The Catholic Lawyer

Volume 2
Number 1 *Volume 2, January 1956, Number 1*

Article 5

The Natural Law and Commutative Justice

William R. White

THE NATURAL LAW AND COMMUTATIVE JUSTICE

WILLIAM R. WHITE*

FOUR THOUSAND YEARS AGO, Hammurabi, King of ancient Babylon, declared in the prologue to his code of laws that he had "established justice" in the world. Considering the state of affairs today, some of us may think that Hammurabi's announcement was a wee bit premature. Of course, justice has never been perfectly established, anywhere. However, the search for justice will always continue as one of the most compelling impulses of the human heart.

But, what is justice? What do we mean when we use the word "justice"?

Probably, the most simple definition of the term justice is that justice is the realization of what is right. Ulpian defined justice for the Roman law when he said that it consists in rendering to each one that which is his due. Justice is merely this, he said, that a transaction is just when each person involved in it has received his due—when each person involved in it has been accorded his rights.

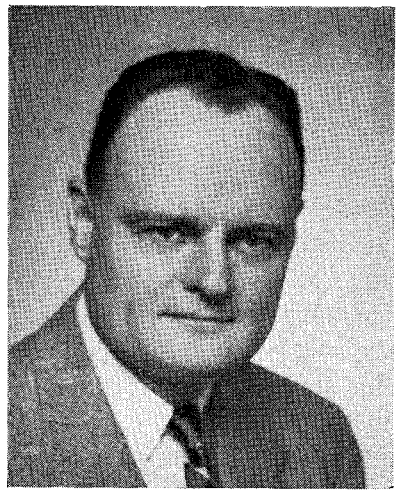
Ulpian's simple statement is, to my mind, a workable definition of the term justice. However, even this simple definition needs some exposition. We need to know what is meant when we say that the persons involved in a just transaction have received their due or have been accorded their rights. What is their "due"? What are their "rights"?

Those who are familiar with the concept of natural law know that, in the final analysis, when we say that a person has received his rights, we mean that he has received his rights under the natural law. We are saying, in other words, that when a transaction is just, it is just because it is in compliance with the natural law, because the natural rights of the persons involved in it have been respected.

You, as American lawyers and as members of the Catholic Lawyers Guild, are, as I say, familiar with the natural law tradition. You know that our American legal history is instinct with the philosophy of natural law. I will not enter upon any detailed exposition of that philosophy.

*Professor of Law, Fordham University School of Law

However, I believe it will not be out of place to outline in broad strokes some of the fundamental tenets of the natural law philosophy. My thought is that a sketch of some of those fundamentals may be helpful as preliminary material.



WILLIAM R. WHITE

We would be hard pressed to find a more forceful or a more succinct expression of the philosophy of the natural law than the eloquent phrases of our own American Declaration of Independence. Every school boy knows the immortal words of our Founding Fathers:

> When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.
>
> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. . . .

In that statement, our Founding Fathers implied the whole natural law jurisprudence. They stood in the tradition of the famous lawyers who had preceded them through the centuries—Cicero, Aquinas, Bellarmine, Suarez and all the others. In that statement, the Founding Fathers declared that man is the creature of God. They recognized an all good and all wise Creator, and they also recognized that such an all good and all wise Creator could not be guilty of a wasteful act or a purposeless act. Hence, when He created man, He was surely acting for a purpose. God, having a purpose for man to fulfill, could not be indifferent to what man does. So, God must desire that each man accomplish the purpose for which He made him. He must wish that each man use all his capacities, without wasting them, in order to bring about the greatest practical development and perfection of his human nature. The natural law philosophy, therefore, teaches that God commands man to participate in His Divine Plan and bring himself by his actions to the perfection of his human nature, eventually even attaining to union with God Himself.

