LOVE AND JUSTICE

By GERARD J. HUGHES

SOMETIME AGO, while I was giving a course of lectures jointly with an anglican moralist, I was struck by a curious misunderstanding which arose between him and a catholic member of the audience who was asking a question. Only after everyone had clearly been somehow at cross-purposes for some time did it emerge that the root of the misunderstanding lay in our different presuppositions about the relation between duties in charity and duties in justice. The catholic was assuming that duties in justice were plainly more fundamental than duties in charity – a view which is certainly to be found in many catholic textbooks of moral theology; whereas the anglican from within his own tradition was making precisely the opposite assumption. For him, duties in charity were more binding than duties in justice, not less so, since he took it that the christian's most basic duty was to love. This divergence of outlook seems to be an important one, and it extends rather more widely than might at first sight be apparent. For one of the strands in the 'catholic' position is that charity is somehow a matter of supererogation rather than of duty in the strict sense. It might almost be said that our duties are all duties in justice, and that everything else that we do over and above what justice demands is a work of supererogation, done out of charity, a superabundance of generosity. In this article, then, I shall try to sort out some of the problems which arise with each of the three concepts, 'justice', 'love', and 'supererogation'. Partly I shall be trying to introduce some conceptual clarity into what can easily become a mass of equivocations; and partly I shall be arguing for the truth of a particular view of supererogation.

To begin with, the term 'justice' has been used in several rather different senses both in popular and in academic writing. Aristotle, followed by Aquinas, distinguished between a general and a specific sense of 'justice'. In the general sense, the sense in which Joseph in the Bible is said to have been a just man, the word is simply a synonym for moral goodness. Justice in this sense includes all the moral virtues. In the more specific sense, justice has traditionally been defined as 'giving back to each man what is owed him'; or, in more

modern idiom, paying one's debts. A similar ambiguity can be detected in several of our own english terms for moral duties. Words like 'owe', 'debt', 'due' and 'duty' all have both a wider sense in which they can refer to almost any moral obligation, and a narrower sense in which the more specifically contractual and even financial overtones are much more prominent. To be sure, we can distinguish between doing what one ought and paying what one owes; between doing one's duty, and paying duty to the customs; between the debts of a bankrupt and one's debt to, say, one's parents. One can owe the milkman for last week's deliveries, and one can also owe it to one's family to spend more time with them.

Nor is our use of 'charity' and its several near-synonyms much more precise. 'Charity' can have overtones of the victorian poor-house; schools could take charity-pupils, and hospitals might admit charity-patients. Again, we still speak of giving to charity, when we have in mind the various welfare organisations. 'Charity' can mean little more than 'kindness', as when we ask people of their charity to pray for the repose of someone's soul. More recent writers have tended to replace 'charity' by 'love' when translating the greek *agape* in the New Testament. But here again, 'love' can apparently have a very general sense, in which we might claim to love all men; and also a very much more specific sense in which a man might love his wife, or when someone says to another, 'I love you very much'.

If we ask what is the relation of charity to justice against this background of ambiguity, there seems little guarantee that the different parties to any discussion will understand the question in the same way. One might argue, for instance, that to love all men *is* to be just in the general sense of that term, and hence that duties in charity are simply identical with duties in justice. On the other hand, the justice which demands that the milkman be paid seems most unlike the love one has for one's wife. And it seems odd to speak of the inadequacy of one's love for one's wife as a sin against charity, whereas calumniating one's neighbour might equally well be described as a sin against justice and as a sin against charity. Plainly, to get anywhere at all with all this we need to tidy up our terminology.

II

I shall not here even attempt to give a formal definition of justice. To do so would indeed be a mammoth undertaking,[1] and in any case would not be necessary in order to deal with the very limited set of questions posed in this article. It will be enough to try to delimit the kinds of areas in which we ordinarily think that questions of justice are involved. I suggest that these are three – though others have argued that a still simpler analysis could be defended. But perhaps justice is ordinarily taken to involve any of three things: the fulfilment of contracts and promises; impartiality; and the proper distribution of advantages and burdens. Let me give a few illustrative examples.

