

# **Liberty, Equality, and Justice: "Ancient Mysteries Crying Out for Understanding"**

*"No student should graduate without one lecture on  
liberty, equality, and justice."*

Presented by

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## Introduction

Vice President Dahlin, Dean Moen, distinguished predecessors, colleagues, students, family, and friends. Thank you for the honor of joining the 49 other faculty in the College of Arts and Sciences who have presented this Harrington lecture. Thank you also for the opportunity this past year to study a topic that I enjoy researching. As I tell my criminal justice students, "justice" is the noun, and the word "criminal" a mere adjective; therefore, criminal justice majors must study the multiple meanings of justice.

The Harrington lecturer is asked to "relate part or *all* of his own subject field to the *whole* concept of the liberal arts." (emphasis added) I took that charge seriously and I think I can relate all of my field of justice to the whole of liberal arts—by midnight perhaps!

When speaking to a South Dakota audience, I always begin by noting that I am from Vermillion on the borderline of SD and Nebraska. Therefore, I claim only to be a borderline expert. Though that may sound light-hearted, I think there is much to be said for living on borders. Since borders are arbitrary and confining, living on them allows us to cross them often and quickly.

My topic tonight crosses many academic borders. No one discipline can confine the concepts of liberty, equality, and justice within its borders; they are too vast and complex. Like our great prairie, these concepts cross many borders. In addition to great breadth, these three concepts also possess depth. Like the prairie roots that extend 15 feet below the surface, the values of liberty, equality, and justice extend deep into the mystery of our human nature. (Rawls; 1971; Ely, 1978; Adler, 1981; Benn, 1988; Cohen, 2000) Tonight, I propose to cross those borders and pull up those roots to gain some understanding of the vast and deep prairie of liberty, equality, and justice. First, however, let me introduce my theme.

## Wisdom, Opposite Truths, and Theme

Thomas Edwards wrote, "The only sure weapon against bad ideas is better ideas. The source of better ideas is wisdom. The surest path to wisdom is a liberal education." While in college, I set out to find this wisdom in liberal education. A college friend recommended that I read *Siddhartha* Hermann Hesse. In search of the great secret of life, Siddhartha joins a group of ascetics, and spends his life in pursuit of this secret at "the innermost of Being." (Hesse, 1951: 11) Toward the end of Siddhartha's long life, a friend named Govinda comes to him and asks Siddhartha to tell him the wisdom that has helped Siddhartha live a good and wise life. Govinda wants a shortcut to Siddhartha's wisdom. Siddhartha refuses to give Govinda the shortcut, but he does offer the following:

I am telling you what I have discovered. Knowledge can be communicated, but not wisdom. One can find it, live it, be fortified by it, do wonders through it, but one cannot communicate and teach it... There is one thought I have had, Govinda, which you will again

think is jest or folly: that is, *in every truth the opposite is equally true*. For example, a truth can only be expressed and enveloped in words if it is one-sided, only half the truth; it all lacks totality, completeness, unity... But the world itself, being in and around us, is never one-sided." (Hesse, 1951; emphasis added)

When I read this passage as a youth in college, I asked myself, "How can this be? How can the opposite of every truth be equally true?" This small book lit a question in me that ignited a lifelong pursuit for an answer.

About a year later, I read Niels Bohr's now-famous statement: "The opposite of a correct statement is a false statement. But the opposite of a profound truth may well be another profound truth." (Peter, 1977: 500) Thus, Siddhartha and Bohr seemed to be saying the same thing: truth lies in understanding opposites. Eventually, I realized that this puzzling thought appeared in many writers, always with no further explanation. In *Guide For the Perplexed*, E. F. Schumacher states, "No real understanding is possible without awareness of these pairs of opposites which permeate everything man does." (Schumacher, 1977: 127) F. Scott Fitzgerald ties intelligence to understanding polarities when he writes, "The test of a first-rate intelligence is the ability to hold two opposed ideas in mind at the same time and still retain the ability to function." While in law school, I read works by Justice Benjamin Cardozo, one of my favorite jurists, and, like Fitzgerald, he encourages us not only to learn these opposing truths, but to "feel" them: "If life feels the tug of these opposing tendencies, so also must the law which is to prescribe the rule of life." (Cardozo, 1928: 7) Abraham Heschel, in his wonderful spiritual anthology entitled *I Asked for Wonder*, suggests that not only ideas are dualities, but we are dualities also. He writes,

Man is a duality  
of mysterious grandeur and pompous aridity,  
a vision of God and a mountain of dust.  
It is because of his being dust that his iniquities may be forgiven,  
and it is because of his being an image  
that his righteousness is expected. (1986: 50)

Over the years I noticed that nearly everyone makes these types of statements, but no one explains either why or how opposite truths exist. In the following passage, Justice Cardozo hints that opposite truths may exist as perennial paradoxes:

The reconciliation of the irreconcilable, the merger of antithesis, the synthesis of opposites, these are the great problems of the law... We fancy ourselves to be dealing with some ultra-modern controversy. [But when] the problem is laid bare, at its core are the ancient mysteries crying out for understanding. (1928: 4)

I took a liking to that phrase, "ancient mysteries crying out for understanding," and have dedicated my research to probing these opposing truths, antitheses, paradoxes, or whatever you wish to call them. (Spader, 1983, 1984, 1985, 1987, 1990, 1997, 2003)



My thesis suggests that opposite truths are pervasive. Justice Cardozo opines that "dichotomies are everywhere." Opposite truths may also be necessary. If we cannot hear the sound of one hand clapping, we may not understand a concept until we understand its opposite.

Before I begin my first topic, a key term must be defined. I will be using the term "dichotomy" throughout this lecture to refer to those opposing truths that Siddartha, Bohr and Cardozo mentioned.

## "Dichotomies are everywhere."

—Justice Benjamin Cardozo

Physical World: Black-white; up-down; left-right; in-out; near-far;  
light-heavy; light-dark; high-low; strong-weak; hot-cold.

Social World: Good-bad; rich-poor; liberal-conservative; powerful-weak; yin-yang; private-public; yes-no; right-wrong; ethical-unethical; mind-body; heaven-hell; thesis-antithesis; bull-bear market; true-false.

Legal World: legal-illegal; guilty-innocent; reasonable-unreasonable; constitutional-unconstitutional; liability-immunity; law-discretion; sane-insane; truth-falsity.

Other Names for Dichotomies: Opposites, dualities, polarities.

Other Names for Golden Mean: Pendulum swings, ebb and flow, golden zigzag, seesaw, wavy line.

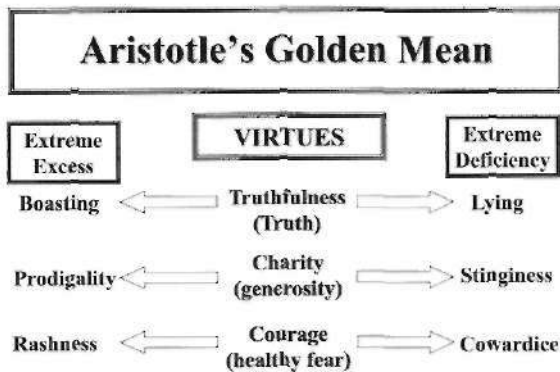
This slide illustrates Cardozo's observation that we have created dichotomies everywhere to describe the physical, social, and legal worlds. It also gives other names for dichotomies, such as opposites, dualities, and polarities. Daniel Meador, President of the ABA, commented that "dualities, if not eternal, have long appeared in Anglo-American law." (1980: 122) Finally, there are many common metaphors that reflect our tendency to move back and forth between opposite choices, such as pendulum swings,

ebb and flow, golden zigzag, seesaw, wavy line, and so on. (See Spader, 1987: 134)

### Aristotle's Use of Opposites: The Golden Mean

I start with an illustration to show how Aristotle used opposites in his idea of virtue as a golden mean. You may think that I start with Aristotle's golden mean because this is the golden anniversary of the Harrington. I am not that shallow—but it was convenient! Aristotle introduced me to the idea of opposites when I read his *Nicomachean Ethics*. Aristotle wrote this short treatise to his son, Nicomachus. With the help of PowerPoint, I will use visual illustrations to quicken verbal descriptions. All visuals reduce complex ideas to simplistic diagrams, so look at them if they aid your comprehension and always monitor their influence because Aristotle's verbal richness in the original work is the best source.

