NATURAL JUSTICE AND LEGAL JUSTICE pdf

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natural justice in the constitutional law of the UK, a core meaning that a decision should be adjudicated by an impartial judge: 'one with no interest in the outcome' or applying nemo judex in suo causa, 'no one should be a judge in their own cause'.

With the introduction of concept of substantive and procedural due process in Article 21, all that fairness which is included in the principles of natural justice can be read into Art. However, golden thread of natural justice sagaciously passed through the body of Indian constitution. Apart from preamble Art 14 ensures equality before law and equal protection of law to the citizen of India. Art 14 which strike at the root of arbitrariness and Art 21 guarantees right to life and liberty which is the fundamental provision to protect liberty and ensure life with dignity. Art 22 guarantees natural justice and provision of fair hearing to the arrested person. Directive principles of state Policy specially Art A takes care of social, economic, and politically backward sections of people and to accomplish this object i. Furthermore Art 32, , and provides constitutional remedies in cases violation of any of the fundamental rights including principles of natural justice. With this brief introduction author undertakes to analyze some of the important provision containing some elements of Principle of Natural Justice. It bars discrimination and prohibits both discriminatory laws and administrative action. Art 14 is now proving to be bulwark against any arbitrary or discriminatory state action. The horizons of equality as embodied in Art 14 have been expanding as a result of the judicial pronouncements and Art 14 has now come to have a highly activist magnitude. It laid down general preposition that all persons in similar circumstance shall be treated alike both in privileges and liabilities imposed. Art 14 manifests in the form of following propositions: In some cases, the Courts insisted, with a view to control arbitrary action on the part of the administration, that the person adversely affected by administrative action be given the right of being heard before the administrative body passes an order against him. It is believed that such a procedural safeguard may minimize the chance of the Administrative authority passing an arbitrary order. Thus, the Supreme Court has extracted from Art. The rule was declared to be invalid as being violative of Art. The rule in question constituted a part of the employment contract between the corporation and its employees. The Court ruled that it would not enforce, and would strike down, an unfair and unreasonable clause in a contract entered into between parties who were not equal in bargaining power. The Supreme Court ruled that Commanding-in-chief ought to have given a hearing to the respondent as well before cancelling the permission given by the board. These rules natural justice principles were vague and indefinite and the constitution could not be read as laying down a vague standard. On the other hand, Fazal Ali, J. This right cannot be allowed to violate by law, which is wholly unreasonable, such law must be reasonable, fair and just. It now means that the procedure must satisfy certain requisites in the sense of being fair and reasonable. The concept of reasonableness must be projected in the procedure contemplated by Art. The Court has now assumed the power to adjudge the fairness and justness of procedure established by law to deprive a person of his personal liberty. The Court has reached this conclusion by holding that Arts. Thus, the procedure in Art. In the same case Iyer, J. SC is of the opinion that conducting a fair trial for those who are accused of criminal offences is the cornerstone of democracy. Conducting a fair trial is beneficial both to the accused as well as to the society. A conviction resulting from an unfair trial is contrary to our concept of justice. The Supreme Court has taken a gigantic innovative step forward in humanizing the administration of criminal justice by suggesting that free legal aid be provided by the State to poor prisoners facing a prison sentence. When an accused has been sentenced by a Court, but he is entitled to appeal against the verdict, he can claim legal aid: Accordingly in India free-legal aid to indigent or disabled person is considered to be essential component of Natural Justice. Accordingly sufficient safeguard has been provided under Indian Constitution to get Legal representation. Article 22 1 and 2 confers four following fundamental rights upon a person who has been arrested: Right to be informed of the Grounds of Arrest: The object underlying the provision that the ground for arrest should be communicated to the person arrested appears to be this. The Supreme Court observed that Article 22 1 embodies a rule which has always been regarded as vital and

