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A Thirst for Justice:
On the Origin of Justice in Human Intuition

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Abstract

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For thousands of years philosophers have sought to understand natural laws. Where do they come from and how are we to use them in practice? What relationship should these laws have to civic laws? And perhaps the most divisive question, from whom or what do they derive their power? In this paper I shall outline how true justice cannot be a product of civic laws. If we wish justice to be a universally applicable virtue, then it should follow from a set of universally applicable laws. These natural laws exist as a part of human nature and thus can be representative of true justice, expressed through human intuition. In the face of flawed civic laws, individuals must be able to look past these imperfect guidelines and call upon our natural sense of justice, inherent to all human beings. This paper uses two primary case examples to demonstrate the natural inclination for human beings to do just that: the murder of Kitty Genovese and the actions of Nazi war criminal Adolf Eichmann. We must remember that civic laws are not collectively exhaustive, and if we wish to be truly just, there are cases where we must act on natural laws that predate even the earliest society.

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Introduction

On March 13th, 1964 Kitty Genovese, a 28-year-old woman living in Queens, New York was stabbed to death in the hallway of her apartment complex. The circumstances surrounding the incident are particularly disturbing. Most notably, Ms. Genovese was not killed by her attacker during the initial attack, and after a neighbor's screams scared the attacker away, Genovese struggled to make it to her apartment. Genovese's attacker returned to the scene, found her lying semi-conscious in a hallway, and proceeded to rape and kill her. Although thirty-eight neighbors heard her screams for help, not one came to her aid or called for help. The outrage the community felt toward the attacker, 29-year-old Winston Moseley, is unquestioned. The first offense was the attack perpetrated by Mr. Moseley against Ms. Genovese. It was unwanted, unprovoked physical violence of a heinous nature. But the action was not limited to two agents.

The presence of witnesses to the crime adds complexity in determining who is responsible (and to what degree) for what happened to Ms. Genovese. The witnessing neighbors had the opportunity to help her following the first attack. While they had no legal obligation to call the police or help Ms. Genovese, there is a sense that they *should* have. Two weeks after the attack, Martin Gansberg penned an article in the *New York Times* roundly criticizing the neighbors' inaction. The focus of the article is not on the actions of the assailant; instead it consists largely of interviews with neighbors. The thoughts of Assistant Chief Inspector Frederick M. Lussen, a twenty-five year veteran of New York City homicide investigations, best summarize the tone of the article. As Gansberg paraphrases, "...the Kew Garden's slaying baffles him [Lussen] – not because it is a murder, but because the 'good people' failed to call the police." The criticism rings true, as Gansberg wasn't the only to speak out against the neighbors. And while his article was cited as sensationalist and for stretching the truth for effect, the simple

facts remained true. Kitty Genovese was dead. Her neighbors heard the first attack and did little more than shout down at the assailant. The prevailing thought in the community was that more could and should have been done.

This incident is best understood by breaking it into segments and analyzing the agents involved. The first action was that of Mr. Moseley against Ms. Genovese. In attacking her, he violated her right to life in an unprovoked and deliberate way. The second involves Ms. Genovese and the neighbors who witnessed the initial attack. Again Ms. Genovese is the injured party, only this time the offender is her neighbors who failed to act on her behalf. Here, her rights are not as clear. Should the witnessing neighbors have acted to help Ms. Genovese? If so, to what extent? What rights did Ms. Genovese have, and were those rights violated?

Reports of the incident and witness testimony reveal that the first call to police was made at 3:50 a.m., approximately ten minutes after Ms. Genovese was killed. Police from the 112 Precinct responded to the call and were at the scene in three minutes. After interviewing neighbors, it was determined that at least thirty-eight people had heard or seen parts of the attack, and yet only one call to the police was made. Interviews revealed that neighbors felt it best to stay out of the altercation. Some thought it to be a lover's quarrel, while one apathetic man claimed he was too tired to get involved. For whatever the reason, Ms. Genovese was left to fend for herself against her attacker.

After the Gansberg article, the story garnered even more national coverage. People all across the United States openly wondered why "decent people" had failed to act. Some psychiatrists attributed the inaction to the desensitization of society to violence through

television. While this could be the reason one individual failed to act, it is unlikely that it explains why thirty-eight people failed to act.

Ultimately, the cause for the group's inaction has been attributed to a phenomenon known as the Bystander Effect. This psychology applies to individuals in groups who fail to move after witnessing something that might generally cause them to move if in isolation. It can be understood as the opposite of a Mob Mentality. A Mob Mentality develops in situations where individuals are grouped together for a particular cause and the presence of even a single person with an extreme view will tend to swing the mindset of the entire group, often resulting in behavior many of the individuals would normally refrain from. The riots in Los Angeles following the Rodney King court ruling in 1992 involved many people who would not have individually clashed with police or looted stores. However, spurred on by the radical environment and social pressures, the behavior of these moderate people became more extreme.

The Bystander Effect is similar, except individuals in groups are influenced away from action. Whereas the individual would normally do something in the situation, he does nothing. The key component to the Bystander Effect is that the individual fails to act because he thinks his fellow group members will act. If everyone has this mindset, then nothing is done. Imagine if just one of Kitty Genovese's neighbors had made an effort to help, in this scenario leaving his apartment and physically attempting to protect the victim. The other neighbors, aware that another individual no different than themselves was sacrificing his own safety to help, would have likely gone to greater lengths to help Kitty than they did. The feeling spurring them to action is a sense of shame that comes from the recognition that the neighbor who is assisting is heroic. Perhaps this feeling of shame is not enough to overcome the fear of getting involved, but the feeling alone indicates that there is an intuition to act. In Ms. Genovese's case, if the

Bystander Effect was the reason why the neighbors failed to act, one thing must be true: each neighbor thought his fellow neighbor would act. This is a non-trivial attribute, for it implies that this was an act that should move an individual to action. The neighbor witnessed an action, thought that he should act, but did not because he thought someone else would act in his place. The key is the impulse to act. It reveals that individuals have a natural urge to assist when we witness another in need.

This same impulse can be found in someone who happens upon a particularly violent car accident. The witness understands that something bad has happened and feels motivated to act. From there, the witness can either help or do nothing. In doing nothing, the witness may justify his inaction one of two ways: that someone else has already called for help, or that it is not the responsibility of a witness to help. We have already established that if the inaction is a result of the Bystander Effect it is still the case that the witness was moved to action. Such is not the case in the latter justification. A witness who does nothing because he feels it is not his responsibility does not feel the impulse to act. When a beggar asks for money, most people do not give not because they feel others will do so, but rather because they feel it is not their responsibility. Beyond this, there is the thought that the beggar will actually do more harm to himself – through the use of drugs or alcohol – than good, indicating that individuals are less likely to act if the impact of their actions is unclear or worse, will do harm to the other person. Accordingly, inaction predicated on the thought that action falls outside the individual's scope of responsibility is not uncommon. While I don't think there is a clear delineation between instances where individuals should and should not feel a responsibility to act, certain cases are clearer than others.

If an individual witnesses an instance of violence against another human being – murder, rape, assault – then I think it is clear that the witness should be responsible for acting. What is it about these particular crimes? These acts are unwanted harms against another party which occur very quickly and without warning, leaving the victim in a state of near helplessness. Unlike denying money to a beggar, failing to help someone being assaulted immediately contributes to that individual's suffering. Were I to refuse money to a beggar, he would still have many others whom he could ask for help and much time with which to ask. My individual act of not helping has a marginal effect on his overall well being; in fact, any financial contribution may very well worsen his situation by fueling a dependence on others and dissuading him from seeking a job or more proactive ways to better himself. My responsibility to act is unclear, not only because the impact of not helping is so marginal, but also because the effects of helping are uncertain. This is not true for a victim of rape. While both individuals are in a state of relative helplessness, the victim of rape is much worse off and for a much shorter period of time, increasing the urgency with which an onlooker act. With a beggar, I can always return the following day and contribute a few dollars to help relieve him of his burden. Rape victims have no such luxury. Time is critical and a witness' failure to act has a direct effect on the well being of the victim.

Kitty Genovese is just one example where a few minutes could have saved her life: not until 3:50 a.m. did the police receive a call from Karl Ross, one of Ms. Genovese's neighbors. Mr. Ross, unsure about what to do, had telephoned a friend to ask for advice before finally calling the police. Clearly he knew that something was wrong or he would have never telephoned a friend to begin with. The call to the police came about ten minutes too late, and when they arrived Ms. Genovese was already dead. A call from any one of the neighbors following the initial attack at 3:15 a.m. would have likely saved the young woman's life. This window of

action for witnesses was short, only about twenty minutes; since no one acted in those twenty minutes, Kitty Genovese was dead.

