

Chapter 1

The Terrain of Justice

From a twenty-first-century vantage point, ancient ideas about justice are striking for two major reasons. First, the extant ancient texts reveal a preoccupation with retribution, and in some cases unbridled vengeance, that is unsettling to modern readers. Second, the ancient sources uniformly embrace stark hierarchies of power, status, and wealth as embodiments of a just political and social order. The commitments to freedom and equality that are widely shared today in those parts of the world which have been strongly shaped by European ideas are nowhere to be seen, at least not in the earliest sources.

The record of ideas about justice extends back many centuries before the beginnings of philosophy, which was a Greek creation. Collections of laws dating from the late third and early second millennia BCE have been preserved from several kingdoms that once existed in ancient Mesopotamia, including Assyria, Accad, Sumer, and Babylonia itself (into which the territories of Accad and Sumer were combined). Similarities among these sources provide strong evidence for the existence of a common customary Mesopotamian law in the third millennium that bridged political divisions. The most extensive of these collections is the Babylonian law, sometimes known as the Code of Hammurabi, although it more nearly resembles a series of amendments to the common law of Babylon or a set of guidelines than a code or collection of statutes.

The legal guidelines collected in the Code of Hammurabi are preceded by a prologue, written in semi-poetic style, and followed by an epilogue in similar style, both of which celebrate Hammurabi's role as promulgator of the laws and exhort the reader to maintain them into posterity. Although Hammurabi says that he was designated by gods to be a lawgiver to Babylonia, he (or the writer who represents himself as Hammurabi) claims to have written the laws himself rather than receiving them from a god. The prologue asserts that the gods Anum (leader of the pantheon) and Illil (chief executive of the pantheon)

Called me by name Hammu-rabi,
 the reverent God-fearing prince,
 to make justice to appear in the land,
 to destroy the evil and the wicked
 that the strong might not oppress the weak,
 to rise indeed like the sun over the dark-haired folk
 to give light to the land.

Here we see clearly themes that can be found in writings about justice during the third, second, and first millennia BCE throughout the lands that have been described as the Fertile Crescent. The word “justice” (*mi-ša-ra-am*) and its variants run throughout the prologue and epilogue. The central purpose of justice is to prevent the strong from oppressing the weak. And the central means of accomplishing this purpose is the threat of violent retribution, directed toward those who might take advantage of the weak.

This representation of the purpose of justice might seem at least to gesture in the direction of the egalitarian concerns that are familiar in modern conceptions of social justice. In fact it does nothing of the kind. The concept of social justice – the phrase is anachronistic in this setting, though it is not entirely out of place – that is incorporated into the extant writings from Babylonian and other societies of this era had nothing to do with equality, nor even with relief from poverty. Social

justice was conceived of as protection of the weak from being unfairly deprived of their due, that is, of the legal status, property rights, and economic condition to which their position in an established hierarchy entitled them. There is no suggestion that the rights or condition of the weak should be equal or comparable to that of others of greater status in their society.

The hierarchical conception of justice that runs throughout this collection of laws can be observed, among other places, in its provisions for punishment. Here is an example:

- 196: If a man has put out the eye of a free man, they shall put out his eye.
- 197: If he breaks the bone of a [free] man, they shall break his bone.
- 198: If he puts out the eye of a serf or breaks the bone of a serf, he shall pay one mina of silver.

The aristocrat cannot act with impunity toward his inferior in status, for those who are inferior have rights. But the punishment for infringing those rights is far less serious than that for violating the rights of a peer.

The Babylonian law's endorsement of hierarchical distinctions extends along a scale that runs from the highest to the lowest, as can be seen from a second example:

- 8: If a [free] man has stolen an ox or a sheep or an ass or swine or a [g]oat, if [it is the property] of a god [or] if of a palace, he shall pay 30-fold; if [it is the property] of a serf, he shall replace [it] 10-fold. If the thief has not the means of payment, he shall be put to death.

As these two representative passages show, the penalties in Babylonian law for violating the rights of another person (or institution) vary enormously with the standing both of the victim of wrong-doing and of the violator. The punishments prescribed for crimes against persons of high standing are far more severe than for crimes against

persons of low standing. When the violator is himself a person of high standing, punishment is less severe than it is for violators of low standing. Stark inequalities of status and power are assumed throughout and incorporated into the Babylonian laws.

The Babylonian legal guidelines are also notable for the harshness of the punishments they prescribe. Death is recommended as appropriate punishment for many infractions, especially those committed against the church or the state. For example,

- 6: If a man has stolen property belonging to a god or a palace, that man shall be put to death, and he who has received the stolen property from his hand shall be put to death.

