Fairness as Order: A Grammatical and Etymological Prolegomenon

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Abstract: In *The Sovereignty of Good* Iris Murdoch invites us to consider understanding moral concerns in terms of metaphors – metaphors that 'are not merely peripheral decorations or even useful models, …[but] fundamental forms of our awareness of our condition: metaphors of space, metaphors of movement, metaphors of vision.' In this paper I consider if fairness might be understood in terms of such a metaphor. As possibly providing useful clues to what any underlying metaphor of fairness might be, I begin by noting certain differences between the grammars of 'fair' and 'just', and by describing the etymology of fairness. I then sketch an account of fairness in terms of orderliness that is consistent with these linguistic features. The account allows us to distinguish injustice and unfairness, and opens up the possibility of justice and fairness mattering for very different reasons.

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If frequency of use and early acquisition are any guides to significance, fairness must be one of our more important moral concepts. Complaints of unfairness are ubiquitous, and the obsession of children for fairness is a notorious feature of family life. Yet the concept of fairness receives little attention from moral philosophers – certainly nothing like that lavished on justice.

This neglect may seem deserved – and for two reasons. First, it may be said that fairness is concerned only with procedures and interpersonal comparisons, and that neither of these two areas raise any deep philosophical issues. Thus there may seem no need to analyze the concept of fairness. Second, it may be said that fairness is a part of justice, and hence issues of fairness are addressed (if only implicitly) by accounts of justice. Again, then, discussion of fairness is unnecessary.

But these are poor reasons for not analyzing fairness. Fairness is *not* restricted to the assessment of procedures and interpersonal comparisons. There is something unfair about punishing people for what they have not done, even if the punishment is preceded by a fair trial, and even if such treatment is meted out to everyone. Nor ought we to think of fairness as a mere part of justice. Unfairness is broader than injustice – or, at least, there can be arrangements that are unfair but not unjust. Consider the parable of the labourers in the vineyard. It is reasonable to say that the vineyard owner's actions were not unjust. No one was paid less than the rate agreed (and that rate was not exploitative – or so we may suppose). Nevertheless the labourers who worked all day had a point when they complained at receiving the same payment as those who started later. (Were the complaint to have no merit the story would have no point and would not have been worth telling.) The labourers' complaint is naturally expressed in terms of fairness: there is something unfair about my working harder than you for the same wage. It seems, then, that the vineyard owner acted unfairly but not unjustly. But if there can be unfairness without injustice, fairness cannot be a mere part of justice, and we ought not to assume that issues of fairness will be looked after by discussions of justice.

So what is fairness? Consider the following observation of Iris Murdoch:

> The development of consciousness in human beings is inseparably connected with the use of metaphor. Metaphors are not merely peripheral decorations or even useful models, they are fundamental forms of our awareness of our condition: metaphors of space, metaphors of movement, metaphors of vision. ... it seems to me impossible to discuss certain kinds of concepts without resort to metaphor, since the concepts are themselves deeply metaphorical and cannot be analysed into non-metaphorical components without a loss of substance. …[1]

If Murdoch is right, it will not be surprising if a *moral* concept is 'deeply metaphorical'. In highlighting metaphors of space, movement, and vision Murdoch suggests that the role of 'deep' metaphors is to facilitate the expansion of our consciousness from the spatial, material, and empirical to more abstract realms. But moral thought is abstract by its nature. Thus we may reasonably expect moral concepts to employ metaphors of the kinds to which she refers. And indeed such metaphors are a feature of moral thinking. Metaphors of space are employed when we talk of what we owe to the *higher* animals, of our de*base*ment, and of our fundamental equality putting us all on the same *level*. Ideas of integrity and dependability invoke notions of solidity and of immobility. And for metaphors of vision we may look to the ideas of regard and respect. We might wonder if Murdoch goes too far in suggesting such metaphors cannot be analysed away without loss of

[1] Iris Murdoch, *The Sovereignty of Good* (London, Routledge and Kegan Paul, 1970) p. 77-8.

substance. But even if she does, identifying the metaphor that has featured in the development of a moral concept seems likely to increase our understanding of that concept. The metaphor may be a useful guide to what still lies at the core of a particular moral concept, or, if the concept has developed away from its original core, to its life history. (Of course a concept may change and develop over time to such a degree that it loses touch with its original core. But where this is so, it is worth asking whether the concept still makes sense. Identifying original metaphors will suggest when this is a particularly pertinent question to ask.)

If fairness is 'deeply metaphorical', how is the metaphor to be discerned? Etymology may offer some clues. The etymologies of a number of moral terms suggest that particular visual or physical metaphors have featured in their development: from blackening we have denigration, from crooked depravity. Attention to grammar may also help. Subtleties of grammar may suggest that a concept has particular features – and those features may set limits on what the underlying metaphor may be.