These truths our Founding Fathers knew, and they properly concluded that it must be God's will that each of us be provided with the necessary means and the necessary tools to carry out the commands placed upon us by God. In other words, they saw that to carry out the Divine Plan each of us must be accorded rights, each of us is entitled to whatever is necessary as a means for us to carry out our obligations to God. This concept of the Rights

of Man our Founding Fathers expressed by saying that all men are endowed by their Creator with "unalienable rights." They mentioned as among those unalienable rights Life and Liberty, and of course they included whatever other rights are necessary to the pursuit of eternal happiness, such as the right of property and of due process.

In their natural law philosophy, the Founding Fathers clearly saw the proper function of the state and government. They recognized civil society as a necessary institution for the human race, and they saw that the purpose of civil society in the Divine Plan was to secure man's natural rights. By gathering in communities, by the division of labor made possible in communal society, by the exchange of ideas and goods facilitated in communal society, men are able to improve themselves more rapidly and attain more expeditiously to the degree of perfection which God desires of them. Civil society secures men in their social activities and guarantees them the natural rights which they need in order to carry out God's will. In civil society, the conditions of peace and order necessary for the development of men are produced, as well as all the other conditions required as part of the "common good."

In brief, then, the basic idea of natural law is that every human being is a creature of God. He is commanded by God to fit himself into God's Divine Plan, thus perfecting his own human nature. In order to carry out this command, each human being must be accorded the means necessary for him. These are his rights, his natural rights. Society and the state exist to create conditions helpful to man's attainment of his individual perfection.

Once we have the notion that each of us has natural rights, we have the idea of justice. The demand of justice is simply that natural rights be respected. Justice is really the realization of the natural law. Justice is giving to each that which he ought to have in accordance with his natural rights.

The fourfold division of justice considered at the Natural Law Conference is somewhat unusual. Traditionally, justice has been considered as falling into a threefold division. That division comprehended (1) commutative justice, (2) distributive justice, and (3) legal justice. But, many modern writers are introducing a fourth division—"social justice."

A word in explanation of these fourfold divisions is advisable. *Commutative Justice* first. Commutative justice is found in transactions between individuals, in exchanges between individuals. Thus, where a buyer and a seller agree to exchange merchandise for money, you have a contract of exchange which raises problems of commutative justice. When two states make an international tax treaty, problems of commutative justice are involved.

Distributive Justice. Distributive justice regulates the duties of the state in its exercise of authority over individuals in the state. Provision by the state of public facilities for education would be an example of an activity regulated by distributive justice.

Legal Justice. This concerns the correctness of the treatment of the state by the individual citizen of the state. Reporting of your income for taxes raises questions of legal justice.

Social Justice, the fourth type of justice,

regulates the duties which the citizen owes to the community as a whole rather than to the government of the state. Those who recognize "social justice" as a fourth division of justice seem to distinguish it from legal justice on the ground that social justice regulates the duties of a citizen to the community as a whole, whereas legal justice regulates his duties to the government.

My concern is with commutative justice.

As I said, commutative justice regulates exchanges between individuals. Voluntary exchanges, a sale of goods or a purchase of a house, for example, are regulated by commutative justice. Commutative justice must also be considered in cases involving recompense or restitution for damage done. Thus, if I injure my neighbor by driving my automobile carelessly and he suffers a fracture of the leg, I must recompense him with money. The question whether the recompense is just and fair will be regulated by the principles of commutative justice. An exchange is involved in that case, although it may not be a voluntary exchange, but one compelled by the courts of law.

With this as the recognized scope of commutative justice, that it regulates exchanges between individuals, and transactions between individuals, we come to the question, "What are the standards of commutative justice? What are the characteristics of an exchange which is really just? What are the marks of a transaction which reflects commutative justice?"

Philosophers have written upon this subject rather sparsely. Nevertheless, the basic idea drawn from them, from the writings of such a man as Del Vecchio in his treatise on Justice, the basic idea is that an exchange or a transaction will be just if there is an "equalization" of values in it. Thus, if I exchange a house in Town A, having a market value of $20,000, for a house in Town B, having a similar market value, the exchange involves equal values and commutative justice is satisfied. Again, if I, by accident, injure another with my automobile and he is confined to his home and unable to work for two weeks (but that is his only damage), then when I reimburse him for two weeks' wages lost, commutative justice is satisfied. However, should he be seriously injured and suffer a permanent loss of earning power, then the damages to be paid him should reflect the diminution of his earning power over the expectancy of his working career, if the necessary equivalence is to appear.

