way? If not, they have an ethical claim against you, and unless you have some additional ethical reason for treating the present case differently, you are ethically wrong to make an exception.

The second worry is that those whom you will see in the future, and those who will see other caseworkers in similar organizations under the same laws, will have a just claim that they also should be granted an exception. Individual practice creates precedents. So whenever you are working with an individual client, you need to consider past practice in relevantly similar cases and to consider that you are setting a precedent for the future.

The formal principle of justice has an ethical bite, that is. It requires consistency and thus implies that if we treat similar cases differently, or treat dissimilar cases the same, we are *prima facie* ethically wrong. That is, we must have a very compelling ethical reason or set of reasons for denying what seems to contravene the formal principle of justice.

## **b. Substantive principles of justice**

But to be just, it is not sufficient only to treat like cases alike and unlike cases unlike. The formal principle of justice needs to be supplemented with a substantive principle of justice. A substantive principle tells us which cases to count as like and which as unlike, and there are as many substantive principles, for as many kinds of things as can be distributed, as there are ways of sorting people out. So when someone claims to be treating like cases alike and unlike cases unlike, we need to ask a series of questions:

- (a) Because anything that can be distributed can be distributed justly or unjustly, we need to ask, 'What are you distributing?'
- (b) Because what is being distributed can be distributed to some people and not to others, we need to ask, 'Who is getting what?'

- (c) And because what matters in determining whether a distribution is just or unjust is the reason for the distribution, we need to ask, 'What is your reason for treating those people in that way and others differently?'

These questions force out the basis the person has for distinguishing people and thus force out the substantive principle of justice being assumed so that it can be assessed.

We can see how these questions operate in the simplest of cases -- ones in which we might not think justice an issue. Anything that can be distributed is subject to some substantive principle. If you give yourself the best seat in your office, the one with the best view, for instance, you are committing yourself to distributing the seating in your office in a way that benefits you in respect to having the best view and so burdens your clients with less than the best view. So the answer to (a) is that you are distributing seats in your office and so views in your office. The answer to (b) is that you are distributing views to you and to your clients, and the answer to (c) might be that because you must sit in your office all day and your clients only sit there for short periods of time, you deserve having the best view. The substantive principle of justice is what is called a principle of desert. Who gets what depends on who deserves it, and you are claiming that you deserve the best view and your clients do not.

It is another question whether you are ethically right in distributing views in your office in that way. Some may think that it matters ethically how we distribute views in our office; others may think it not important. But because anything that can be distributed can be distributed justly or unjustly, we are committed to some substantive principle of justice for any benefit or burden we distribute -- some basis for distribution -- whether we are self-conscious about that or not. We might not think about views in our office as being something we distribute, and it may not matter ethically, but we distribute smiles, we distribute irritation, we may distribute welfare payments, eligibility for other benefits, and so on. In each case, there is a basis for our distribution, whether we are conscious of it or not. To determine what that basis is, to determine if we are acting ethically, we need to ask the questions we have identified.

What we shall discover is a wide variety of substantive principles that people have used, and people argue ought to be used, to distribute benefits and burdens. Because any distinction can be used as a reason for distributing benefits and burdens, the range of substantive principles is as wide as the range of distinctions between people -- gender, race, height, or whatever. Most of these substantive principles will not withstand ethical scrutiny, even for views in your office, but among all the possible substantive principles, there are some strong contenders, even for such major social goods as liberty, wealth, and income.

Some -- Marxists -- argue that benefits and burdens ought to be distributed 'from each according to their ability, to each according to their needs.' Others argue that the distribution should be on the basis of merit. Others argue that it should be on the basis of intrinsic worth as an individual. We shall examine two of these substantive principles, one that emphasizes individual liberty, but accepts wide disparities in how individuals are to be treated in society, the other of which emphasizes the essential equality of individuals, and ensures that each will be benefitted by any gains of society as a whole, with one consequence being that everyone's basic needs will be met. We shall not examine all the main contenders among substantive principles, but the two we shall examine articulate incompatible ideals that arguably lie behind all other substantive principles -- except, perhaps, the Marxist view, which we will examine briefly at the end of this chapter.

### **c. Using principles of justice**

If we return now to 'Still waiting after all this time,' with questions (a) through (c) in hand, we can get a better understanding of the ethical situation the agency's taking on EAP clients has produced. We are able to see where the harms lie.

David is distributing places in line among EAP clients and the agency's traditional clients. He claims that with the EAP everyone is treated the same way as before. We need to ask, 'In what respect are they being treated the same? What, in short, is being distributed?' He says that if the traditional clients were on a waiting list, if they were in line, that is, they still are.

Yet EAP clients go to the head of the line, in front of those who may have been waiting for some time for help. If a client who is not an EAP client is tenth in line, he or she might expect to be served after the nine in front are served. But at any time any number of EAP clients may jump in front. So though David is right that the former clients are on a waiting list, as they were before, he is wrong in implying that they are not being harmed by the agency's taking on EAP clients. They are being harmed in two ways. First, they may have to wait much longer for service, and, second, they are not being served in the order in which they have lined up. They are being treated as second-class clients, pushed aside if a 'full-cost reimbursement' client shows up. So the agency's clients are being treated the same way they were before in respect to waiting in line, but they are being treated differently in respect to being served, in a timely way, in turn (see the Code of Ethics 6.04(a) & (b) & 3.07(b)).

The agency's original clients have been harmed by the agency's taking on EAP clients, and the agency thus faces an ethical problem. Ought it to take on EAP clients, which provide assured funding for the agency, or ought it to refuse to do so and make sure that its former clients are served in a timely way in their proper turn? Or ought they to try to ensure somehow that EAP clients -- despite presumably paying for preferential treatment -- take their turn in line?

### **d. The agency's role**

However we answer that question, taking on an EAP raises another issue about the agency's role. Taking on EAP clients and putting them at the head of the line means that of the two groups of clients the agency now serves -- those employees from businesses which have contracted with the agency and the traditional clients of the agency -- those likely to have the most resources are being served first. The agency's traditional clients are low-income people with limited access to the sort of counselling the agency provides, but they are being treated as second-class clients because the agency is taking on EAP clients who are employed and would normally, but for their employers' contracts with the agency, seek private help.

So by taking on EAP clients, the agency is helping those less needy than its traditional clients and in helping them and, indeed, helping them before it helps its traditional clients, it is shifting somewhat the focus of the agency away from its traditional role of providing help for the needy who are unable to seek outside help because of limited resources (see the Code of Ethics 6.04(b)). That the agency has made no clear decision to change its focus does not mean that the focus is not changing. Indeed, taking on EAP clients may require the agency to provide such services as stress-management and retirement management, thus shifting the focus of its resources from mental health problems to issues of more

immediate concern to businesses.