I shall begin, then, by looking at some aspects of 'fair''s grammar – focusing in particular on differences between the grammars of 'fair' and 'just'. I will then turn to fair's etymology. In proceeding in this way I do not mean to suggest that etymology, or grammatical differences, are guaranteed to be of philosophical interest. My assumption is only that they may be suggestive, and may play a role (albeit alongside other considerations) in developing an understanding of fairness – an understanding informed by subtle distinctions and significant connections.

In the final section of the paper I outline an account of fairness suggested by fair's etymology and consistent with its grammar. This account understands fairness in terms of a metaphor of order. Unfairness is a type of disorderliness. Such an understanding will allow us to distinguish between justice and fairness, while at the same time explaining their proximity. It will also suggest that injustice *qua* injustice and unfairness *qua* unfairness matter for very different reasons.

1. The Contrasting Grammars of 'Fair' and 'Just'

In considering the grammar of 'fair' I will take a comparative approach, noting certain contrasts between the grammars of 'fair' and 'just'. A good way to achieve a more subtle understanding of any concept is to ask how it differs from its near neighbours – and there can be no doubt that justice is a neighbour of fairness.

The first contrast I want to note concerns the expression of comparatives, superlatives, and degrees. In comparing the fairness of different policies we might say that 'Policy A would be fairer than Policy B, but Policy C would be the fairest of the three'. In expressing degrees of fairness we might use any of a range of expressions: 'entirely fair', 'quite fair', 'a bit unfair', and 'very unfair'. All this seems unremarkable. But now consider justice.

Suppose we must choose between a number of possible courses of action, none of which is free from injustice. Such choices are often difficult: somehow we must judge the relative seriousness of the injustices, and we might be unsure how to set

about this task. But suppose we reach a judgment. How is that judgment best expressed? There is a notable tendency to express comparisons and degrees in terms of *injustice* rather than justice – and even when this makes for a more convoluted expression. The better arrangement is said to be 'less unjust' rather than 'more just' (or 'juster'); the best arrangement is the one that is the least unjust, rather than the most just. Arrangements may be described as 'grossly unjust' or as inflicting only 'minor injustice'. But there is an awkwardness about 'quite just' and 'very just', and a certain redundancy to 'entirely just'. 'Entirely just' is just 'just'.

There is, then, a contrast between justice and fairness in the expression of comparatives, superlatives, and degrees. As regards fairness, both 'fair' and 'unfair' are used to express degrees, comparatives, and superlatives. There is nothing odd about 'fairer' and 'fairest'. Faced with a tragic choice we may say that a particular arrangement is the fairest in the circumstances. But justice is different. Comparisons and degrees are happily expressed only in terms of *in*justice.

This focus on injustice suggests that injustice has a primacy over justice – that we should think of justice as the absence of injustice, and understand justice by understanding injustice – rather than vice versa. Injustice is the fundamental concept; justice is the derivative. Mill seems to be making this point when he says: '… justice, like many other moral attributes, is best defined by its opposite …'.[2] But even if Mill is right to say that the primacy of the negative applies with regard to many moral attributes, it seems not to apply in the case of fairness – at least if our

[2] John Stuart Mill, *Utilitarianism*, Ch. 5.

practice when expressing comparisons and degrees is any guide. We do not eschew ‘fairer’ and ‘fairest’.

What explains why injustice wears the trousers, when fair and unfair live together on equal terms? Why should injustice be deeper than justice, while fair and unfair are on the same level? An explanation is suggested by a second grammatical contrast between justice and fairness – a difference concerning particularity.

There is such a thing as *an* injustice. Given enough time and effort one might, in principle at least, identify and count the injustices one suffers. I might say that I have suffered four injustices this week, three minor ones on Tuesday, and a more serious one on Thursday. Injustice – or some of it, at least – has a particularity.

Fairness is different. We talk of injustices, but not of ‘unfairnesses’. We cannot count unfairnesses; I cannot say I suffered two unfairnesses on Tuesday. Unfairness, as far as its grammar is concerned, lacks the particularity of injustice. This is not to say that we cannot individuate when talking of unfairness. I can say that I have been treated unfairly five times this week – very unfairly on each occasion. But such particularity is introduced by talking of occasions, periods, treatments, or whatever – particulars that then have unfairness associated with them. In contrast to injustice, particularity does not come as part of unfairness itself.

This difference between injustice and unfairness opens up the possibility of accounting for injustice’s priority over justice, and unfairness’s lack of priority over fairness, in terms of the presence and absence of particularity. We might give the

following ‘atomistic’ account of justice. At root there are injustices. (There are no ‘justices’.) Where there are injustices, there is injustice. The more injustices there are, and the more serious they are, the more injustice there is. (Aggregating and comparing these injustices is not plain sailing – hence our frequent uncertainty as to which of two states of affairs is the more unjust.) Justice is the absence of injustice, that is, the state where there are no injustices. (Hence the redundancy of ‘entirely just’.) Thus a concern for justice is a concern to avoid injustices. Given this, in making comparisons we must focus on injustice.