In the first place, there are the explicit contracts that we make, with employees, customers and clients. Again, there are all the many explicit promises we make even when these are not legally enforceable. In all these cases, there are mutual services rendered, or mutual expectations set up, which are undertaken precisely on the understanding that they should be mutual. Secondly, there is the kind of injustice which would result from refusal to apply rules or laws or procedures impartially once they have been set up. Perhaps in both these cases, the mutual agreement ones and the impartiality ones, we would also describe acts of injustice as being unfair. It is unfair to reap the benefits of a contract without paying the price to which one has agreed; it is unfair of a referee to apply the laws of a game differently to each of the two sides, and unfair of a judge to interpret the law one way in one case and another way in the next case. For this reason some philosophers have tried to show that all our beliefs about justice can in the end be reduced to the notion of fairness.

But perhaps it is clearer, at least at the outset, to distinguish as I have done between the unfairness of the judge who fails to apply the law impartially, and the injustice of a law which imposes penalties on a certain section of the population even when it is impartially applied. Thus, the decision of a court might well be racist, unjust, and totally impartially given. So at least to start with, we might consider as yet a third area of justice the problems connected with the distribution of wealth in the world, the provision of equal opportunities for all our children, and so on.

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[1] For two recent attempts to do so, see John Rawl's monumental work, *A Theory of Justice* (Oxford, 1972), and N. M. L. Nathan's *The Concept of Justice* (London, 1971), neither of which claims to cover anything like the whole range of problems which could be raised.

If this will do as a rough account of the kinds of problems which we normally consider to involve questions of justice, we can go on to say that duties in justice will involve the duties to fulfil our contracts and promises, the duty to be impartial, and the duties involved in the equitable distribution of benefits and burdens.

Now there are several things to be noticed about duties in justice. To begin with, they are complex – which is why, among other things, it is so difficult to give a satisfactory definition of justice. Then, they are of widely varying degrees of importance. My duty in justice to pay the milkman is considerably less important than my duty in justice to administer the law impartially in a murder trial; and the duties of a referee are considerably less important than our duties towards the third world. But we can also provide examples where the relative importance of fidelity, impartiality and distribution is reversed. My duty to share a cake equally between my three children might be far less important than my duty to keep a promise to my wife, or my duty to pay my employees. In short, to say that a duty is a duty in justice does not in itself say anything about how important a duty it is, or how wrong it would be to fail to do it. Another thing to notice is that duties in one area of justice may easily conflict with duties in another area. I may, for example, have concluded a contract and paid my side of the bargain; and then it might be discovered that for the other party to pay his would manifestly do great damage – let us say, it might involve his firm in bankruptcy, as Rolls Royce discovered not so long ago. Here one might have to decide between the obligations in justice of the original contract, and the unfair distribution of hardship which it eventually produced. Or again, an impartial administration of the law might well lead to greater injustices of another kind. We cannot assume, then, that our duties in justice will always harmonize into a neat pattern.

It should now be clear that we have very many other duties which are not duties in justice in the senses just described. I should say, for example, that a man has a duty to himself to develop his talents, and a duty to safeguard his health. One also has duties in gratitude, where there is no question of justice or requital in any contractual sense. To be ungrateful is not to be either unjust or unfair. One has a duty to tell the truth – but it is not at all clear that this could in any way be reduced to a question of justice. A long list of examples could be compiled. But my point is a simple one. These duties, like duties in justice, are complex, can conflict with one another, and on

occasion can conflict with the demands of justice itself. One need only think of the old conundrum about how one is to reconcile the claims of justice and mercy. Nor is it obvious that justice ought always to be allowed to win in such conflicts. Indeed, I should have thought that on some occasions the requirements of justice were best forgotten.

At this stage, I would like to draw one simple conclusion. The title of this article might well be misleading were it to suggest that there is some *special* difficulty about the relation between love and justice – a difficulty not to be found in the relations between mercy and justice, for example, or between justice and one's duties to oneself. And it would be equally misleading if it suggested that there ought to be some simple solution, such as that duties in justice were always less important than duties in charity or love, or that they were always more important than these. The enormous range of importance to be found among duties in justice themselves should alert us to the improbability of any such simple solution.