Aristotle advised his son that virtue lies in the golden mean between the two extremes of too much of a quality, or too little.

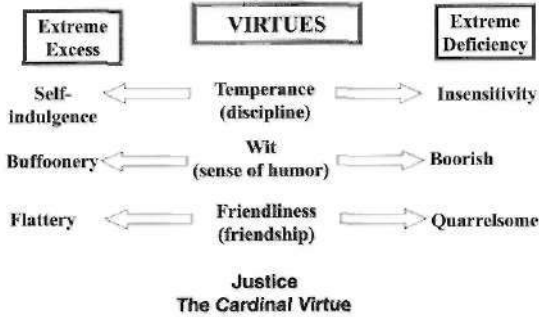


On the left lies the extreme of too much, or excess, and on the right the extreme of too little, or deficiency. Then Aristotle discussed several Greek virtues using the analogy of a golden mean. Though a modern list of virtues may differ somewhat, many of the virtues that Aristotle surveyed are still respected today, especially given the revival of virtue and character ethics in books, such as Covey's *Seven Habits*, and in many professions including Criminal Justice. Aristotle discussed these virtues:

- Truthfulness, which is the golden mean between excessive exaggeration of facts (or boasting) and the deficient disclosure of facts (or lying);
- Charity (generosity), which is the golden mean between excessive giving away of too much (often referred to as prodigality, as in the prodigal son) and the deficiency extreme of giving too little (or stinginess);

- Courage, a virtue highly prized by the Greeks, lies between excessive risk taking (or rashness) and the deficiency of too little risk taking (or cowardice).

In this fashion, Aristotle proceeds through numerous other virtues.

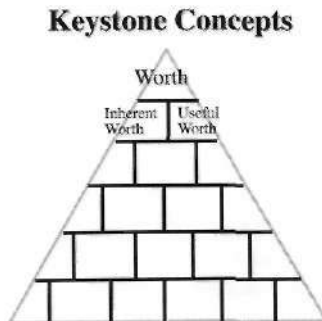


He dedicates all of Book V to the moral virtue of justice and states: "Therefore, justice is often thought to be the greatest of virtues, and...in justice every virtue is comprehended." (p. 106)

I've always felt that the *Nicomachean Ethics*, despite some significant flaws, contains much common sense and wisdom. If we follow Socrates' admonition that the unexamined life is not worth living, we can meld Aristotle's reflection on virtues with our own natural tendencies toward certain excesses and deficiencies. I thought about spending the rest of the evening documenting what I believe are the extremes of modern society, all the way from extreme sports to our extremely dangerous lifestyles, but I will let the authors of *Fast Food Diet*, *The Politics of Healing*, and other wonderful books document our modern tendencies toward extreme forms of behavior.

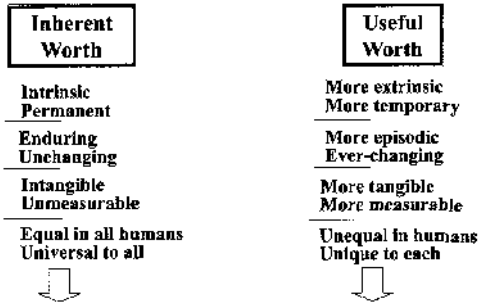
### First Set of Opposites: The Two Worths of Human Beings

Now I am going to introduce three sets of opposing fundamental truths. The next few slides cover the first set. Certain concepts are so important that I refer to them as keystone concepts.



These concepts set atop an entire pyramid of lesser values. The first and most important for my topic tonight is the concept of human worth. But what is human worth? What do we mean when we ask what a human life is worth? The concept confused me until I realized that the concept of "worth" contains two opposing truths within it. Humans possess two worths, and each type of worth is distinctly different from the other. Throughout history and in many cultures, the two types of worth have been given many names. Ethicists often refer to the two types as intrinsic and instrumental worth, but I will eliminate the technical terminology and refer to them as inherent and useful worth.

## TWO WORTHS



### MOST FUNDAMENTAL DECISION

To make the two types of worth as clear as possible, I use the most dichotomous terms available to us:

- inherent worth refers to intrinsic and permanent worth, but useful worth refers to more external and temporary worth;
- inherent worth is enduring and unchanging worth, while useful worth varies continuously and changes rapidly;
- inherent worth is intangible and immeasurable, while useful worth is more tangible and measurable;
- inherent worth is equal in all human beings and universally possessed by all humans, but useful worth is unequal and unique to each human being according to the social dynamics of each situation.
- and most importantly for my thesis, inherent worth demands certain equality of treatment, but useful worth justifies certain inequalities.

Now let me discuss each in more detail. I begin with useful worth because Americans seem to grasp that concept more easily. Utilitarian theory focuses on useful worth, and thus entire disciplines, such as economics, employ volumes of data to conduct cost-benefit analyses of useful worth.

**Useful Worth.** Utilitarian ethics explicitly states that the most ethical decision is the one that will generate the most utility or usefulness for me (as in egoistic utilitarian theories of Ayn Rand) or most usefulness for everyone, as in the many social utilitarian theories of Jeremy Bentham, John Stuart Mill, and other theorists. (Bentham, 1987) Most daily and ethical decisions involve the determination of whether other humans are useful and whether one human is more useful than another for any particular job, undertaking, or task. Obviously, if I need heart surgery, a doctor with surgery expertise is more useful to me than a plumber. If I have a leak in my water pipes, a plumber is more useful to me than a carpenter. Thus, one person may be more useful if that person possesses more expertise, is more productive, or puts forth more effort, depending on the criteria that we employ in the many practical decisions that we make every day. For these reasons, useful worth changes with the context of every decision and tends to be based on more tangible, measurable, and unique qualities of each human being.

The idea of "using" another person carries a negative connotation today; therefore, it is important to point out that historically and theoretically the idea of a person's utility carries a very positive connotation. Isn't it a major goal of education to make students more competent and capable in many skills, and therefore more useful? As long as each person voluntarily chooses to use his or her skills for the good of employers, community, or country, few ethical issues arise. I choose to be an instrument or means by which the university carries out its mission of teaching our youth; and I choose to be an instrument of furthering education for the State of South Dakota. St. Francis' prayer, "Lord make me an instrument of your peace," beautifully illustrates instrumental worth in its most spiritual form.

Yet commercial and pragmatic, not spiritual, usefulness seems to dominate our public discussions and airways. I do not want to imply that one type of worth is more important than another, but I do emphasize that extreme focus on only useful worth, as our modern society often does, debases us as human beings. We are a pragmatic people seeking practical results and often we never get beyond useful worth to inherent worth. The concept of inherent worth must form the core of any ethical and just system.

**Inherent Worth.** Inherent worth resides within all human beings, and all humans possess it equally. No human being possesses more inherent worth than any other human being. Unlike useful worth, inherent worth cannot be earned, and cannot be increased or decreased by any human being who possesses it. Inherent worth exists apart from useful worth, and useful worth cannot be the basis for determining the inherent worth of another person. We can measure useful worth with many yardsticks, such as performance and skills tests, but inherent worth cannot be quantified. We are free to judge others as better or worse on the basis of their useful

worth, but we are morally bound to acknowledge and respect the inherent worth of every other human being. (Kant, 1959)

Inherent worth is also inalienable, and, as Jefferson wrote in the Declaration of Independence, all rights based on inherent worth are also inalienable. "Inalienable" in this sense means not capable of purchase, not capable of transfer, and not capable of forfeiture. One cannot voluntarily choose to purchase more inherent worth in the way that one purchases more useful worth through education, experience, or other means of making ourselves useful to others. Nor can one voluntarily transfer or forfeit inherent worth. One human being cannot take away the inherent worth of another human being, nor can we give away our own inherent worth. In short, I cannot say to you, "I will give you my inherent worth." Nor can I say, "I choose to forfeit my inherent worth." Inherent worth is not a property right; it is a right of personhood.

