Evolution of Justice



By Benjamin Vincent

*The arc of the moral universe is long, but it bends toward justice. ~ Martin Luther King, Jr.*

If there is one thing that unites mankind more than anything else, it is probably the universal, undying desire for justice. There is something within every one of us that cries out against injustice. Even the smallest of children constantly protest what they see as “unfair.” Throughout history man has sought to build a society that is, above all else, just. From the Code of Hammurabi to the Universal Declaration of Human Rights, a desire for law and order built around justice has long formed the foundation of human society. Yet this endless quest to extinguish injustice has seen many, many forms over the course of history, and has been constantly at war with the self-centered and sinful nature of man.

In order to fully understand the concept of justice, we must trace it back throughout history. **If we are to establish a just and effective criminal justice system, we must discover how we got to where we are today.** Then, perhaps, we will be able to see clearly where we must go from here.

To this end, we will examine the evolution of justice from the beginning of time to the present day. **We’ll take a look at the origin of justice, the development of legal systems throughout time, and the source of the modern understanding of justice.**

The Origins of Justice

When we look at the very beginning, we see that mankind started out with a perfect understanding of justice that came from God, but quickly corrupted that perfect understanding when we fell into sin. While we still carry a deep desire for justice, our understanding of justice itself and our ability to implement it have been significantly harmed. From the origin of justice, we move into mankind’s pursuit of justice throughout time. In order to understand that, we have to take a look at the earliest forms of law.

To begin, we’ll take a look at the origin of justice. Of course, as Christians, we believe that justice has its source in the nature of God. Isaiah 61:8a says simply, “For I the LORD love justice.” God is just, and He desires that justice be upheld in His creation. Genesis 1:27 says that mankind was created “in the image of God.” This means that mankind was uniquely created to reflect God’s nature and attributes. The desire for justice is written on the hearts of mankind because it is part of who we are as God’s image-bearers. Of course, mankind is fallen into sinful nature, which has tarnished the perfect image we were designed to carry. Thus, while we all possess a desire for justice, we also tend to violate the principles of justice.

Examining the origin of justice in God’s nature tells us a lot about justice itself. Justice is more than a sense of right and wrong; it’s a desire for “fairness” that extends to all areas of life. Justice is often defined in its simplest form as “giving people their due.” There are two sides to justice; its ideological form, and its legal form. As an idea, it is essentially the principle that every person should deal rightly and fairly with others, and that wrongdoing ought to have negative consequences. Merriam-Webster Online defines the conceptual side of justice as, “The quality of being just, impartial, or fair… the principle or ideal of just dealing or right action.” The conceptual side of justice is applied practically through legal justice. Merriam-Webster Online also defines justice as, “The maintenance or administration of what is just especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments… the administration of law.” The *idea* of justice is applied through *systems* of justice. Both of these elements of justice are found when we look back at its origin in God himself. God is just in nature, and so He established systems of law and justice for his people. The Old Testament, especially the book of Leviticus, is full of specific laws and regulations God put in place to uphold justice for His people.

Ur-Nammu and Hammurabi

The earliest known complete legal code is the Code of Ur-Nammu, drafted during the reign of Mesopotamian king Ur-Nammu around 2100-2050 B.C. The Code consisted of 40 paragraphs carved on stone tablets; it simply listed crimes and the punishment each required. The law was very simple, with most crimes being punishable by fines in silver. Some of the laws were, “If a man committed a kidnapping, he is to be imprisoned and pay fifteen shekels of silver,” or, “If a man knocked out the eye of another man, he shall weigh out half a mina of silver.” Ur-Nammu’s reign was a relatively peaceful one, and the Code receives some credit for this. However, the Code was far more basic, and more lenient, than the most famous example of early law: the Code of Hammurabi, written about three centuries later by the Babylonian king Hammurabi.