This notion of equalization of values is fundamental to the philosophic concept of commutative justice. It is not a carry-over of the primitive law idea of reprisal, the idea of "an eye for an eye." It is rather a consequence of the recognition of the right of private property. Under the natural law, each man must be recognized as having the right of private property. Because man owns property with such an unalienable natural right, another man may not deprive him of his property, unless, in return, some equivalent value flows to the one who gives up the property. The wrongdoer must, therefore, restore to the injured person the property of which the injured person was deprived by the wrongful act. And in a voluntary exchange, unless something of substantially equal value is transferred to the party who yields up his property, he may find himself without the necessary means of accomplishing his duties under the Divine Plan.

There is a lesson here for each of us

from this emphasis on equivalence: that it is our duty, when we are involved in exchanges (which are not gifts or acts of charity), to see that the other party receives fairly equal value to the value yielded up. Of course, there will be questions of valuation when the chief value attached to a thing is a subjective one. But the principle of equalization brings home to us that a lack of proportion and a lack of equivalence in a transaction points to an unjust transaction *prima facie*.

Having in mind, then, that the principles of commutative justice are to be applied when considering contracts of exchange, and having in mind, further, that where an exchange is involved those principles of commutative justice call for a certain equalization of values, let us turn to the questions which have been suggested for discussion by the Chairman of the Conference.

A prepared statement has been distributed to you. I would like to refer to it. You notice that the statement gives us a picture of the current industrial scene. It draws in broad strokes an outline of the impressive development of our national economy. It points out (among other phases of the industrial scene) the recent pattern of labor relations as showing some significant changes. It then raises certain questions for comment by us:

> What problems of commutative justice are involved in the negotiation of collective bargaining agreements between management and labor? May a union demand a voice in the management prerogatives of quantity of production? Price of products sold? Location of plants? Number and qualifications of employees hired? May a union ask for a look-see at the books of the company showing profits and wages paid employees in different wage classifications?

What it really asks is three basic questions. First of all, we are asked to list the problems of commutative justice which we believe are involved in the current labor negotiations. Secondly, we are asked whether a union may demand that it participate in the management of a business, as a matter of commutative justice. Thirdly, whether the books of a business should be open to union representatives in connection with collective bargaining.

With respect to the first question, wherein we are asked for a list of the problems of commutative justice involved in current labor negotiations, I would say that in the past year collective bargaining conferences have concerned themselves with two problems of commutative justice. The first is the problem of the nature and extent of a "just wage," and the second is the problem of the right of a union to demand a voice in the management of a business.

Perhaps I am over-simplifying things when I say that only two problems of commutative justice have been involved in the current labor negotiations. You may point out that in the past year unions have emphasized demands for pension plans, for welfare insurance plans, and for supplementary unemployment compensation. But these demands are merely demands for wages—for deferred wages (with the company paying the increased cost)—not directly to the employee in his pay envelope but by putting aside funds in a trust to provide future pensions and future unemployment compensation and future hospitalization and medical treatment. The problem involved in these demands is whether the amount of money required for these benefits can fairly be demanded by

the laboring man as a "just wage."

The second question is the one which has been selected today for more detailed discussion. That question is whether commutative justice requires that labor have a voice in the management of a business. The question is whether, as a matter of commutative justice under the natural law, our industry in the United States should be organized so that laboring men or their representatives may participate in the management of business. This question calls for some hard thinking and, in the end, my conclusion is only tentative.

In my opinion, ladies and gentlemen, the principles of commutative justice do not require that labor be given a voice in the management of a business under the present conditions of industry in the United States.