Upon this reality of inherent worth, we base the claim for equality and the claim that all persons deserve equal respect. Without a deeply held belief in the inherent worth of each person, we soon adopt useful worth as the only worth upon which we make judgments and decisions affecting other human beings. Without protections for the inherent worth of each person, we approach a scary world in which human beings are worthy only as long as they are useful. At that point, we start disposing of those humans who have become useless to us.

This danger at the heart of useful worth leads me to my central point regarding inherent worth. At the level of inherent worth, no human being can claim superiority to any other human being, and likewise no human being should acknowledge inferiority to any other human being. *At the level of inherent worth, the most fundamental—and accurate—statement we can make to one another is: "I am you and you are me." For that reason, learning and discovering inherent worth is the discovery of oneself in others, and others in oneself.* All of our literature, philosophy, history, science, and liberal studies point to that one fact, even though much of our human history records its absence in man's inhumanity to man.

**The Most Fundamental Ethical Choice.** A good liberal education must teach students this core distinction between inherent and useful worth, but it must also present the most fundamental ethical choice as explicitly as possible. I ask students to answer this question: do you believe deep-down in your belief system that all humans possess inherent worth, or do you reject inherent worth and treat humans solely on the basis of their useful worth? I suspect that most of you have already made this decision, and perhaps I have merely clarified it. But how do we make it a daily practice? The really difficult task involves how we implement this decision in our daily lives given the enormous social and ethical issues that we face today.

It is easy to recognize and respect the inherent worth in family and friends. Yet we do not really understand and accept inherent worth unless

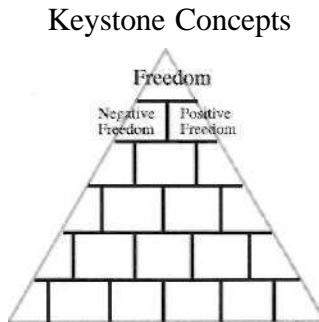
we recognize and respect it also in persons of other nationalities, races, and religions who may be strangers to us. We fully understand inherent worth if we acknowledge its presence in criminals, and even terrorists. Now this is critical to understand. As human beings we can choose to forfeit our own "useful" worth, and make ourself "useless" to all others, but we cannot forfeit the inherent worth of any human being, not even our own inherent worth. No terrorist can usurp the power to declare that inherent worth exists in some human beings but not other human beings. A terrorist can only choose not to recognize and respect the inherent worth in others, but his choice not to recognize inherent worth in others does not mean that their inherent worth ceases to exist. Likewise, no legitimate government can declare that some human beings possess inherent worth and others lose it because of their terrorist actions. In summary, no person or group of persons can exterminate the inherent worth of any other persons; they can only *choose* not to recognize its presence.

Criminal justice practitioners and government officials, who reject or forget inherent worth, become as dangerous, in my opinion, as some of the offenders or terrorists that they are trying to control. Such practitioners cannot be trusted to respect the sovereignty of an individual life, nor the individual rights that protect an individual's inherent worth. For them, humans are judged only on the basis of their usefulness. Any enlightened justice system must respect the inherent worth of each human being and the rights that flow from it. (Hart, 1979; Richards, 1981; Spader, 1994)

Next, I wish to discuss the two types of freedoms that flow directly from these two types of worth.

### **Second Set of Opposites: Negative and Positive Freedom**

Like the concept of worth, freedom is also a keystone concept, and the term "freedom" also contains within it two opposing types of freedom.



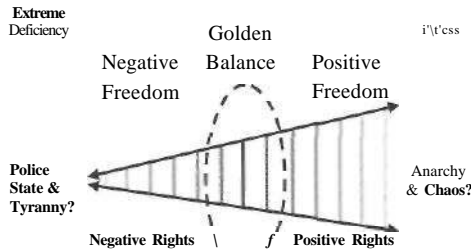
Abraham Lincoln recognized these opposing truths when he wrote: "The world has never had a good definition of the word liberty,'... [T]here are

two, not only different, but incompatible meanings for the same word." Isaiah Berlin, a modern philosopher of freedom, brilliantly discussed these two opposing meanings of freedom in his classic essay entitled, *Two Concepts of Freedom*. Berlin surveyed history and concluded, like Lincoln, that two concepts exist. As if to illustrate my thesis that opposites exist in all truths, Berlin refers to them as the opposites of negative and positive freedom. Now if a continuum can represent the many degrees of freedom that we possess, the negative and positive poles on this continuum can represent the opposite polarities of freedom. (See also, Feinberg, 1980)

Let me develop negative freedom first. When we seek negative freedom, we seek freedom from harms caused by others and freedom from fear of those harms. A life lived in fear is scarcely a life at all. Thus, our criminal justice and military systems provide the minimum "night watchman" government that even libertarians recognize as necessary to provide negative freedom from death, torture, rape, maiming, and other harms.

Negative freedom protects us not only from physical harms, but also from intangible, psychological harms. Negative freedom includes the freedom from coercion that unreasonably intrudes upon our free will. In this sense, negative freedom protects us from a demeaning life of fear, terror, or submissiveness that destroys our autonomy and takes control of our own lives away from us.

Many negative freedoms are protected by negative rights in the Fourth, Fifth, Sixth, and Eighth Amendments. If society and government decrease negative freedoms, or in Aristotle's terms create a deficiency of negative freedom, that loss leads to a police state at the social level and abusive controllers at the individual level.



### Freedom Continuum

We must remember that negative freedom is only half of freedom, and though it may be the most necessary part of freedom, it is not the most important form of freedom. Some individuals, like Janis Joplin, conclude that negative freedom is the totality of freedom and that "freedom's just another word for nothing left to lose." Aspiring only to a life of negative

freedom, or a life free from all restraints, should not become the sole aspiration of liberally educated persons. (Taylor, 1979) Yet that danger exists, especially if we do not understand how negative freedom merely frees us to achieve the higher form of freedom achieved in positive freedom.

Positive freedom is freedom for something. If negative freedom creates a sphere around us that protects us from outside harms, then positive freedom involves what we do within that sphere. Many people panic when this occurs: "I'm free, now what do I do?" George Bernard Shaw was speaking of positive freedom when he wrote, "Freedom means responsibility. That is why most men dread it." (Cited in Peter, 1977: 202) A liberal education ought to make us aware of all the subtle mechanisms that we use to escape the demands of positive freedom. We pursue addictions of all kinds in this society not only for the pleasures they provide but also for the escape they offer. Ironic isn't it, how we Americans pride ourselves in fighting for freedom (negative freedom that is), but then turn right around and give it up to so many addictions, and these days, to so many diseases caused by excessive weight and obesity? Therein lies a deep paradox in these polar truths—taking one to an extreme may destroy its opposite. The excessive pursuit of positive freedom may destroy negative freedom. Addictions may seem to enhance our positive freedoms (especially the freedom to pursue pleasure), but they soon lead to loss of negative freedom from their coercive powers.

For those who avoid all of these addictive traps, life becomes more than mere surviving; life becomes "a thriving." In its highest reaches, this positive freedom generates all of the valuable gifts of love, health, trust, beauty, joy, and creativity that elevate living to a state of flourishing. Aristotle called it *eudaimonia*, or that state of virtuous and happy living in which humans flourish and thrive.