fundamental for safeguarding personal liberty in all legal systems where the Rule of Law prevails. Madhu Limaye, Member of the Lok Sabha and several other persons were arrested. Madhu Limaye addressed a petition in the form of a letter to the Supreme Court under Article 32 mentioning that he along with his companions had been arrested but had not been communicated the reasons or the grounds for arrest. In the return filed by the State this assertion had neither been controverted nor had anything been stated with reference to it. One of the contentions raised by Madhu Limaye was that there was a violation of the mandatory provisions of Article 22 1 of the Constitution. The court further observed that the two requirements of Clause 1 of Article 22 are meant to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension or misunderstanding in the minds of the arresting authority and, also to know exactly what the accusation against him is so that he can exercise the second right, namely of consulting a legal practitioner of his choice and to be defended by him. Those who feel called upon to deprive other persons of liberty in the discharge of what they conceive to be their duty must, strictly and scrupulously, observe the forms and rules of law. Right to consult and to be defended by Legal Practitioner: Art 22 1 guarantees right of legal representation by advocate of his choice. The Article does not require the state to extend legal aid as such but only requires to allow all reasonable facilities to engage a lawyer to the person arrested and detained in custody. The choice of counsel is entirely left to the arrested person. The right to consult arises soon after arrest. This does not mean that persons who are not under arrest or custody can be denied that right. The spirit and sense of Article 22 1 is that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of near-custodial interrogation. Moreover, the observance of the right against self incrimination is best promoted by conceding to the accused the right to consult a legal practitioner of his choice. The case added an additional fortification to the right to counsel. The Supreme Court went a step forward in holding that Article 22 1 does not mean that persons who are not strictly under arrest or custody can be denied the right to counsel. The Supreme Court held that right of arrested person upon request, to have someone informed about his arrest and right to consult privately with lawyers are inherent in Articles 21 and 22 of the Constitution. The Supreme Court observed that no arrest can be made because it is lawful for the Police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. The Supreme Court issued the following requirements: The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. Every step that makes the right of appeal fruitful is obligatory and every action or inaction which stultifies it is unfair and unconstitutional. Pertinent to the point are two requirements: Both these are State responsibilities under Article Where the procedural law provides for further appeal these requirements will similarly apply. Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side. The Indian socio-legal milieu makes free legal service at trial and higher levels, an imperative processual piece of criminal justice where deprivation of life or personal liberty hangs in the judicial balance. Partial statutory implementation of the mandate is found in S. Enough has been set out to establish that a prisoner, deprived of his freedom by court sentence but entitled to appeal against such verdict, can claim, as part of his protection under Article 21 and as implied in his statutory right to appeal, the necessary concomitant of right to counsel to prepare and argue his appeal. Equally affirmative is the implication that while legal services must be free to the beneficiary the lawyer himself has to be reasonably remunerated for his services. Naturally, the State concerned must pay a reasonable sum that the court may fix when assigning counsel to the prisoner. Of course, the court may judge the situation and consider from all angles whether it is necessary for the ends of justice to make available legal aid in the particular case. That discretion resides in the Court. Art 22 4 to 7 deals with preventive detention, Art. The SC observed even when the law does not allow legal representation to the detenu, he is entitled to make such a request and the advisory board is bound to consider this request on merit, and Board is not preclude to allow such assistance when it allows the state to be represented through a lawyer. Art 32 and of the constitution

provides for constitutional remedies for violation of fundamental Rights and other legal rights respectively remedies, Under Art 32 and can be exercised by issuing appropriate Writ, Direction and Orders. However, in recent time it is new development that Writ of Certiorari can also be invoked against Administrative authority exercising adjudicatory function. Vijay Narain, in this case Court held that Writ of certiorari or prohibition usually goes to a body which is bound to act fairly or according to natural justice and it fails to do so. In the same manner where the decision is affected by bias, personal, or pecuniary, or subject matter as the case may be considered as violation of principle of natural justice. In such circumstances also writ of certiorari and prohibition can be issued both Under Art 32 and Premchand, speaking for SC, Gagendragadkar, J. Any order made in violation of principles of natural justice is void ab-initio and is liable to be annulled and cancelled. When a competent court holds such official act or order invalid or sets it aside, it operates from nativity, i. It is available in those cases where a tribunal though competent to enter upon an inquiry, acts in flagrant disregard of the rules of procedure or violates the Principles of Natural Justice, where no particular procedure is prescribed. Where the tribunal has disabled itself from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or where the conclusion on the very face of it is so wholly arbitrary and caprices that no reasonable person can ever have arrived at the conclusion interference under Art. Art runs as follows, Art. High Court may in exercise of its power of superintendence issue direction, Order or writ in cases where it felt that there is violation of principles of natural justice accordingly it is one of the constitutional provisions framed in the spirit of principles of natural justice. Art deals with Dismissal, removal, or reduction in rank of persons employed in civil capacities under the Union or a State, though Art. If the inquiry officer olds the charges to be proved then the report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action prejudicial to the delinquent officer. The enquiry should not be an empty formality. In situation i , the order would undoubtedly be void. In such a case, normally, the authority concerned can proceed afresh according to natural justice. In situation ii , the Court has to see whether in totality of the circumstances, the delinquent servant did or did not have affair hearing. He should not be based either in favour of the department or against the person against whom the inquiry is to be held, or prejudge the issue, or have a foreclosed mind, or have pre-determined notions. An inquiry by a person who is biased against the charged officer is clear denial of reasonable opportunity. For example, one and the same person cannot be a judge and a witness in the same case.