Do the writings of the moralists throw any light on this problem? The answer seems to be in the negative. The moralists seem quite divided in their thinking, and none of them seem to have any extended analysis of the matter. Their reluctance may be due to the fact that proposals for labor-management partnership have not been advanced in sufficient detail to permit thorough analysis. It seems that labor-management partnership is one of the long-range objectives of the Congress of Industrial Organizations. Walter Reuther and the late president Philip Murray of the C. I. O. both strongly indorsed what they called the Industrial Council Plan. The 1948 convention of the C. I. O., held in Portland, Oregon, adopted a number of resolutions approving the "industrial council plan." According to that plan, there would be established in each industry an economic council which would perform all fundamental management functions. Each council would be composed of representatives of the workers, owners, government and general public. The 1948 resolution of the C. I. O. states that key decisions in an industry, such as the rate of capital investment, the prices of goods, the size and location of plants and the sales policies of the corporation should be governed by industry councils.

Some of the moralists and ethicians have pointed to a statement by the Holy Father, Pius XI, as an indorsement of labor-management partnership. In the Encyclical *Quadragesimo Anno,* Pius XI said:

> In the present state of human society, however, We deem it advisable that the wage contract should, when possible, be modified somewhat by a contract of partnership, as is already being tried in various ways to no small gain both of the wage-earners and of the employers. In this way wage-earners are made sharers of some sort in the ownership, or the management, or the profits.[1]

Other moralists, who feel that a labor-management partnership is not required by the natural law (at least in the present condition of American capitalism) say that the statement of Pius XI is merely a piece of mild advice and a passing observation of secondary importance. They point to statements by Pope Pius XII and say that Pius XII thought it a distortion of the words of Pope Pius XI to interpret them as requiring a labor-management partnership as a matter of justice. Pope Pius XII did say in 1952 in a radio address in Vienna that commutative justice does not require a partnership between labor and management. His statement was:

---

[1] *Quadragesimo Anno,* para. 65, FIVE GREAT ENCYCLICALS 144 (Paulist Press 1953).

> Herein lie the deeper motives why the Popes of the social encyclicals, and We Ourselves, have declined to infer either directly or indirectly from the nature of the labor contract the right of the worker to co-ownership in the operating capital, and its corollary, co-determination in the conduct of the business. Such a right must be denied because of more basic issues involved.[2]

Further, in 1952, Monsignor Montini, the Vatican's Substitute Secretary of State, wrote:

> Our Holy Father, Pope Pius XII, has many times referred to the juridico-social position of the workers in industry, accurately distinguishing what belongs within the sphere of natural law, from that which forms part of the aspirations of the working classes and which can consequently be pursued by legitimate means as an ideal.
>
> He warned, in fact, that
>
> 'A danger arises when one insists that the salaried workers in a company should have the right of economic co-management, especially when the exercise of this right is, in fact, subject, directly or indirectly, to organizations foreign to the company itself. Now, neither the nature of the work-contract nor the nature of the business necessarily imply, in themselves, such a right.... The wisdom of Our Predecessor, Pius XI, showed this clearly in the Encyclical 'Quadragesimo Anno' and, accordingly, there is denied therein the intrinsic need of patterning the work-contract on the contract of partnership.'[3]

Because of these statements and later disputes among the moralists, we must say that there has been no clear indication one way or the other by the moralists on the question whether participation by labor in industrial management is required by commutative justice.

When we turn to our legal authorities, we find the situation similar. There are no legal guideposts for us. As you know, Section 9.(a) of the Labor-Management Relations Act[4] provides that the duly elected representative of the employees shall be their representative for bargaining for "rates of pay, wages, hours of employment or other conditions of employment." You all know, also, that in the *Inland Steel Corporation* case[5] the Circuit Court of Appeals considered the question whether a company was required to bargain about a pension and retirement plan. There the union desired to obtain a modification of the compulsory retirement feature of the company pension plan. The corporation felt that such a modification of its pension plan was not a matter of "rates of pay or wages" and that it was not required to bargain with the union concerning that feature of the plan. However, the Supreme Court held that the pension plan was "one of the conditions of employment" and it ordered the company to bargain concerning that condition of employment.

