



In search of justice

Craig Hassed, MBBS, FRACGP, is Senior Lecturer, Department of General Practice, Monash University, Melbourne, Victoria.

The search for justice can be undertaken in many ways. For example one could search for it in the Oxford Dictionary, in which it is described as the first of the 'cardinal virtues'. Cardinal comes from the Latin word 'cardin' meaning 'hinge' so the cardinal virtues are therefore the centre or fulcrum of right conduct. Justice, also coming from a Latin word 'justitia', meaning 'righteousness or equity' as well as 'fair, well founded, proper, correct and exact'. If we take a moment to trace the etymologies a little further we see that 'equity' comes from 'aequus', the same root as equal, equable and equanimity. It carries a sense of universalisability, evenness and freedom from fluctuations. Definitions by themselves however, are just words and do not satisfy the basic human longing for justice.

A more common place where people search for justice in the modern day is in the courts of law and indeed, because of the rise in litigation, doctors and patients are increasingly found there. Consequently there is a worldwide medical insurance crisis particularly in procedural areas of medicine such as obstetrics which carry with them a high risk. It is getting to the point that doctors in many areas of medicine cannot afford to continue to practise and even if they do, the increased costs will be passed on to patients.

Some might suggest this trend is indicative of a surge in the number of negligent doctors. Others might suggest it could indicate other phenomena such as the population becoming more litigious, lawyers becoming more predatory, tech-

nology becoming more high risk, people abusing and profiteering from the system, or misdemeanours which would previously have not been detected are now coming to light. It could be a combination of all these.

No matter, doctors and public alike feel extremely vulnerable as insurance companies collapse and the physician has one eye on the patient and the other on their medical defence. It would be difficult to argue that this situation is improving the standard of care for patients although there is good evidence that it increases the financial and human cost of care. Now many investigations, referrals and treatments are ordered from the motivation of protecting oneself against litigation rather than being clinically indicated. Is all of this a sign of a more just and equable healthcare system? Probably not.

Socrates would have seen the growth in the numbers and activities of lawyers (and doctors for that matter) as potentially a sign of a society in decline as people increasingly needing to go to sources of authority outside themselves was a sign of a lack of responsible self governance.

'But what can show a more disgraceful state of education than to have to go abroad for justice because you have none of your own at home? And yet there is a worse stage of the same disease – when men have learned to take pleasure and pride in the twists and turns of the law; not considering how much better it would be for them so to order their lives as to have no need of a nodding justice'.¹

It would be difficult for us to conceive of life without an extensive legal system especially in light of the fact that wronged patients and wrongly accused doctors need to have some recourse to justice when responsible self governance fails, as it often has a wont to do. One also suspects that negative stereotypes of doctors or lawyers can diminish the standing of the majority who are well intentioned.

Where is and what is justice?

There may be many answers to these questions. In the modern language of ethics, justice has taken on a particular meaning being normally equated with the fair and equable distribution of resources whether that be according to need, merit or some other criteria.

'When medical resources are scarce some form of just distribution of those resources must be achieved'.²

'In the context of health care ethics justice is important in the areas of distribution of scarce resources'.³

This modern usage however, does not take us very far. If one asked: 'What is disease?' and someone answered: 'Diabetes is a disease' then one might feel tempted to answer: 'This is one single expression or example of disease but it does not tell me what is disease itself'.

Rather than giving an exhaustive response by listing every known disease one might come closer to answering the question by saying: 'Disease is a disruption to the natural, harmonious and orderly functioning of the body (or any-

thing for that matter)'. So it is with understanding justice and injustice.

Distributive justice is one example of justice but it is not justice itself. There are other answers to the question of what justice is, such as a lawful and harmonious relationship between the various elements of human nature and injustice with a disharmony in our nature. Therefore, for example, when greed or passion overmasters reason then the soul is not harmonious and injustice soon arises.

Emerson, like Einstein, equated justice with the laws that underpin the whole universe, not just human nature or human made law. Justice was the tendency for nature to rebalance itself and thus nonobservance of the law is inevitably corrected. Furthermore, morality is equated with observance of these natural laws.

'Thus the universe is alive. All things are moral. That soul which within us is a sentiment, outside of us is a law. We feel its inspirations; out there in history we can see its fatal strength. It is almighty. All nature feels its grasp. It is in the world, and the world was made by it'. It is eternal but it enacts itself in time and space. Justice is not postponed. A perfect equity adjusts its balance in all parts of life...The world looks like a multiplication table, or a mathematical equation, which, turn it how you will, balances itself. Take what figure you will, its exact value, no more, no less, still returns to you. Every secret is told, every crime is punished, every virtue is rewarded, every wrong redressed, in silence and certainty. What we call retribution is the universal necessity by which the whole appears wherever a part appears'.⁴

Some interesting implications arise from this view. First, the laws that are written into nature are written into our own conscience as well. Thus, inequity in the world is the product of inequity within ourselves and the unhappiness we inflict

on others arises from our own unhappiness. Present dilemmas are the product of past neglect and present uncorrected injustices will produce further inequities in the future although the connection between the two often becomes clouded by the mist of time.

In a more practical sense, if the present spate of litigation, or at least much of it, is not arising from a sincere societal search for justice but rather greed, vengeance or some other motive, and penalties levied are unjust, excess or inappropriate, then the outcome will not be just. Nor will it be consistent with health, freedom or happiness despite the fact that isolated individuals may seem to have profited. The inevitable product will be further inequity and deprivation whether that takes the form of patients being over investigated or treated, or people not having access to adequate health care because it has become too expensive, or doctors and patients living in fear while trying to go about their normal business. Nor can the legal profession flourish and be respected in the longer term if the motivation and implementation are not just.

Conversely, if the motivation is just, then the outcome will be consistent with health, freedom and happiness. Patient care and professional standards will improve, resources will be more fairly and equitably distributed, and patients and doctors can go about their rightful business with greater confidence. If we don't have the current wisdom to distinguish between which of these two possibilities might be operating, between injustice and justice, then we can simply watch and time will tell. Either way, one hopes that justice will always be seasoned with mercy because, having a heart as well as a head, humans have to decide their conduct with the whole of their being, not just a part of it.

'The quality of mercy is not strained,
It droppeth as the gentle rain from heaven
Upon the place beneath. It is twice blessed:
It blesses him that gives, and him that takes,
'Tis mightiest in the mightiest, it becomes
The throned monarch better than his crown:
His sceptre shows the force of temporal power,
The attribute to awe and majesty,
Wherein doth sit the dread and fear of kings:
But mercy is above this sceptred sway,
It is enthroned in the hearts of kings,
It is an attribute to God himself;
And earthly power doth then show
likest God's,
When mercy seasons justice'.⁵

References

1. Plato. The Republic. Book 3:405. In: The dialogues of Plato. Translated by Benjamin Jowett. Oxford: Clarendon Press, 1892.
2. Gillon R. Philosophical medical ethics. London: John Wiley and Sons, 1991; 77.
3. Boyd K, Higgs R, Pinching A. The new dictionary of medical ethics. London: BMJ Publishing, 1997; 143.
4. Emerson R W. Compensation. In: The collected works of Ralph Waldo Emerson. New York: World Classic Library, 35.
5. Shakespeare W. The Merchant of Venice.

AFF