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2: What Is Natural Justice? Â» Smith and Partners Lawyers

Natural justice is a term of art that denotes specific procedural rights in the English legal system and the systems of other nations based on it. It is similar to the American concepts of fair procedure and procedural due process, the latter having roots that to some degree parallel the origins of natural justice.

Natural justice has a long and disparate history. Examples of the usage abound. The expression has theological and philosophical overtones and implications. My Lords, when a central administrative board deals with an appeal from a local authority it must do its best to act justly, and to reach just ends by just means. If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means. In regard to these certain ways and methods of judicial procedure may very likely be imitated; and lawyer-like methods may find especial favour from lawyers. But that the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation. And the assumption that the methods of natural justice are ex necessitate those of Courts of justice is wholly unfounded. This is expressly applicable to steps of procedure or forms of pleading. Procedural fairness is a more specific name for one aspect of natural justice in its broadest sense. The change began in the s. In what follows, I address only the hearing limb of procedural fairness and I do not address the other limb, which is bias or apprehended bias. Secretary of State for the Environment. And it has been recognized that in the context of administrative decision-making it is more appropriate to speak of a duty to act fairly or to accord procedural fairness. The developing application of the doctrine of natural justice in the field of administrative decision-making has been very largely achieved by reference to the presence of characteristics which have been thought to reflect important characteristics of judicial decision-making. The effect of Atkin L. The emphasis given in subsequent decisions to the presence and absence of these characteristics diverted attention from the need to insist on the adoption in the administrative process of fair and flexible procedures for decision-making, procedures which do not necessarily take curial procedures as their model: Citations omitted And at The statutory power must be exercised fairly, i. Why is that important? Despite more high sounding reasons such as separation of powers under the Commonwealth Constitution or the importance of Chapter III, the fundamental, although related, reason for the emphasis is the perception in Australia of the proper functions of the courts. That is, the courts are to stay away from the merits of administrative decision-making when engaged in judicial review. The reviewing court is concerned with the fairness of the procedure adopted, not the fairness of the decision produced by that procedure. In practical terms, the bulk of a procedural fairness case in modern times is not, as it used to be, whether procedural fairness is required but is the content of procedural fairness in the circumstances of the particular case. As Mason J said in Kioa at The law has now developed to a point where it may be accepted that there is a common law duty to act fairly, in the sense of according procedural fairness, in the making of administrative decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of a contrary statutory intention. It seems that as early as Lord Loreburn L. Board of Education v. But the duty does not attach to every decision of an administrative character. Many such decisions do not affect the rights, interests and expectations of the individual citizen in a direct and immediate way. Thus a decision to impose a rate or a decision to impose a general charge for services rendered to ratepayers, each of which indirectly affects the rights, interests or expectations of citizens generally does not attract this duty to act fairly. This is because the act or decision which attracts the duty is an act or decision: Where the decision in question is one for which provision is made by statute, the application and content of the doctrine of natural justice or the duty to act fairly depends to a large extent on the construction of the statute. This, it was held, per Mason, Wilson, Brennan and Deane JJ Gibbs CJ dissenting , meant that the applicants were entitled to be heard before the making of the deportation orders against them. In the result the demurrer was allowed and the action dismissed by a statutory majority. The plaintiff was an Italian citizen, he lawfully entered Australia, he had permits to enter and remain but remained in Australia after the expiry of the permits. The offer was to remain open until 30 April , acceptance being by the making of an application for a permit to remain in Australia. It was in reliance upon the contents