Fairness is different. If unfairness lacks the atomicity of injustice – if unfairness is not constituted by ‘unfairnesses’ – then an understanding of fairness does not require a focus on the avoidance of ‘unfairnesses’. Of course, where there is fairness there is no unfairness, and where there is unfairness there is no fairness. But the absence of atomicity leaves it open for fairness and unfairness to be on the same level as regards understanding their nature, and for comparisons and degrees to be expressed in terms of fair as readily as unfair.

How plausible is an atomistic understanding of injustice? How plausible is it that all injustice (all failure to achieve justice) is the result of injustices? Rather than attempt to consider this question in the abstract – that is, without taking a view on what might constitute the atoms (the injustices) of which injustice is composed – let us consider it in the context of a particular atomistic account – an account that entails that there is an injustice only when someone is wronged by being denied what is due. If this is (at least part of) what an injustice is, then for injustice to be atomic (that is, for there to be injustice only where there is an injustice) it must be that there

is injustice only when someone is done an injustice by being denied what is due. Is this plausible? Or can there be 'victimless' injustice?

Phillip Montague suggests there can be injustice without anyone being done an injustice. He writes:

> ... a University promotes an undeserving member of staff (but does not fail to promote any deserving ones); a plant manager does not dismiss an employee who deserves to be let go (but fires no-one who does not deserve to be). … The … lesson is that one can act unjustly without doing anyone an injustice.[3]

It might be questioned whether Montague's examples are indeed cases where no-one is done an injustice. Perhaps it can be argued that the University's deserving staff, or the staff in the plant who do not deserve to be let go, are done an injustice when others are promoted or not dismissed. But even if that were so, it would show only that these particular examples are unsuitable for making the point Montague wants to illustrate with them. So let us assume that these are cases where no-one is done an injustice. The question then is whether Montague draws the right lesson from them. Do the examples show that there can be injustice where no-one is done an injustice?

Montague's inference is one possibility but it is not the only one. An alternative is to say that his examples are not cases of injustice (since there is no-one to whom an injustice is done), although they may well describe arrangements that are less than

ideal. Which inference ought we to make? If we agree with Montague we will have to say that someone's being wronged and denied what is due is not a characteristic of injustice but merely something that often occurs when there is injustice. Is it worth making the virtue of justice less distinctive in this way so as to include Montague's cases as examples of injustice? Or would this be to give up a feature central to injustice in order to include cases that are not really cases of injustice?

This question calls for a judgment as to where the balance of costs and benefits lie. I want to suggest that the costs of following Montague outweigh any benefits. The virtue of rejecting Montague's position, and of endorsing the atomicity of injustice, lies in what it allows us to explain (or to explain simply). First, atomicity offers an explanation of the (apparent) primacy of injustice over justice. Second, it allows us to explain why an arrangement's being unjust (as against unsatisfactory in some other way) is peculiarly significant – as it is widely taken to be. A plausible explanation of the seriousness of injustice is that when there is injustice, someone is wronged (that is, suffers an injustice). If we accept that injustice is especially serious, but follow Montague in denying that whenever there is injustice someone is done an injustice, how are we to explain the significance of injustice?

We could, of course, deny that injustice *qua* injustice is especially significant. Or we could look for an alternative account of injustice's special significance. But can we really expect to find one if promoting the undeserving, and not firing those who deserve to be let go, are counted as cases of injustice? Are such practices serious enough to be cases of *injustice*? Is it not better to say that while these might be cases

[3] Phillip Montague, 'Comparative and Non-comparative Justice, *Philosophical Quarterly*, 30 (1980),

of unfairness, they fall short of being cases of injustice – and that the lesson of Montague's examples (to the extent that they are cases where no-one is done an injustice) is not that one can act unjustly without doing anyone an injustice, but that there can be unfairness without there being any injustice?[4]

A consequence of understanding justice as the absence of injustices, with an injustice being understood as a wronging (by virtue of a denial of due), is the coherence achieved (or preserved) between the understanding of justice and the intimacy of the concepts of justice and right. That there is an intimacy between justice and right is suggested by the congruence of their respective grammars. As 'less unjust' is used in preference to 'more just', so 'less wrong' is used in preference to 'more right'. As comparisons are expressed in terms of injustice rather than justice, so, insofar as we are willing to make comparisons at all, it is degrees of wrongness, rather than degrees of rightness, that are compared. And as injustices are particular, so too are wrongs: we talk of doing someone *a* wrong. Nor is the association of just with right limited to grammar. To be done an injustice is to be wronged; to justify is to show to be right; and 'just so' means 'rightly so'.