What ethical justification could there be for the agency's taking on EAP clients, given the harms to their traditional clients and this worrisome shift in the agency's focus? It may be that the agency is so underfunded that it needs to take on an EAP to continue to provide service to its existing clients. We cannot know without further information, but if that is the case, we have a question of tradeoffs. Justice is not the only value, and David would need to argue that the agency must compromise what it takes to be its mission in order to continue its mission.

As usual, trying to understand a particular issue in a case has revealed other issues - including an issue of what is called procedural justice.

### **e. Procedural justice**

Let us look at a case which raises the issue of how those in line should be considered for help.

#### *6.2 The waiting list*

There is a waiting list for service in a mental health agency. The list never gets shorter, only longer, and people stay on it 'just in case.' People are taken by priority of need, not the time they spend on the waiting list, and priority of need is determined by, for example, whether a person needs hospitalization.

Some of those on the list injure themselves to get services, act out, 'or whatever' to be sure they are hospitalized, and Michael Jones, the person at the agency in charge of taking cases, must sort out those who are in real need from those who are not.

By the time a decision must be made because of an overdose, for instance, Michael has met with the prospective clients three or four times and so has some basis for judging whether they are a danger to themselves or others. In addition, he asks questions to determine the seriousness of the situation.

The most difficult cases are those in which the patient is borderline, enough of a problem to risk harm to those around and to themselves, but not enough to get hospitalized. Michael says he 'puts those through their paces.' If they want treatment, for example, they must come to therapy, three days a week for six months. If someone will follow through, then Michael will let them in.

He says he is right 60% of the time, and the rest of the time 'we won't know what they will do.' The decisions are complicated because the patients are very sophisticated in manipulation. One patient, Martha, wrote letters every three months asking for treatment, and Michael's assessment is that she wants to form more dependency-type roles.

A waiting list implies that one's entry into the system is determined by a wait. So if you were on such a list, you would presume that you would get treatment and that your getting it will be determined by your position on the list.

But the 'waiting list' does not serve that function at this agency. Some on the list will never get service because it has been determined that they do not need it, and some not on the list will get service ahead of those on the list because it has been decided they need it right away.

In Still waiting after all this time, the procedure adopted by the agency for serving its clients appeared to be first-come, first-served when it was not. The agency really had two lines -- one for the EAP clients and one for its regular clients -- and a rule that said EAP clients get served first, regardless. So the agency knew what it wanted and devised a procedure to get it.

The agency thus followed what is called perfect procedural justice. Perfect procedural justice occurs when, for instance, each of two children should get half the dozen cookies one has. We simply divide the dozen in half -- 'one for you, and one for you,' and so on. The procedure is simple and effective. Similarly, if we are concerned that those who get to a store or a bus stop are served in the order in which they arrive, having a line is a simple and effective procedure to guarantee that -- provided no one crashes the line and no one in line lets another in who came later.

What marks perfect procedural justice is that one knows ahead-of-time what a just distribution would be and can figure out how to achieve it. The difficulty with Still waiting after all this time, as we noted, is that the Director was mistaken in thinking he knew ahead-of-time what was just.

In The waiting list the situation is different. The 'waiting list' does not line clients up for service in the order of their arrival. It does not line them up in any way because the agency takes whichever client it judges is most in need, regardless of where that person is on the list and even whether that person is on the list. What the agency wants is to serve those clients most in need and to rank clients in a way that matches up to their need for the agency's services. Having a waiting list is no help to that end. First, new more needy cases can occur at any time and will not go to the end of the list. And, second, being on the list is no guarantee that the agency will agree that the person truly needs the agency's services.

The agency would like to select out from all who apply for its services all who truly need help and only those who need help. If it fails to help some who need help, or helps some who do not truly need it, it will have failed in obtaining its end. But the best it can do is to devise an imperfect procedure and then, as the agency sees how the procedure works in practice, fine-tune it to get closer and closer, if possible, to achieve the end of sorting out all and only those who need help.

The agency has a set of problems that make that end difficult to achieve. On the one hand, even if everyone with a borderline personality disorder needs help, the agency must sort out those with a borderline personality from those who do not have a borderline personality disorder, but, as it were, border on it or are just faking it. On the other hand, the agency will not be able to help all those who clearly have a borderline personality disorder, but distinguishing within the group with a borderline personality disorder those who are most in need is itself difficult, requiring, if one is to be sure, just the sort of intensive examination received by those who are judged most in need and are taken on by the agency. In short, the agency cannot be sure it is making the right judgments about who is most in need and who is not unless it takes on everyone, and it cannot do that.

The agency is thus faced with designing a procedure that will be imperfect -- just as are the judicial hearings that so concerned Mary in 1.2 Dancing the legal dance. The agency knows that what would be just would be a procedure that sorts out for help all and only those who truly need help, but it cannot design a procedure that will ensure that result. So it must draw a line somehow, and it can weigh its line either towards helping those who need it or keeping out those who do not. It can devise a procedure, that is, which, though not perfect, is generous and attempts to help all who need help, but will also help some who do not, or it can devise a procedure that keeps out those who do not truly need help, but risks keeping out some who do need help. Either way, the procedure will be imperfect. Ei-

ther some who do not truly need help will get it or some who do truly need help will not get it.

Even if money were no object, drawing a line would not be easy. If money were no object, we might think we ought to be generous and make sure to help all who need help even though that will mean that some who do not need help will get it anyway. But giving help to those who do not need it may create just the kind of dependency that help is designed to eradicate. The best help for some prospective clients may be no help. So there are harms no matter where the line is drawn.

We have just made a distinction between two kinds of procedural justice, and it is worth making the distinction clearer. We often commit ourselves to a procedure to determine what is just and what is not. For instance, we might be committed to a substantive principle of justice that says that everyone gets a certain benefit if they deserve it, but then, because it is not obvious who is deserving and who is not, we might devise a procedure to make that determination. The procedure might consist of hearings before an impartial panel giving evidence for and against someone's deserving the benefit. Our criminal justice system is based on the substantive principle that those who commit crimes deserve punishment and those who do not do not, but because it is not obvious who has committed crimes and who has not, we have a procedure -- a criminal trial is part of that procedure -- to make that determination.