The Ancient History Encyclopedia explains the contrast between the Code of Ur-Nammu and the Code of Hammurabi: “Unlike the earlier Code of Ur-Nammu, which imposed fines or penalties of land, Hammurabi’s code epitomized the principle known as Lex Talionis, the law of retributive justice, in which punishment corresponds directly to the crime.” The Code of Hammurabi exemplifies the earliest form of retributive justice. Where Ur-Nammu’s code demanded only a monetary fine for the crime of “knocking out” another’s eye, the Code of Hammurabi began the Judaic idea of “an eye for an eye.” Hammurabi’s Code was harsher, requiring punishment equal to or greater than the severity of a crime. If a son hit his father, the Code demanded his hands be “hewn off.” Though it was very extreme in its application, the Code of Hammurabi established a principle that would shape justice systems for centuries to come.

The idea of retributive justice—that consequences ought to correlate directly to actions—is in fact a Biblical concept. Exodus 21:22a and 24 says, “When men strive together and hit a pregnant woman, so that her children come out… if there is harm, then you shall pay life for life, eye for eye, tooth for tooth, hand for hand.” However, the Biblical standard of justice is tempered by mercy; in the nature of God, justice and mercy go hand in hand. Micah 6:8 says, “And what does the LORD require of you? To act justly and to love mercy and to walk humbly with your God.” Yet the retributive justice of the Code of Hammurabi was far from God’s intended standard; it was without mercy. In Hammurabi’s mind, the purpose of justice was to prevent crime at all costs. In order to fulfill this purpose, justice was by nature retributive to the end. It was put into practice through strict enforcement and an interesting practice known as “Trial by Ordeal.”

Under the Code, guilt or innocence was often determined by forcing an individual suspected of a crime to face a life-threatening ordeal, often swimming across a treacherous river. If the person survived, they were considered innocent; if they did not, they were deemed guilty. This specific method of enacting justice places the focus on punishing the wicked at all costs, rather than protecting the innocent. Though we would now consider such practices barbaric, in ancient Babylon the Trial by Ordeal was considered the most legitimate way to hear from the gods whether a person was guilty or innocent.

So how can we summarize justice under the codes of Ur-Nammu and Hammurabi? Ur-Nammu’s Code saw justice as a means to provide recompense for those who had been wronged. If you were injured, you were paid. The purpose of justice was to “undo” damage. It was by nature compensatory, and it was enacted by establishing legal standards for the restitution required for specific crimes.

The Code of Hammurabi saw justice in a different light. Under this system, the purpose of justice was to strongly discourage crime and punish those who violated the laws. The focus was not on repaying the one who was wronged, but rather on giving criminals their “just desserts.” Justice was by nature retributive, and was enacted by establishing specific punishments that correlated directly to the crime committed.

Both of these early legal codes had massive influence on the future of legal systems, and though elements of both could be found in the legal systems of later civilizations, the retributive justice of Hammurabi would carry the greatest weight.

Roman Justice

Continuing our journey through the history of justice and its many forms, we look next to the most significant ancient civilization in the Western world: the Roman Empire.

The legal system of the Romans was a major turning point in history; many elements of the Roman judicial system can still be found in various Western countries today. The Roman Empire refined its legal system to a degree the world had never seen. Whereas in the past, even the greatest civilizations had rather loose and vaguely-defined legal structures, Rome clearly established very specific processes for legal proceedings. Even Greece’s legal system was very flexible and varied greatly between its various city-states. But the Romans firmly believed in the importance of having a consistent standard that applied throughout the empire.

Part of the advantage the Romans had over any previous society was the massive amount of time they had to develop an effective justice system. The Roman legal system was in place for over a thousand years, beginning to really take shape with the Twelve Tables around 449 BC and lasting all the way through the Corpus Juris Civilis of Eastern Rome in 529 AD. In the earliest days of Roman society, the citizens of Rome were divided into two classes: the patricians, who formed the upper class of Roman society, and the Plebeians, the common people. During this time, Roman law was based on custom, rather than on written statutes. Over time the Plebeians came to realize that, because the law was upheld by pontiffs who were selected only from among the Patricians, the common people were often at a disadvantage in legal matters. They demanded that the law be codified and applied to all people equally; thus, a council of ten men called the decemvirs was commissioned to lay out the law in written form. The result was the work called the Twelve Tables, a formal documentation of the ancient customary laws of Rome. While the Twelve Tables didn’t change the law or create new laws, they did standardize and clearly codify the previously established legal statutes of Rome. Though the Twelve Tables were destroyed during the fourth century BC, their influence remains to this day; up until that point in time, law was nearly always based on custom. But the Twelve Tables established a precedent of laying down the law clearly and specifically; a precedent that stands to this day.