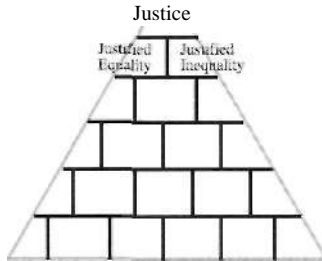
Yet history also tell us that positive freedom taken to an extreme becomes licentiousness, anarchy, and perhaps chaos. Herein lies the difficult balance. How do we keep one person's freedom from destroying another's? Humans tend to intrude on each other's freedom. As the saying goes, we "take liberties," especially with other peoples' liberties. Therefore, freedom must be restrained lest it destroy itself. We seek that difficult, but golden, balance where all of us can achieve maximum liberty compatible with the maximum liberties of all others. Most political debates between the egalitarians, libertarians, and communitarians deal with that question for our complex society. (Nozick, 1974; Williams, 1979; Gutman, 1980; Weinreb, 1984; Daly, 1994; 1998; Cohen, 2000; Barcalow, 2004)

### **Third Set of Opposites: Equality and Inequality**

My third and final keystone concept is that of justice itself. By now I hope you have noticed something that took me years to realize. Keystone concepts are broad words that contain opposite meanings within their generality. The broad term "worth" can mean inherent or useful worth, and the

term "freedom" can mean negative or positive freedom. Perhaps a popular example from the movie, *My Big Fat Greek Wedding* will help. In the movie, two people from very different cultural traditions are getting married. Tension exists between the two cultures throughout the movie. At the wedding banquet, the father of the bride notes that the American family's name means "apple" in Greek, while the Greek's family name means "oranges." To ease the tension, he then exclaims: "Though you are apples, and we are oranges, in the end we are all fruits!" What's the point? Many keystone concepts in our language hide opposite meanings under their general cloak. For example, the term "color" includes black and white; the term "distance" includes near and far; and the term "weight" includes light weights and heavy weights. Most importantly, note how we avoid polarities by advancing up to more general terms. My thesis suggests that these general words, like worth, freedom, and justice, are the "majestic generalities" that we use to eliminate polar differences and seek unity of purpose. Yet in practical life, tough decisions must be made, and if the devil is in the details, the devil is also in the dualities.

## Keystone Concepts




Does the capstone concept of justice contain two opposing meanings? Let me ask you, does justice require that we treat other persons equally? You may answer, "Of course." Next, let me ask, does justice require that we treat other persons unequally? Many of my students believe that justice requires equality but not inequality. By now you should surmise that justice requires both equal and unequal treatment at different times and in different ways. Aristotle explains why justice requires equality at times and inequality at other times. In his famous definition of justice, Aristotle defines justice as equal treatment of equals, and unequal treatment of unequals. (Aristotle, 1991: 1280 ff.) This definition seems simple enough, but it contains enormous complexities. In order to illustrate this complexity, I developed a 2x2 that quickly illustrates the core intricacies. I should note that I have found this 2x2 nowhere in the justice literature, yet I hope you understand its common sense and necessity by the time I finish tonight.

*Aristotle*: "JUSTICE is equal treatment of equals,  
and unequal treatment of unequals."

INJUSTICE is equal treatment of unequals,  
and unequal treatment of equals.

		<b>Persons</b>	
		Equal Persons	Unequal Persons
<b>Treatment</b>	Equal Treatment	Equal Treatment of Equal Persons <b>JUSTICE</b> "Justified Equality"	Equal Treatment of Unequal Persons <b>INJUSTICE</b> "Unjustified Equality"
	Unequal Treatment	Unequal Treatment of Equal Persons <b>INJUSTICE</b> "Unjustified Inequality"	Unequal Treatment of Unequal Persons <b>JUSTICE</b> "Justified Inequality"



First, as slide 17 illustrates, Aristotle's definition of justice contains the two central concepts of persons and treatment. Second, we know that all persons are equal in some ways, such as in their inherent worth, and unequal in other ways, such as in their useful worth. Based on these relevant equalities and inequalities, we treat persons equally and unequally. Now let us work our way through all four possibilities, because to omit one or two of the four possibilities is to omit part of truth itself.

**Justified Equality: Justice is equal treatment of equals.** We start with the most recognizable of the four possibilities—justified equality, or justice as the equal treatment of equal persons. Last week, we celebrated Martin Luther King's life that was dedicated to bringing equality between the races. Equal treatment of persons from different races may be what most people think of as justified equality. Yet the concept applies in all decisions that require comparing two or more persons. Since we are all involved in academia, I will use a professor's decision on grades as an easy first example in each of the four areas represented in this slide. If two students turn in a research paper that deserves a grade of A, and both get A grades, then justified equality exists. In criminal justice, if two offenders commit a similar crime and receive a similar punishment, then we may claim that justified equality occurs. In formal jargon, justice results when those similarly situated receive similar treatment.

But these are the simple examples. Let me give you a more complex example. Two drivers, each with an illegal blood alcohol level of .12, veer off the road and kill an innocent pedestrian. Let us assume that both are guilty of vehicular homicide, and the standard punishment for this offense is two years in prison. Do we treat them equally because they engaged in the same crime of vehicular homicide that produced the same result of

another person's death? Retributionists and just desert theorists argue that justified equality occurs when we give these two drunk drivers the same punishment. What do you think? Does it matter if one driver is 55-years of age and owns a local business? Does it matter that she employs 30 residents in the small town where she lives? Does it matter that she has never committed any prior offenses? Does it matter that the accident occurred while she was returning from the wedding of her only child, at which she unwittingly drank too much alcohol while socializing with her family and friends at the wedding? Does it matter that no deterrent value will result because this wedding of an only child is a unique celebration and she most likely will never commit the offense again?

Now let us look at the second driver. Does it matter that he is a young, unmarried, and unemployed worker who has caused two prior accidents due to his drinking? Does it matter that he killed the pedestrian while driving home from the bar where he had been drinking all day? Should we still treat the two drunk drivers equally and give them the same punishment of two years in prison? I am a member of MADD (Mothers Against Drunk Driving) and their answer seems to be affirmative. But I ask you, at what point does justified equality pass over a line into the second possibility—justified inequality, or justice as unequal treatment of unequal persons?

**Justified Inequality: Justice is unequal treatment of unequals.** I think that most of us also understand the common sense in justified inequality. Again I will use grades as the first easy example. If one student turns in an A paper and another student turns in a C paper, they have produced unequal papers and justified inequality occurs if they receive unequal grades. The formal and legal jargon for justified inequality is "dissimilar treatment for those dissimilarly situated." That seems to be common sense. Yet in the example of two drunk drivers, are we justified in treating them unequally even though they caused equal harm, namely the death of an innocent pedestrian? When we determine inequality, should we look only at the harm they created in the past (retribution), or should we also try to predict the harm they may cause in the future (deterrence). The harm caused by the two drivers is equal, but the risk of harm they may cause in the future seems very unequal. The younger male is far more likely to cause future harm with his drinking than the 55-year-old female, who may in fact create much good if she is allowed to remain free to operate her business for her 30 employees. Clearly, the factors we use to define equal and unequal determine the outcome, and therefore determine the meaning of justice itself.

Next, let us look at the third and fourth possibilities that occur quite often in the real world, but often have no name. I want to give you a name for them tonight.

**Unjustified Equality: Injustice is equal treatment of unequals.** Injustice occurs if unequals are treated equally; I refer to this as "unjustified

equality." There are times when treating two persons equally leads to injustice. Again, let me give you an easy example from grading. If one student turns in an A-level paper and another a C-level paper, and if the professor gives both students an A-grade, then unjustified equality has occurred. (Some also call this "grade inflation" but that is not my topic tonight!) In criminal justice, if one offender commits a more serious crime than another, and both receive the same punishment, unjustified equality may have occurred.