A procedure is perfect if we know ahead-of-time what is just and can devise a procedure that ensures that result. If we know that each of two persons deserves half of what is available, for instance, then we can have perfect procedural justice if we can divide the benefit in half. Unfortunately, the situations in which we know what is just and how to achieve it are rarer than we might like. We are far more likely to find ourselves having to devise a procedure that is imperfect. We have such a procedure when, as with perfect procedural justice, we know ahead-of-time what is just, but cannot devise a procedure that ensures that result. The criminal justice system is one example. The waiting list provides another. The welfare system itself provides yet another.

We would like welfare benefits to go to all those who need help and only those who need help, but we cannot design a procedure that will pick out all and only those persons. The consequence is that in drawing a line, we need to make a value judgment about which way to weigh the benefits -- to help all who need help and thus help some who do not, or to keep out those who do not need help and risk not helping some of those who need help.

In either case, we will find examples of persons who need help and do not receive it and of persons who do not need help and do receive it. It is the nature of imperfect procedural justice that there will be such examples. So one cannot properly argue that the welfare system is bad because of those who take advantage of the system for their own benefit when they do not need aid. Similarly, however, one cannot properly argue that the system is bad just because some who need help do not obtain it. To make an ethically proper argument about the welfare system, we need to begin with an examination of the relevant percentages. Of all those who need help, how many do not obtain it, and of those who do not, how many do obtain it? Then we need to examine whether the disparities can be remedied or lessened by fine-tuning the procedure in any way. Only if too large a percentage of those in need are not being helped or too large a percentage of those not in need are being helped can we proceed to object to the procedure, and, of course, people will disagree about how much is 'too large.' And only if the procedure can be fine-tuned to be more discriminating can our objections have any fruitful outcome.

## **f. Discretion**

A last issue to examine in this section concerns discretion. In The waiting list those 'in need' get served first, but, however clearly in need some persons may be, subtle judgment is often necessary to pick out others. In any situation in which there are standards for judging, someone must do the judging, and two sorts of ethical issues can arise. On the one hand, even if the rules by which to judge are clear, the person doing the judging may not apply them correctly. Or the rules may be unclear so that their application is unsteady even when applied by the most fair-minded of persons.

In Adoptive Children, Deborah was giving some adoptive children information about their natural parents. One issue that case raised concerned whether it is ever ethical to break the law, and another concerned how we decide who gets the illegal information and who does not. Deborah was making exceptions to the general prohibition against providing information, and even if we agree with her that some sort of exceptions needed to be made, we might wonder about some of the particular judgments she made. In one instance she mentioned, she did not provide information to a brother and sister who came twice, unannounced, asking for help. She preferred, she said, that people make appointments so she could do a better job preparing, and these two were demanding.

She is engaged in risky illegal behavior and so needs to do careful screening. She needs to judge who is likely to talk and who is not. She also has concerns about the well-being of the natural parents. Who is likely to be concerned about their interests and who is not? So she might be likely to think demanding persons put her and the natural parents at risk.

Exercising discretion raises ethical issues. Because Deborah is making exceptions to a general prohibition, and she is making her own rules to guide herself, she has to be especially sensitive that she may be unjust -- either in making up the rules she applies or in applying them. They seem unclear. What does it mean to be 'undemanding,' for instance? And her application of these rules seems unclear -- how is one to determine who will not talk because they are extremely happy, or will talk because they are angry at having to go through the complicated ritual Deborah seems to be demanding?

## **2. Social justice**

Social work has been called the altruistic profession. As their professional calling, social workers help others. But we can help individual clients by changing the society within which they live as well as by concerning ourselves with the personal difficulties they have, and social workers have a professional obligation to work for social justice. The Code of Ethics says that social workers 'should advocate for living conditions conducive to the fulfillment of basic human needs and should promote social, economic, political, and cultural values and institutions that are compatible with the realization of social justice' (6.01; see 6.04).

Even if social workers were not committed to this end as professionals, it takes little examination of what it is like to be working within the profession to understand why they would be motivated to achieve this end. A caseworker soon discovers, first, that many clients' particular problems are social problems -- lack of educational opportunity, lack of a stable and adequate source of income, lack of child-care facilities, and so on -- and, second, that what the caseworker can do for these clients within the system is little compared to

what could be done by changing the system.

We shall first examine what are called the conditions of justice, what must be true in order for issues of justice to arise. We will then examine two competing visions of justice, one that emphasizes individual liberty, but accepts wide disparities in how individuals are to be treated in society, the other of which emphasizes the essential equality of individuals and ensures that each will be benefitted by any gains of society as a whole. These are not the only contenders among substantive principles, but they represent incompatible ideals that will allow us to see how we might agree on the end of achieving social justice and yet have such completely different visions of justice that we would disagree on everything else.

But however incompatible the ideals of these two visions of justice, at least one other vision -- that of Marxism -- requires a radically different understanding of what is essential for justice. We shall consider this alternative when we have finished briefly sketching the other two.

### **a. Conditions of justice**

It is a condition of any question of justice that what is being distributed be moderately scarce. If what was being distributed was not scarce at all, everyone could have as much as they wanted, and there would be no need to concern ourselves with how to distribute the thing justly. If it were very scarce -- like a single glass of water on a life boat with 20 passengers -- then justice is not possible. So we are only concerned about questions of justice when there are some of the goods in question, but not enough for everyone to have as much as they might want or need.

Social workers are committed by the Code of Ethics to 'promote the right of clients to self-determination and assist clients in their efforts to identify and clarify their goals' (1.02). That commitment assumes that each of us can have a particular vision of a life for ourselves and that each of us has a right to the general means to realize that vision -- equality of opportunity, for instance, sufficient income or wealth to satisfy at least our basic needs, and so on.

Such goods as opportunity and income are basic goods -- extremely valuable to us as means to an end, namely, achieving our particular vision of the good life for ourselves. But, unfortunately, it is true of everything of value to us in achieving our particular visions for ourselves that it is at least moderately scarce. And so, in determining how to distribute such basic goods, we need to agree on a principle of distribution, a substantive principle of justice. As we shall see, that turns out to be much harder than it might at first appear. Let us begin with a view articulated best by the philosopher Robert Nozick.

### **b. Justice as free transactions**

Whenever we go shopping, we take money (or a credit card), and when we decide to buy something, we give the merchant money, and the merchant gives us the goods -- milk, clothes -- we have purchased. This exchange redistributes the goods of the world. You had some money which the merchant now has, and the merchant has some goods which you now have. If this redistribution of goods is to be just, there must be a substantive principle of justice underlying it and it must be justifiable. We can best see that principle and understand how it works by pursuing an analogy.