Maiming is held forth as the suitable penalty for many lesser infractions. While in some cases penalties seem proportional to the offenses for which they are inflicted – loss of an eye for destroying another person’s eye, a broken bone in retribution for breaking another’s bone – in other cases penalties are highly disproportional, for instance death for the criminal who cannot afford to make restitution to the victim, or for the unhappy thief who has preyed on the church or state.

A starkly retributive conception of justice also underpins the epilogue to Hammurabi’s Code. The early lines of the epilogue restate the prologue’s characterization of Hammurabi as the defender of justice and of the weak:

In my bosom I have carried the people of the land of Sumer and Accad,
they have become abundantly rich under my guardian spirit,
I bear their charge in peace;
By my profound wisdom I protect them,
That the strong may not oppress the weak
So [as] to give justice to the orphan [and] the widow [. . .]

The epilogue then urges Hammurabi’s successors to preserve his laws, suggesting in sixteen lines of verse that the ruler who does so will enjoy

prosperity and will reign as long as Hammurabi himself – and then, in more than 280 additional lines, threatening dire consequences for the ruler who fails to uphold Hammurabi’s laws: revolts, famine, sudden death, the destruction of his city, the dispersal of his people, and the ruin of his land among other consequences. This emphasis on retribution for any ruler who fails to preserve and enforce Hammurabi’s laws echoes the emphasis, within the Code itself, on harsh punishments for offenders – especially those who violate the rights of persons of higher standing.

The association of justice with harsh retribution on the one hand, and, on the other, either positive endorsement or tacit acceptance of vigorous hierarchies of power and status is ubiquitous in ancient writings far beyond the Fertile Crescent. The Code of Hammurabi was promulgated in an ancient state with a highly centralized apparatus of power; Homer’s *Iliad* was composed in a decentralized society organized by way of clans or tribes. Yet the conception of justice that can be discerned in the *Iliad*, which took shape more than a millennium after the rule of King Hammurabi, shares both these features.

Justice (*dike* in the *Iliad*; another, later and more abstract Greek term is *dikaiosune*) is not the principal virtue in the *Iliad*; that distinction goes to *arete*, which is generally translated either as “virtue” or as “excellence.” In the Homeric poems, *arete* is associated closely with the qualities of a warrior: strength, cunning, and skill in the use of instruments of war. When justice does enter into the picture, it does so in a context that is colored by emphasis on these warrior-like qualities.

The work opens with a quarrel between Agamemnon and Achilles. When it is revealed that the plague, lately unleashed on the Greek armies besieging Troy, has resulted from King Agamemnon’s refusal to release a young woman he had taken captive, he reluctantly agrees to the release, but insists that he must receive in compensation Briseis, a prize girl from Achilles, one of the other military leaders. The latter objects:

And now my prize you threaten in person to strip from me,
 for whom I laboured much, the gift of the sons of the Achaians.
 Never, when the Achaians sack some well-founded citadel
 of the Trojans, do I have a prize that is equal to your prize.
 Always the greater part of the painful fighting is the work of
 my hands; but when the time comes to distribute the booty
 yours is far the greater reward, and I with some small thing
 yet dear to me go back to my ships when I am weary with fighting.

When Agamemnon responds to Achilles' complaint by seizing Briseis, Achilles exacts revenge by withdrawing his forces and his own outstanding talents as a warrior from Agamemnon's campaign against Troy. The disasters that ensue for the Greek army set the stage for the tragic story that occupies the remainder of the epic. For Achilles, Agamemnon's grasping for gain from the war is unjust; the hubris manifested by the great commander in depriving Achilles of his prized booty constitutes a deeply personal injustice, to which revenge is the appropriate response.

Justice is associated with revenge throughout the entire *Iliad*. In a battle scene depicted later in the work, one of the Trojan enemies is taken captive and appeals to Menelaos, Agamemnon's brother, to spare his life. Agamemnon, aware of these events, rushes to the scene to declare:

“Dear brother, o Menelaos, are you concerned so tenderly
 with these people? Did you in your house get the best of treatment
 from the Trojans? No, let not one of them go free of sudden
 death and our hands; not the young man child that the mother carries
 still in her body, not even he, but let all of Ilion's
 people perish, utterly blotted out and unmourned for.”
 The hero spoke like this, and bent the heart of his brother
 since he urged justice. Menelaos shoved with his hand Andrestos
 the warrior back from him, and powerful Agamemnon
 stabbed him in the side and, as he writhed over, Atreides,
 setting his heel upon the midriff, wrenched out the ash spear.