Should we then say that these witnesses were unjust in their actions? Clearly the witnesses knew something was not right when they heard Ms. Genovese's screams. The impulse to act was present, but was somehow repressed. I think it is wrong here to say that the inaction of the individual witnesses was unjust, because the group collectively failed to act. No individual was any more responsible for acting than another. I think a different scenario can better illustrate my feelings on this matter. Imagine a group of people are standing in a park. Another individual enters the group, in full view of everyone, murders one of the people, then flees the scene. Shocked, many people will do nothing. Others will flee the scene in fear for their own safety. When asked if someone should call the police, the answer will undoubtedly be yes. But if asked, should *you* call the police, I think the answer will not be unanimously affirmative. Someone in the group should help, but it doesn't have to be one certain individual. To some degree, the Bystander Effect will prevent many in the group from acting. In Kitty Genovese's case, one couple admitted to witnessing the first attack. Marjorie and Samuel Koshkin saw Winston Moseley flee to his car and return to the scene five minutes later. Mr. Koshkin thought about calling the police, but was dissuaded by his wife. "I didn't let him," she told reporters. "I told him there must have been thirty calls already" (Gado 4). What should we think of the Koshkins' failure to act? They clearly understood the situation and were moved to act, but the thought that someone else will help prevented them from doing anything.

Certainly there are instances where too many people trying to help can have negative consequences. For instance, if someone is choking and requires the Heimlich maneuver, one person helping is better than two people trying to help the victim simultaneously. But what harm

is there if ten people all call the police when witnessing a rape? The victim is not any worse off because the witnesses are not acting directly on the victim. In Ms. Genovese's case, no additional harm would have come to her if all thirty-eight witnesses had called the police. However, the opposite is also true. Assuming one person had already called the police, then no additional good could have come to Ms. Genovese had another also called. The problem then occurs when an individual assumes that someone else has already called for help.

The very existence of the Bystander Effect is a commentary on human nature, indicating that not only do we understand right and wrong, but we think other people do too. Moreover, we assume the best in others, automatically thinking someone will help in urgent situations. So while the Bystander Effect is to some degree responsible for the death of Ms. Genovese, it also is reflective of the good nature of her neighbors. Many had good intentions, but failed to act because they assumed other neighbors had already done so.

The urge to act is sufficient in demonstrating that individuals do not fully derive their beliefs about justice from civic laws but instead from intuition. The impact of intuition on the creation of civic laws began even before the creation of cities. As isolated individuals, our actions were judged introspectively based on human nature. There were no communities or cities to enforce laws upon us as individuals; instead each man decided what was right and wrong based on a sense of justice inherent to all of us. As relationships began to develop between multiple individuals, general sets of guidelines and rules were set forth based on the collective thoughts of the parties involved. Instead of having each individual examine singular actions, the group could come to a consensus on a general variety of actions based on a set of common laws. The benefits of such a practice included the speed and (relative) objectivity with which actions could be addressed. The major issue with such a practice is that the resulting laws are not all-

encompassing. Even in the largest cities, with the most complex system of laws imaginable, there will be cases that fall outside of the law. In these cases, individuals must return to the original source for justice: intuition.

As a group, the witnesses to the rape and murder of Kitty Genovese acted unfairly. Most alarming is the idea that a phone call to police following the first attack would have almost certainly prevented Moseley's return to the scene and saved Ms. Genovese's life. A phone call would not have put any of the witnesses in immediate physical danger. At most, it would have been a minor inconvenience to their night. The ease with which Ms. Genovese's life could have been spared is still disturbing today. We should further examine the nature of the Mob Mentality before determining whether or not any of the witnesses were individually unjust in their actions.

If we are to assume that the Bystander Effect was responsible for no one acting, then a few assumptions must be made clear. First, each member of the group of witnesses understood the situation. Second, each member of the group felt the urge to act. And third, each member of the group did not act because he or she felt that another member would act instead. When the Bystander Effect is present, all individuals in the group are acting (or not acting) as a collective unit. Similar to the Mob Mentality that develops in riots, many people will often find themselves acting in ways they would not otherwise. When a Mob Mentality is in effect, individuals lose this autonomy and act collectively, and thus the actions of the mob should be judged collectively and not individually. When we look at the actions of the group of witnesses, we see a group of people who collectively failed to help Ms. Genovese. The belief that at least one of the other witnesses would act was so strong, that it overcame any impulse to act for everyone in the group.

The Bystander Effect argues that the reliance on others to act is what caused the diffusion of responsibility and resulting inaction. If there had been a single witness who thought that he was the only person seeing the attack take place, it would have been much more likely the police would have been called. Does this single person have a better sense of right and wrong? No, because each member of the group understood the nature of the incident and knows what to do, it is just the case that they failed to act due to the thought that someone else would act instead. Such is a weakness of individuals when put into groups. Now, what more are civic laws than the collective thoughts of a particular set of individuals? As individuals began to live among one another, a set of laws was established based on nothing more than collective intuition. The difference between collective and individual intuition can be seen in the continual readjustment of civic laws to fall in line with contemporary beliefs. These laws are almost exclusively reactive by nature, owing their existence to the realization by participating individuals that the old laws were, in one way or another, flawed.

What allowed for these laws to be instantiated in the first place is often attributed the oppression of intuition in favor of collective self-interest. This collective self-interest is what results in deep-seeded beliefs in future generation like those held by slave owners that black Africans were naturally inferior and thus worthy of slavery. But in those with no vested economic interest in slavery, such a belief was not held. This realization, if not inspired from civic justice, has just one source: individual intuition. That individuals can so often see injustice beyond the law is indicative of two things: we have an intuitive sense of justice and civic laws

are not collectively exhaustive.¹ Our intuitive sense of justice serves not only to fill the gaps in civic justice, but is also an agent of reform.

If individuals so often make better decisions than groups of individuals, then isn't it the case that civic laws are inherently weaker than the laws of individuals?² Opponents will argue that such a claim is foolish, referencing the dictatorial regimes of Adolf Hitler or Joseph Stalin. Such arguments are not without merit, but the original claim has been misunderstood. Clearly dictatorial governments often turn for the worse because the sheer number of individuals under the control of one inhibits that ruling individual from effectively using his intuition to rule. The laws imposed by such governments are still said to be civic laws, even if they owe their existence to one person. The difference between these laws and the intuitive laws individuals use to govern themselves is the target population. Civic laws in a dictatorial regime are created by one man to govern the relationships of others. The ruler must ask himself, "What will one man think if another man acts against him in this way?" Even within a democratic system, a group of individuals must make judgments for the general population. But collective self-reflection is stronger when making general decisions for the welfare of others and, it seems, a more natural approach to creating civic laws. For individual laws, we simply ask ourselves, "What would I think if another man acts against me in this way?" This could be indicative of the limitations of individual justice, demonstrating that its range of applicability is centered primarily on the individual from which the justice stems.

¹ The idea that civic laws are not collectively exhaustive, meaning that they do not account for all human actions, has two important implications. First, civic laws are by nature reactive and will never be able to fully anticipate actions that could occur in the future. Second, the task of enumerating and enforcing a system of laws that accounted for so many possibilities is, put simply, overwhelming.

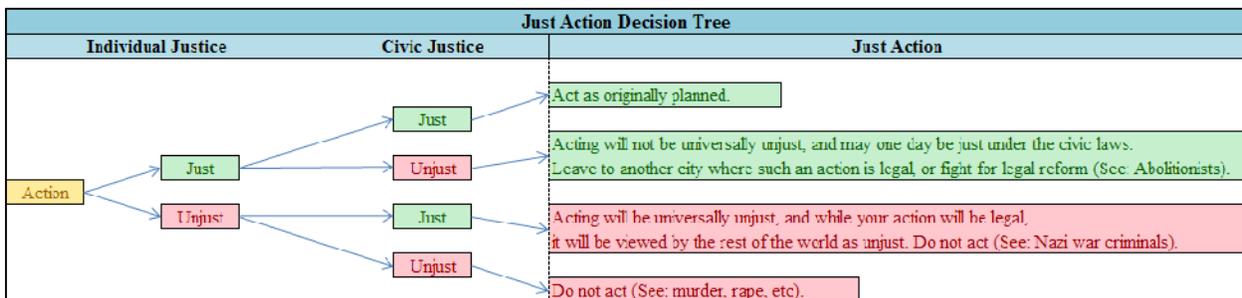
² The laws of individuals shall be defined as the natural understanding of justice, inherent to all individuals and realized through our intuition.

However, true justice is not concerned with the best and most effective way to run a city; rather a delineation between the individual laws and the civic laws must be made. If individuals act differently compared to individuals in groups, then it is also the case that the guidelines by which they act are different. Individually there are laws we follow privately based on intuition and feeling whereas civic laws are the result of collective reasoning, which, as we demonstrated, is often precarious. Accordingly, laws derived from collective reasoning are weaker than laws of individuals. In essence, the whole is less than the sum of its parts, as the problems of the Mob Mentality and groupthink penetrate and weaken collective reasoning, suppressing individual intuition in favor of collective self-interest. But such is not to say that civic laws have no place in society. In fact, the existence of society (and the complex relationships between individuals that result) demands a set of normalized, enforceable laws to govern people of sufficient number effectively. As both Plato and St. Augustine argue, civic laws, while not the source of true justice, have their place in our world.