Monopoly is a game in which money and property are distributed. At the end of the

game, if the game is played to the end, one player is likely to have most if not all the wealth of the game -- all the money and all the property. The players begin even. Each is given the same amount of money, \$1500, and none begin with any property. They are all subject to the same rules, and as the game proceeds, money and property are redistributed. A player gets \$200 for going around GO; so \$200 goes from the Bank to the player who passed Go. Another collects \$6 rent; so \$6 goes from one player to another. Each play in the game not only shifts one's position on the board, but also holds the potential for shifting one's fortunes. Will one land on Boardwalk? Will one land on Parking -- diagonally across the Go and sometimes filled with the money from fines and assessments?

We all know what can go wrong in such games. If someone cheats by taking money from the bank without permission, or by turning over mortgaged cards without paying off the mortgage, or by refusing to pay Community Chest by burying the tax card in the deck without admitting that it was the tax card, then the game is unfair, and the outcome of the game is unfair to the extent that it reflects the unfairness in the game. If the final distribution of winners and losers depends upon someone having unmortgaged Boardwalk without really paying off the mortgage, for instance, then the winner did not really win and the losers did not really lose.

Similarly, if there is no cheating, but there is coercion, the game is unjust. An older sibling may tell a younger, 'You better not buy B & O: that's mine!' To the extent that the final result of the game reflects that earlier coercion, it is as unjust as if the person stole the B & O.

Yet if all the transactions of the game are uncoerced and if there is no cheating, the final results, whatever they may be, seem just. No one who plays seems to have any proper grounds of complaint even if everything is lost. Or, at least, that is the way we think about the game and about similar situations where people start out with equal shares and, though a series of transactions, end up with unequal shares.

For instance, no one complains about races in which there are winners and losers. As long as everyone started at the same mark, the result is deemed just provided that there was no cheating or coercion. In competition in the marketplace, no one seems entitled to complain when, at the end of the day, the farmer ends up with less fruit and produce and more money and various customers have less money, but some fruit or produce. As long as they were not cheated, and no one was coerced, the exchanges of money for fruit and produce seem just, the final distribution at the end of the day as just as the distribution at the beginning.

Such examples are convincing because, it is claimed, any distribution that is achieved through free and uncoerced transactions from an originally equal distribution is just. What matters on this view is not what shares of any distribution anyone has, whether one has more or less than another, but how the distribution was achieved. If it was achieved in a just way, then it is just -- even if the final distribution is very unequal as in Monopoly. One person has everything, and the rest have nothing. But, on the theory of justice being articulated here, that distribution is just provided it was achieved in a just way.

One implication of this theory is that the apparent vast disparities in our social system may in fact be just. We cannot tell just by looking at how things are now. We shall instead have to determine how the disparities were achieved. What matters is that people within society are allowed to engage in free and uncoerced transactions. If government interferes with their capacity to engage in such transactions, the end result of such transactions is unjust to the extent the result reflects the interference. On this view, taxes are a form of interference because money is redistributed not through free and uncoerced transactions, but through the government's demanding a share. Regulations regarding buying

and selling would be a form of interference because they prevent people from freely doing what they wish to do. The vision is of a society unfettered by governmental regulations, in which persons engage in exchanges with each other, buying and selling what they wish as they wish. Whatever happens as a result of such transactions is just provided the original distribution was just and provided there is no coercion or cheating.

This can be a powerful vision, especially when we view it as explaining our everyday commercial transactions and their results -- whether, for instance, our having our house and furniture is just when others have neither. It surely resonates with the system of capitalism in which we live. Justice has been called 'the first virtue of social institutions' because, among other things, it sets the normative relations between citizens. Justice as free transactions tells us that it is just to buy and sell and trade and that we are not being unjust in having more than others provided only that we achieved what we have through free transactions. Cheating and coercion are the great sins in such a social system, for they impede justice.

### **c. The implications for social work**

This vision sets a view before any social worker about where this society ought to be heading if it is to become a just society, and it is a view that has implications for how a social worker ought to respond to the problems faced by individual clients. That is, if we have this view of justice, we will think that our clients can face only two sorts of problems. Either (a) the system is somehow preventing them from realizing their full potential by restricting, in some way, their transactions with their fellow citizens or (b) the clients are themselves not taking advantage of what the system allows.

If the problem is (a), a social worker ought to work to remove governmental regulations that hamper free enterprise, must work to prevent cheating in the system and must work to purify the system of any coercive elements that may harm clients in pursuing their aims.

If the problem is (b), a social worker must meet a client's problems by offering options and encouraging the client. 'You ought to be more self-confident of your capacities to succeed,' or 'You have a number of personal assets, and you need to develop those if you are going to succeed in this society,' or 'You seem to have difficulty in competitive situations. Let's work on that by practicing competitive games?'

In short, the vision of justice has implications for a social worker's practice. If a social worker accepts this vision, then he or she will be obligated to tell clients to strive to succeed within the system to the extent the system satisfies the theory of justice. That is, failures of a client become the personal responsibility of a client on this theory of justice if a client does not compete well within the social system, and a social worker would have the obligation to tell a client that and to try to help the client compete better.

One virtue of this theory of justice is that it attempts to maximize the liberty of those within the system. They are free to do whatever they wish with whatever assets they have, provided that they do not coerce or cheat others in making transactions. But the theory has its problems. We can best bring these out by examining what we might call 'the lottery of life.'

#### **d. Natural features and social circumstance**

One cause of injustice is that persons are born into social circumstances which make a profound difference to the kinds of lives they are able to lead. It is no fault of their own that they are born into such circumstances, and by the time they become responsible enough to make decisions, the circumstances may already have worked such harm as to stunt forever the person's life chances. This impediment of being born into social circumstances that are less than optimal is compounded when one is born with a natural feature that is a deficit in the social system in which one must live.

Consider the following case:

##### *6.3 Differing social circumstances*

The social worker, Amanda, is visiting a client in the city. The woman has a son, Thomas, 4, and lives generally by herself in a small ramshackle house. She has a scar down her arm, put there by her occasional boy friend who blow torched it one night when he was angry. Her son has a hearing defect, and though he is intensely curious and talkative, Amanda has a difficult time understanding him. He repeats what he hears, and what he hears is not clear.

Amanda has finally found public housing for the woman and her son and explains the conditions. It costs, but her welfare payments will be increased to pay for it. Her boyfriend cannot live with her however.

They talk, and after pointing out that living in public housing will finally put Thomas in a position where his hearing impairment can be helped, Amanda says, 'It will also give you a reason for not seeing that man again. So he won't be able to hurt you.'