Achilles' appeal to justice as fairness in the distribution of rewards, in the first of these passages, seems as familiar as a quarrel overheard yesterday among a group of children. In contrast, the vengeful responses registered in these passages, especially Agamemnon's deadly act in the latter one, will seem archaic and repugnant to many readers.

The Iliad does not call attention to hierarchies of power, status, and wealth in the explicit way in which we find these distinctions recognized in Babylonian law. It would be superfluous for it to do so. It is obvious that the Greek societies represented by the encampments outside Troy are organized into elaborate hierarchies of the weak, the powerful, and the more powerful, which are taken for granted and appear to be accepted as both natural and just. The quarrel with which the work opens is a dispute on the margins of this accepted order, in which Agamemnon claims his right to a pre-eminent share of the booty of war on the basis of his status as the chief leader of the Achaians, and Achilles claims his right to a greater share than he has hitherto received on the basis of his recognized superior excellence as a warrior and greater contributions to battle. No question arises about the justice of the hierarchical order as a whole.

These key features – acceptance of the justice of hierarchies and a strong emphasis on retribution – are also found, with significant differences of emphasis, in the ancient laws and other texts of Hebrew scriptures. Some of the numerous acts of God's retribution against the people he created (and against the Israelites, after God's covenant with Abraham and his later covenant at Mount Sinai) are well known. In Genesis 6, God resolves to wipe the entire race of human beings off the face of the earth because of their consistently evil thoughts, inclinations, and actions; he spares only Noah and his family. In Genesis 18, God decides to destroy the cities of Sodom and Gomorrah for the sins of their inhabitants. Abraham bargains with him until God agrees to save the city of Sodom in order to preserve as few as ten good men, if they can be found. They cannot, and God sends angels to rescue Abraham's nephew Lot and his family from Sodom before the place is

burned to the ground; Lot and his family survive, except for Lot's wife, who is transformed into a pillar of salt after she disobeys God by looking back at the city as they flee. In Exodus, when the Israelites are camped at Mount Sinai and Moses goes up the mountain to receive laws for the Israelites from God, the Israelites become impatient and, following instructions from Moses' brother Aaron, they pool their gold jewelry to make a golden calf as an impostor god. The true God threatens to destroy them all, leaving Moses to begin a new nation from his own offspring; Moses pleads with God to spare them, and God relents, but soon afterward he enlists one of the Israelite tribes, the Levites, to kill many of the others, and thousands die in retribution for their infidelity to God. After this episode, the Hebrew scriptures are filled with stories of a cycle of infidelities to God, demonstrated by the Israelites, and of retribution inflicted on them through captivity, enslavement, and other sufferings.

The Hebrew scriptures apply retributive ideas to relations beyond those between God and the human beings he created. Retribution is the fundamental rule of justice that prevails in relations among the Hebrews as well. Here is a sample of the laws God transmits to the Israelites through Moses at Mount Sinai:

Whoever strikes another man and kills him shall be put to death. But if he did not act with intent, but they met by act of God, the slayer may flee to a place which I will appoint for you. But if a man has the presumption to kill another by treachery, you shall take him even from my altar to be put to death.

Whoever strikes his father or mother shall be put to death.

Whoever kidnaps a man shall be put to death, whether he has sold him, or the man is found in his possession.

Whoever reviles his father or mother shall be put to death.

According to these writings, justice is done when retribution is inflicted upon transgressors. Retribution is typically harsh, and in

some cases, such as that of death for reviling a parent, disproportionately so, at least to modern sensibilities.

In addition to retribution inflicted or allowed by God as punishment for offenses committed by his people directly against him, and to retribution inflicted by human beings for offenses against one another, the Hebrew scriptures envisage a third category: retribution by God against people or rulers who fail to uphold justice for the poor and the weak. This theme is prominent in the prophetic writings. Here are examples from two of the major prophets:

The Lord saw, and in his eyes it was an evil thing,
that there was no justice;
he saw that there was no man to help
and was outraged that no one intervened [. . .]
he put on garments of vengeance
and wrapped himself in a cloak of jealous anger.
High God of retribution that he is,
he pays in full measure,
wreaking his anger on his foes, retribution on his enemies.

Tell this to the people of Jacob [. . .]
They grow rich and grand,
bloated and rancorous;
their thoughts are all of evil,
and they refuse to do justice,
the claims of the orphan they do not put right
nor do they grant justice to the poor.
Shall I not punish them for this?
says the Lord;
shall I not take vengeance
on such a people?