Given the association of fairness and justice we might expect the grammar of 'fair' to follow the grammar of 'just' in replicating the grammar of 'right'. But if we have such expectations, we will be disappointed. As regards grammar, 'fair' replicates not 'right' but 'good'. As we have 'fairer' and 'fairest', so we have 'better' and 'best'. Comparatives and superlatives of both fair and good are happily expressed in positive as well as negative forms. And as unfairness is not particular, neither is

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p. 140.

goodness. As there are not ‘unfairnesses’, so there are not ‘bads’. And again the association is not limited to grammar. ‘Fair’ is often a synonym of ‘good’: fair weather is good weather, and to be ‘fair of face’ is to be good-looking.

The contrasts in the grammars of ‘fair’ and ‘just’ (and their respective similarities with the grammars of ‘good’ and ‘right’) raise the question of whether fairness and justice are as deeply connected as they are usually assumed to be. If the fair is part of the good, and goodness is the fundamental concept of teleology, and if the just is part of the right, and rightness is the fundamental concept of deontology, then perhaps justice and fairness have their roots in very different soil – even though their branches intertwines. To be sure, any satisfactory account of fairness must explain why (at least) much unfairness is unjust, and (at least) much injustice is unfair. But that is consistent with the nature of fairness being very different from the nature of justice, and with injustice *qua* injustice, and unfairness *qua* unfairness, mattering for very different reasons.

In considering the grammar of ‘fair’ I have sought to emphasize distinctions (between fair and just) that are generally overlooked. I want now to focus on some of fair’s connections that are generally overlooked (or dismissed as irrelevant).To do this I want to look at its etymology.

[4] In *Justice as Fittingness*, pp. 25-6 I accepted Montague’s position. I now think this a mistake.

2. The Etymology of 'Fair'

'Fair' has many senses. As well as fair treatment and fair shares we speak of fair-haired, a fair copy, fair weather friends, fairgrounds, and so on. Given that our interest is in fairness as a moral concept it is tempting to dismiss these other senses of 'fair' as simply irrelevant. But ought we? Or can at least some of them shed light on the nature of fairness?

Are fair-haired, fairway, and fairground all equally unrelated to fair treatment? Fair-haired, fair copy, fair-weather friend, fairway, and fair shares all have a common ancestry in the Germanic languages of northern Europe. But the noun 'fair' as in 'fairground' – the 'periodical gathering for sales or entertainment' – derives from *feria* in Latin meaning a holiday.[5] Given this, we can be confident that the occurrence of 'fair' in both 'fair shares' and 'fairgrounds' is coincidental, and that no amount of thinking about fairgrounds is going to shed any light on fairness. But why assume that the common ancestry of 'fair treatment' and 'fair-haired' can suggest nothing of interest about the nature of fairness?

Consider, then, the etymology of 'fair' as an adjective. The *Oxford English Dictionary* begins by noting 'In all the older senses formerly used antithetically with *foul'*.[6] Both 'fair' and 'foul' have ancestors and relations in Old English, Old Saxon, Old High German, and Gothic. The *OED* suggests their respective Germanic roots are *fagraz* and *fulaz*. This pairing of fair and foul survives in fair play and foul play,

[5] This division is reflected not only in etymology, but also in grammar: in the former uses 'fair' is primarily an adjective; in the latter it is a noun.

[6] *Oxford English Dictionary*, Second Edition, 1989.

in fair means and foul, in fair and foul weather, and in fair as beautiful and foul as ugly. It is used to set the scene in *Macbeth*. Macbeth's first words are: 'So foul and fair a day I have not seen'; and the opening scene concludes with the witches' chant: 'Fair is foul, and foul is fair:/ Hover through the fog and filthy air'. Given this antithesis between fair and foul in all early uses, focusing on foul seems a good way to see what is – or at least was – at the heart of fairness. So let us begin with foul.

The *OED*'s first entry for 'foul', with references going back to about 800 AD, is 'Grossly offensive to the senses, physically loathsome; primarily with reference to the odour or appearance indicative of putridity or corruption'. There are early references to diseases, and to people and carcasses affected by disease. 'Foul' comes into English from northern Europe, but the *OED* suggests an earlier ancestry in Aryan (*pu*), with connections in Sanskrit. Since this is thought also to be the source of terms in Greek and in Latin (*putere, pus*) from which 'putrid' and 'purulent' in English derive, 'foul' and 'putrid' appear to have a common ancestry, but with foul's ancestors taking a northern route across Europe, putrid's a southern.

So 'foul' is concerned with the putrid, stinking and rotten. (Perhaps the sound's association with its meaning derives from blowing out the offensive particles that might get ingested from a rotting carcass or fruit.) What is perceived to be foul is identified at least as much by smell (and taste) as by sight. If the origins of foul lie in the identification of safe food sources, and with avoiding decay and disease, this reflects, perhaps, the importance of smell (and taste) in that process. Appearances may have their uses; but the senses employing contact may be required in order to identify when the chemical changes occurring in decay have begun.