In addition to assault, rape, and murder, there are acts that elicit even stronger calls to action. Violent acts against children, elderly, or otherwise less capable individuals elicit strong emotions from individuals. What is it that makes the murder of a child worse than the murder of an adult? On a basic level, both acts involve the violation of a human beings fundamental right to life. But the murder of a child is regarded as the worse of the two crimes. Is it because a child has the potential to live longer and more productive life and thus deserves a greater protection from violence? If this were the case, then it would also be true that the murder of a healthy adult would be worse than the murder of a mentally handicapped adult. This is clearly untrue, which means there is another characteristic of children besides the greater potential for life that makes the murder of one a more heinous act. This is because children are less able to defend themselves

from violence. Imagine the Kitty Genovese case was altered, and instead Ms. Genovese was a teenage girl. I contend in this situation instead of no witness acting, nearly all of them would have. This is not because the life of a child is any more valuable than the life of an adult, but rather because we feel that the child is at greater disadvantage than an adult and thus needs more help.

Such a mindset seems to indicate that individuals not only understand natural inequalities, but, at least under some circumstances, will seek to right them. Is this what it means to be just? Any action is seemingly held to two standards: a particular justice that governs the relationships between individuals in groups and a universal justice that exists within all of us. First, the action should be held against the justice universal to all individuals. Regardless of the judgment, the action should then be held against the specific civic justice which governs the individual responsible for the action. The outcomes can then be applied to a decision tree like the one below:



At an early age, individuals begin to understand the difference between right and wrong, fair and unfair, just and unjust. While many argue this understanding is a product of nurture, I believe that human nature plays far greater a role. If an individual’s understanding of right and wrong were based solely on nurture, one could postulate that external laws and only external

laws would dictate any given individual's understanding of good or bad. If this were the case, actions that abided by civic laws would be just and those that were not would be unjust. Yet what is just under one set of laws may be unjust under another. If justice is a virtue, then it should have a paradigm case. Furthermore, this scenario does not account for individuals justly acting in opposition to or unjustly acting in accordance with a particular set of laws.

Actions of abolitionists in the American South who fought to end slavery were perpetually in violation to state and federal laws, and yet we look back on them as inspirational. The words 'bravery' and 'courage' come to mind instead of 'injustice'. Slavery is just one example in the history of mankind where certain institutions existed legally under the law and are now considered unjust. Slavery is a particularly interesting case given the justifications that the practice is a natural institution and in line with intuition. But as I elaborated earlier, there is a difference between deep-seeded beliefs and intuition. Equality is intuitive; prejudice is a deep-seeded belief. What was it that led the first abolitionists to speak out against slavery? If an individual's sense of right and wrong is based on civic laws, then it begs the question as to why the abolitionists acted as they did. The opposite case, where individuals act unjustly while in accordance with a particular set of laws, further illustrates the fact that right and wrong are not derived completely from nurture. From 1939 to 1945, between eleven and seventeen million people were put to death under the Nazi regime of Germany. Committed outside of the scope of battle, the Holocaust represents the organized murder of millions of innocent people. Yet, under the laws of the Nazi regime, officers in death camps were acting in accordance with the legal code by committing these murders. If nurture alone dictates one's understanding of right and wrong, then the abolitionists would be unjust and officers in Nazi death camps just. The

existence of a justice beyond civic laws is what allows us to see the absurdity in this statement, as the nature of human beings is such that we are able to see justice outside the law.

For thousands of years philosophers have sought to understand natural laws. Where do they come from and how are we to use them in practice? What relationship should these laws have to civic laws? And perhaps the most divisive question, from whom or what do they derive their power? In this paper I shall outline how true justice cannot be a product of civic laws. If we wish justice to be a universally applicable virtue, then it should follow from a set of universally applicable laws. These natural laws exist as a part of human nature and thus can be representative of true justice. Dubbed 'Universal Laws' by some, these natural laws are what appeal to us and move us to act when we see what we deem as injustice beyond civic laws. They are responsible for our negative reaction to crimes against children, Nazi war criminals, and Kitty Genovese's neighbors.

But the origin and nature of these laws is not uniformly agreed upon by philosophers and the different theories should be outlined and understood. Most agree that justice is achieved by giving one his due, but the point of contention rests on how much one is due and who or what the final end of the action applies to. Plato believed that individuals were created with natural inequalities and the best way to arrive at justice was to give each man his due based on these inequalities. St. Augustine on the other hand argued that it was God, not man, from which true justice flows. In his system, an individual could be civically just by giving another man his due, but he would only be truly just by giving God His due. Both of these theories rest on precarious assumptions which are not universally accepted. A true system of justice must not have such conditions, and the system that is most intriguing is John Rawls' theory of justice as fairness.

I. Plato's *Republic* and the Origin of Civic Justice

The existence and nature of justice has been an ongoing debate among philosophers for centuries. Some argue that justice is similar to generosity in that it requires at least two parties: one to act, and one to be acted upon. In contrast, others contend that justice more closely mirrors virtues like moderation, which can be restrained to one party. One can be immoderate by indulging one's self in food or drink to excess. In such a situation, the individual is acting on himself. Perhaps justice can be characterized by both descriptions, representing a virtue governing the relationship between an individual and himself as well as an individual and others. And while human beings were not originally born into cities, it is argued by many including Plato and St. Augustine that human beings are inherently social, allowing for justice to be expressed not only within the individual but also within communities of individuals.

Before the development of communities, individuals were responsible only to themselves and their families. Even before the advent of the family, human beings were of a nature such that child rearing was necessary to ensure survival of offspring. The relationship between mother and child is sufficient for the existence of justice. For years, anthropologists had been unable to determine when the first family – consisting of a man, woman, and children – was created. However, in 1877, Lewis Morgan wrote in his book *Ancient Society* that the first family was created approximately 100,000 years ago during a period in human history referred to as “Savagery”³, and Morgan's opinion on human social evolution would go on to influence the

³ According to Morgan, Savagery represents the first of three periods in human history, with the next two being Barbarism and Civilization. See Morgan, Lewis Henry. *Ancient Society*. Cambridge: Belknap of Harvard UP, 1964. Print.

likes of Friedrich Engels.⁴ The purpose of the first family was simple: survival. But survival was not the only good to come from the existence of the family. The relationship between mother, father, and child allowed for the expression of virtues such as courage, generosity, and justice. As families joined together, the relationships between individuals became more complex and more virtues began to surface. Charity and piety both emerged as these communities developed class structures and religious observances. The question then becomes: is the community the origin of these virtues or is it merely the vehicle through which they are best expressed?

Plato was one of the first philosophers to comment on this question. In the *Republic*, he begins by his analysis attempting to understand the origin of justice. According to Plato, justice has two incarnations: the city and the man. Recognizing the immediate difficulty in moving directly to understand the just individual, he begins his search by looking for justice within the city. In doing so, Plato makes assumptions regarding human nature that will alter his understanding of justice from later philosophers, most importantly the existence of specific natural inequalities between individuals:

‘All of you in the city are brothers,’ we’ll say to them in telling our story, but the god who made you mixed some gold into those who are adequately equipped to rule, because they are most valuable. He put silver in those who are auxiliaries and iron and bronze in the farmers and other craftsmen. For the most part you will produce children like yourselves, but, because you are all related, a silver child will occasionally be born from a golden parent, and vice versa, and all the others from each other.’ (415a-b)

This belief that certain individuals are naturally superior to others, while not fully expressed until the myth of the metals in Book III of *Republic*, is a guiding force behind Plato’s construction of the good city. Within the good city, Plato argues that four virtues must be present for the city to be called ‘good’: wisdom, courage, moderation, and justice. (*Republic*, IV, 427e).

⁴ See: Engels, Friedrich, and Ernest Untermann. *The Origin of the Family: Private Property and the State*. Honolulu: University of the Pacific, 2001. Print.

His contention is that justice will be what remains once the first three virtues are found. “Then, if we find any of these in it, what’s left over will be the ones we haven’t found,” he claims. It is unclear what is meant by this last statement, but the structure of the following argument suggests that Plato meant to argue for a conditional relationship between the four virtues.⁵

Wisdom was his first target, and could be found in the knowledge and good judgment of the city. But it is not knowledge of any particular matter that makes a city wise, but rather knowledge of the city and the relationships within it. Those possessing this type of knowledge are known to Plato as ‘complete guardians’. But even this knowledge of how to properly rule is not sufficient for a city to be wise, for the term ‘ruler’ is dependent upon a relationship between at least two individuals: the ruler and the ruled. Accordingly, the rulers must possess the means to rule the city while the ruled must know that they do not have such knowledge. If both parties are not knowledgeable of their respective positions, then the city fails to be wise. As we have already demonstrated, Plato assumes that natural inequalities exist among individuals which reinforce these positions (*Republic*, IV, 427e).