In the Hebrew scriptures, as in earlier Mesopotamian writings, justice is realized through retribution or vengeance when the rights of the vulnerable – which are not necessarily equal to those of the powerful – are violated.

A casual reader might think here, as in the case of Babylonian law, that the prophets' emphasis on justice for the poor and the vulnerable is indicative of an egalitarian bent. We shall see in a moment that there are significant differences between the views about justice that can be found in the Hebrew scriptures (which, it is important to remember, consist of a collection of diverse texts composed over a span of several centuries during the first millennium BCE) and those which we have noted above, in the much older Babylonian law. Nevertheless, there is no evidence in these scriptures of the egalitarian sensibility that is evident in many modern conceptions of social justice. Fundamentally, the Hebrew texts, like the Babylonian law, conceive of social justice as protection of the weak from being unfairly deprived of the legal status, property rights, and economic condition to which they are entitled within the established hierarchy.

It is nonetheless important to note that the duties toward the poor and the weak articulated in the Hebrew scriptures are duties of *justice*, and not duties of charity, as some interpreters have supposed. Many of the passages that evoke these duties do so by deploying a Hebrew term for justice (*mishpat*). A number of the relevant passages make their arguments in explicitly judicial terms. In the book of Isaiah, God enjoins the rulers of Sodom and Gomorrah to "pursue justice and champion the oppressed; give the orphan his rights, plead the widow's cause." The prophet Malachi reports:

I will appear before you in court, prompt to testify against sorcerers, adulterers, and perjurers, against those who wrong the hired labourer, the widow, and the orphan, who thrust the alien aside and have no fear of me, says the Lord of Hosts.

Like Babylonian law, the Hebrew scriptures articulate a vision of social order that is recognizable as a conception of a sort of social justice, albeit an archaic one. And, again like Babylonian law, that conception focuses on rights, including the rights of the weak and oppressed, rather than on equality. Widows, orphans, strangers, and others figure

prominently in many passages about the protection of these rights, because these people are at greater risk than most others of having their rights violated. Their rights constitute claims of justice, not of charity. But they do not constitute claims to equality. The ancient Hebrew laws and other writings were composed within the context of an unequal social order, and there is no suggestion in those writings that the inequality of that order is unjust.

In addition to assuming without objection the existence of the poor, the weak, and the otherwise vulnerable, the Hebrew scriptures, like nearly all other writings of equal or greater antiquity that deal with legal and social relations, paint a sharply hierarchical picture of the relations between males and females. Patriarchal figures like Abraham and Isaac often take more than one wife, and the role of husbands in relation to their wives as limned in the scriptures often more nearly resembles that of a property owner than that of a partner. When Abram (later called Abraham, in recognition of God's promise that he will have many descendants) travels with his wife Sarai (later Sarah) to Egypt to escape famine in the Negeb, he instructs Sarai to tell the Egyptians that she is Abram's sister, not his wife. The Egyptian ruler Pharaoh takes Sarai into his household, apparently to have her as a concubine, and treats Abram well on Sarai's account, so that he prospers. God shows his displeasure at the virtual prostitution of Sarai, the woman whose descendants will constitute his chosen people, by striking Pharaoh's house with disease, and Pharaoh sends Abram and Sarai away together, but Abram profits handsomely from the arrangement. While it is true that female figures in the Hebrew scriptures often show strength and cunning, they do so within a context of accepted relations of domination by and subordination to men.

The Hebrew scriptures also acknowledge the institution of slavery, accept its legitimacy, and accord it prominent legal recognition. Hebrew fathers were entitled to sell their children, male and female, as slaves, and the laws assumed that some would do so. The laws God transmits to Moses at Sinai for promulgation to the Israelites contain

provisions for the buying, selling, and manumission of slaves. It would be difficult to discover more striking evidence of the prevalence and acceptance of hierarchies of power and status than that provided by statutes regulating the practice of slavery.

Yet the inequalities countenanced in ancient Hebrew laws differ significantly from those codified in the much older Mesopotamian documents. Consider the following provisions of the laws God dictates to Moses:

When you buy a Hebrew slave, he shall be your slave for six years, but in the seventh year he shall go free and pay nothing [. . .]

When a man sells his daughter into slavery, she shall not go free as a male slave may. If her master has not had intercourse with her and she does not please him, he shall let her be ransomed. He has treated her unfairly and therefore has no right to sell her to strangers [. . .] If he takes another woman, he shall not deprive the first of meat, clothes, and conjugal rights. If he does not provide her with these three things, she shall go free without any payment [. . .]