Putridity, then, is at the heart of foulness, and foulness is associated with what is associated with putridity. Hydrogen sulphide – with its distinctive rotten eggs smell – is a quintessentially foul-smelling gas. Its presence (as at areas of thermal activity) makes for foul air. Along with the putrid, foul is closely associated with filth and excrement – as in dogs fouling pavements. To foul is to pollute; foul water is polluted water. And to foul things up is to make a real mess of them.

So foul is concerned with putrefaction and corruption, disease and decay, and with filth and pollution. Unsurprisingly, given our concern to survive, we find the foul repulsive, offensive, and unpleasant. At the core of foulness are ideas relating to vitality and health, and (presumably derivative) negative aesthetic associations – that is, ugliness.

What of fair? Fair being the antithesis of foul, we may expect that it too will concern vitality and health, and also aesthetics – but be everything that foul is not. And so it is. To be fair is, in the words of the first entry of the *OED*, to be 'beautiful to the eye; of pleasing form or appearance; good-looking'. Fairness is particularly associated with females – the 'fair sex' – and particularly with those females to whom males are biologically attracted, presumably, at least in part, and not necessarily consciously, on the basis of factors that make for a greater likelihood of producing healthy offspring. Such females – those with vitality and health, and who are youthful but physically mature – are those traditionally referred to as 'fair pretty maidens'.

The primacy of vision for fairness – of being ‘beautiful to the eye’ as the OED has it – represents something of a contrast with foul. Putrefaction and decay are often positively identified by smell (and taste); vision often has a role, but the priority given by the OED to smell in its phrase ‘odour or appearance indicative of putridity’ is not inappropriate. But when we turn to the fair the significance of smells and tastes falls away. We do not talk of fair smells and fair tastes. Fair is overwhelmingly, if not entirely, associated with the eye. Perhaps this reflects features of the human animal: whereas smell plays a significant role in identifying the unhealthy, positive identification of the wholesome and healthy is often by sight (although seemingly not entirely, given the size of the perfume industry, and the extraordinary prices its products are able to command).

To be fair in the sense of good-looking is to be free from disfiguring blemishes. Thus we have fair and foul copy – copy that is, or is not, free from faults and imperfections. The use of ‘fair’ in English to mean light-coloured – as in ‘fair-skinned’ and ‘fair-haired’ – is a late addition, and one reflecting aesthetic preference. The *OED* reports this use of ‘fair’ as ‘apparently not of very early origin’, its first citation being as late as 1551; and of this earliest citation, the *OED* notes that ‘‘brown’ and ‘foul’ are treated as equivalent’.

So fair, at its core, is about being ‘good-looking’ and ‘pleasing to the eye’. To be fair is to have beauty and to give visual delight. And whereas foul is particularly associated with putrefaction and decay, fair is particularly associated with vitality and health. How does this help our understanding of ‘fair’ in the moral realm? We have foul deeds and foul play (‘murder most foul’) – acts offensive to our moral

sense, as the putrid offends our senses of smell, taste, and sight. And there is a moral sense of 'fair' – less used now than it once was – to refer to a character, conduct, or reputation that is free from moral stain or blemish. (See *OED* entry A9.) But what of the more specific moral notion of fair – fairness as associated with justice, equality, and impartiality? Arrangements that are fair in this sense are, no doubt, 'pleasing to the moral eye'. But what is it about such arrangements that make them so pleasing? To talk of 'pleasing to the moral eye' is to employ a metaphor of vision and perhaps of space. But what exactly is this metaphor, and how does it work?

If to be fair is to be 'beautiful to the eye; of pleasing form or appearance; good-looking' (as the OED's first entry has it), what are the requirements of 'pleasing form or appearance'? What makes for beauty in a face, a building, or a landscape design? Some requirements we might refer to as requirements of *presence*. To be good-looking requires all the right elements, and only the right elements, to be present. Beauty is marred by incompleteness, and by the intrusion of extraneous elements. If one has missing teeth or a carbuncle, one would be ill-advised to enter a beauty contest. Second, there are requirements of *proportion*. A small nose, columns too narrow for their height, or a tree that has outgrown its surroundings, will threaten due proportion, harmony, and balance. Third, there are requirements of *placement*. The various elements must be in their proper place: nothing should be awry. Given the satisfaction of these requirements – the appropriate arrangement of the appropriate elements, all in due proportion, there is at least the possibility of pleasing form and beauty.