The specialization of labor is the first indication that individuals are naturally suited for certain work: “...in the first place, we aren’t all born alike, but each of us differs somewhat in nature from the others, one being suited to one task, another to another” (Plato, II, 370a). However, it seems incorrect for Plato to assume that some individuals are naturally suited to be farmers while others are naturally suited to be builders. Perhaps he can point to physical characteristics that would make one man better than another at farming (i.e. a firm grip, a strong back, etc.) but as the city he builds becomes more complex, so too does the specialization of

⁵ If wisdom & courage & moderation, then justice. That is to say that wisdom, courage, and moderation are jointly necessary conditions for the emergence of justice.

labor. What characteristics make one more naturally suited for merchanting than ship captaining? Here Plato's theory that individuals are more naturally suited for certain jobs over another begins to falter. It is not the nature of a man which determines his role, but rather his knowledge of a certain subject. Specifically in the case of sea merchants, Plato explains that "... if the trade is by sea, we'll need a good many others who know how to sail." But knowledge of the winds and currents is not something in our nature but rather it is acquired from years of study and practice. Good judgment and intuition play a part in differentiating the good sailors from the bad, but these qualities are necessary for any individual to excel at his respective occupation. In this way, all individuals are created alike. The difference Plato seems to be aiming at is that between the guardians and every other citizen.

As Plato begins to expand his city, he creates occupations for doctors, artists, and beauticians. Everyone, it seems, has something for which they are naturally suited. While the city has grown in number, its walls have yet to expand. As Plato indicates, "And the land, I suppose, that used to be adequate to feed the population we had then, will cease to be adequate and become too small." This inevitably will lead to one thing: war. The citizens shall be inadequate to serve the city to this end, having the nature for practicing only one profession well. The responsibility then falls onto a class of citizens known as guardians. "Then our job, it seems, is to select, if we can, the kind of nature suited to guard the city" (*Republic*, IV, 374e). Demonstrating a knowledge for stately affairs is not sufficient for one to be a guardian, for just as craftsmen were naturally suited for their respective crafts, so too is the guardian at his. But a nature characterized by philosophy, spirit, speed, and strength is still not sufficient. The guardian must

endure a rigorous education.⁶ The end of such an exercise is to give birth to a class of individuals capable of leading the city, not just in subsistence, but in pursuit of virtue. The city is called wise then when its citizens realize their natures and do that which they are best suited for, or, in the case of the craftsmen, recognize that they are *not* guardians and submit to the rule of others.

Courage, the second of the four virtues Plato sees in his good city, also owes its presence to a relationship between the city's citizens. Like wisdom, courage is held by single individuals but expressed in relation to the entire city. Courage is dependent upon the citizens' understanding and uncompromising obedience of the laws of the city. Surrendering not to pains, pleasures, desires, or fears, this courage is what ultimately preserves the city. After articulating his understanding of courage, Plato makes his first differentiation between civic virtues and actual virtues:

GLAUCON: Then I accept your account of courage.
 SOCRATES: Accept it instead as my account of civil courage, and you will be right. We'll discuss courage more fully some other time, if you like. At present, our inquiry concerns not it but justice. And what we've said is sufficient for that purpose. (Plato, III, 430c)

The importance of the distinction made here should not be overlooked. Plato has not articulated his argument for courage but instead for a civic manifestation of courage. In doing so, he strengthens the argument that virtues can have distinct incarnations in both the city and the individual.

The final step before justice will be revealed in the city requires the location of moderation. Moderation is perhaps the clearest example of a virtue that can exist in both the individual and the city. Also identified as self-control, moderation in an individual involves that

⁶ I shall not, for the purpose of brevity, examine the intricacies of Plato's city. The scope of this essay is restricted to seeking the origin and nature of justice as intuitive. Accordingly, specifics regarding the construction of the city will be left alone.

individual acting on himself, restraining a part of himself from certain wants. It is clear that the individual does not need others to practice self-control, for self-control is a stronger part of himself restraining a weaker part. Imagine a man who is severely malnourished happening upon a feast. The desire to eat is strong, but a starving man's digestive system is too weak to digest a large amount of food. In essence, eating too much will kill him. Instead he must slowly reintroduce food into his diet, allowing his reason to dominate his appetite. Moderation then is best understood as a relationship of superiority, one part in submission to another. This relationship is not restricted to the individual.

The relationship between a mother and her child is also a one characterized by domination. The child, too ignorant to fully comprehend the world around him, is incapable of surviving on his own. The mother, owing her existence to a proper rearing from her own mother, owes it to her child to do the same. The moderate mother-child relationship involves the mother giving enough care for the child to survive initially, but restraining from giving so much care that the child would be incapable of surviving on its own once the mother leaves. This natural balance of care is what creates sustainable generations and ensures species survival. As the family begins to incorporate more and more individuals, this relationship extends to the father and other children. Proper submission by the children to the parents is necessary for the family to remain strong and is to the benefit of all parties involved.

From the family, the leap to the city is not a difficult jump to make. While the relationships within a family are more intimate, characterized by love and intimate knowledge of the other parties, the relationship that exists between citizens is still representative of a mutual

understanding between the parties involved.⁷ Just as the family was constructed of classes, those who rule and those who obey, so too is the city. If the city is understood as an extension of the family onto a larger scale, the dominant relationship of rulers to the ruled appears natural and necessary for the benefit of all parties. Like moderation in the self, mother-child relationship, and family, moderation in the city requires the lesser submitting to the greater, the lesser and greater not in number but in power. The guardians, while fewer in number, are superior due to their outstanding natural character. The other citizens, while being greater in number, hold much less power. While a moderate individual is such through reason controlling his many appetites and desires, so too is the moderate city where the guardian class rules the common citizens. This understanding of who rules and who is ruled is the same regardless of scale. But one may be simultaneously in possession of self-control and lacking civic moderation. As such civic moderation and not self-control is necessary for the existence of civic justice, for each individual expresses self-control in reference to himself but expresses civic moderation in reference to others.

Having demonstrated the existence of wisdom, courage, and moderation in his city, Plato is left with justice:

Justice, I say, is exactly what we said must be established throughout the city when we were founding it – either that or some form of it. We stated and often repeated, if you remember, that everyone must practice one of the occupations in the city for which he is naturally suited...Then it turns out that this doing one's own work – provided that it comes to be in a certain way – is justice. (*Republic*, III, 433)

It seems apparent that civic justice requires three things: citizens recognizing that which they are best suited for and to which natural class they belong (craftsman, soldier, or guardian), a

⁷ This is a point of contention between Plato and St. Augustine to be examined later in the paper.

willingness to fight for the laws of the city, and the preservation of the natural social inequalities between citizens.⁸ If any of these three conditions are not met, then justice, according to Plato, cannot exist. For him, the greatest harm that can happen in a city is the “meddling and exchange between these three classes” (III, 434b).

Such a philosophy stands in opposition to many ideas of the progressive thinkers of the twentieth century, which sought to break down natural inequalities and allow for everyone to start from an equal playing field. While Plato does acknowledge that natural inequalities exist, an idea that is central for his understanding of justice, his laws seek to strengthen the inequalities that occur naturally, not diminish them. As he says in Book IV of *Republic*, “...if an offspring of the guardians is inferior, he must be sent off to join the other citizens and that, if the others have an able offspring, he must join the guardians” (423c-d). The preservation of the social inequalities within the city is of such importance because it was Plato’s belief that justice in the city mirrored justice in the individual. “Then a just man won’t differ at all from a just city in respect to the form of justice; rather he’ll be like the city” (Plato 435a-b). Within the individual each part of his soul – the rational, spirited, and appetitive – must remain in its natural position relative to the others, with the rational part ruling over the other two. Plato’s dependence his analogy between the just city and just individual forces him to argue for the existence and perpetuation of social inequalities he calls “natural”.

Starting the search for justice in the city could lead some to think that Plato believes the city is a necessary pre-condition for the existence of justice. On the contrary, the search for justice begins in the city and moves *backwards*. Imagine following a raging river all the way up

⁸ These social inequalities stem from Plato’s use of the myth of the metals. The idea that certain citizens are composed of a naturally superior material is fundamental in his defense of perpetuating inequalities between classes.

to its source. The original spring may not be the best representation of what the river is, but the river owes its existence to it. Civic justice does not depend upon the city, but rather the city depends upon the individual. As Plato indicated in his proof of courage in the good city, virtues in the city are best described as *civic* virtues. They are not universal. Since distinct cities are composed of people with different natural inclinations, it will not be the case that each of the first three virtues – wisdom, courage, and moderation – will reveal themselves in identical forms in different cities. But as we limit the scale of our target, moving back from the city to the family and the mother/child, the complexity of relationships begins to decrease drastically and the virtues governing these relationships begin to normalize.

Again, imagine the development of a river. Every river begins from an original source. While distinct rivers can have vastly different appearances on a grand scale, their basic source is the same. If we restrict the scope of our view to only the original springs of many distinct rivers, the differences will not be so obvious. This same understanding can be applied to justice. Looking at distinct cities, the nature of civic justice in a great number of cities can appear radically different. Such differences are most appropriately attributed to a variety of anthropological factors. Take two cities with radically different understandings of what it means to be just. One, like Plato's good city, gives each man his due based on natural inequalities. Says Plato, "...no citizen shall have what belongs to another or be deprived of what is his own" (IV, 433e). The other city would appear much more communal, with each person receiving an equal share of whatever goods the city produced. Each city can be just if it properly allocates to each person that which is due to him, regardless of whether those goods are equivalent in each community. As such, Plato's civic justice is not incompatible with the distributive justice

proposed by John Rawls in *A Theory of Justice*. What is it then that leads distinct cities to develop different models of justice?