**Unjustified Inequality: Injustice is unequal treatment of equals.**

The fourth possibility in my 2x2 is that of unjustified inequality. The terms "unjustified inequality" contain a double negative and we know that double negatives are doubly difficult to understand. Yet we fit all forms of racist, sexist, and other invidious discriminations under this concept.

Unjustified inequality occurs when two equal persons are treated unequally. In formal jargon, unjustified inequality is dissimilar treatment of those similarly situated. This is the injustice that we are referring to when we talk about discrimination on the basis of race, gender, disability, and so on. But do not limit it only to those types of injustice. Unjustified inequality occurs in many small decisions of daily life too. In grading, for example, if two students turn in an A-level paper, and if the first student receives an A grade and the second student receives a C grade, then the second student could claim that unjustified inequality occurred. If the second receives a C grade because he is black, then it is racially based unjustified inequality.

Now that you have an understanding of all four possibilities, let me give you some logical mind twisters. If there are times when equal treatment of equals produces justice, there are also times when equal treatment of unequals produces injustice. Thus, if two persons possess unequal amounts of a relevant quality, then it is unjust to treat them equally. Likewise, if there are times when unequal treatment of unequals produces justice, there are also times when unequal treatment of equals produces injustice. Thus, if two persons possess equal amounts of a relevant quality, then it may be unjust to treat them unequally. Unjustified equality is the negative opposite of justified equality, and justified equality is the positive opposite of justified inequality. Hope I didn't lose you there!

*If you understand these logical mind twisters, you will now understand an important point that the justice literature often leaves unspoken—it is important to know that all four possibilities are separate and distinct from each other. The form of justice that is equal treatment of equals differs from the justice that occurs when we treat unequals unequally. Likewise, the form of injustice that is unequal treatment of equals differs from the injustice that occurs when we treat equals unequally. The two forms of justice and the two forms of injustice should not only be distinguished, but also should be recognized as two separate forms of justice and injustice. We should be able to label all four with the accurate label wherever they occur,*

and I believe all four occur in many forms under many names in many disciplines. Yet I have not found this common-sense 2x2 chart, nor these four terms, described and explained all together by one author anywhere in the justice literature. I have read many authors and heard many speakers talk about one or two of these four possibilities, but never all four together.

Now, I find this 2x2 to be very abstract and I suspect that you do too. When I present it in class, the glaze in students' eyes thickens! Therefore, I developed the following exercise to demonstrate how to apply this 2x2 to equality issues. This exercise generates lively debates in all of my classes. I start by dividing the class into four groups and giving each group one of the following four questions and examples. Each group must develop further examples that are presented to the entire class for discussion.

Q. In what ways are men and women equal, and justice occurs if we treat them equally? We are seeking **justified equality** with this question.

Example: Both males and females enjoy and benefit from sports; therefore, Title IX brings justified equality by demanding equality, or proportionality, in male and female sports.

Q. In what ways are men and women unequal, and justice occurs if we treat them unequally? We are seeking **justified inequality** with this question, and it obviously involves many politically sensitive issues.

Example: Only males get prostate cancer and the law allows males to use sick leave when they miss work due to prostate cancer. Only females get pregnant, and the law allows females to use sick leave when they miss work due to childbirth. The unequal amounts of sick leave required for prostate cancer and child birth is a form of justified inequality based upon gender differences.

Q. In what ways are men and women unequal, and injustice occurs if we treat them equally? We are probing **unjustified equality** with this question, and it also involves many politically sensitive issues.

Example: Anyone who has seen the long line often extending 25 yards outside the women's restroom in the dome understands that putting an equal number of stalls in the women's and men's restroom is not justice. This form of equal treatment is really unjustified equality, and most sports facilities are beginning to recognize the stupidity of this form of simplistic equality. Congress may address it with a Restroom Equity Act.

Q. In what ways are males and females equal, and injustice occurs if we treat them unequally? We are probing **unjustified inequality** with this question.

Example: Most all of history!

(Please note that all four concepts can be applied to race, age, disability, religious and other discrimination issues by simply changing the terms "males and females" to the classifications relevant to that discrimination issue.)

After the student discussions, I end this exercise by asking a series of questions. If we are not aware of all four concepts, and if we do not use them to make decisions, are we not likely to be using half-truths, or even quarter-truths, to resolve equality issues? Is not understanding all four concepts—justified equality, justified inequality, unjustified equality, and unjustified inequality—the first step toward a complete understanding of justice? Do you now understand the complexity involved in equality and justice issues?

Justified equality and inequality ought to be our abiding aspiration, yet many unjustified equalities and inequalities remain our enduring reality.

### **Distributive Justice: Its Relation to Equality and Inequality**

I have stated that justice requires equal treatment of equal persons, and unequal treatment of unequal persons. My final question asks: *how* do we determine if two persons are equal, and *how* do we determine if two persons are unequal in order to do justice? These are the questions of distributive justice that have preoccupied us for centuries, from Plato to John Rawls, and continue to preoccupy our debates today. Hinman (2003: 249) notes that "(m)uch of the work done in the last fifty years has centered on the question of distributive justice" involving the central problem of "the distribution of inequalities." In my research, I have probed applications of major principles that we use to justly distribute inequalities in society. (Spader 1989, 1991, 1997, 2003)

These ten principles are also very abstract; therefore, I developed another exercise to make them more concrete for my students. I invite you to join in the following exercise. Assume that you are given a million dollars to distribute to ten strangers who have already been randomly selected. Second, assume that you must distribute the million dollars in a just fashion. In other words, you must seek distributive justice and give reasons to explain why your distribution is just. What criteria, standards, or principles will you use to achieve a just result in your distribution of the million dollars to ten strangers? In short, finish this sentence: "I will give it to each of the ten persons according to his or her\_\_\_\_\_."

The next slide presents ten separate principles of distributive justice that theorists have promoted throughout history. You could have used one,

or any combination of these ten principles, to seek distributive justice in your decision. I have never seen all ten listed together in one place in the justice literature and to my knowledge, I was the first to apply distributive justice principles to the field of criminal justice. (Spader, 1989) I believe it is important to know that all ten exist before making important decisions.

### Distributive Justice

- The Egalitarian Principle.....equality
- The Meritarian Principle.....merit
- The Puritanical Principle..... effort
- The Ability Principle.....ability
- The Consequential Principle.... achievement
- The Socialist Principle.....need
- The Aristocratic Principle.....rank or status
- The Laissez-Faire Principle.... supply & demand
- The Legalist Principle.....legal entitlement
- The Utilitarian Principle.....greatest good

My purpose here is merely to introduce you to these ten principles. I can only briefly describe each principle in this lecture tonight; however, I should mention that many theorists have written tomes arguing the superiority of one, or some combination, of these principles in a just society.

• **The egalitarian principle: To each equally.**

The first principle states that absent any reasons to the contrary, we should treat all human beings as equally as possible. Known as the egalitarian principle, advocates of this principle believe that we should treat all others equally given our equal inherent worth. Egalitarians argue that we cannot justly distribute many inequalities because the application of the following nine abstract principles is too arbitrary and too discretionary. The egalitarian principle focuses on our commonality, whereas the other nine principles focus on our differences. Radical egalitarians believe that using our differences to justify unequal distribution of society's wealth ultimately leads to unfair and excessive inequalities. (Nielsen, 1982)

Did you decide to give \$100,000 to each of the ten persons? If so, you likely used some form of the egalitarian principle. All people, you may argue, possess equal intrinsic worth that demands equal respect for our common humanity. At the very least, the egalitarian canon holds that goods and punishments, benefits and burdens, utilities and disutilities ought to be distributed equally in default of reasons to the contrary. Though not so prevalent today, many theorists of the past have sought more egalitarian societies. (Tawny, 1931; Bedau, 1971; Schaefer, 1979; Gutmann, 1980; Nielsen, 1982; Norman, 1987; Sen, 1987; Roemer, 1996, 1998)

The danger with an egalitarian approach that gives \$100,000 to each of the ten equally, besides being a possible lazy form of escapism from a diffi-

cult decision, is that good reasons almost always exist to treat persons unequally. Suppose you later discovered that one of the ten persons is a scientist who has just discovered and freely disclosed to the public a complete cure for AIDS, another a young black who worked her way out of extreme poverty and got accepted into Harvard, another an old surgeon who *alone* possesses the ability to operate on a rare disease, another an artist who has produced some of the most prized paintings, another a welfare mother with several undernourished children, another a high-ranking general in the military and member of an entire family of highly decorated military officers, another a specialist who possesses unique skills in great demand in our economy, another the sole heir of the insane person who gave you the million dollars just before he died, and the last a scientist who claims he can double the rice production on this planet with the million dollars and thereby prevent the starvation of billions of people. In those nine individuals, you find the nine other reasons not to treat all equally, and thus you find the nine other principles. Let's bring out these nine other principles that we often use to justify treat persons unequally.