We can refer to these elements of pleasing form – the requirements of presence, proportion, and placement – as requirements of order. The notion of order is a notion concerned with arrangement, particularly of spatial or temporal arrangement. Order requires that there not be chaos, although mere pattern and regularity are not enough. A world turned upside down – a world where fools rule or knaves profit – may be patterned, regular, and predictable. But it is not well-ordered. Order requires not merely that there is regularity, but that the pattern is an appropriate one.[7]

I take it, then, that at the heart of fairness is the idea of 'pleasing form' or 'good-lookingness', and that involved in these notions is the idea of order. Now as we have seen, an important aspect of fairness is the primacy of its application to contexts of vitality and health – paralleling the primary application of foulness to putridity, disease, and corruption. So the question arises: Is the suggestion that fair (and foul) be understood in terms of order plausible given the prime application of fair and foul to vitality, health, ill health, and decay? And surely it is. The notions of health and order are closely linked. To be in good health is to be 'in good order'; it is to suffer from no 'disorders'. A machine that ceases to function is 'out of order'. As organisms degenerate they break down; as they decay and fall apart, so order is lost. Cor*rupt*ion involves *rupt*ure and breakdown.

[7] Ulysses' listing makes the point that more is required for order than mere regularity:

> The heavens themselves, the planets, and this centre,
> Observe degree, priority, and place,
> Insisture, course, proportion, season, form,
> Office, and custom, in all line of order …

William Shakespeare, *Troilus and Cressida*, Act 1, Scene 3.

Much of the good order that is health can be understood in the same way as the good order that is beauty – that is, in terms of presence, proportion and placement. Good health requires completeness: the presence (and functioning) of vital elements, both organs and nutrients. To be in good health is to be whole; and wholesome food is food for health. ('Health' and 'whole' are etymologically linked, and both are linked to 'holy'.) Health requires the absence of intrusive foreign elements, the avoidance of poisons and the excision of diseased parts lest they infect the whole. Good health requires that each part of the organism functions in harmony with other parts to maintain balance and with due proportion. It requires that nothing is awry or 'out of joint'; that all is in its proper place.

Health, then, is as much about order as beauty is. Thus one commonality between health and beauty is the applicability of fair and foul to both; but another is their both being infused with the idea of order. Understanding fair and foul in terms of order facilitates our understanding of these connections. It also allows us to account for another prominent application of 'fair' and 'foul': in descriptions of the weather.

To associate fair weather with health and beauty, and foul weather with decay, destruction and loathsomeness, is reasonable enough. A sunny aspect is pleasing to the eye; and when the sun shines crops can be harvested. Foul weather is not just unpleasant: storms and floods bring destruction, hunger, and death. But what makes fine weather fine, and foul weather foul, goes deeper than these associations. The notions of fair and foul weather are very much notions invoking the idea of order. The essence of weather that is fair – 'set fair' as we say – is stability. Weather that is foul is unsettled – unpredictable, chaotic, and disorderly. There is nothing strained in

Hobbes' comparing of 'foule weather' and war – his 'disorders of the present times'.[8] And, when he makes this comparison, he emphasizes not the battles and the showers, but the 'disposition thereto' and the absence of any 'assurance to the contrary'.[9] What characterizes foul weather (and war too) is the insecurity that is consequent to its chaotic, disorderly nature.

In this way, then, we may find coherence in the diverse senses that 'fair' has. The central applications refer to pleasing appearance and health; and underlying these uses seems to be the idea of order. From this core we can account for fair-haired, fair copy, and fair weather. We can explain fairways – both nautical and on golf courses. These are driveways and sail-ways that are free from obstacles – passage along them being, smooth, predictable and orderly. The question we must now consider is whether fairness retains its association with notions of pleasing form and appropriate order when we move from the concrete and earthy to the abstract and moral?

3. Unfairness as Disorder

Is fairness – in the sense associated with justice and equality – also to be understood in terms of orderliness? One reason to think that it is, is the coupling of fair with reasonable, and of unfair with arbitrary. Why should unfair be habitually associated

[8] Hobbes, *Leviathan*, A Review, and Conclusion.

[9] ' … the notion of time, is to be considered in the nature of warre; as it is in the nature of weather. For as the nature of foule weather, lyeth not in a showre or two of rain; but in an inclination thereto of many days together: so the nature of war, consisteth not in actuall fighting; but in the known disposition thereto, during all the time there is no assurance to the contrary …' (Hobbes, *Leviathan*, Ch. 13).

with arbitrary? And what is objectionable about arbitrariness *per se*? Arbitrariness will often occasion failings and demerits. But why not focus on those demerits? Why think it any sort of a criticism to say that arrangements are 'arbitrary from the moral point of view'? To be arbitrary is to fail to reflect reason and thus to lack order. Arbitrariness makes for an absence of order. Understanding fairness in terms of order makes sense of the connection between the arbitrary and the unfair.