When a man strikes his slave or slave-girl in the eye and destroys it, he shall let the slave go free in compensation for the eye. When he knocks out the tooth of a slave or a slave-girl, he shall let the slave go free in compensation for the tooth.

The differential treatment of male and female slaves suggested in the first part of this passage is one of its most noteworthy features. It is also noteworthy, however, that the provisions mentioned here confer rights upon slaves that are quite robust in comparison with anything provided in Babylonian law, or most other ancient legal codes. If they were enforced effectively (admittedly a big “if”), then slavery among the ancient Israelites must have been significantly less vicious than the relatively modern form that was imposed for centuries on Africans.

Further, the Hebrew laws do not recognize an aristocratic class with legal privileges that soften for its members the consequences of their

wrongdoing, as the Babylonian and other ancient Mesopotamian laws do. Here is the passage that is, with the exception of the famous Ten Commandments, the best known of the laws dictated at Mount Sinai:

Wherever hurt is done, you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, bruise for bruise, wound for wound.

This formula, which is echoed in Leviticus 24 and Deuteronomy 19, has been given the label *lex talionis*, which derives from the central place held by an equivalent version in early Roman law. One of the most noteworthy things about it is that it does not prescribe different punishments for different classes of victims or perpetrators. True, the penalty for destroying the eye of one's slave, as stipulated by a separate article of this legal code, is loss of the slave to freedom, not loss of the owner's eye. Clearly the rights and obligations that were allocated to slaves by Hebrew law differed from those allocated to others. Unlike the Babylonian law, however, the code dictated at Mount Sinai makes no further distinctions among adult males within the Israelite camp. If the ancient Hebrew laws do not envisage a regime of equality in the sense imagined by some modern proponents of social justice, they do take a significant step in the direction of equality before the law, at least for free adult males.

It is also noteworthy that, although retribution is a central theme in Hebrew scriptures, as a general rule the punishments prescribed in these texts are more nearly proportionate to the wrongs for which they are imposed than was the case in earlier Mesopotamian legal codes. Here is an example:

When a man steals an ox or a sheep and slaughters or sells it, he shall repay five beasts for the ox and four sheep for the sheep. He shall pay in full; if he has no means, he shall be sold to pay for the theft. But if the animal is found alive in his possession, be it ox, ass, or sheep, he shall repay two.

The five-to-one or four-to-one restitution ratios suggested here (two to one, if the original animal can be recovered) are a far cry from the thirty-to-one and ten-to-one ratios mentioned for the same kind of offense in the Babylonian text we saw above. Similarly, the provision that an offender who cannot afford to pay the required restitution should be sold into slavery – presumably on the expectation of release after six years of service, as we have seen above – seems more nearly in proportion to the offense of stealing a piece of livestock (or at least less disproportionate to that offense) than the death penalty prescribed by Babylonian law.

From a modern point of view, the death penalty prescribed by ancient Hebrew law for anyone who strikes or reviles his father or mother (stipulated in one of the passages from Exodus above) is an exception to this generalization. The reasons for this exception become more apparent when we consider that a parallel between two relationships – between God and his chosen people and between parents and children – runs throughout the Hebrew scriptures. The Ten Commandments are divided into two parts, the first one of which dictates the Israelites' fundamental duties toward God, while the second prescribes their duties toward one another. The central message of the first part is the demand that the Israelites worship and honor their God consistently and exclusively. The second part begins with the famous decree "Honour your father and your mother, that you may live long in the land which the Lord your God is giving you." Parents are accorded a status in relation to their children that resembles that of God in relation to his people as a whole. In view of this parallel, it is not surprising that the penalty prescribed for dishonoring one's parents is as severe as the punishments God inflicts on the Israelites for their transgressions against him.

The strong relation of command and obedience between God and his chosen people portrayed in these scriptures goes a long way toward accounting for the fact that ancient Hebrew laws accord less recognition to hierarchies of status and power than Babylonian laws do. Babylonian law, as we have seen, extends exceptional recognition to

the state and the church, as signified by the harsh penalties for crimes committed against them; and it also distinguishes persons into aristocratic and common ranks. For the most part, Hebrew law imitates neither of these features, because the central hierarchical relation in this literature is that between the Israelites and God.

Generally, then, the provisions for retributive justice in ancient Hebrew law rest on a sense of proportionality between wrongs committed and penalties prescribed. The tendency of this law is toward a principle of reciprocity: life for life, eye for eye, tooth for tooth, and so forth.