As illustrated with the analogy of the river, things which begin looking the same can end up looking radically different. Rivers can attribute such differences to dissimilarities in topography, weather patterns, and even ecology. Working backwards from the city, to the family, to the mother/child relationship, and finally back to the individual, we can see how at each level the relationships concerning the included parties are also altered. The nature of familial relationships is much simpler than those governing individuals on the city scale, and the same is true for the mother-child relationship; the fewer agents in the target population, the less complex and more natural the relationships will become. Taking into account Plato's understanding of moderation as an "agreement between the naturally worse and the naturally better as to which of the two is to rule both in the city and in each one" (IV, 432a), moderation in the individual can be seen where the naturally worse appetitive and spirited parts of the soul submit to the naturally better rational part. In the city, the determination of which individuals are "naturally" worse and naturally better are dependent upon the constituents of the city as well as a variety of other factors like the city's climate or topography. Looking at the family, there is less variability in the nature of the relationships, largely due to the decrease in the number of individuals in the target population.

Moderation in the family is more easily seen because the naturally worse and naturally better are more easily identified. The parents are clearly the superior party and the children the inferior, but it remains to be determined which parent is superior to the other. Limiting the parties to only two individuals, the mother-child relationship eliminates this level of complexity, as clearly the mother is the superior and the child the inferior. However, the mother-child

relationship is not the base case for virtue, for we can look even further. Virtue in the individual is the ultimate model, for it is dependent on nothing and is eternal. While the mother-child relationship is the most basic and natural relationship for human beings, it exists on a level one step above the individual and lasts only for as long as the child depends on the mother for survival. And like the family, the mother-child relationship will differ depending on how much care the child needs and how capable the mother is of giving that care. Accordingly, that which is due to a child can differ among distinct mother-child relationships, and is often limited to pure survival. What an individual owes himself is much more concrete and unwavering, though much more difficult to see.

Looking again at the three conditions that allow for the existence of justice – wisdom, courage, and moderation – let us see how those conditions can apply to the individual soul. If the good city is wise because of the three classes of citizens understanding of their respective natures, then the soul should be wise in much the same way. “Then, if an individual has these same three parts in his soul, we will expect him to be correctly called by the same names as the city if he has the same conditions in them.” (Plato, IV, 435b). This of course begs the question: does the soul have three parts just as the city does? We have already identified two distinct parts of the soul when defining self-control. For such a term necessitates the existence of at least two parts acting in direct opposition to another. Plato sees at least three distinct parts of the soul: the rational, the appetitive, and the spirited (IV, 437-441). These three parts mirror the classes that make up the three classes of the city, with the rational represented by the guardian class, the appetitive the common citizens, and the spirited the soldiers. The natural hierarchy follows much in the same way as the hierarchy of the city. The rational part, represented in the city as the guardian class, rules over the other two classes. The same three virtues that necessarily precede

justice in the city must exist in the individual for his soul to be just. A well-ordered soul is like a well-ordered city; each part must understand its role and fulfill it.

However, Plato's argument for demonstrating justice in the individual relies on circular reasoning. In order for the just individual to mirror the just city, his soul must be ordered in the same way as the just city. However, the natural inequality of the three classes within an individual's soul is necessary for defending the proposition that the inequality of classes within the city is natural. In essence, Plato argues that the just soul resembles the just city and so it must have three classes. And since the three classes in the soul are characterized by a natural inequality, so too must the classes within the city. While Plato postulates the myth of the metals prior to articulating his argument about the just individual, suggesting that he sincerely believes that men are not created equally, it is clear that he is relying upon our a priori belief that it is natural for the rational part to rule over the spirited and appetitive, for it is highly unlikely that he would rest his argument on a creation myth.

Accepting Plato's argument concerning the nature of the just soul and the just city, we are still left with a question of superiority. As relationships between individuals became more complex, a new set of rules was created to govern these relationships. As individuals we answer to rules from our soul based on intuition. The natural understanding that the rational part rules over the appetitive and spirited parts of the soul, at least in well-ordered individuals, is unquestioned. The same can be said for the superiority of the mother to the child, and the parents to children in a family setting. There is an element of dependability that exists between the parties. Without the parents to care for the children, the children would very likely die. The mother-child relationship is an even better example of the dependence that the weaker party has on the stronger. Without the mother's milk and care, the child would not last more than a few

days. The individual too relies upon subordination of the weaker parts to the greater, as the rational part prevents the appetitive and spirited parts from running wild and harming the individual. Thus the superiority of one party to the other in the individual, mother-child relationship, and family is a natural one. Natural superiority between the different parts of the city is not so obvious. Plato's reliance upon the myth of the metals is the only defense he has that the guardian class is naturally superior to the rest of the citizens. But unlike the other relationships, a biological superiority cannot be demonstrated. Justice, it seems, at each level becomes less and less natural. With the individual, the soul is fully dependent upon itself for survival. One step forward reveals less vulnerability on behalf of the dependent party; even a child whose mother abandons him can still be fed and cared for by another mother. The children in a family setting are even less vulnerable, for should the parents leave or be killed it is still possible that the two children can raise themselves or be raised by another family. Finally we arrive at the city and the dependence of the weaker citizens to the guardians.

Examining this relationship more closely, it can be seen that the dependence has shifted from full dependence to one approaching mutual dependence. The other citizens depend on the guardians to ensure the survival of the city, but not for their personal survival. It could be argued that without the protections of the city man would perish, but it is not the lack of a city that will cause man to perish but rather man's dependence upon the city for survival. While human beings are inherently social, we are not, by nature, dependent upon cities for survival. Cities have their purpose, but that purpose is only in serving the immediate ends of the citizens within it. While the complex relationships and interactions within the walls help us understand and see justice in action, they do not represent the nature of true justice, which exists in our nature and is expressed through our intuition. Plato's differentiation between civic and actual virtues is critical to our

understanding of the roll of human intuition in filling the lapses in civic justice, which, as Augustine also argues, fails to capture the true essence of justice.

II. St. Augustine and the Superiority of Divine Law

The idea that human beings are naturally social is critical to understanding the relationship between civic and individual justice. The role of man on earth is a topic addressed by St. Augustine of Hippo in *City of God*. Similarly to Plato, and in line with the Christian tradition, St. Augustine deemed the social tendencies of human beings as natural. After all, it was God who decided that Adam should have a companion in Paradise. Man was, by nature, good, having been constructed in God's image. "Accordingly God, as it is written, made man upright, and consequently with a good will" (Augustine, XIV, 11). The weakness of man was not in his nature, but in his failure to recognize God as the true good. In Paradise, the goodness of man was dependent upon the direction of his love to God. If God had been the only object available for man to love, then it is likely that man would have remained in Paradise. But there was another party that man could love instead of the Creator: himself. Man's redirection of love from God on to himself resulted in his banishment from Paradise. As His creations, man owed it to God to live as He wished and direct all love to Him. In essence, man was unjust to God when he did not give Him that which was His due. As Augustine writes, "...justice is that virtue which gives every one his due. Where, then, is the justice of man, when he deserts the true God and yields himself to impure demons?" (XIX, 21).

Augustine recognized human beings as social creatures and the family a divine creation. If we are to understand that human beings are the descendants of Adam and Eve, then it is not illogical to say that we are all one large family. Clearly this proposition would not be so easily

accepted in contemporary discussions, but it is true for Augustine to a certain extent. As the direct descendants of Adam and Eve, we all must bear the burden of original sin. “Each man, being derived from a condemned stock, is first of all born of Adam evil and carnal, and becomes good and spiritual only afterwards” (Augustine, XV, 1). Having accepted family as a divine creation, Augustine admonishes those putting too much trust in the power of the city for it differs greatly from the divine institution of the family. As Oliver O’Donovan argues:

The distinctive feature which Augustine discerns in the Christian household is that commands are given “not from lust for dominion but from dutiful concern for other’s interest, not in price but in compassionate care...This is what the order of nature (i.e., creation) requires, for that is how God made mankind.” (145)

For Augustine, the leap from family to city is, unlike Plato, difficult to make. Dominion over other men, unlike familial rule, is unnatural and results in sin. Says Augustine, “And hence the righteous men in primitive times were made shepherds of cattle rather than kings of men” (XIX, 15). The good men rule not from a desire for power, but from a duty to serve their fellow men. The earthly peace resulting from good rule is not an end for Augustine. “But as this is not a good which can discharge its devotees of all distresses, this city is often divided against itself by litigations, wars, quarrels, and such victories as are either life-destroying or short-lived” (Augustine, XV, 4).