The woman says, after a slight delay, and in tears, 'You don't understand. He's my man, and any man is better than none.' She refuses to move.

One may regret the woman's decision, thinking it a manifestation of a fatalism she could try to overcome. But the plight of her son is more dramatic. He is bright and inquisitive, but having been born with a hearing defect, and living in such social conditions that he is unable to obtain help, he will not be able to make himself understood readily and will have difficulties in school and in his social life. A natural defect, perhaps readily remedied, condemns him to less than a full life because, through no fault of his own, he was born in a system which left his well-being up to a mother who, for whatever reason, was unable to provide for proper medical aid at the time when it would do the most good.

What we might call natural assets and deficits are distributed at birth. Some are born with features that will aid them in seeking their own conception of the good life; others -- like Thomas -- are born with features that will impede their seeking the good life for themselves. We are all born into certain social circumstances. Our parents are poor or rich, upper-class or lower-class, educated or not, and so on. Our prospects for life are to some extent determined by these circumstances. Those parents who presume that their children will go to college, for instance, are more likely to have children who go to college.

Thomas has been hit by bad luck twice in the lottery of life. He was born with a hearing defect, and he was born into social circumstances that make help difficult to obtain. It seems unjust that matters should be so arranged in a society that children should be harmed so much because of something that is not their fault. It is one thing to condemn someone to less than a full life for something they choose to do. That is how we justify

sending those who commit crimes to jail. It is quite another thing to put someone at risk of living less than a full life because they are born with a defect in social circumstances that make it difficult to correct. They are not responsible for having been born with a defect that will substantially alter their life prospects, and they are not responsible for being born into social circumstances that make correcting that defect in a timely way unlikely. It thus seems unfair that they should be penalized in trying to achieve their life prospects.

It seems particularly so because we live in a capitalist society. Some natural features are thus obviously more valuable than others because wealth and income are distributed in large measure on the part of one's capacity to achieve the good life for oneself. Native intelligence and a willingness to work count for more than a natural sense of cooperation in a society in which one acquires goods through competitive practices. Thomas was born into a system, that is, that values articulate individuals who can make themselves clear.

What count as natural assets and natural deficits are themselves socially determined. Any particular society is an artifact, a creation of human beings, and it can be changed if human beings wish to change it. In one sort of society, some natural features may be assets that are deficits in another sort of society. For instance, in Eskimo cultures a willingness to share everything has survival value while, in other cultures, such altruism might count as naivete.

That natural assets and deficits are social artifacts is important to keep in mind because it is arguable that societies ought to be arranged so as to compensate those who are not well-endowed from birth with the natural features that make for success within a particular society. Those persons who are born mentally handicapped in some severe way are unable to compete in society, through no fault of their own, and it is not just, it may be argued, to have a social system so arranged as to deny them the benefits the social system arranges for others who are born with what the system makes natural assets. Those who are born with natural features that are assets within such a society should get no credit for being born that way any more than those who are born with what are considered deficits should be held responsible.

We should look carefully at a theory of justice that fails to compensate those who lose out in a social system because they lack the natural features the system defines as assets, and we should look equally carefully at a theory which rewards those who win out because they are born with natural features the system considers assets.

We are, in effect, here making use of the fourth step in our method of tracking harms. For we are here asking what harms will be unmitigated, produced or entrenched by the particular arrangement Nozick argues is just.

#### **e. Difficulties with justice as free transactions**

The theory of justice as free transactions does nothing to nullify the conditions of social circumstance. If one is born into a social position that makes it difficult to utilize one's natural assets, the theory does not compensate in any way for that problem. We start off a game of Monopoly even with others, and it is that even start which explains in part why no one complains of uneven results. Any eventual unevenness is the result of their own play and luck, good or bad. But if the distribution of money at the beginning of the game had been uneven, so that some were, as it were, born into different starting positions, with significantly different assets, then it is not obvious that the outcome of the game would be thought just, even if the transactions were uncoerced and free of cheating. If someone begins with \$5000 and another with \$10, then no matter how good the luck of the latter, it will

be difficult to purchase enough property early on to make a run at winning the game.

Taken as an analogy of a society, Monopoly fails because it supposes people start out equally situated while, in real life, they start out in different social circumstances, some so advantaged by the successes of their parents that it is difficult for them to fail and some so disadvantaged that it is difficult for them to succeed. Monopoly presupposes an even playing field, as it were, while the game of life is marked by the unevenness that societies impose in discrimination -- against women and certain ethnic groups, for instance.

Monopoly also fails, like the theory, to compensate for natural deficits. If one is born with low intelligence, or some other feature that harms one's capacity to engage in transactions, or if the system is biased against women, for example, a person with the 'wrong' natural characteristics may be disadvantaged in a system that emphasizes such transactions. Again, it is no fault of one's own to be born with such features, and yet the system is so designed that someone with such features is less likely to achieve success than someone who is born with natural assets.

Of course, the assets and deficits are 'natural' only in the sense that they are natural features of people. That such features are deficits or assets is a result of having a social system which makes them deficits or assets. Monopoly makes competitive features assets and makes deficits of such cooperative or charitable behavior as letting someone get all four railroads so they can have a complete set. A different game, or different social system, might make competitive features deficits and cooperative features assets.

So the vision of justice at issue is doubly at fault, it may be argued. For it first defines what count as assets and deficits, making justice depend upon them, and then fails to compensate those who, through no fault of their own, fail to have those natural features the social system deems assets.

The vision is thus open to the objection that it distributes the goods of society on the basis of characteristics which are themselves socially determined and which are not distributed justly. For it is arguable that because no one deserves what natural features they have or what social circumstances they are born into, it is unjust to distribute the goods of society, like opportunity and income, on the basis of any natural features or social circumstances.

The theory picks out some natural features as crucial, namely, those helpful to engaging in transactions, and it picks those features, it is claimed, because they encourage the liberty of individuals and, when emphasized, produce the most efficient system. The argument is that when people are free to do whatever they wish, without interference, they will produce more than when a governmental agency is telling them what to do or restricting their actions.

But one additional problem the theory faces is that in attempting to encourage liberty, it may undermine it. In the game of Monopoly, those who lose out lose out completely. Unless one modifies the game to allow for bank loans, some players will slowly or quickly lose all their assets through bad luck or bad play. The implication is that if we were to adopt this vision of justice for our society, some would not make it. They will simply not have enough natural talent to make it, or to overcome bad luck or a poor inheritance, in a society that values the capacity to engage in transactions. So they will lose their liberty because they will lose the capacity to engage in any transactions at all. In the worst case, they will die, and in cases less worse, they will have nothing to sell. Similarly, those who win in the game will have their liberty diminished because there will be fewer and fewer individuals with whom they can engage in transactions. They are, of course, not likely to notice that because, unlike Monopoly, real societies produce new wealth and new players all the time, but the point is that the liberty of individuals depends upon the choices available to them,

and if the choices are diminished, so is their liberty. Those who succeed in such a system are impoverished by the loss of liberty of those who fail, and that is some evidence that a just society cannot be arranged the way Monopoly is. Even the winners lose something if matters are so arranged that there are winners and losers.