Looking back, it is not difficult to discern a similar principle at work in other ancient sources as well. In Babylonian law, the penalty prescribed for an individual who has caused a personal injury to someone of the same status is to suffer the same injury: destruction of an eye for destruction of an eye, breakage of a bone for breakage of a bone, and so forth. In the *Iliad*, Achilles' initial complaint is that Agamemnon has taken a larger share of the spoils of war than he deserves in proportion to his contributions. Achilles argues that he, Achilles, always contributes more, whereas Agamemnon always seizes the greater rewards, so that there is an imbalance in the proportions between contribution and reward, and thus a failure to conform to norms of reciprocity. In the battle scene in which a Trojan enemy is taken captive and appeals for his life to be spared, Agamemnon upbraids Menelaos for wavering from a principle of reciprocity in retribution: the Trojans have done harm, not good, to the Greeks, so it would be an act of injustice to do the Trojan captive the good of sparing his life.

The notion of reciprocity seems therefore to play a central role in all these ancient conceptions of justice. In fact, cross-cultural studies suggest that all known societies place considerable weight on values pertaining to reciprocity, so that we should expect to find that notion incorporated into virtually any conception of justice that is closely anchored to practices in the real world. Many philosophers across the centuries have endorsed the claim that people have a generalized duty

to reciprocate for benefits received. The Roman philosopher Cicero suggested that “[t]here is no duty more indispensable than that of returning a kindness [. . .] all men distrust one forgetful of a benefit.” In *The Origin and Development of the Moral Ideas*, written around the beginning of the twentieth century, Edward Westermarck argued that “[t]o requite a benefit, or to be grateful to him who bestows it, is probably everywhere, at least under certain circumstances, regarded as a duty.” No idea, in fact, is more consistently regarded as a part of justice, nor as widely esteemed as a universal provision of morality, than the notion of reciprocity.

Popularly, reciprocity is assumed to entail an exchange of like for like, or at least of equal value for equal value. As sociologists and anthropologists have long pointed out, however, in reality the notion of reciprocity applies to a range of exchanges from the equal to the decidedly unequal; at the extreme of a continuum, one party may give nothing in return for a benefit it has received. Let us call exchanges in which all participants receive benefits equivalent to those they bestow instances of *balanced reciprocity* (bearing in mind that exchanges may involve more than two parties and that the “things” exchanged may be either benefits or harms). We can adopt the phrase *imbalanced reciprocity* for all exchanges that do not satisfy this equivalence condition.

Both ancient and modern writings frequently suggest that justice for people who are equals requires that their exchanges with one another exhibit the characteristic of balanced reciprocity, at least over the long term. Achilles’ argument in the quarrel with which the *Iliad* opens is that his contributions to battle are superior to those of all the other Greeks, including Agamemnon, so that, even though Agamemnon is the acknowledged leader of the Greek army, for the purpose of distributing the spoils of battle, he (Achilles) should be treated as Agamemnon’s equal, or at least very nearly so, and should therefore receive a nearly equal share of the spoils. The Babylonian laws dictate that noblemen who cause personal injuries to other noblemen, in other words to their equals, should be made to suffer the equivalent

harm, so that the exchange between them (in this case, of harm for harm) will satisfy the condition of balanced reciprocity. Ancient Hebrew laws similarly tend toward a principle of balanced reciprocity in cases involving personal injury, by dictating that wrongdoers should suffer the same kind of injury as the kind they have inflicted on their peers. Historically, the notion – it may be apt to call it a principle – of balanced reciprocity among equals has commanded considerable assent, whether the things being exchanged are benefits or harms.

However, the principle of balanced reciprocity has usually been considered a principle of justice *only* with respect to exchanges between people who are regarded as equals. For the bulk of human history, nearly all societies have divided their members into groups that are unequal in power, status, and wealth, and in many societies these groups have also been regarded as unequal in merit. Stark inequalities of these kinds prevailed in ancient Mesopotamian societies and among the ancient Greeks; nor were they absent among the ancient Israelites, even though they were not encoded into law in the same way as they were among the Babylonians. Similar inequalities arose and persisted in most societies thereafter as well.