- **The meritarian principle: To each according to his or her merit.**

The second principle is the meritarian principle and holds that we ought to treat persons unequally on the basis of their unequal merits. Meritarians may dislike the equalitarian principle because rather than treat all equally when distributing goods, meritarians argue that we ought to treat each person differently on the basis of individual merits. If the principle of equality asserts that humans possess a common inherent equality, the principle of merit asserts that humans possess unequal merit, and in this sense, no two people are alike. The principle of merit provides one reason for justified inequality. If we connect this debate to the two meanings of worth discussed earlier, we can generalize that egalitarians tend to place emphasis on inherent worth, and meritarians on useful worth. Meritarians argue that because humans develop unequal useful worth, we are justified in distributing benefits unequally in proportion to those inequalities.

In *Animal Farm*, George Orwell satirized our claims of equality: "All pigs are born equal, but some pigs are born more equal than others." Social preferences for skin color, body shapes, and even gender certainly do make some "more equal" than others. Persons lucky enough to be born into middle and upper classes gain a "more equal" chance at developing the skills that help them merit more. Though the ideal of equal opportunity professes our commitment, unequal social conditions remains our reality.

Despite these unequal conditions, our society utilizes meritarian principles in many social and commercial settings to distribute wealth to those with great useful worth, and most accept it as a just and fair method of distributing benefits. But what is merit? The next three principles, in my opinion, are more specific forms of the merit principle.

• **The "puritanical" principle: To each according to his or her effort**

Reschler (1966:36) refers to the next principle as the "puritanical" canon espoused by theorists of a Puritan Ethic who believe that God helps those who help themselves, and therefore we should also. Effort defines merit under this principle because those who put in great effort deserve great merit. Perhaps you decided to give the million dollars to some who have pulled themselves up by their bootstraps (e.g., the young black student who worked her way out of poverty and got accepted in Harvard). These persons do it "the old fashioned way; they earned it." If the young black has no money to pay the tuition at Harvard, would you give it to her on the basis of her extraordinary effort? Unlike natural talent, or lucky achievements, effort is the one factor over which an individual has control. Theorists who favor the effort principle argue that justice should not be based on external factors over which we have no control, but rather on the one quality that all free beings can control, namely our choice to put forth more or less effort.

Critics of the effort principle argue that there is little justice in distributing rewards to misguided efforts, particularly if they produce no fruits from all their effort. Parents may witness a fly ball bounce out of their child's glove and praise it with a shout of "good effort" or "way to hustle." Workaholics may make effort an end in itself, but a just society, some argue, demands some fruit of all this effort. Two of the fruits are in the next two principles.

• **The ability principle: To each according to his or her abilities or talents**

The ability principle holds that justice consists in distributing more benefits to those who possess the most ability. Abilities are of two kinds: natural and acquired. Natural talents are gifts of nature; acquired talents are the results of effort, experience, and education. We acquire freedom as we acquire abilities because abilities give us so many more options. Education nurtures nature's talents into acquired talents. Advocates of the ability principle argue that justice involves rewarding the talents that result from nature and nurture.

A major objection to the ability principle comes from theorists like John Rawls (1970) who believe that it is unjust to allocate rewards solely on the basis of natural talents that are the "gifts of God." These theorists also question whether it is just to reward acquired abilities that come from unequal access to better education. Birth into a middle or upper class family, with all of the benefits that accrue from it, is out of a person's control, whereas good-faith effort and hard work are more meritorious because they are within the control of each individual. Justice, they argue, should be based on the exercise of our free will, not on the lottery of birth or genes. John Rawls was acutely aware that luck was not deserved—it was simply luck. Therefore, he was very sensitive in his theory of justice to the

issue of luck, and he tried to create a just society in which luck played a minor role. One way was to create a more equal society that did not unduly reward luck; thus Rawlsian theories tend to be known as more egalitarian theories in contrast to Nozick's more libertarian theory. (Rawls, 1971; Nozick, 1974)

A second major objection to the ability principle comes from the next principle. Natural and acquired abilities are too subjective to measure, and abilities should not be rewarded until they display themselves in concrete achievements.

- **The consequentialist principle: To each according to his or her achievements.**

The consequentialist principle holds that justice consists in distributing rewards (or punishments) on the basis of the outcome of a person's actions. Consequentialists believe that the measure of distributive justice should not be an internal, invisible subjective talent. Rather external, measurable achievements represent the most just measure on which to base distributions of benefits. Consequentialists also focus on the useful worth of individuals, but usefulness is defined by the goods produced. The bottom line is results, and an external product rather than an internal talent is the most measurable way to achieve justice. Good intentions alone are not sufficient; they must result in services rendered, goods produced, or achievements recorded. Our society utilizes this principle in many areas, such as "publish or perish" in academia, commissions for sales in businesses, and sports salaries for those producing more points. The Board of Regents wants to apply this principle to liberal education when it asks us to list the economic development that results from our teaching, research, and service, or when they ask what have we done in the past year that benefits Sioux Falls.

Serious objections also exist to the consequentialist principle. For example, two persons who are shoveling coal may contribute equal effort and display equal talent at shoveling, but the one with twice the biological bulk may be capable of handling a shovel twice as big, thus producing twice the result and getting twice the reward. Why should biological bulk, rather than effort and talent, be the basis for justice? Coming close to the Thrasymachian view that "might makes right," the consequentialist principle may need to be limited by some of the other principles, such as the next three principles.

- **The socialist principle: To each according to his or her needs.**

The socialist principle holds that justice occurs when benefits are distributed in proportion to the different needs of different people. If one of the ten strangers is a welfare mother with several undernourished children, would you give her some or all of the million dollars on the basis of her great need? This principle differs from the merit, effort, talent, and

consequentialist principles because persons with needs may not be meritorious persons, or even persons who put in much effort. We say they need it, not they deserve it. Students have appealed to me for a higher grade on the basis that they need it to keep their scholarship, get into a sorority, or to stay in college. I usually respond that need, in my opinion, is not a just principle on which to distribute the benefit of a higher grade.

You have probably realized by now that most decision makers and most theorists combine two or more of these principles, as Marx did: "From each according to his ability, to each according to his needs." Competitive, capitalistic societies prefer: "From each according to his ability, to each according to his productivity." What combination of principles determine how you distribute grades? As part of this class exercise, I usually ask my students to tell me which combination of these ten principles I should use to determine student grades. We usually conclude as follows: "From each according to his or her abilities, to each according to her or his achievement and effort." My next question, then, is how do I measure effort? My primary principle is achievement as measured by students' exams, papers, and external expressions of their knowledge and skills. However, I also use effort as a secondary principle. I like to encourage hard working students, and after many experiments, I have developed an objective method of measuring effort that students believe is fair and that they encourage me to continue using.

