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FLEW ON ENTITLEMENTS AND JUSTICE

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In «Equality, yes, surely; but Justice?», Antony Flew (Flew 1986: 197-204) puts forward some new arguments in support of his well-known stance to the effect that egalitarianism and collectivism not only fail to be grounded in any conception of justice but are even incompatible with the very concept of justice, on which they ought to ‘mount a bold and radical onslaught’, denouncing it as an irretrievably reactionary notion. In this Note I propose to criticize Flew’s arguments.

Here are Flew’s main lines of reasoning. Anyone who talks about justice is bound to stick to the traditional concept expressed through that word, unless he is prepared to convey a new meaning with it. This latter would be in no-one’s interest, since, once you waive the usual and traditional (and common-sensical) use of a word, replacing it with a quite different use and meaning, whatever you thenceforth say about what at the new stage you convey by that old word, interesting though it may be, is not relevant to the old and usual concept and therefore fails to constitute a conception of what used to be meant by that word. Now, the old and usual concept of justice is that of giving (or assigning, or resigning, or allotting) everyone his due (or his own). That concept is intrinsically backward-looking: if you are going to act justly, you need first to find out what each person claims as his own. You cannot assign everyone his own by gratuitously presupposing that nothing is his own and that a fresh start is to be made, by means of which all goods are viewed as ‘up for grabs’ and are to be allotted or distributed among the members of society irrespective of their past entitlements. Quite the contrary: if you do that, you may be justified on other grounds — e.g. that in that way society as a whole would purportedly be happier — but you are not being just at all, since you are treading on all antecedently acquired entitlements.

Here now are my criticisms.

1. In a fairly obvious sense all goods are ‘up for grabs’, i. e. a radically new redistribution, a fresh start in allotting goods and services, is always possible: possible in the sense in which many things can be done that are not in fact done. Whether you believe in free will or not, anyway you surely hold that many things you don’t do you could possibly do. I here refrain from discussing what that possibility might consist in — whether physical possibility or whatever. What is relevant to our present concern is that posing problems as Rawls, K. Nielsen and other distributionists do calls for no fresh start to be made; no: what alone such a way of bringing up issues requires is for such a fresh start not to be ruled out beforehand. Let us begin on a neutral ground: a radical redistribution can be made. Whether it would be just or not is what we are going to go into. and even if most distributionists do not define ‘justice’ in the old way, nothing debars them from doing so. For obviously not all prior holdings are legitimate — and so not everything a person has, or holds, or enjoys, is (legitimately, justly) his own (Flew himself implicitly recognizes that point). What a distributionist would then point out is that the needy’s right to be treated so as to have their fulfilment as human beings enhanced overcomes or supersedes whatever

purported ‘entitlements’ have thus far been bestowed upon the small minority of the well-to-do — and hence that none of the goods to be (re)distributed is due to those few people.

2. Light can be shed on the former point by remarking that the word ‘entitlement’, on whose meaning Flew’s arguments seem to hinge, can be combined with ‘just’ in a non-pleonastic way. According to Flew (1986: 200, towards the top) no particular theory of justice can have as a hallmark its being an entitlement theory — thereby clearly implying that to act justly is the same as to yield to everyone whatever he is entitled to. But a person may be entitled by custom or by law to an unjust holding, while other people may be morally entitled to claim that holding, even against positive law. Hence not all entitlements are just or legitimate. (Whether any two just entitlements are compatible with one another is a quite different matter, which I shall forbear going into here.) Thus some holders of usurped goods are, at least in a way, entitled to keep their holdings — entitled by an authority which legalizes the *faits accomplis*. Whether or not their entitlements are right or just is a further question. Therefore, the distributionist can assert that any entitlement incompatible with the implementation of his distributionist ideal is not just or right (legitimate). That point may seem a mere quibble, but I am sure that Flew’s arguments sound to a large extent a matter of course because of the fact that no-one would deny the existence of prior entitlements — at least in a weak sense — while whether or not those entitlements are legitimate, and which among them are, is of course less commonly agreed on. If one clings to the view that no two clashing entitlements or claims can both be right or just (a view which, by the way, I myself do not share), then of course one is bound to develop a theory of justice hinging not on prior entitlements as such but on rights. The existence of previously established claims or entitlements does not entail that the claimers have a right on what they claim or hold. Thus, it is Flew who in fact seems to be taking something for granted that ought instead to be seriously argued for: he maintains that, if being just is assigning everyone his due, then justice is backward-looking, i.e. acting justly is to recognize previously acquired entitlements. This assumes that those entitlements or claims are legitimate, an assumption challenged by the distributionist.