Among people who are considered unequal, imbalanced reciprocity has generally been regarded as just. In Babylonian law, fully free men were recognized as the superiors of commoners, whose circumstances were in some ways akin to those of serfs, and the legal remedies prescribed for wrongs committed by the members of one of these groups against members of the other were accordingly disproportionate. In the literary representation of ancient heroic Greece in the *Iliad*, arguments for treatment on the basis of balanced reciprocity were based on the premise that the claimants were equals; no one in this literary landscape supposed that the relations between unequals should be anything but unequal. Ancient Hebrew laws were exceptional in this era by virtue of approximating to a notion of equality before the law among free adult males; but even these laws accorded recognition to differences of status that provide

a rationale for imbalanced reciprocity in many significant cases, including those involving relations between men and women. Historically, norms of justice based on the idea of imbalanced reciprocity have been as powerful and as prevalent as those based on the idea of balanced reciprocity.

Neither of these ideas (of balanced and of imbalanced reciprocity) is capable of applying itself to real cases without further ado. For inescapable practical reasons, neither idea can serve as the basis of a conception of justice in the absence of additional tools.

The principle of balanced reciprocity can be applied to ascertain whether justice has been done, or to determine how it might be done, only insofar as a standard is available as a basis on which to compare benefits or harms exchanged. The simplest case occurs when the benefits or harms in question are of the same kind. In the *lex talionis*, for example, the punishments prescribed – loss of an eye, of a tooth, and so forth – are identical in kind to the harms for which they are imposed.

When the benefits or harms in question differ in kind, the idea of balanced reciprocity can be applied only if those benefits or harms can be evaluated by reference to a common scale. In many cases, the kinds of comparisons that can be made are, at best, approximate and rough. If I publish an article praising your dairy farm that enhances your reputation and helps you attract business, you may repay me by offering to supply me with milk at no cost. In this case it is difficult to say whether the benefits we have given each other are equivalent in value. Similarly, if I harm you by allowing my dogs to attack some of your livestock, you may retaliate by diverting a flow of water away from my land, thereby depriving me of a valuable water supply. Is your retaliatory action equivalent in value to the harm you have suffered? In the absence of a common standard of value, it is impossible to answer this question.

The most important response to this problem is the introduction of a common currency. Currencies, of course, have multiple purposes. As a means of filling the need for a common standard for the purposes

of justice, the adoption of a currency suffers from two significant difficulties. First, to the extent to which the currency value of a good is determined by a market system, significant discrepancies may arise between the currency or market value of the good and its value to the person involved in a particular case. Second, it is often believed that some goods are, or should be deemed to be, incommensurable with one another, so that, as a matter of principle, their values are, or should be, irreducible to a common standard. For example, it is sometimes said that it should not be possible to buy love with money. Similarly, in political systems in which some collective decisions are made through voting procedures, the principle that votes should not be available for sale is widely accepted. Again, it is commonly thought that there are some offences, such as rape or assault, to which no monetary value can (or should) be assigned. These inherent or prescribed barriers to exchange limit the range over which a currency can serve as a basis for comparing the values of benefits and harms that differ in kind. Nevertheless, that range remains considerable; and, for those benefits and harms which lie outside it, assumptions can be adopted so as to extend that range for the purposes of doing justice, as happens (for example) when a money value is attached to the harm of making libelous statements.

For the most part, then, adoption of a currency, together with some conventional assumptions that allow for the assignment of monetary values to those benefits and harms which are not normally commercially valued, makes it possible to determine whether an exchange has satisfied the condition of balanced reciprocity.

The case of imbalanced reciprocity is more complex. In order to determine whether an exchange is fair in accordance with the principle of balanced reciprocity, we must ascertain the values of the goods or harms exchanged. In order to determine whether an exchange is fair in accordance with the notion of imbalanced reciprocity, we must ascertain the values of the goods or harms exchanged *and* identify the unequal proportion to which an exchange of those goods or harms must conform if that exchange is to be deemed just. The number of

variables involved in determining whether an exchange is just in accordance with the notion of imbalanced reciprocity is greater than the number of variables whose values we must ascertain in order to learn whether an exchange is just according to the principle of balanced reciprocity. Societies that endorse the norm of imbalanced reciprocity among unequals must both solve the problem of devising a standard for comparing the values of diverse benefits and harms and fashion a standard for determining the (unequal) proportion in which goods or harms should be exchanged.

In societies that divide their members into groups that are unequal with respect to a variable considered relevant for justice, whatever that may be (usually, status or purported merit or both), this problem is solved by means of a set of role definitions that prescribe status entitlements and obligations for each of the major groups. These entitlements and obligations constitute a sort of map of the society's "terrain," a guide to the locations of privilege and deprivation that are scattered throughout its population and to the patterns through which those differences are reproduced or reconstituted over time. Without a map of this kind, the notion of imbalanced reciprocity cannot take on a definite shape, and questions about whether justice, conceived of as imbalanced reciprocity, has been done cannot be answered.