But justice as free transactions is not the only substantive principle of justice we could adopt as our vision of a justice society. John Rawls has articulated a very different theory.

#### **f. Justice as fairness**

It is wrong to punish people for something they did not do. It is thus wrong to send people to jail when they committed no crime, and it is equally wrong that people should be penalized in any way for things they are not responsible for. But you are not responsible for having been born into a particular social position, and you are not responsible for having been born with whatever natural features you may have, some of which may be assets in our society and some of which may be deficits. So, one might argue, a just world would be one in which people are not penalized in their quest for the good life for themselves by natural and social contingencies for which they are not responsible.

We might imagine modifying a society modelled after Monopoly in a series of stages, each modification responding to a harm done in such a society and all the modifications leading to a very different kind of society, articulating a very different vision of justice. For, first, as we saw, those who are born into poor social circumstances are harmed by their birth in those positions through no fault of their own. In a real society, unlike Monopoly, individuals do not start out equally situated. One way to compensate for the inequality is to ensure that everyone has an equal chance to be a success in the society.

But we must distinguish between different ways of understanding what it means to have an equal chance. What is called formal equality of opportunity guarantees that when we all compete for positions, each person is judged wholly on merit. The person who most merits the position wins it. But individuals with equal natural talents will not compete on a level playing field if all that is required is formal equality of opportunity. For those born into poor social circumstances have that much farther to go to catch up with those, with equal natural talents, born into the best social circumstances. The latter will generally win the best positions not because their natural talents are better, but because their social circumstances allow them to develop better what natural talents they do have.

Requiring formal equality of opportunity after people have been affected by their social positions comes too late, it can be argued, to help those harmed by being born into less fortunate social positions. What is needed is real equality of opportunity. That means that society must be arranged so that those with equal natural talents rise, or fall, to the same level no matter where they may be placed by birth in the social scale. Providing real equality of opportunity requires a fundamental change in the way in which we educate our children, guaranteeing real equality of opportunity throughout the educational system. It would require fundamental changes in the ways in which we rear and support our children, making sure that some are not harmed by their family circumstances.

But even providing real equality of opportunity will not help those who are born without the natural features the society values. Those who cannot make it in a competitive system will not be helped by a system that guarantees that natural talents rise to their natural levels regardless of the social position in which one was born, for they lack the natural talents to make it. Yet it is not just, it is claimed, for those people to suffer for being born with

whatever natural features preclude their making it in a competitive system. It is not their fault they lack those features, and it is unjust, it is claimed, so to arrange a social system that they are penalized for having the features they have.

What is needed, the argument continues, is some floor below which people are not allowed to fall, a floor high enough so that they can live a decent life. Society should compensate them for its having made valuable natural features they do not have.

With real equality of opportunity, and with a floor below which citizens are not allowed to fall, a society can compensate those who would otherwise be harmed in a social system arranged like Monopoly. But such modifications leave untouched those who are born with natural features the system designates as valuable and who are born into such good social circumstances that they can parlay their position into great gains for themselves. Yet, it is argued, they deserve their success as little as those without the favored natural features deserve their failures. We should look at the distribution of natural features as a lottery, with no one deserving whatever features they have. Because society determines which features are valuable and which are not, rewarding some for having those valuable features is as unjust as penalizing those who lack those features. Society should not be arranged so that the distribution of income and wealth and other social goods depends upon natural characteristics for which no one can properly claim credit.

Instead, it is argued, it should be arranged so that benefits accrue to those with natural talents only if they are to the benefit of everyone. This arrangement effectively puts a cap on everyone's income and wealth as well as a floor. Indeed, any difference between the cap and the floor can occur only if those making more advantage those on the floor. If any rise, all rise. Injustice, on this view, is an inequality that is not to the benefit of all.

### **g. The implications for social work**

We can envision the social structure that would occur under this theory of justice by imagining a situation in which persons are normally competitive -- students in a classroom, for instance, vying for grades. What the theory requires is that those with natural assets which would normally allow them to rise to the top use those assets only for the benefit of all. Natural assets become public assets and natural deficits public deficits. Each member of the class would get the grade of the person who gets the lowest grade unless getting a higher grade advantages everyone. So each member of the class would try to raise the lowest grade as high as possible. The students thus do not compete, but cooperate for grades. Altruism becomes a social virtue and competitive self-interest a social vice.

As with the view of justice as free transactions, this view sets before a social worker a vision of society for which we can aim. To the extent that we let individuals fall through the social net, we are unjust; to the extent that we fail to have real equality of opportunity, we are unjust; and to the extent that we allow some individuals to amass income and wealth that is not to the benefit of all, we are unjust. Social activism means working for a deep egalitarianism, on this view, and this view has implications for practice in particular cases as well.

For many of the cases that come before social workers will reflect injustices within the system. Individuals will find that they are not getting ahead, even with natural talent, and will find that some impediment to real equality of opportunity is blocking them. Or they will have fallen through the floor and discover that there is no support for them within the system. The need for social workers would diminish considerably were the theory of justice as fairness realized, for many of the individuals put at risk by our current system would be

taken care of in a system with real equality of opportunity and with a floor. But, also, the concerns of social workers would change. In justice as free transfers, a social worker's job would be to make sure the system does not prevent individuals from achieving their true potential and to encourage clients to take advantage of what the system offers them. But in justice as fairness, a primary concern would be those who are so self-interested as to attempt to gain advantages for themselves which do not benefit all. Bill Gates would become an object of concern rather than a role-model.

#### **h. Difficulties with justice as fairness**

This vision of a just society is deeply egalitarian, and it has some significant disadvantages. For one thing, it is not at all clear how one could institute it without a heavy loss of liberty. The advantage of justice as free transfers is that once the system begins, everyone is free to do what they want to do consistent with allowing everyone else freedom. Anything that interferes with freedom creates injustice. Normally, individuals in a society come to occupy different positions, with different assets and deficits, through their own individual efforts and through luck, both bad and good. A storm that demolishes your house puts you at a disadvantage vis-a-vis others through no fault of yours, and a deal that you make at a flea market puts you at an advantage though it harms no one else. Individuals become differentiated one from another through their own acts and acts of nature, and yet, in a society in which justice as fairness operates, continual tinkering is required to make sure that any significant differentials are to the benefit of all. Individuals would not be free to do whatever they wished, and significant transfers of income and wealth would be required to create a floor below which people cannot fall and to make sure that those who would otherwise rise high within the system gain only when the gains are for the benefit of others. Justice as fairness requires a loss of liberty. We trade liberty for what the theory claims is fairness.