Critics of the socialist principle argue that needs are too expansive. Like wants and desires, needs soon become limitless. Thus, the major difficulty is distinguishing between real needs and felt needs. Poorer societies may limit real needs to the bare essentials of survival. In more wealthy societies, the safety net may be raised to cover higher level needs, such as the need for education, though education may also be the basis for developing talent, merit and productivity. Critics believe that socialists fail to understand human nature because humans are fundamentally selfish and competitive, yet the socialist principle requires fundamentally unselfish and cooperative behavior. Therefore, critics argue that the most basic need of humans is to be challenged with incentives, not demeaned with need-based handouts.

Despite these criticisms, Catholic theologians and socialist countries believe that just societies ought to appeal to our higher natures, and they call for an economic bill of rights in addition to the political Bill of Rights that our Founders attached in the first ten amendments of our Constitution. Advocates of the need principle believe it is important to meet physical needs for food and shelter first; our society, however, believes it is more important to protect freedoms and incentives that allow individuals to fulfill their own needs. Therefore, unlike socialist societies with certain economic rights guaranteed by the state, we grant political rights guaranteed by the Bill of Rights. Socialists criticize us and ask: If you are a hungry and

homeless person, do you prefer the right to free speech to express your views, or the right to food to fill your growling stomach? In response to these criticisms, our society supplements political rights with economic rights under entitlement statutes. The debate continues with egalitarians promoting more economic rights, and libertarians of the liberal tradition promoting more political rights.

- **The aristocratic principle: To each according to his or her rank or status**

This principle holds that justice occurs when we distribute benefits according to rank and status. The aristocratic principle has very few advocates in our democratic society with our strong egalitarian strains. To determine a person's just share on the bases of castes, family background, nobility, or other fixed status runs counter to equal opportunity and upward mobility incentives provided by the effort, merit, and achievement principles. Yet all organizations need some ranking system, if for no other reason than to determine who makes the final decision in difficult allocations. Legal systems rank by trial, appellate, and Supreme Court judge-ships; universities rank by assistant, associate, full, and emeritus professorships; and the military by several ranking levels. These rankings, however, tend to find their basis in other principles, such as merit, effort, and achievements rather than fixed castes, aristocracies, or privileged classes.

- **The laissez-faire principle: To each according to supply and demand**

The laissez-faire principle holds that it is just to give greater benefits to persons who possess skills that are in greater demand. The invisible hand of the free marketplace determines the just distribution of goods and services. When socially desirable skills and products are in short supply, the resulting demand drives up the prices that in turn operate as an incentive to induce individuals to incur the expenses, risks, and inconvenience needed to meet the demand.

- **The legality principle: To each according to his or her legal entitlement**

This principle holds that justice consists in distributing benefits and burdens under standards fixed by the law. The law determines entitlements, and the law determines how rewards and punishments will be distributed.

The legality principle is best illustrated in the laws of inheritance. When parents die without a will, their children often inherit their wealth under the laws of inheritance. When wealthy children of wealthy parents inherit even more wealth under the laws of inheritance, there is no outcry that the result is unjust even though others may claim they need it more (the socialist principle) or deserve it more (the meritarian principle). The laws of inheritance avoid any conflicts by fixing the standard in law, and the standard is one of blood relationship to the decedent (a form of the status principle).

You are aware of the many ways that our society, one of the most law-bound societies in the world, seeks justice under the rule of law. The legal-

ity principle differs from all of the previous principles in that the decision maker is less free to apply the personally preferred principle but must seek to apply the legally determined principle. Law, not principles of justice, determines what is the just distribution. Any experienced adult knows, however, that the law often gives enormous amounts of discretion to those making important decisions. In the old days, when land meant wealth, we would say that nine-tenths of the law is possession, meaning that the one with possession often got his way. Today, nine-tenths of the law is discretion (not possession), and enormous pockets of discretion in our laws allow decision makers to utilize one, or any combination of these nine principles, when they make decisions under discretionary laws. (Davis, 1969) Therefore, those in powerful positions should know these principles and know which principles should be used for important decisions.

• **The utilitarian principle: To each according to the greatest good for the greatest number**

The utilitarian principle holds that we obtain justice by distributing benefits and burdens in order to produce the greatest good for the greatest number of people. If one of the ten persons were a scientist who puts forth a good case that she can double the rice production and prevent the starvation of billions of people, would you give the entire million dollars to her in the hopes that her future research would benefit many more people? Would you give it all to her, and nothing to any of the other nine individuals, thus distributing the million dollars in a very unequal fashion in hopes of obtaining the greatest good for the greatest number of people.

When using this principle, as well as the equality principle, decision makers tend to focus on the interest of the group; and when applying the other principles, they tend to focus on the characteristics of the individuals. Of course, what is good for the individual is often good for the group, and the principles complement each other, as John Stuart Mill brilliantly argued in his classic essays on liberty and utilitarianism. (Mill: 1959, 1966) However, the utilitarian principle can place the interests of the many above the interests of one, as all Star Track fans know. Therein lies the major weakness of the utilitarian principle: it ultimately sacrifices individuals to the collective interest. The founders of our country saw this danger only in hindsight. First they created and ratified the Constitution in 1787 that gave the new federal government more power to control those unruly commoners, but then two years later added the Bill of Rights to protect individuals from the "tyranny of the majority." Even still, they ignored the rights of slaves and women.

Though utilitarian principles permeate economics, ethics, business, law, and many other parts of society, they must be limited by rights lest the tyranny of majorities destroy unpopular minorities, or lest majoritarian juggernauts crush unpopular individuals. John Rawls (1970) said it best:

"Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override." In his classic defense of more individual rights, entitled *Taking Rights Seriously*, Ronald Dworkin distinguished between strong individual rights that could "trump" the power of the majority, and weak rights that the majoritarian juggernaut often rolls over with ease.

These are ten major principles of distributive justice. Did you use one, two, or a number of these to distribute your million dollars? Now that you are aware of all ten, would you change your decision? If you limit yourself to only one principle, you are a monist. If you use two, you might be called a dualist. If you use more than two, then justice theorists might refer to you as a pluralist or integrationist. Most theorists today tend to be pluralists and incorporate many of these principles, giving different levels of priority to different principles in different spheres of society.

If we are seeking justice in our society, should we not be aware of all ten of these principles? (Deutsch, 1985) Do we not use all ten at differing times to make important decisions about whether we should treat persons equally or unequally?

#### Distributive Justice and Equality/Inequality

<p><b>Equal Treatment of Equal Persons</b></p> <p>Equal treatment justified when two persons demonstrate:</p> <ul style="list-style-type: none"> <li>•equal merit, or</li> <li>•equal achievement, or</li> <li>•equal need, or</li> <li>•equal rank, or</li> <li>•equal rights, and so on.</li> </ul>	<p><b>Equal Treatment of Unequal Persons</b></p> <p>Equal treatment not justified when two person demonstrate:</p> <ul style="list-style-type: none"> <li>•unequal merit,</li> <li>•unequal achievement,</li> <li>•unequal need,</li> <li>•unequal rank,</li> <li>•unequal rights, and so on.</li> </ul>
<p><b>Unequal Treatment of Equal Persons</b></p> <p>Injustice occurs when equal persons treated unequally due to:</p> <ul style="list-style-type: none"> <li>•race, or color of skin,</li> <li>•gender,</li> <li>•national origin,</li> <li>•disability,</li> <li>•or other irrelevant factors.</li> </ul>	<p><b>Unequal Treatment of Unequal Persons</b></p> <p>Unequal treatment justified when two persons demonstrate:</p> <ul style="list-style-type: none"> <li>•unequal merit, or</li> <li>•unequal achievement, or</li> <li>•unequal need, or</li> <li>•unequal rights, or</li> <li>•unequal "useful worth."</li> </ul>



I believe that we frequently use these principles, and this slide connects the principles to my prior discussion that showed four possibilities involving equal and unequal treatment of persons. For example, if we look at the upper left box, does not justice require equal treatment if two persons possess equal merit, effort, ability, need, rank, or legal rights, depending on which principles we use in that decision? Look at the lower right box. If two persons possess unequal amounts of merit, effort, ability, need, rank, or

legal rights, do we not believe that justice allows us to treat them unequally?