A second point concerns the grammars of 'fair' and 'order'. When considering the grammar of 'fair' I emphasized the absence of particularity – there not being 'unfairnesses' – and the absence of any priority of unfairness over fairness. These are also features of order's grammar. Disorder lacks particularity – it is not composed of discrete lumps of disorder. And comparisons and superlatives are as readily expressed in terms of order as disorder: we may talk of arrangements being 'very orderly' as well as 'very disorderly'. Disorder, it seems, has no priority over order. Like fair and unfair, order and disorder appear to be on the same level – at opposite ends of a continuum.

Does understanding fairness in terms of a visual and spatial metaphor of pleasing form and order have any serious rivals? It might be suggested that there is a more substantial metaphor at work – one that emphasizes the links between fairness and impartiality, and seeks to understand fairness in terms an absence of bias. But I suggest this approach is to be rejected – and for two reasons.

First, other things equal we ought to try to understand fairness in a way that reflects the other uses of the adjective 'fair', and the association with 'foul'. But the ideas of

bias and partiality are no help in connecting together the various uses of ‘fair’ or in connecting fair with foul.

Second, and perhaps more importantly, fairness ought not to be understood in terms of bias and partiality since an arrangement may be less fair even though it involves no bias or partiality. Suppose that you and I are each owed $200 in wages by a bankrupt employer, and suppose the administrator winding up the company has only $100 to allocate between us. One possibility is to divide the $100 equally between us; another is to allocate it all one of us by tossing a fair coin.

Unless we have agreed to toss a coin for it, an equal allocation is fairer – no matter how fair and unbiased the coin-tossing.[10] But given that there is no partiality in the random allocation, it is hard to see how partiality can explain why an unequal division is fairer. By contrast understanding unfairness in terms of disorder explains immediately why the inequality produced by a random allocation is less fair. An equal outcome (here) is more orderly than an unequal one. (Thinking of fairness in terms of impartiality does not allow us to explain the importance of order to fairness. By contrast, thinking of fairness in terms of order does allow us to explain the importance of impartiality for fairness. To be partial and biased is to be moved by the wrong sorts of reasons – reasons that ought not to count. It will take extraordinary luck for such partiality not to issue in arbitrariness and disorder.)

But if ‘fair’ is to be understood in terms of order, what kind of disorder constitutes unfairness? The answer, I suggest, is disorderliness with respect to due. There is,

surely, a close connection between fairness and due. If you really deserve some prize for musical performance, and I do not, then it is only fair that you get it and I do not. If your tribe is entitled to some piece of land, and mine is not, it would be unfair if my tribe were allocated it. As a first approximation at least, fairness seems to require that accordance with due.[11]

Understanding fairness in this way has the merit of accounting for the proximity between fairness and justice. Fairness and justice are close neighbours, and no account of fairness will be plausible if it fails to explain fairness's proximity to justice. Now the least controversial way to define justice is to say that it requires treatment according to due (where due is understood in terms entitlement, right, desert, and perhaps need). Thus we will account for the proximity of fairness and justice if we say that fairness too requires accordance with due – that is if the order required by fairness is that of being orderly with respect to due.

But if both justice and fairness are to be understood in terms of accordance with due, and they are not synonymous (as they are not), what is the difference between them? And how are the differences in grammar between 'just' and 'fair' to be explained? Why is injustice particular while unfairness is not? Why is justice a derivative of injustice, when unfairness is not prior to fairness?

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[10] This point is made by Nicholas Rescher, *Fairness* (New Brunswick, N.J.: Transaction, 2002), pp. 34-5.

[11] I suspect that this is only a first approximation, and that the order required for fairness can be supplied in ways other than accordance with due. Consider the case of genuinely voluntary slavery. Such slavery is (I take it) not in accordance with due (and is wrong and unjust); but I think that what is wrong with voluntary slavery is not that it is *unfair*. Its being voluntary seems to preclude its being unfair. My inference from such a case is that the requisite order for fairness need not be supplied by accordance with due, but may be provided in another way – in particular, by consent (such consent

Both fairness and justice require allocations in accordance with due. But 'accordance with due' can be understood in more than one way – in particular, in more and less demanding ways. The difference between fairness and justice is that the standard of accordance with due required for fairness is higher than that required for justice.

According to a minimalist (least demanding) interpretation of accordance with due there is accordance providing only that no-one is denied a benefit that is due. Interpreting accordance in this way entails that whenever there is a failure of accordance, someone is wronged by being denied what is due. This, I suggest, is the accordance required by justice. Providing there are no due denials there will be no injustices; hence there will be no injustice; hence there will be justice. Understanding justice on the basis of such an interpretation of accordance with due accounts for the particularity of injustice (an injustice being the denial of a due), and the priority of injustice over justice.