Tied to this concern about a loss of freedom is that the theory would make a society just only at the price of great inefficiency. The more egalitarianism is required, the more transfers from one to another are required and, it seems, the more individual incentives for using one's talents are reduced. One may respond that we are socialized into a competitive system and that we may just as well be socialized into a cooperative one. But it needs to be argued on independent grounds that competitive appetites are not natural features of individuals, and the concern is that if they are natural features, the system is at odds with what humans will do in any event and that this creates friction and thus, in that form as well, a source of inefficiency in the system.

Besides, it may be argued, though it is just to provide for those who, through no fault of their own, have natural features that disadvantage them in society, the argument for a high floor is less plausible when one considers those who have the natural features that are assets in a society, but fail to develop them, through no fault of society's. Someone who fails to develop their talents is still supported by the system and thus by other individuals within the system who are effectively working for those persons as well as for themselves. That seems unjust. Why would some provide for others who are perfectly capable of providing for themselves, but refuse to? The incentive to develop one's talents for the benefit of all is reduced if others could develop theirs as well, but do not wish to and yet still are supported by the system.

Besides, some may object, those who do have what society recognizes as assets can develop them for their own benefit only if others benefit as well. So the features that make

them distinct individuals become public property, as it were, to be used to benefit all if used to benefit any. Individuals are not allowed to choose any sort of life they wish, to develop their talents any way they wish, but only for the benefit of all. That may be good, but the price may be too high. We lose individuality as well as liberty.

### **i. Alternative theories of justice**

We may compensate for both natural and social differences or not. Justice as fairness compensates fully for both; justice as transfer compensates for neither. If there are no other differences that a system of social justice arguably needs to compensate for, these theories represent the limits. But, obviously, there are alternatives.

We might compensate for natural differences, providing a floor, for example, but not compensate for social differences. Or we may compensate for social differences, providing real equality of opportunity, but not compensate for natural differences. Or we may compensate for some natural differences and not for others or for some social differences and not for others. Or we may compensate for all social differences and some natural differences, and so on. Each of these alternatives would need to be explored for their harms and benefits if we are not convinced that either of the two visions we have examined properly captures a just society.

In exploring these various alternatives as well as the two visions we have examined, however briefly, we would be exploring differing forms of social organization. A society organized so that it would be just on Nozick's justice as free transactions would differ in significant ways from one organized so that it would be just according to Rawls's justice as fairness.

Not only would the wealth and income generated by those within the society be distributed in different ways, but what would count as social virtues -- as a 'good person' -- would differ too. Someone who takes advantage of every competitive opportunity to increase his or her wealth is an entrepreneur in a society organized to express justice as free transactions. Entrepreneurs are generally to be praised. Helping the least advantaged would be not an act of justice, but of kindness -- not required, but nice to have. We would praise such acts, but we would not think them expressions of a just individual, but of an individual who is, besides being just -- neither cheating nor coercing -- also kind.

But in a society organized to express Rawls's justice as fairness, helping the least advantaged is an act of justice, provided that everyone benefits. It is not kindness to help those in need of help. Rather, they have a claim upon us. We shall be living in an unjust society if there exist inequalities not to the benefit of all.

We need only imagine a society 'writ small' -- a group of social work professionals working together, a classroom of students -- to appreciate the significance of how the differing visions of justice can make a difference to the ways in which those within the society interact and to the structure of the society as a whole. A classroom in which inequalities in grades are unjust unless they are to the benefit of all means that the very best students will need to work together to help those least advantaged -- or everyone will achieve the grade to be achieved by the least advantaged. On the other hand, a classroom in which only 10% are to obtain A's, 20% B's, 30% C's and so on does not encourage cooperation. Each act of helping that may advantage another student will disadvantage the student who is helping. A society organized so as to satisfy Nozick's justice as free transactions will be highly competitive while one organized to satisfy Rawls's justice as fairness will be highly cooperative. The relations between members of the society will thus differ significantly, and the distribution

of the society's resources -- grades in the case of a classroom -- will differ significantly as well.

Because social work is an altruistic profession, concerned as a profession to empower and help others, social work must consider what is the most just society, what social structure will best achieve the end of helping those most in need. Justice as fairness and justice as transfer both presuppose the economic organization of society ought to be capitalism, but, as Marx made clear, capitalization is only one form of economic structure and his argument is that it is inherently unfair.

Marx's attack on 'bourgeois capitalism' sends a mixed message about what social work is obligated to do to fulfil its mission. On the one hand, Marx attacks the rhetoric of justice as 'an ideological device for presenting bourgeois interests under the guise of allegedly universal values.' We may sometimes think an individual is trying to dress up an action done out of self-interest by giving us 'ethical' reasons for it. 'I only did it because I want to help you.' Marx's critique is that capitalism has developed an entire 'ethical' system simply to dress up unbridled self-interest so that it may appear just and responsible. Were we to take Nozick's justice as free transactions to its logical end and prohibit, as unjust, any interference by the government in how we engage in commerce and so prohibit taxation that is used now to aid those in need, we would have a system without a safety net -- or, more accurately, a safety net secured only by the kindness of those who have succeeded in the 'dog-eat-dog rat race' of unbridled capitalism. So for us to ask whether socialism is just is for us, from Marx's point of view, to use concepts that presuppose capitalism to query a system which rejects it. The answer ought to be 'Not applicable.'

And yet, on the other hand, Marx argues for a system of distribution which, in a pure form, would seem to distribute society's benefits 'according to need.' A medical system which distributed health care on the basis of need would be far different than ours, which generally distributes health care on the basis of ability to pay, but it would still distribute health care. So it seems not unreasonable to ask, 'Is that distribution just?' Indeed, part of the power of Marx's conception seems to derive from his critique of capitalism as being unjust, the exploitation of one by another, and from his description of a socialist system in which the benefits of society are distributed according to need as being inherently just, treating each member of society as a person entitled to have his or her needs satisfied merely by being a fellow human being in that society. That is why 'the Marxian approach to justice [seems] essentially a Rawlsian one in that it concentrates on the alleviation of basic needs.'