While the city portrayed here is certainly worse than that outlined in Plato’s *Republic*, it is not an uncommon one. Ancient Rome was plagued by constant power struggles, wars, and civil unrest. It is unlikely, even if earthly cities were as carefully planned and executed as Plato’s in *Republic*, that Augustine would waiver in his belief that cities on earth are still flawed. “But the fact is, true justice has no existence save in that republic whose founder and ruler is Jesus Christ, if any choose to call this a republic; and indeed we cannot deny that it is the people’s

weal” (Augustine, II, 21). It is Augustine’s belief that earthly cities are not, as Cicero argues, united by a common sense of justice. “For the people, according to his [Cicero] definition, is an assemblage associated by a common acknowledgement of right and by a community of interests” (Augustine, XIX, 21). Instead, earthly cities are bound together by a collective self-interest of the parties within. Any sense of “justice” that arises then is simply for the purpose of furthering the collective self-interest of the community and is not representative of true justice. That is not to say the earthly city is incapable of good. “But the things which this city desires cannot justly be said to be evil, for it is itself, in its own kind, better than all other human good. For it desires earthly peace for the sake of enjoying earthly goods” (Augustine, XIX, 21). The existence of civic justice ensures that man can enjoy earthly goods and facilitates man’s proper direction of his love toward God.

Within earthly cities we also find the unity of religion and civic morality. The Christianity of Augustine does not work against the pursuit of civic morality; instead it furthers the ends of the city. In Matthew, Jesus preaches, “Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets” (7:12). This has become known as the Golden Rule. Such a creed is inherently social in nature, because it concerns not only the actions of one man but the actions of one man in relation to another. Acting in accordance with the Golden Rule would be just under both civic and heavenly conceptions of justice. The unity of religion and civic morality is not one-sided. As Peter Burnell points out, “the immorality of civilization can pollute people in their religion” (38). The proper citizen must then balance himself between his earthly, civic duties and his heavenly responsibilities.

If the civic justice of the earthly city is not in fact true justice, then from where does civic justice draw its significance? Here again we must look to the Fall. The sin of Eve resulted from a misplaced sense of love, whereby pride led her to love herself more than God. Once cast from Paradise, men were inherently flawed. Despite this, Herbert Deane argues (as cited in Parel 1990) that “‘vestiges’ or ‘shadows’ of true justice inhere in the soul, thanks to which the fallen man is able to establish some kind of civil order” (75). However, these shadows are at the mercy of misplaced loves. Such loves lead societies to sin, misrepresenting the nature of virtue and justice to align with their actions. As Parel remarks, the justice of the city reflects not true justice but rather the collective self-interest of those who constitute the city (76). Justice then is achieved through a proper directing of one’s love unto God instead of oneself. Just as the Plato’s just soul was able to properly order loves, so too is Augustine’s just man, the former through only reason and the latter through His grace. It is in Book XIV that Augustine remarks on the nature of the two cities as being the objects of two different loves, one of self and one of God.

Accordingly, two cities have been formed by two loves: the earthly by the love of self, even to the contempt of God; the heavenly by the love of God, even to the contempt of self. The former, in a word, glories in itself, the latter in the Lord...In one, the princes and nations it subdues are ruled by the love of ruling; in the other, the princes and subjects serve one another in love, the latter obeying, while the former take thought for all...And therefore the wise men of the one city, living according to man, have sought for profit to their own bodies or souls...But in the other city there is no human wisdom, but only godliness, which offers due worship to the true God, and looks for its reward in the society of the saints. (Augustine, XIV, 28)

Clearly then, the earthly city is not the source for man’s understanding of true justice. As such, even an individual in full compliance with its civic laws would still be unjust, for all men must obey the divine laws first and only civic laws insofar as they further man’s ultimate end: love of God.

But beyond civic and divine justice, Augustine recognizes an attribute of human nature written into all men. As Herbert Deane writes, “Since St. Augustine insists that human fellowship and social life are natural to man, it is not surprising that he recognizes the existence of a law of nature, a basic moral law that is written into the hearts of all men, and that is distinct from human laws or divinely revealed laws” (85). These natural laws, inherent to man even before the Fall, remained dormant until man’s banishment from Paradise. In the heavenly city, man’s only guiding force was divine justice, but God, knowing the fate that awaited his creation, implanted within man an intuitive understanding of justice to be used after man’s descent to the earthly city. The Fall resulted in a misguided will, now incapable of fully comprehending the nature of divine justice. Civil laws, being constructions flowing from a flawed will, are also insufficient as a means to being truly just. In order to overcome the weaknesses in civic laws and move closer to understanding true justice, man now relies these natural laws, written into his nature by the Creator and revealed to him through divine illumination.

The ideas of Plato are not lost in the words of St. Augustine. Just as civic justice was discovered in the good city through the revelation of wisdom, courage, and morality, so too can divine justice be revealed to the individual. The individual must first have the wisdom to understand his nature as inferior to the Creator. He then must have the courage to understand and follow the laws of the Creator. Finally, moderation is revealed through the individual’s steadfast maintenance of his dependence upon God. The individual must maintain his relationship with God as one characterized by dependence, for without His Grace man shall never enter the Kingdom of Heaven. Justice then emerges in man’s understanding of his subservience to God, his willingness to fight to maintain these divine laws, and his continued acknowledgement of his subservient position relative to God. For Augustine, the meddling and exchange between the

classes of men is not an issue, for no natural superiority exists between men; we are all equally flawed since the Fall. Rather Augustine warns against man's meddling between two classes: himself and God. The Creator, being by definition naturally superior, is owed due admiration and love. When man denies Him his due and loves himself instead, then man is meddling between the classes and is acting unjustly (Parel 77).

Augustine's commentary on the origin and nature of true justice reveals his belief that, at least after the Fall, man must rely on his intuition to act justly. Having been banished from Paradise, man's ideas of true justice are clouded, and it is only through proper love of God that he can once again see the truth. Civic justice should not be disregarded as worthless, for it allows for man to enjoy earthly pleasures. Such pleasures were not manifest until after the Fall and civic justice aims to serve these ends. But civic justice's real importance is in its ability to serve man's true ends. That is, man should abide by civic laws so long as doing so furthers his ability to fulfill his true end: love of God.

Civic laws created by the corrupt souls of fallen individuals are inherently flawed, creating a situation whereby man must look elsewhere for guidance on what is truly just. Since the Fall has limited his understanding of divine justice, man must use his intuition and call upon those laws written in his nature, which predate even the burden of original sin. During the Holocaust, civic laws governing the SS called for the systematic murder of millions of people. The inability of those individuals to look past the civic laws and see the natural laws writ onto all men has since been called a "crime against humanity."⁹ These natural laws exist to fill the gaps between earthly and divine laws, and, at least in the eyes of Augustine, help man return to his rightful place in Paradise.

⁹ As defined by the London Agreement of 1945.

III. On the Banality of Evil and the Weaknesses of Civic Justice

The idea that there exists a justice common to all men, written into our nature (through the Creator or otherwise), was a central prosecutorial point of emphasis in the Nuremberg trials of Nazi war criminals. Generally, laws cannot be applied retroactively, but in the case of the Nuremberg defendants, all were tried and convicted of violating the London Agreement of 1945 despite the fact defendants were not (and could have been) aware of the civic law they were accused of violating. The London Agreement of 1945 was the decree by which the Nazis at Nuremberg were tried and convicted of crimes committed during the Holocaust. The charter defined three broad categories of crimes which defendants could be charged: war crimes, crimes against peace, and crimes against humanity. While the application of law retroactively was unprecedented from a legal standpoint, so too were the atrocities the Nazis were accused of committing. Of the accused who actually made it to trial, most attempted to deny wrongdoing, passing responsibility up the chain of command while categorically denying committing any first-hand offenses.

One notable exception to this defense was noted SS-Obersturmbannführer Adolf Eichmann, who was tried fifteen years after the Nuremberg trials. As chronicled by Hannah Arendt, Eichmann's trial in Israel in 1960 was singularly different due to the defendant's willingness to admit to the acts he stood accused of and his uncompromising belief that everything he had done was within the scope of the law.¹⁰ As indicated by lawyers for the defense in a pre-trial interview, "Eichmann feels guilty before God, not before the law" (Arendt 21). The conviction of (and general sentiment toward) the accused affirms the idea that all

¹⁰ Eichmann claimed to have been acting under the word of the Führer, Adolf Hitler, whose word was regarded as law for sworn members of the SS.

individuals understand the natural laws of humanity and their importance relative to civil laws. More importantly, it forces us to ask ourselves what went wrong. What caused a man few would call evil to commit such heinous acts against humanity?

Born March 19, 1906 in Solingen, Germany, Adolf Eichmann's childhood was defined by a need for affiliation. Unable to secure jobs through talent, the young German relied upon family connections and a fanatical sense of loyalty to his superiors. Upon the German surrender on May 8, 1945, Eichmann's concern centered primarily on his future as a leaderless pupil. Thinking back on the day, Eichmann revealed his need for affiliation, saying:

I sensed I would have to live a leaderless and difficult individual life, I would receive no directives from anybody, orders and commands would no longer be issued to me, no pertinent ordinances would be there to consult – in brief, a life never known to me before. (Arendt 32)

Eichmann's actions during the Holocaust are well documented and are not questioned. Fervently serving the Nazi party for eleven years, he eventually reached the rank of Obersturmbannführer, a position of power but still one toward the middle of the chain of command. Known for his ability to “solve the Jewish Question”, Eichmann's rise through the ranks of the SS was directly related with his success in removing Jews from Germany and German-occupied territories, and up until 1941, when the Nazis began the implementation of the Final Solution, Eichmann's duties consisted largely of confiscating Jewish property and deporting any Jews unable to pay their way out of the country. When informed of Hitler's intentions for the Jews, Eichmann followed the Führer with unquestioned loyalty. As the war began to wind down in April 1945, and an allied victory was imminent, Adolf Hitler committed suicide in his bunker in Berlin, ending his reign as Führer of Germany. His death also left

Eichmann in a relative state of lawlessness, for the laws of Hitler were the only laws the young German had known for the last decade.