Beginning with the Twelve Tables, the Romans established many legal traditions that would shape the course of justice throughout the Western world forever; many of today’s legal traditions are still modeled after the early Roman system. Under Roman law, justice was believed to derive from the concept of natural law, principles engrained within every human being. The influence of classical philosophers brought the idea of natural law to the forefront of the legal ideology of the day. Whereas most cultures of the past had based their laws entirely on practical needs and religious beliefs, the Romans based their laws on a belief that every human being was born with an understanding of certain principles that must be upheld. This idea would ring throughout history, carried by the pens of the philosophers, the speeches of the orators, the songs of the minstrels, and the brushes of the painters. Western culture built itself around the natural law, and often without knowing it, slowly regained some of the pieces of justice we lost at the Fall. As the river of justice flowed through Rome, some of its past meaning was restored. Roman law truly changed history.

However, punishment in Rome was still incredibly harsh; as Duhaime’s Encyclopedia of Law writes, “When it came to capital punishment, no one, it seemed, could kill like the Romans.” Whether it be political prisoners thrown to the lions for all to watch, debtors forced into a form of slavery as bondservants, or murderers and thieves subjected to the brutality of Roman Crucifixion, Roman punishment was cruel and often very extreme. The retributive justice of Hammurabi had left an indelible mark on the world; even the greatest civilization in history was not immune to its temptations. Thus, the Romans have a reputation for crafting a remarkable legal system that was enforced in some rather unpleasant ways. We should be thankful that it was Rome’s legal ideology, and not methods of punishment, that have continued to this day.

In today’s world, there are two primary models that are followed for legal systems throughout the world: civil law, and common law. The justice system of the Romans was the origin of civil law. The late Roman emperor Justinian codified Roman law into a massive compilation of rules and statutes known as the Corpus Juris Civilis during the Sixth Century AD. This monumental document was rediscovered and made the new basis for legal processes in 11th-century Italy. Its influence spread throughout Europe, and to this day many European nations base their civil legal code on the Roman laws. In the United States, however, we operate primarily under a separate legal model that originated many years later in England. Let’s take a look at the origin of the system we’re most familiar with: common law.

Common Law

Despite developing parallel to many other European countries, English law and culture took a very different course than that of most other Western nations. Whereas civil law was par for the course for most of Europe, England followed a different pattern. After the Norman conquest of 1066 AD, English monarchs began to consolidate their power, gaining direct control over the legal system. Rather than operating from a set of codified statutes, English law came to be based on specific royal orders, called “writs,” from the king. Legal issues were addressed individually based on the judgment of the nation’s rulers, and then those decisions set a precedent that would be upheld as a legal standard in the future. Where civil law is based on a clear-cut all-encompassing legal code, common law is born from individual judgment and precedent that is set by specific cases.

This is the system we see the most in the United States; the legislature creates laws based on specific needs, and those laws are added to an ever-adapting legal code that is based on years of individual judgments. In addition, various courts make rulings regarding specific civil and criminal issues, and the precedent set by such court rulings forms another sort of legal standard.

The English common law system had some flaws, however. The primary issue was, of course, the massive amount of power in the hands of the king. There were several very significant developments that took place to refine the system, however. The most significant reform came with the Magna Carta, the revolutionary document that was, in a sense, the first written constitution in European history. Its 63 clauses laid out the rights of the people and the power of the government over them; and although it was far from a perfect protection of justice, it was a huge step in the right direction. By limiting the power of the monarchy and protecting the people from undue abuse, the Magna Carta allowed the common law system to truly flourish and serve as a foundation for a strong and relatively prosperous nation that would eventually become the most powerful empire in the world, and the largest since Rome itself.