of the news releases that the plaintiff came forward and identified himself to the Minister and sought the amnesty which the releases offered. The alleged amnesty was not granted to the plaintiff and the Minister intended to treat him as a prohibited immigrant and to deport him accordingly pursuant to s 18 of the Migration Act. The Minister had no discretion to allow a prohibited immigrant to remain as such at large. Gibbs J regarded the duty to act fairly as simply flowing from the duty to observe the principles of natural justice at , and as a matter of the true construction of the statutory provision in light of the common law principles, and said that the status of the plaintiff as a prohibited immigrant and that the power in s 18 was conferred quite unconditionally suggested that the principles of natural justice were not intended to apply at Once it was concluded that the Act did not impose a duty to act in accordance with the principles of natural justice, it was not relevant that statements made by the Minister may have led the plaintiff to expect that he would not be deported. The Minister was entitled to exercise the power even if the exercise of it appeared to be unfair, and to defeat expectations which his statements had raised at Aickin J agreed with Gibbs J at He said the plaintiff could not seek to hold the Minister to his promise not to deport and grant resident status but he may point to the promises having given rise to such an expectation as would entitle him to complain of a want of natural justice unless he be accorded an opportunity to put his case to the Minister: Jacobs J said that the legislature was assumed by the courts to be aware of the principles of natural justice which were a part of the common law at The plaintiff was, in the fairness which underlay the application of the principles of natural justice, entitled to know the reason for the proposed deportation and to present submissions to the Minister which the plaintiff may think may displace the reason and any facts upon which it may be based at Murphy J held that s 18 was conditioned by rules of natural justice at This construction of s 18 was applied a month later in R v MacKellar; ex parte Ratu CLR , which did not involve an amnesty. Gleeson CJ expressed the point in Lam at [34] as follows: But what must be demonstrated is unfairness, not merely departure from a representation. Not every departure from a stated intention necessarily involves unfairness, even if it defeats an expectation. In some contexts, the existence of a legitimate expectation may enliven an obligation to extend procedural fairness. In a context such as the present, where there is already an obligation to extend procedural fairness, the creation of an expectation may bear upon the practical content of that obligation. But it does not supplant the obligation. The ultimate question remains whether there has been unfairness; not whether an expectation has been disappointed. This submission was framed in a way that took up only part of what was said in Annetts. Reference was made in Annetts to power to destroy, defeat or prejudice not just rights but also interests or legitimate expectations. His Honour said that the obligation to afford procedural fairness is not limited to cases where the exercise of the power affects rights in the strict sense, but extends to the exercise of a power which affects an interest or a privilege. It is then important, in the present matters, to identify the rights and interests affected. Rights or interests affected? It affected their rights and interests directly because the decision to consider the exercise of those powers, with the consequential need to make inquiries, prolonged their detention for so long as the assessment and any necessary review took to complete. That price of prolongation of detention is a price which some claimants may have paid without protest. After all, they sought entry to Australia and this was the only way of achieving that end. And they claimed that return to their country of nationality entailed a real risk of persecution. But even if it were the fact that individuals were content to have detention prolonged, that must not obscure that what was being done, for the purposes of considering the exercise of a statutory power, had the consequence of depriving them of their liberty for longer than would otherwise have been the case. At [69] these judges said: A non-citizen who is in the position of the plaintiffs and seeks the engagement and favourable exercise of the dispensing powers under the federal statute with which these cases are concerned does so to obtain a measure of relaxation of what otherwise would be the operation upon non-citizens of the visa system; it is the requirements of that system which must be met to lift what otherwise are the prohibitions upon entry and continued presence in Australia. This is sufficient to satisfy the principles just discussed. This was after adopting the reasoning of Brennan J in Kioa at There are interests beyond legal rights that the legislature is presumed to intend to protect by the principles of natural justice. It is hardly to be thought that a modern legislature when it creates regimes for the regulation of social interests â€" licensing and permit systems, means of securing opportunities for acquiring legal rights, schemes for the