III

We are now in a position to ask how works of supererogation fit into this pattern of duties, and in particular how supererogation is related to justice in particular and to duties in general. It might at first sight seem plausible to say that works of supererogation are good works over and above the demands of strict justice. Thus, the traditional 'catholic' view, as it was held by the questioner in the example at the beginning of this article, was that where justice left off, charity began; and, moving on one further step, that whereas one was bound to fulfil all justice, there was a certain optional character about charity which would suggest that somehow works of charity were works of supererogation. It was this that my anglican colleague found so strange. On the basis of what I have already said about justice, it can readily be seen that his misgivings were well-founded. For there are very many duties which we have to ourselves and to one another which are certainly not duties in justice. Yet they are surely duties, not optional extras.

It is a great pity that we have so often given the impression that our only strict duties are the clearly contractual ones. As a first result of this, the moral teaching of the Church on other aspects of justice itself is comparatively undeveloped (although the social encyclicals have of course consistently stressed the importance of distributive justice). It is only comparatively recently that the Church

has paid much attention to our duties towards the third world, for instance, and we have not really devoted anything like enough effort towards the solution of the complex and baffling economic and political problems on which any precise account of these duties depends. A second result is that even here it might occur to people that duties towards the third world were to do with charity rather than justice; and this impression goes hand in hand with the view that aiding the third world is a work of supererogation to be undertaken only when we have done the other things that we really *have* to do. I suggest that the view that works of supererogation are those good works not required by strict justice is false in itself, and has led to a minimizing view even of the extent of our duties in justice.

Perhaps one might, then, suggest an alternative view, that works of supererogation are those good works which we do not have *any* duty to do – or, to put the same thing another way, a work of supererogation is something which it is right and good to do, but not wrong to omit. In short, an optional extra. But I think that there is one fairly strong argument against adopting this position. For a consequence of this position is that there are good things which one is able to do but not in any sense obliged to do. And this means that one does not in general have any duty to do as much good as possible. But, for many philosophers it has seemed quite evident that one does have a duty to do as much good as possible; and did not Jesus himself require us to be perfect as our Father in heaven is perfect? Can the christian really hold that to strive as best one can after perfection is an optional extra?

So I think it is worth suggesting that we have a duty to do all the good that lies in our power; and, moreover, that we have a duty to widen our capabilities for doing good. One of the lessons that we should learn from the parable of the good samaritan is that we have a duty towards our neighbour – that is to say, towards anybody who needs our help. The tragedy of our situation is that we are so often powerless to help those who need us, whether they are those who are starving in Calcutta or, as is often the case, those who are closest to us. Our inability to help may itself be a consequence of our past moral failures. Christian perfection demands that we meet the needs of others as far as we can, and that we try to extend our abilities. And I do not think that perfection is a matter of supererogation. I think it is a matter of duty, and, consequently, that there are no such things as works of supererogation.

Such a view may seem intolerably rigorist and demanding. But I believe that this impression is given only because many people of goodwill insist on attempting the impossible and do more harm than good in the process. We have no doubt all had the experience of seeing the damage done when someone considers that every minute of his spare time should be spent in prayer in the chapel, or when someone considers that all his leisure time should be devoted to working for various good causes, all under the heading of works of supererogation. On no account would I wish to say that such things were duties, precisely because they do result in more harm than good, and are based on a mistaken estimate of what one's capabilities are and where one's perfection lies. Such rigorist demands would indeed be intolerable. But to suggest that one strive for perfection to the limits of one's true capabilities does not seem to me either rigorist or intolerable.

Let us now return to our original problem about the relations between justice and love. There is considerable support in tradition for the view that 'charity' means 'perfection', and that therefore one's duty in charity is simply another name for one's general duty to seek perfection. As such, it will include duties in justice (as I am using the term 'justice'), though it will, of course, extend much wider as well. And on this view, duties in charity will be duties, not optional extras.