Natural Law

We now find ourselves drawing near to the modern understanding of law and justice; yet there is one major development we have yet to explore. During the 17th and 18th centuries, political philosophers like Benedict de Spinoza, David Hume, John Locke, and Thomas Hobbes revolutionized the way people thought about the role of government. The concept of natural law made a strong return in the ideology of human rights and the purpose of government. Suddenly, the government was seen not as a divine instrument of authority, but rather, as a man-made instrument of mutually beneficial protection.

To some, government was an ingenious and essential tool; to others, a despicable and completely unnecessary abomination. Yet the view became increasingly prominent that government was, in fact, a necessary evil. As Locke wrote in his Second Treatise on Government,

“If man in the state of nature be so free… why will he part with his freedom… and subject himself to the dominion and control of any other power? To which it is obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion of others: for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very unsecure. This makes him willing to quit a condition, which, however free, is full of fears and continual dangers: and it is not without reason, that he seeks out, and is willing to join in society with others, who are already united, or have a mind to unite, for the mutual preservation of their lives, liberties and estates.”

This concept formed the foundation of a new era of political ideology, which in turn caused a massive shift in people’s understanding of justice. Locke himself, only a few paragraphs after the previous passage, wrote,

“First, there wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them: for though the law of nature be plain and intelligible to all rational creatures; yet men being biased by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.”

Thus justice took on a new nature and purpose: the application of the natural law, enforced through the establishment of an agreed-upon standard of legal procedures, in order that the people may hold one another accountable to the universal laws of right and wrong.

United States Justice

In 1776, 56 men came together and signed a document that would change the world. With the Declaration of Independence, the United States became a grand experiment. Could the revolutionary ideas of the philosophers be put into practice in the real world? Could a nation truly be built on such a foundation? The world watched with bated breath as the foundling nation learned to crawl, then stand, then walk; and finally the United States stood as a giant among the nations, proving to all the world that, despite great adversity, a nation founded on the principles of liberty and the protection of rights could flourish after all.

The justice system of the United States was modeled largely after English common law, but was upheld based on a different set of principles, influenced heavily by the ideas of Locke and Hobbes and Paine. While it followed a similar model, the United States differed from its mother country in that it focused on a different nature and purpose for justice. Justice was, by nature, a moral obligation, written on the hearts of all mankind. Regardless of whether one believed in God or not, the vast majority of Americans believed that morality was an absolute, and that justice was a responsibility. The purpose of justice was straightforward: protecting the people and their rights. The question, then, was how to enforce that justice; and that, of course, is our question today.

From the Code of Hammurabi all the way through the Middle Ages, punishment tended to be extremely harsh and exclusively retributive. Yet as the thinking of the day regarding the role of government shifted, so too did the ideas about criminal punishment. Though punishment was still based directly on the crime, it was far less cruel, and as time went on, often incorporated elements of rehabilitation. Especially during the 20th Century, a new focus was placed on encouraging criminals to re-enter society as law-abiding, productive citizens. Suddenly, there was a tension between the centuries-old standard of retribution, and the desire to provide past offenders with a hope for the future. That tension continues to this day, and is probably the main question when it comes to the nature and purpose of justice today.

And here we find ourselves at the present day. We’ve come a long way from hewing off the hands of sons who hit their fathers. Yet we’ve still got a long way to go before we are truly, fully restored to the standard of justice we were designed for, at the very beginning of time itself. Justice has come of age since the days of Ur-Nammu and Hammurabi, yet there is still tension within justice, and now it is our turn to answer the big questions. What is justice? What purpose does it serve? And how can we best pursue that purpose? In order to answer these questions, we must look not only at where we are, but at where we’ve come from; then, perhaps, we will see more clearly where we need to go.

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