In the final months before the German surrender, when most members of the SS were taking the necessary steps to forge documents and destroy all evidence tying them to the genocide that had taken place in Nazi death camps throughout Europe, Eichmann made a comparatively weaker effort to hide his past actions. However, following his arrest by American soldiers and imprisonment in a camp for SS men, Eichmann went to great lengths to conceal his true identity, implying he, at the very least, understood how the rest of the world felt about his actions during the war. Yet if he truly felt as though he had done no wrong, why not reveal his true identity and take his chances at trial? The opening of the Nuremberg trials in November of 1945 brought increased scrutiny in the search for Eichmann, whose name was garnering more and more notoriety. In January of 1946, Eichmann decided that the risk was so great that his identity would be discovered and, with the help of other inmates, he escaped to a city fifty miles south of Hamburg. Eichmann lived in hiding for four years under the assumed name Otto Heninger before fleeing to Argentina in July of 1950. For ten years he lived in a state of relative anonymity. However, on May 11, 1960, Eichmann's pursuers finally caught up to him, seizing the 54-year-old fugitive as he stepped off the bus on his way home from work. Nearly fifteen years after his escape from Allied custody, the accused would finally stand trial, now in the newly created Jewish state of Israel (Arendt 240).

Eichmann was charged not only with crimes against the Jewish people but with what the Allies dubbed "crimes against humanity" (Arendt 255). The former charge is clearly understood, for Eichmann's acts against the Jewish people were well documented. But what is meant by the

phrase “crimes against humanity?” In Arendt’s statement paraphrasing Winston Churchill, these crimes against humanity are differentiated from war crimes as they concern:

...the blotting out of whole peoples, the “clearance” of whole regions of their native population, that is, not only crimes that “no conception of military necessity could sustain” but crimes that were in fact independent of the war and that announced a policy of systematic murder to be continued in time of peace. (257)

The attempt to eradicate an entire race of people was such a gross injustice that it prompted laws to be applied retroactively, for no law had been in existence to judge those charged with attempted genocide. As Arendt puts it, “...if a crime unknown before, such as genocide, suddenly makes its appearance, justice itself demands a judgment according to new laws” (254). The London Agreement of 1945 was created precisely because of the limitations of civic laws at the time. The application of laws retroactively in the case of Eichmann and other war criminals, specifically doing so in the name of justice, indicates that there are limitations to civic justice and, in times like this, we must look past the laws and use our intuition. Recognizing the gaps in civic justice, we can then attempt to codify a law that will apply to such acts in the future.

It is this same intuition that Eichmann failed to use during his time in the SS, instead blindly acting under the laws of Hitler. It was well known that Eichmann was not anti-Semitic. He harbored no ill feelings toward the Jews; he was simply doing as he was ordered to do. Upon his arrest, Eichmann claimed that he had lived the life of a strict Kantian who acted in accordance with the categorical imperative. This was, of course, until he was ordered to proceed with the Final Solution. It was then, claims Eichmann, when he turned over his will to the Führer. Perhaps, as Arendt suggests, Eichmann’s formulation of the categorical imperative

mirrored that of Hans Frank's "categorical imperative in the Third Reich", which reads: "Act in such a way that the Führer, if he knew your action, would approve" (136).

The nature of the categorical imperative demands that one must look beyond one individual or one society for that matter and ask if they would will their actions as law universally. Says Arendt, "In this household use, all that is left of Kant's spirit is the demand that a man do more than obey the law, that he go beyond the mere call of obedience and identify his own will with the principle behind the law – the source from which the law sprang" (137). This characterization embodies the idea that true justice cannot spring from civic laws, but instead originates from within all of us as a part of human nature.

Kant's categorical imperative stands as one of the first codifications of moral theory as necessarily intuitive. Justice springing from such a source is normatively complete, whereby it, and not civic justice, accounts for every action that could be judged as just or unjust. But the categorical imperative is not without its limitations. Namely, it exists as a comprehensive moral code and not a system of justice. The purpose of civic justice is, as Augustine acknowledges, to serve the collective self-interest of the parties involved. Civic laws are still useful to individuals, due in large part to their ability to promote societal order. University of California anthropologist Richard McElreath recently published the findings of a study suggesting that the extent to which societies depend on civic justice varies directly with the number of people living within the society, arguing "it is likely that small and large communities regulate cooperation – mutual defense, conversation, etc. – in different ways, because different mechanisms and enforcement of norms work better at different scales of society" (1). As societies have grown larger and more complex, the necessity for civic justice to maintain peace and stability has increased. However, social order and peace should not be man's ultimate end, and as such, it is often necessary for

man to look past civic laws and act on his intuition. For our obligations go beyond our civic duties, as we are also citizens of the human race and must serve our fellow man as we would expect him to serve us.

IV. Justice as Fairness and the Triumph of Ethical Intuitionism

Having identified true justice as a part of human nature, how then do we reveal it? We have demonstrated that civic laws are, as a vehicle to realize true justice, wholly inadequate. While Plato argues through a strict societal organization that the development of true justice is possible, he also acknowledges that such a city is likely beyond the ability of human beings.¹¹ The issue with his proposal lies in his assumptions about human nature, namely the existence of a number of natural inequalities that should be fervently maintained. He also assumes that individuals will be able to identify that for which they are naturally best suited and obediently practice it. Upon rejecting these pre-conditions, Plato's argument for the expression of true justice in the city falls apart. Additionally, the weaknesses in civic justice – its inability (generally) to account for “new” injustices, its backward looking approach, etc. – weaken it as a vehicle for true justice.

St. Augustine's argument in *City of God* is more compelling. The level playing field for all individuals is an idea that still speaks to people today. Rooted in the thought that human beings are naturally just, corrupted only through Original Sin, Augustine's arguments regarding the nature of true justice always return to the Creator. Both men – Plato and Augustine – recognized justice as a giving one that which he is due, with Plato's theory distributing goods

¹¹ “You mean that he'll [the just man] be willing to take part in the politics of the city we were founding and describing, the one that exists in theory, for I don't think it exists anywhere on earth. But perhaps,...there is a model of it in heaven...” (Plato, IX, 592a-b).

based on naturally inequalities. The difference between them is not in the definition of justice, but in the determination of exactly what one *is* due. In Plato's system, characterized by natural inequalities, some people are simply owed more than others. Augustine on the other hand argues that everyone, as a descendant of Adam and Eve, is equally corrupt and thus begins from the same starting point. But for the theologian, giving each man that which he is due is not enough to demonstrate true justice, for the Creator is the ultimate source of all things and must be given his due. When Adam and Eve were cast from Paradise, their crime was one of misplaced love, loving themselves with love that was due to God. Created in His image, both had a natural understanding of justice, but when cast from Paradise their will was tainted. All that remains are the "vestiges or shadows of true justice in our soul" (Parel 77).

Augustine does not dismiss the merits of civic justice, for civic laws can still impact man's attempts to give to the Creator that which He is due. However he argues that true justice can only be obtained in giving God that which He is due. Clearly, one major issue arising from Augustine's argument is his reliance on participants believing in God. Without the belief that the Creator is the ultimate end of man's love, the argument is unsound.

Recognizing the diversity of religious beliefs throughout the world, perhaps it is best if justice is restricted to the world of men. And so, just like Plato and Augustine, we will define justice as giving every man that which he is due, but we will assume an equal starting point for these individuals and shall seek to right inequalities as they come along. By defining justice as giving each man that which he is due, we are left with the concern that our theory may be vulnerable to subjectivism. As Michael Huemer argues in *Ethical Intuitionism*, theories grounded in subjectivism are inherently flawed, for all make the mistake of assuming moral infallibility (227). The good, or the just for our purposes, cannot be determined by an individual or by

society, for both are clearly not morally infallible. The third source of the good is the Creator, who many would argue is morally infallible and thus a satisfactory source of the good. But the belief in a divine creator is a necessary precondition for such a theory to the extent that, if rejected, the argument fails to hold weight.¹²

Huemer's beliefs on ethical intuitionism reflect a system where human intuition stands as man's truest understanding of justice. The systematic killing of millions of people during the Holocaust was not a crime under the Third Reich, but it was, as Arendt says, a "crime against humanity." Huemer also indirectly addresses these crimes, writing, "...when confronted with cases we have never previously considered [the Holocaust], we often have moral intuitions that conflict with our moral theories" (232). The Holocaust represents a time when individuals like Adolf Eichmann, when confronted with orders that are in direct opposition with accepted moral truths¹³, acted in accordance with the laws of the state and ignored human intuition. In fact, it was Eichmann's unwavering compliance with civic laws that is so perplexing. The feelings we have towards him indicate that most rational human beings understand that uncorrupted moral intuition stands superior to civic laws and represents man's most objective source of justice.