The upper right represents one form of injustice, and the lower left represents the injustice that most persons perceive when we wrongly treat persons unequally by using irrelevant qualities, such as their skin color, gender, national origin, disabilities, age, and so on.

The next slide attempts to illustrate the thesis of Michael Walzer's book *Spheres of Justice*.

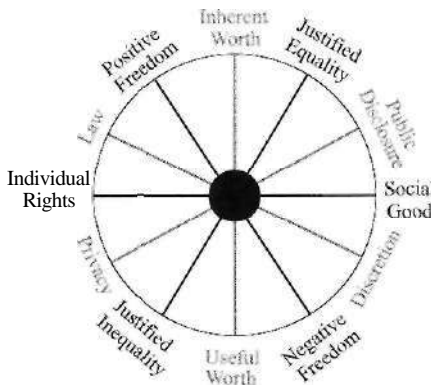


In this book he demonstrates how we use distributive principles in different spheres of our lives. One principle may be primary, and others secondary, in different spheres. Notice how they overlap in many areas; for example, merit in one sphere may be defined the same as achievement in another. Of course, the intermingling is often far more subtle and complex than this slide portrays.

**Summary and Conclusions**

I will sum up with four points that I have tried to illustrate here tonight.

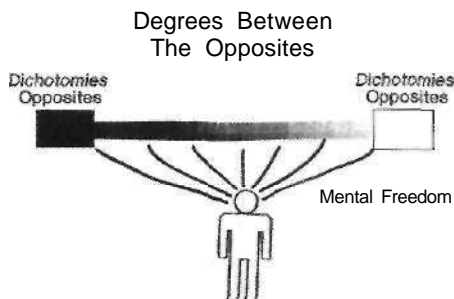
First, as Siddartha, Bohr, Cardozo and others hint, we may not be able to express wisdom in words because every truth expressed in words contains only half the truth, and we must look to find the opposite truth before we can possess the complete truth that leads to wisdom.



Perhaps this wheel of justice can help us visualize the main spokes in a justice system, with each spoke putting tension on the central hub from opposing directions. After creating this wheel image, I thought of Native American hoops, circles, and councils of elders. Like a Native American circle of elders, perhaps we need a council of elders on major decisions, with one elder positioned at each spoke to represent the core value as we as strive to balance the wheel wisely. Most of us are too narrow-minded and tend to focus on one spoke only, as John Stuart Mill (1966: 63) noted in his classic essay, *On Liberty*: "Truth, in the great practical concerns of life, is so much a question of reconciling and combining opposites, that very few have the minds sufficiently capacious and impartial...to make this reconciliation." Thus, Mill, one of the greatest minds of all times, knew that very few people can reconcile these opposites alone.

Second, keystone concepts like worth, freedom, and justice are very broad and abstract terms. Therefore, they tend to hide opposite truths within them. These opposite truths, or dueling dualities, should not be denied, avoided, or most dangerous of all, reduced to just one. I believe that we must resist our desire for easy certainties and instead seek out all of these opposing truths. The next slide (omitted due to lack of copyright clearance) illustrates the many weights and counterweights Alan Greenspan must consider to balance our economy. Is not balancing our justice system any less complex? Perhaps this slide gives a more accurate picture of how complex any large system can be, and how changing one part of a system will produce changes in all other parts. A good liberal education should introduce us to this complexity. I have dedicated my research toward highlighting all of these dualities, and understanding the need to balance them consciously and carefully.

Third, I have tried to explain why dichotomous truths not only do exist, but also must exist, and why we should be excited about the existence of opposing truths. Dichotomies originate in the creativity of human minds, as the next slide attempts to illustrate.



Human beings possess a unique form of freedom. It is mental freedom. With this productive mental freedom, we continuously create these polar

opposite words. Why do we create so many dichotomies? It took me a long time to realize that dichotomies and polarities represent the human mind at work, and illustrate the genius of the human mind. We are not limited to one answer, in the way bees make a beeline to honey. As the saying goes, "There are three sides to everything: yours, mine, and everything in between." Therefore, our amazingly flexible minds create a whole spectrum of possible answers to our fundamental human issues. As time passes, we tend to label the two ends of that spectrum with dichotomous terms, like black and white on a color spectrum with the many shades of gray in between. In a similar fashion, we create opposite terms for intangible values like private versus public values, individual rights versus social good, negative and positive freedom, equality and inequality. Likewise, as time passes, the opposite poles on these spectrums crystallize into polar opposite words representing opposite truths.

These dichotomous terms then become quick, easy, and efficient ways of referring to fundamentally opposite views on that spectrum of choices. Therein is also their danger. These words are such tiny, puny little sounds and symbols that we should use them with care when we describe enormous realities out there. Polarities are presumptuous. Zuker explains the limited function of conceptual opposites:

Words only *represent (re-present)* something else. They are not real things. They are only symbols...Paradoxes are common...Paradoxes are the places where our rational mind bumps into its own limitations...Opposites such as good-bad, beautiful-ugly, birth-death, and so on are mental structures which we have created. These self-made illusions are the sole cause of paradoxes...Understanding involves passing the barrier of paradox. (1979, 255, 205)

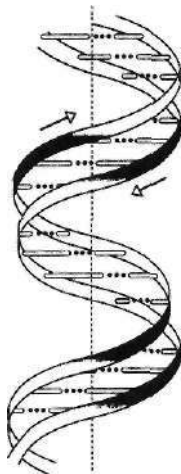
Therefore, we must move beyond the childlike dichotomies and probe their meaning in more depth to seek understanding. Understanding occurs when we see the self-made paradoxes of our linguistic creations. Morris Cohen explains why we must not take these paradoxes too seriously, even when we feel the tension pulling us both ways:

A good deal of the wisdom of life is apt to appear foolishness to a narrow logic. We urge our horse down the hill and yet put the brake on the wheel—clearly a contradictory process to a logic too proud to learn from experience...[T]his humble illustration is a symbol of that measured straining in opposite directions, which is the essence of that homely wisdom that makes life livable.

Siddhartha also understood this homely wisdom based on experience that required a "measured straining in opposite directions." These dueling dualities compete for our attention. Walter Murphy (1986: 26) points out that competing opposites "coexist, sometimes in harmony, often in compe-

tition, and occasionally in conflict." Schumacher (1977) believes not only that we must confront these pairs of opposites but also note the value of the tensions that they create in us: "[E]verywhere society's health depends on the simultaneous pursuit of mutually opposed activities...The pairs of opposites put tension into the world, a tension that sharpens man's sensitivity and increases his awareness." Tension may cause conflict, but we should remember that some conflict can be constructive. (Simmel, 1955; Coser, 1956, 1967; Deutsch, 1969, 1973; Williams, 1979; Spader, 1997) Rollo May notes that "[T]he creative act is an encounter between two poles," and it takes courage to encounter both polarities in order to create new syntheses. (1975: 78) Enduring conflicts require enduring creativity.

Lastly, Aristotle's image of the golden mean may be too static for today's dynamic society. As a bicyclist sways one way, then another, to maintain balance, should we not expect swaying back and forth between opposite values in the same way that society swings back and forth between conservative and liberal values, or the Supreme Court sways back and forth between opposing doctrines? (Kuhn, 1970; Salzburg 1980) Perhaps we need images of pendulum swings, or even my image of a golden zigzag, or these spiraling helices to illustrate this need to move between two polarities.



A bicyclist who won't sway crashes, and a society that won't be vigilant to balance opposing truths may end. For that reason, dichotomies, like democracy, require eternal vigilance, particularly when we are dealing with "these ancient mysteries crying out for understanding."

Thank you again for this opportunity,  
and thank you for your attention.