In *Cross* v. *National Labor Relations Board,*[6] the Circuit Court of Appeals developed the idea of the *Inland Steel* case further and held that a company was required to bargain with a union with respect to group health and accident insurance plans. The court felt that bargaining with respect to such a plan was practically the same thing as bargaining with respect to wages.

---

[2] *Radio Address of His Holiness, Pope Pius XII, to the Austrian Katholikentag in Vienna, September 14, 1952,* SIX SOCIAL DOCUMENTS OF HIS HOLINESS POPE PIUS XII 32 (1953).

[3] *Letter of His Excellency Monsignor G. B. Montini, to Archbishop Siri of Genoa, September 22, 1952, id.* at 36.

[4] 61 Stat. 143 (1947), 29 U.S.C. § 159 (a) (1952), amending 49 Stat. 453 (1935).

[5] Inland Steel Co. v. N.L.R.B., 170 F. 2d 247 (7th Cir.), *cert. denied,* 336 U. S. 960 (1948).

[6] W. W. Cross & Co., Inc. v. N.L.R.B. 174 F. 2d 875 (1st Cir. 1949).

When one reads the court cases on the subject, one gets the impression that the courts believe that benefits demanded by unions, by way of wages, pension plans, or insurance plans, are all economic benefits which may be translated into money and are the proper subjects of collective bargaining. But it is really a different thing for a union to demand that its representatives be given partnership rights in a business and take part in making management decisions. Asking for money or for the things that money can buy, like welfare plans or supplementary unemployment compensation, is one thing; asking for power, for management's power of decision, is another thing. It is the career officer asking for command — not money. The courts have said that unions are entitled to demand, as a matter of statutory law, economic benefits which the employer can satisfy by paying out money. No case, as far as I know, has said that an employer must bargain with a union if it demands power, management's power, to make business decisions.

The absence of guideposts in the writings of moralists and in the decided cases, gives us a certain comfortable sense of freedom. We can strike out for ourselves and face and decide on our own whether the principles of commutative justice require that labor be given a voice in the management of business.

First of all, let us ask whether the principle of equivalence requires that labor be given a voice in management. When we look at the relationship between labor and the enterprise, and when we study the employees who are not in the management group, we see manual laborers willing to offer their energies, mental and physical, to working upon materials supplied by the employer, with tools supplied by the employer, and we see clerical workers willing to spend their energies on the books and accounts of the employer in an office supplied by the employer. Now, our question is: Is there anything in the nature of their work that means it cannot be fairly compensated for in money? Is there anything in the nature of this exchange, in which the laborers offer their mental and physical energies to the enterprise, that indicates that their offer cannot be fairly compensated for by money, by a just wage? We have a situation where the owner of the business is paying management to make business decisions. It is paying management to assume the responsibilities of command, to do the work of making the necessary research, acquiring the necessary information and, finally, making the decisions. It is paying the laboring group to expend their mental and physical energies in the enterprise otherwise than by making the decisions. Do the principles of commutative justice indicate that labor must participate in the work of management? Can labor be compensated for its services by receiving a just wage, or is it necessary that labor pass over into the sphere of management and do part of the work of management?

Assuming that laborers are receiving sufficient compensation in money to take care of their families, to save for their old age and to acquire some property, is such a wage a fair equivalent for the laborers' services? Those who say that labor must participate in management maintain that something more than mere wages is needed to requite the worker. Why must the laboring man participate in the president's decisions as to what products should be

marketed? Why must union representatives advise the vice-president for advertising, on the selection of television or radio or newspaper advertising? Why should the factory man or the union accountant sit with the treasurer when he determines that the method of business expansion shall be through debentures rather than through common stock?

In my opinion, there is nothing in the nature of the services rendered that indicates that fair compensation sometimes requires that the laboring man be afforded an opportunity to take on additional burdens, the burdens of management. Commutative justice requires that when the laborer gives up his property in the form of his energies, mental or physical, he be given other property in return to equate for the property yielded up by him. "Other property" here would be money wages or the tangible things that money can buy. Certainly, it seems incongruous to suggest that, as compensation for the laborer's work, he be given not other property or more wages but that he be called upon to assume additional burdens and to do further work, this time by way of doing the work of management.