Significant evidence suggests that values pertaining to hierarchy and respect are as widespread throughout human cultures as values pertaining to reciprocity and fairness. Although the emphasis on hierarchy in ancient ideas about justice seems striking from a twenty-first-century point of view that has been shaped by modern European notions of social justice, that emphasis is not exceptional from a pan-historical and pan-cultural standpoint. It should never be forgotten, of course, that most of our sources of information about nearly all societies, especially ancient ones, originated in privileged strata of those societies. For nearly the entirety of human history over the more than four millennia for which written records have been preserved, most of the population in almost every society has been illiterate. Even

if, occasionally, a member of a less privileged stratum were to succeed in learning to read and write, that person would be unlikely to have the resources to produce and preserve written documents, except under the direction of the more privileged. For this reason, we cannot assume that the ideas about justice we find in ancient sources are accurate guides to the views of those societies' weaker and more vulnerable members. Yet cross-cultural evidence suggests that, even though specific privileges have often been resented by those to whom they were denied, most members of societies that endorse marked hierarchies of power, status, wealth, and purported merit have accepted these distinctions as a basis for their thinking about issues of morality and justice.

It is worth emphasizing that, as a general rule, a society's terrain provides a basis for judgments about justice because that terrain is accepted as normal, not necessarily because it is itself just. Psychological studies of adaptation suggest that any stable state of affairs tends to become accepted over time, at least in the sense that alternatives to it do not readily occur to those who play out their lives within it. A terrain that may initially have been seen as unjust, perhaps because the entitlements and obligations that constitute it were imposed by conquest or similarly forcible means, will often, over time, acquire the status of hallowed tradition – as British political and legal institutions gradually did after the Norman conquerors of the eleventh century replaced the existing Anglo-Saxon political and social order with new political and legal rules, which favored the Normans' interests. Changes of terrain through conquest or other forms of imposition are often followed by sustained ideological campaigns, designed to make the new order seem “natural” and normal. The success or failure of these campaigns goes a long way toward determining the durability of the new order.

Typically, the most prominent feature of a highly hierarchical terrain is an overarching “bargain” between the powerful and the weak, in which the powerful offer protection to the weak, often supplementing it with the promise of additional goods, in return for

the promise of obedience and respect. This, in substance, is the bargain that Hammurabi dictates to the Babylonians. It is also, in broad terms, the bargain that God offers the Israelites, to whom he promises protection, fertility, prosperity, and national independence in return for their submission, fidelity, and worship.

This kind of overarching bargain is itself a form of imbalanced reciprocity, although it is not always easy to say which party to the bargain gives more and which gives less. The ancient Babylonian and Hebrew texts that promise to uphold justice for the vulnerable and threaten those who fail to do so extend these promises in accordance with the principle of *noblesse oblige*. In these promises, protection of the rights of the poor is a gift from the strong to the weak; but this gift reinforces the hierarchical relationship and thereby helps to maintain the privileged position of the strong. In societies with strong centralized authorities that engage in redistribution, the flow of material goods generally benefits the poor and the weak, so that, in a strictly material sense, the relationship of reciprocity is imbalanced in favor of the poor. Yet the process of centralized redistribution itself operates as a ritual of communion and subordination to central authority that reinforces the importance and power of the rulers.

Nearly all, and in some respects literally all, human societies in recorded history have been organized hierarchically. Yet vast differences exist between the modes of organization that have prevailed in these societies. Each society exhibits a distinctive terrain, with high points and low points – the loci of privilege and deprivation – to be found in varying locations and at varying elevations. Moreover, even within societies that can claim a continuous history and a single identity, the topography of the terrain has usually changed considerably over time.

If the conception of justice that prevails within a society is based on the notion of imbalanced reciprocity among unequals, and if the inequalities among the members of that society are based on their standing or positions within the social order, then changes in that order, or terrain, will lead to changes in the ideas about justice that are

accepted within that society. Similarly, if one society's terrain – or the conception of that terrain as shared by its members – differs sharply from the conception that prevails in another society, we should expect the ideas about justice in those two societies to differ as well.

The history of ideas about justice is in large part a history of changes in the way in which the terrain of societies has been conceived. We can begin to see how that history developed, from its beginnings in the first half of recorded history, by turning from the pre-philosophical ideas of the ancient Mesopotamians, Israelites, and Greeks toward the far more systematic ideas about justice that can be found in the works of the Greek philosophers.