3. A radical distributionist can have good reasons for regarding many, if not all, prior claims or entitlements as illegitimate, quite apart from the fact that the badly-off have a stronger claim on the goods they need in order to reach the fulfilment as human beings to which they have the right. Those reasons can be briefly spelt out as follows: Flew himself makes a lot of the difference between resorting to compulsion and failing to do so. (What he most blames distributionists for is their proposing ‘to deploy the forceful machinery of the state in order to impose on everyone’ their vision of an ideal society.) I take it that he will acknowledge that stealing is a way of resorting to compulsion. What has been gained through theft is illegitimately held. (Fraud and unfair trade — including taking advantage of other people’s needs either for charging too much or for paying them too little — are forms of theft.) So is what has been secured through unjust war, murder, enslavement of other people. Receivers are somehow or other thieves, too, and so are those who bear to stealers the ancestral of the relation of receiving.¹ All of them have an illegitimate claim to what

¹‘Ancestral’ is used in the set-theoretical sense. See Quine 1951 39: 216: ‘In general [the ancestral of] x is the relation of z to w such that z is w or else bears x to w or else bears x to something which bears x to w or else etc.’ Hence, here the ancestral of the

they have thus acquired. But then, most, if not all, current owners have an illegitimate claim to what they own. Money, Vespasian said, is odourless. How many crimes, unjust wars, unfair trade practices — including payment of exceedingly low salaries to workers —, exploitation of slaves and so on have contributed to the current distribution of wealth? and how many of those who hold goods are sure that every penny they have been paid for any service or good they have sold, as well as every penny they have inherited, was entirely unblemished, free from any such (whether direct or indirect) connection with crime? I am quite sure no-one can be sure of that. On the contrary, all wealth is much more likely to participate in (at least one of) those chains.

Whether a practice is lawful or not is one thing; whether it is legitimate (just, right) is quite another. Positive law may prosecute the direct receiver while letting alone the receiver's receiver and so on. Positive law still allows many unfair trade practices. There are many borderline cases between black and non-black market, between usury and fair lending rates, between unmasked exploitation and paying fair wages. Up to a point at least any acquisition achieved through such practices is illegitimate. and so is any gain which indirectly benefits from one of those practices I have just described, and so on and so forth. Any such gleaning is none the less unjust for complying with the authority's regulations. What is more, that very same lawfulness is an aggravating circumstance, since it amounts to shielding the wrong-doer by 'deploying the forceful machinery of the state in order to impose' both on those who need the goods in question but have not engaged in such dishonest practices and on those who have been somehow deprived of those goods — i. e. those who have been wronged or harmed by such practices — the obligation to refrain from seizing, or from taking back, those goods.

A similar case is when a person lays hands on an unmerited position unfairly won over opponents who deserved to be awarded the post better than he did — as often happens in competitive exams leading to positions in the state administration. Is that person rightfully (justly, legitimately) entitled to keep either his position or such other goods as holding it has enabled him to procure? No: for him to have skilfully plied the state's authority to grasp the desired position and to enjoy it thus protected by the state's forceful means of coercion is nothing but to compound his offence with (indirect, if you wish) violence. Likewise true, if less obviously outrageous, is the misdemeanour of one who has secured such a position relatively justly — the opponents had less merits than he — but unjustly all the same, as e.g. the position's holder earns too much for the task he has to discharge: thus for instance a lot of civil and military officers in certain countries illicitly benefit from the state, which exacts heavy tributes from a poor population to nourish those idle officers; such has been common practice through history — and still remains up to a point so even in our developed societies.

In the pool of money all merges into the stream. As is well-known, unless artificial measures against miscegenation are taken, several generations suffice for a new-comer's genetic contribution to be shared by most members of any given community. The more so as regards the origin of money or wealth. Therefore, far from agreeing with Flew that prior

relation of being a receiver is the relation borne to some person by someone who either is a receiver of some goods from him, or buys some goods from someone who is a receiver of those goods from that person, or buys some goods from somebody who has bought them from someone who is a receiver of those goods from that person, or ...

entitlements are to be regarded as right ‘until and unless the holdings of these others can somehow be proved to be morally illegitimate’ (Flew 1986: 203), I contend that they all can reasonably be considered wrong (unjust) until or unless the contrary can be substantiated.

I bring this paper to a close by remarking two things. First, my third (and main) argument is liable to be disliked not just by conservative anti-distributionists like Flew himself, but also by most distributionists, including especially Marxians. For Marx, violence belongs to (political) superstructure; thus it is secondary in character and causal power: private ownership is not brought about by violence or theft, even if, once it exists and is fully developed, it gives rise to the state, which resorts to violence at the service of the ruling class. That is why Marx rejected Proudhon’s view of private property as theft. Although what has been argued in my third point above does not strictly imply the Marxian view’s falsity, it must be clear that I do not share Marx’s conception of the two ‘halves’ of social structure — an economic basis, which would be ultimately determinant, and the superstructures. (Moreover, the ‘moral’ character of my arguments for (re)distributionism is strongly nonMarxian.) My second and final remark is that all I have said ought not to be read as either ruling out conflicting rights or denying cases of relative or hypothetical justice. There may be degrees of legitimacy and of illegitimacy, so much so that some actions or holdings may be to some extent legitimate and yet up to a point illegitimate, owing to which a fresh redistribution of the goods thus held might be both to some extent just and to some extent unjust.

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