IV

I might, perhaps, have finished there, but for one important difficulty. Instead of speaking about the relations between justice and love in the last paragraph, I found it natural to speak of the relations between justice and charity, using one traditional sense of the word 'charity' current among theologians. But what about love – love in its ordinary everyday sense, before it gets stretched beyond all useful and idiomatic limits? What about the love a man has for his wife, or a mother for her child, or a person for his friends (as distinct from his familiar acquaintances)? What are the relations between these loves and our duties?

Obviously enough, the fact that love has been offered and accepted between two people gives rise to duties and obligations. A particular need has been created – out of nothing, almost – and has to be responded to. A particular vulnerability has been laid bare which demands the greatest tenderness and respect. Equally obviously, the loves which we have compete with, and on occasion come into

violent conflict with, our other obligations. A man might love a woman, and yet have an obligation to his wife and children to give her up. It does not help clarity of discussion here to suggest that in such a case it is not truly love which he has for her. Duties in love are only some of the duties we all have. Do they have a specially strong claim on us? It will not do here to confuse psychological impact with moral importance. That being said, however, the very force and immediacy of being in love *does* mean that the refusal of love is all the more hurtful, and hence that duties in love are all the more pressing for that very reason. Love opens up such immense possibilities for good or for ill that our duties in love will often be far more serious than many of our duties in justice, or in gratitude, or duties to ourselves.

Nevertheless, I do not think that it can be said that duties in love outweigh *all* our other duties, or that love is always paramount over justice, any more than one can affirm the view that justice always has a prior claim to love. The search for a simple solution here is a delusion. All that can be said here is that we have a general duty to respond as fully as possible to the needs of others, and that love of its very nature enables us to do this in the deepest possible way. To say more would require the development of an entire theory of normative ethics.

It is also worth reflecting on how odd it would be to suggest that we should love someone (be it wife, family, or friend) out of a sense of duty, and how distinctly unwelcome it would be to hear that someone loved us out of a sense of duty. In the everyday sense of love, love is not something which can be commanded as a duty, for it is not always in our power. Love involves a whole complex of emotional and personal attitudes which are not by any means entirely within our voluntary control, even with regard to people whom we know well. Still less is it psychologically possible for us to love someone whom we have never met or seen or heard of. What, then, are we to make of the command to love one another as Christ loved us, or the suggestion that we have a duty to love all men? I have already suggested that it would be repugnant to love them out of a sense of duty; and, in any ordinary sense of 'love', it is simply impossible for us to love all the people we know, let alone all men. I suppose that we might conceivably adopt the paradoxical solution that we here and now have a christian duty to do what is simply impossible for us in this life. But I suggest that by far the better answer to this question is to say that in this life we are *not* commanded

to love all men in the ordinary sense of love. We should understand this saying of Jesus as enjoining on us the pursuit of perfection, the striving for charity in the general sense already considered, which will involve fidelity to our duties to our neighbour, but will not necessarily involve loving him.

Yet one final and most important qualification must be made. The command of Christ that we should love one another, taking 'love' now in its everyday sense, despite its present impossibility, does surely point to an ideal which we can recognize and appreciate even though we cannot attain it on this earth. Here we have revealed to us what is the mystery of God's promise to us in Christ. Even our whole mind and heart and strength are all too limited to compass the total self-giving involved in loving all men. But God, who is love and who promises us a share of his nature by making us one in his Son, has shown us that what is impossible for man is possible with God. For the moment, we still need the painful slowness of moral theory; we still need to ask 'Who is my neighbour?' and we cannot do without a whole string of concepts for our duties – justice, fidelity, love, gratitude, and the rest. We see through a glass darkly, in the obscurity of faith, hope, and moral theory, illumined occasionally by the partial light of our human loves. In a sinful world we have, for the most part, to make do with justice and charity. But it is our unshakeable hope that this slow groping pursuit of charity, with the grace of God, prepares us for that love which cannot now be commanded of us or provided by us, but which God has promised to give us as he gave us his only Son.