Fairness (like justice) requires, in general at least, that we are not denied those benefits that are our due. But to avoid unfairness a higher standard of accordance with due is required than this minimal standard that is enough to avoid injustice. Fairness does not require accordance with due in the strictest possible sense: it does not require that we receive only those benefits that are our due. (If we are all fortunate, and to the same degree, that is not unfair.) But it does require that where there are no differences in (overall) due, there should be no differences in (overall) allocation. This requirement allows us to explain why it is unfair not to redress the

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not necessarily affecting what is due). I cannot complain that my being a slave is arbitrary if I am a

natural lottery. It may also underpin the complaint of the vineyard labourers: after the dues (as understood by the complaining labourers) were met, some, but only some, received an excess. But there was no difference in due between the labourers as regards such excess.

The accordance with due necessary for avoiding unfairness may have other requirements. It may require that there not be suffering out of line with anything that is due. Suffering that we are due not to get is both unjust and unfair; but suffering that is merely not due (that is, not due, but which we are not due not to get it), can be unfair – if it is significant. A child's developing of cancer is unfair (though not unjust). It may be tempting to think that another requirement of the accordance necessary for avoiding unfairness is that where there are differences in (relevant) due, there ought to be differences in allocation (and perhaps even that allocations ought to be proportional to due). But there are reason (which I cannot discuss here), why this may not be so. Certainly it ought not to be assumed without argument that such differential allocation is a requirement of fairness.

I want to conclude by considering an objection to the account of fairness I have sketched, and by doing so clarify further the contrast between fairness and justice. I have claimed that fairness is to be understood in terms of order – in particular, of order with respect to due. But to this it might be objected that the emphasis I have given to disorder is misplaced since complaints of unfairness are not complaints about some impersonal good of order. A concern for fairness, so the objection runs,

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slave only by virtue of my having (genuinely) consented to it.

is a concern for those who get treated unfairly. Complaints of unfairness are just as 'personal' as complaints of injustice.

I want to reject this objection. It is true, of course, that when there is unfairness there is (at least normally) someone who suffers unfairly. Often this is because the unfairness is a consequence of a due being denied. But even where unfairness involves no due denial, it will generally be easy for some to argue that they have done less well than they would have done had arrangements been fair. In this way we may claim that arrangements are unfair to us. I say generally since there are cases plausibly interpreted as 'unfair though not unfair to anyone'. For example consider this case. Shortly after Churchill's death, Attlee wrote the following appreciation:

> He was, of course, above all, a supremely fortunate mortal. Whether he deserved his great fate or not, whether he won it or had it dropped into his lap, history set him the job that he was the ideal man to do. I cannot think of anybody in this country who has been favoured in this way so much . . . In this he was superbly lucky. And perhaps the most warming thing about him was that he never ceased to say so.[12]

It is hardly fair for one person to be so much luckier than everyone else. But it less obvious that this is a case where anyone – everyone else – can reasonably complain of having suffered unfairly.

[12] As quoted in Kenneth Harris, *Attlee* (London: Weidenfeld and Nicholson, 1984) p. 569.

However, even if there are no cases of ‘unfair, but not unfair to anyone’, there is an important distinction between complaints of unfairness and complaints of injustice in terms of what they presuppose. When there is injustice, there is the denial of a due (or so I have claimed). The existence of the due denial entails that there is disorder with respect to due, and one reason one might care about injustice is on the basis of a concern for order with respect to due. But – and this is the crucial point – even if one did not care at all about such order, one could care about injustice. One could care that a due had been denied.

But now consider unfairness – and to avoid getting distracted by considerations that are not essential for unfairness, consider a case of unfairness that is not unjust (that is, a case of unfairness where there is no due denial). Suppose that you and I are both due 2 units of the good, and that these are the only (relevant) dues we have. (Thus suppose it is not the case that either of us is due not to get more than 2 units; and nor is it the case that either of us is due to get whatever it is that the other in fact gets).

Suppose now that I get 3 units while you get 5. I complain that the allocation is unfair, and that it is unfair to me. This seems reasonable enough: I have got less than I would have got under the fair allocation that it is natural to consider – the allocation where each of us gets 4. But what is the basis of my complaint and what does it presuppose? I may complain that I have received less than you. But why should that matter? It will matter, of course, if I have a due to get whatever you get. In that case my getting only 3 will be unfair (and unjust too) since my due will be denied. But what is my complaint if I have no such due – if my getting only 3 is

unfair but not unjust? In this case the basis of my complaint seems to be that my allocation is less than I would have received under a more orderly distribution. But if disorderliness and arbitrariness do not matter, why should my getting less matter? My complaint may not be about the disorder; it may be about what I get. But my complaint may nevertheless rely on a more orderly distribution being better than a less orderly one. Thus while injustice *qua* injustice may matter on account of the due violation and wronging, unfairness *qua* unfairness may matter for quite a different reason. It may matter (to the extent that it does) on account of the good of orderliness with respect to due.