When we lay out the competing visions of justice as free transactions and justice as fairness, we do not mean to exclude a vision of justice and thus a vision of society that may differ radically from those that would express the two visions we have examined, however briefly. It is one more reminder that we cannot assume that others share our vision of what is ethical and that the first step in understanding the sources of conflict in an ethical situation is coming to see the issue from the point of view of those with whom we disagree. What may seem terribly unethical from our perspective may, within the boundaries of another ethical vision, be the only ethical thing to do. Only then can we properly begin to assess the competing judgments and determine what we ought to do, all things considered.

## Questions

1. Distinguish between an instance of particular justice and social justice.
2. Some have argued that civil disobedience is impossible without the distinction between particular and social justice because being civilly disobedient can only take place within a political system that is basically just. Using Martin Luther King's protests as an example, explain how civil disobedience presupposes a just system. In *1.2 Dancing a legal dance*, could Mary have engaged in civil disobedience to protest the judge's decision?
3. What is the formal principle of justice? Give an example from social work practice or from the cases in the book of treating like cases unlike. Of treating unlike cases alike. Explain why they are prima facie wrong.
4. What is the difference between the formal principle of justice and substantive principles?
5. The formal principle of justice has substantive ethical weight. Explain how by using an example from your own experience or from the cases.
6. Standing in line may seem an ethically unchallenging procedure for determining the order in which one is to be seen. But consider each of the following scenarios, first determining what is being distributed and the order in which individuals are being served and then laying out the harms and benefits to all involved.
  - (a) In the emergency room of a hospital, those most severely injured are seen first regardless of the time of their arrival. So others may sit in the waiting room for hours for what are judged minor injuries by the staff on hand. Those waiting may include elderly individuals who are unable to sit for such long periods without extreme discomfort. Is this just? Is there anything that could be done to mitigate any harms?
  - (b) Two social work practitioners in an agency are seeing first-time clients on a first-come first-served basis. The clients line up in two lines, one in front of each practitioner, the clients presumably judging which line will move the fastest. Or deciding which practitioner they want to see.
  - (c) This time the clients line up in one line, the first in line going to whichever social work practitioner is free.
  - (d) The honor system is used. An elderly woman comes in, asks for a number, and when told that the honor system is used, says, 'Good. I'm next.'
7. Now imagine yourself a social work practitioner who is being queried by a client about why they are being treated in a way they perceive to be unjust and so harmful. For instance, a client waiting in the office when the elderly woman in (6)(d) enters and announces 'I'm next' will not see you as soon as the elderly woman if you take her word for it. The honor system requires honor, that is, and disputes can readily break

out that will need mediating. If you are the social worker, you will need to have at hand a procedure for mediation and an explanation of how it applies in the situation at hand. The mediation procedure will obviously itself need to be just. So lay out a mediation procedure for such disputes, one that is just, and apply it to the case at hand where the elderly woman is taken ahead of others who have been waiting.

8. Distinguish between perfect and imperfect procedural justice.
9. Explain how the welfare system is an instance of procedural justice. What is being distributed? How is it being distributed? Is the procedure imperfect or perfect? In either case, if either is applicable, why is it one or the other?
10. Suppose that the welfare system is a system of imperfect procedural justice. Could it be made perfect? What would that require?
11. The criminal justice system is imperfect, and it can be designed either to protect the innocent, which means that some who committed a crime will not be found guilty, or to ensure that those who committed a crime are found guilty, which means some who are innocent will be found guilty. Disagreements about what to do about 'welfare cheats' center on where to put the burden of proof. Should we try to ensure that all who need help obtain it? Or should we try to ensure that those who do not need help do not obtain it? The former remedy will let some who do not need help get it, and the latter will not let some who do need get it. Using the method of tracking harms, assess the relative merits of these two remedies and determine which is ethically preferable, if either is.
12. What are the conditions of justice? Give an example of something of concern to social workers that is so prevalent we need not concern ourselves (at least overly much) with its just distribution. Why not? Give an example of something of concern to social workers that is so scarce there is little sense concerning ourselves with its just distribution. Why not?
13. One of the powerful appeals of justice as free transactions is that we often obtain goods and services in our society through free transactions and no one thinks them unjust. We buy a blouse or shirt, when others cannot afford one, and we do not think that in itself ethically wrong. Provide an instance from social work practice or from a case in the book where those involved engaged in free transactions and everyone thought the result just. What made it just -- according to the theory in question?
14. What two particular problems come to the fore for social workers if the society is committed to justice as free transactions? Why are those problems the ones that come to the fore?
15. Is it ethically right to blame the client for a failure to achieve success within a social system organized to express justice as free transactions? Lay out the benefits and harms of such a practice and then assess the practice as a feature of justice as free transactions. That is, if it is harmful, is it so harmful that we ought not to organize our society to express justice as free transactions? If so, why? If not, why not?

16. What is the substantive principle of justice that animates justice as free transactions? What is the formal principle?
17. What is the substantive principle of justice that animates justice as fairness? What is the formal principle?
18. How might one argue on ethical grounds that natural features and social circumstances are morally irrelevant in the distribution of social benefits and burdens?
19. Explain how each different vision of a just society accentuates some human traits as being ethically more valuable than others. Compare the traits and assess, on those grounds alone, which theory is ethically preferable.
20. Justice as free transactions and justice as fairness mark out differing forms of social organization. Lay out how a classroom or any social structure would be organized under each view. Explain in particular how the differing forms of social organization would make different personal features and acts ethical. For instance, in a society that expresses justice as free transactions would individuals who help those who are least advantaged be acting justly? If not, what moral virtue would they be expressing? What about the same sort of act in a society that expresses justice as fairness?
21. If the same act expresses different moral virtues in different forms of social organization -- as the answer to the previous questions suggests -- what kind of moral character is each theory of justice holding up as the ideal? For instance, if someone who helps the least advantaged is just in the one society, but kind in another, does that make for a difference in the kinds of moral character each theory implies is ideal? What are those differences?
22. Marxist theory says that everyone ought receive according to their needs. Does justice as fairness go farther than that? If so, in what way(s)? If not, how does it differ from Marxism? In what way(s) does justice as free transaction deny that claim?
23. The social system in which we live cannot be ethically right just because it seems 'natural.' It may seem natural just because we have been reared in it. Its arrangement of benefits and burdens is contingent and so can be changed. The questions are whether the arrangement ought to be changed, and if so, how and why. Assess the system and determine which of its features, if any, social workers have an obligation to examine and change if that is necessary. How are they to go about doing that?