It seems then that we have identified a number of characteristics that are necessary for a proper and natural system of justice:

- (I). Justice is defined as giving each man that which he is due.

¹² A moral theory dependent upon a belief in God is not collectively exhaustive, as it only appeals to those who believe in a divine creator. The moral statement, "Abortion is wrong because God says it is wrong," has no bearing on an atheist. Without the belief that God is an omnipotent being, an atheist would read the statement as nonsense, just as a person would read, "Abortion is wrong because I say it is." To that extent, a moral theory grounded in divine law is pure subjectivism and fails to satisfy us in our search for true justice.

¹³ Murder is wrong, etc.

- (II). The system must follow from human intuitions.
- (III). The system should be collectively exhaustive, meaning that it should be applicable to all situations past, present and future.
- (IV). The system should not rely on any outrageous preconditions that are not uniformly accepted by most rational agents (belief in natural superiority of some individuals to others, belief in God, etc.)

The idea of Justice as Fairness, first proposed by John Rawls in *A Theory of Justice*, satisfies all of the above criteria. Before his death in 2002, Rawls, with the help of Erin Kelly, was able to respond to many criticisms that followed the publication of his first theory in 1971. In *Justice as Fairness: A Restatement*, John Rawls outlines a system of justice built upon a foundation of distributive justice. True justice, as Rawls defines it, seeks to help those least advantaged in society. Such a system does not seem so far from what many individuals seem to do naturally, as seen in our proclivity to protect children with greater vigor than we protect adults. Dissenters may argue that we go to greater lengths to protect children because they are more innocent or because children have a longer life ahead of them, but such an argument does not account for the same protectionist feelings we have toward the elderly. Certain groups of individuals are protected by society because of nothing more than the group's inability to protect itself. This feeling is not something created through civic laws, for as we have seen with the witnesses of the Kitty Genovese murder so often civic laws are inadequate in this respect. As Robert Audi explains in his study of ethical intuitionism *The Good in the Right*:

Moral sensitivity can run ahead of judgment. We may sense a duty, say, to help someone, without any good idea of whether the duty derives from a tacit promise or from beneficence or both... Emotions may reveal what is right or wrong before judgment articulates it; and they may both support ethical judgment and spur moral conduct (87).

The validity of Audi's statement is rooted in common sense. There are cases where individuals simply do not have the time to make measured judgments on whether or not they

should act, proving that individuals are able to recognize and seek to correct inequalities intuitively. Individuals like Adolf Eichmann and the witnesses to the Kitty Genovese murder acted unjustly because they failed to failed to correct (or even recognize in the case of Eichmann) the inequalities in their respective situations. Their reasoned judgments led them to act in accordance with intuitively unjust civic laws or to not act when doing so would have been the just action. When placed into groups, individuals have a tendency to act (or not act) in accordance with the customs of those groups, regardless of whether or not doing so is a violation of our intuitive sense of right and wrong.

The retroactive application of law to account for Nazi “crimes against humanity” was done so not out of any legal precedent, but in “the spirit of justice.” This spirit of justice is exactly what Rawls appeals to in his description of justice as fairness. According to Rawls, one of the biggest obstacles for creating a system that harnesses our intuitive sense of justice is our inability to put aside the characteristics that define who we are as people. Once these traits are manifest in the physical world, it is difficult for one to put aside knowledge about race, social standing, or religious beliefs. In creating a system of justice, we will naturally be biased towards favoring the characteristics that define us. Unlike Plato, Rawls believes that natural inequalities should not be rigidly maintained. His system based on two basic principles of justice:

- (a) Each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and
- (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle) (Rawls 42-43).

These principles of justice allow for only socially constructed inequalities, which are open equally to all members of society. Like Plato, Rawls would allow for the guardians of the

city to have more political power. But unlike the Plato, Rawls sees no natural progression into a role of guardian. Each member of society should have an equal claim to the position, which, once obtained, should be used to help those who are worse off. The system is much like a scale: it starts on balance between two individuals, just as all members of society should have an equal starting point. For whatever reasons, one person is elevated while the other falls. Now, the person in a higher position should work to right this unnatural inequality that has been created. While those best off in society may be unable to rebalance the scale, any movement towards the starting point of equality is a step in the right direction. To ensure an equal starting point for all, Rawls' method for creating a just system involves a thought experiment whereby each individual begins on a level playing field: the original position.

The idea of the original position stands in direct opposition to the ideas of Plato in the *Republic*, and yet the original position seems utterly intuitive. Being unable to distance ourselves from characteristics that define us, we must return to the original position, where every man is equally ignorant of his place in society. In doing so, man is better able to create a system of laws that will ensure justice is practiced more closely in accordance with the true justice written into our nature. Additionally the original position ensures a sense of objectivity that the just cities of Plato and Augustine cannot.

One preexisting condition for Rawls' theory of justice as fairness, one that does not apply to more general moral codes like Kant's categorical imperative, is the idea of a well-ordered society. Along with the original position, a well-ordered society is needed for Rawls' other ideas to fit together harmoniously. In order for the society to be well ordered, "everyone in society must accept, and know that everyone else accepts, the very same political conception of justice" (Rawls 8). Additionally, each member of society must have faith in the idea that "society's basic

structure – that is, its main political and social institutions and the way they hang together as one system...to satisfy those [commonly accepted] principles of justice.” Finally, citizens must also effectively regulate that which stands as the publicly accepted principles of justice (Rawls 9). Such conditions are curiously similar to the requisite conditions of wisdom, courage, and moderation needed in Plato’s just city. The difference lies in the fact that Rawls does not attempt to propagate the “natural” inequalities postulated by Plato.

While the preconditions of a well-ordered society and original position are not utterly obvious, it would be a stretch to call them “outrageous”. These conditions are arrived at through an introspective thought exercise Rawls calls “reflective equilibrium”. Argues Rawls, “...the best account of a person’s justice is not the one which fits his judgments prior to his examining any conception of justice, but rather the one which matches his judgments in reflective equilibrium” (*A Theory of Justice* 48). Reflective equilibrium requires the individual to weigh the various proposed conceptions and revise his judgments or stand by his original convictions, after which the individual should arrive at the conclusion that the conception of justice arrived at in the original position is the best match with our considered judgments (Rawls, *A Theory of Justice* 50).

The purpose of the original position is to return individuals to a state of being predefining their understanding of self-defining characteristics. After determining the merits of the original position through reflective equilibrium, and having shed any notions of who we are as people, or who we may become, it is then impossible to create a system in which certain members of society are more advantaged based on such characteristics. Imagine if Hitler and the other Nazis credited with creating the Final Solution had entered into such a thought experiment prior to deciding on a policy of mass extermination. Even if their assumptions about the Aryan race as

superior were maintained, the uncertainty surrounding their own place in the resulting society would have likely prevented them from adopting a policy of extermination based on race. The original position's veil of ignorance "achieves this result by limiting the parties to the same body of general facts (the presently accepted facts of social theory) and to the same information about the general circumstances of society" (*Justice as Fairness* 87).

Before beginning his examination of justice as fairness, Rawls readily admits the limitations of his doctrine. Justice as fairness is not, like Kant's categorical imperative, a universal moral doctrine. As Rawls argues, "we view justice as fairness not as a comprehensive moral doctrine but as a political conception to apply to that structure of political and social institutions" (*Justice as Fairness: A Restatement* 12). Such a claim is representative of Rawls' desire to maintain a certain practicality in his theory, but reinforces his belief that human beings are naturally social creatures. His maintainsociety has become a natural part of human life, to such a degree that separating man and the city is an impossible task.

Many of Rawls' later discussions center on the process of determining exactly what each person in society is due – the primary goods. These goods include basic rights and liberties, freedom of movement and free choice, powers and prerogatives of offices and positions of authority and responsibility, income and wealth, and the social bases of self-respect (Rawls 59). However, such a discussion is beyond the scope of this paper. I do not wish to demonstrate exactly what goods a person is due in order for a system to be fair, but rather the aim is on demonstrating that a system of justice as fairness – that is, a system that gives to each man his due based on an assumption of natural equality and the social nature of human beings – is utterly intuitive and stands as the truest representation of the justice written into human nature. The

system is not perfect and, as many have opined, has its fair share of holes¹⁴, and perhaps a comprehensive system of justice is, as Plato and Augustine both indicated, beyond the reach of human beings. But John Rawls' theory of justice as fairness is at least a step in the right direction; it not only recognizes the mutual dependence individuals have evolved into with society but also appeals to that aspect of human nature which so often resists the influence of even the most heinous of civic laws: human intuition.

¹⁴ See Allan Bloom, "Justice: John Rawls vs. The Tradition of Political Philosophy." *The American Political Science Review*, Vol. 69, No. 2 (Jun., 1975), pp. 648-662.

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