It would seem that the only justification for a demand on the part of the laboring man for management power would be the claim that management is incompetent to carry on its functions or that management is planning to disrupt the business and impair the security of the laboring man's job. And, certainly, management in American industry is not generally incompetent, nor is there any widespread desire on the part of American executives to terminate the business in which they are engaged and thus destroy their own jobs.

Some may emphasize the fact that, after all, a business enterprise is a cooperative enterprise. It involves an alliance of the worker and management and capital. And they may argue that the worker has a right, along with the investor, to have a voice in the selection of the managing officials. Workers, like stockholders, should cast votes for directors who, in turn, elect the management.

This suggestion has a certain appeal. It is true that one can find industries where workers and stockholders have been, over the years, faithful partners in the enterprise. Possibly the American Telephone Company has something of this character. Many thousands of its employees have devoted their entire lives to the business. Likewise, thousands of faithful shareholders have kept their investment in the company and contributed loyally when called upon for additional capital. However, there are other businesses which are entirely different in their character. The great ranches of the far west have a great number of seasonal workers, among whom there is a great turn-over. Other industries have large numbers of transitory workers. I recall one company, an aircraft and camera corporation, which during the early 1940's had, each year, almost a 50% turn-over of the working force, even though the wages paid by the company were fine wages.

If workers are to be partners, the question is raised whether they are prepared to assume the responsibilities of partners and share in the losses of the company. Generally, management executives throughout the country retain their jobs only by continued success. If the company's profits diminish, most corporations will not take

excuses. There may have been strikes; there may have been unexpected material shortages; there may have been unanticipated competitive surprises to excuse a bad period. However, management must retire if the company is not successful, no matter how substantial its excuses might be. If labor is now to become influential in management's decisions, is the laboring man prepared to face the same prospect as unsuccessful management faces? In the nature of things, laboring men cannot assume the risks of failure.

As far as the investor is concerned—the owner of the business, the shareholder—he is willing to place his property, his investment, in the control of a small, carefully selected management group. But if labor is to participate in management, and the invested capital is impaired as a result of a bad decision, will labor be willing to contribute to the corporation to make up for the impairment of capital? Will it be willing to share losses which its poor advice may bring upon the corporation?

The last consideration is that, as a practical matter, participations by labor unions in decisions of policy could greatly impair the efficiency of a corporation. If union officials participate in the management, how can management's decisions be kept secret from its competitors, when the same union officials will be participating in the management of the competitors because the competing companies have workers belonging to the same union?

For all these reasons, it seems to me that, while labor may insist upon a just wage, it may insist upon pension plans, supplementary unemployment compensation and a share in the profits of a corporation, I do not see that it can insist upon command or upon participation in command. The principles of commutative justice do not require that labor be permitted to assume the responsibilities of management. The nature of the laboring man's services are not such that it is unfair to ask him to leave management to the managers. An enterprise, like a football team, works well only when all are inspired by a common desire for success. The laboring man is on the team, and he should have a share in the glory that comes from success; but there is no reason why he has to play quarterback and call the signals. There is no injustice to the laboring man if the investors in the corporation feel that the management group whom they have employed to manage the corporation should have the sole responsibility for that job.

In summary, let me say that I have tried to emphasize as the essence of commutative justice the notion of equivalence. Exchanges and transactions will be just when they comply with the requirements of the natural law, when the property rights of the parties are respected, but, chiefly, when the exchange involves equivalent values. It is also obvious that, even when great nations are concerned, exchanges by persons who have no moral authority to deal with the property which is the subject matter of the exchange are unjust.

Applying the secondary principle of the natural law to particular cases is not easy, particularly in the fluid fields of labor relations and international relations, and even though I may have expressed myself with some force during the past few minutes, please believe me when I say that I am expressing my own opinions, humbly subject to correction.