provision of privileges and benefits at the discretion of Ministers or public officials â€" intends that the interest of individuals which do not amount to legal rights but which are affected by the myriad and complex powers conferred on the bureaucracy should be accorded less protection than legal rights. There has, I think, been a shift in focus from the nature of the power in the hands of the decision-maker to the effect on the individual of an exercise of governmental power and thus, in deciding whether or not procedural fairness is required, to decisions that affect the status of the person affected. The inventors of these expressions had not seen modern professional sport. Fairness is not an abstract concept. It is essentially practical. Whether one talks in terms of procedural fairness or natural justice, the concern of the law is to avoid practical injustice. There are only a few guideposts. What do we know? The particular content to be given to the requirements to accord procedural fairness will depend upon the facts and circumstances of the particular case. By the statutory framework I mean the express and implied provisions of the relevant Act and the inferences of legislative intention to be drawn from the circumstances to which the Act was directed and from its subject-matter: Fernando, there are no words which are of universal application to every kind of inquiry and every kind of tribunal: We know that a decision-maker does not have to reveal their thought processes: Where the exercise of a statutory power attracts the requirement for procedural fairness, a person likely to be affected by the decision is entitled to put information and submissions to the decision-maker in support of an outcome that supports his or her interests. That entitlement extends to the right to rebut or qualify by further information, and comment by way of submission, upon adverse material from other sources which is put before the decision-maker. It also extends to require the decision-maker to identify to the person affected any issue critical to the decision which is not apparent from its nature or the terms of the statute under which it is made. The decision-maker is required to advise of any adverse conclusion which has been arrived at which would not obviously be open on the known material. Subject to these qualifications however, a decision-maker is not obliged to expose his or her mental processes or provisional views to comment before making the decision in question. What is the value or what are the values of procedural fairness? We are told it is not opposed to the interests of effective administration. It can improve the quality of executive decisions by providing information. Individuals will be interested in participating in decisions by which they could be affected: So procedural fairness may improve the quality of the decision. It may assist in imparting the sense that justice has been done R Osborn v Parole Board [] AC at [68] , and been seen to be done. Public acceptance of the decision may be enhanced. In some contexts, it may protect human dignity. In my opinion it means that the perspective of the decision-maker must be altered so that instead of the only perspective being that of the person exercising the power, affording procedural fairness means that the perspective of the person affected must necessarily be taken into account. This, in my view, reflects a shift in Australia since the s from administrative power being exercised as a matter of governing ex cathedra, to a perception that those governing are answerable to and should be responsive to, those affected by that exercise of power.

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3: Natural justice - Oxford Reference

In natural justice the conscience is invoked and not legal principles. Rules of natural justice are not codified, but they are principles ingrained into the conscience of men. Natural justice is the administration of justice is a common sense or liberal way.

In , the Court ruled in Baker v. Canada Minister of Citizenship and Immigration that the requirements of natural justice vary according to the context of the matter arising. Natural justice is a term of art that denotes specific procedural rights in the English legal system [1] and the systems of other nations based on it. It is similar to the American concepts of fair procedure and procedural due process , the latter having roots that to some degree parallel the origins of natural justice. Natural justice is identified with the two constituents of a fair hearing, [3]: Indian Head School Division No. Furthermore, preliminary decisions will generally not trigger the duty to act fairly, but decisions of a more final nature may have such an effect. No duty exists where the relationship is one of master and servant, or where the individual holds office at the pleasure of the authority. On the other hand, a duty to act fairly exists where the individual cannot be removed from office except for cause. This principle embodies the basic concept of impartiality, [11] and applies to courts of law, tribunals, arbitrators and all those having the duty to act judicially. The erosion of public confidence undermines the nobility of the legal system and leads to ensuing chaos. In Dimes v Grand Junction Canal , his Lordship was disqualified from hearing a case as he had a pecuniary interest in the outcome. Bias may be actual, imputed or apparent. Actual bias is established where it is actually established that a decision-maker was prejudiced in favour of or against a party. However, in practice, the making of such an allegation is rare as it is very hard to prove. Once this fact has been established, the bias is irrebuttable and disqualification is automatic â€" the decision-maker will be barred from adjudicating the matter without the need for any investigation into the likelihood or suspicion of bias. However, it was discovered by Dimes that Lord Cottenham in fact owned several pounds worth of shares in the Grand Junction Canal. This eventually led to the judge being disqualified from deciding the case. There was no inquiry as to whether a reasonable person would consider Lord Cottenham to be biased, or as to the circumstances which led Lord Cottenham to hear the case. Amnesty International AI was given leave to intervene in the proceedings. However, one of the judges of the case, Lord Hoffmann , was a director and chairperson of Amnesty International Charity Ltd. He was eventually disqualified from the case and the outcome of the proceedings set aside. In Locabail UK Ltd v Bayfield Properties Ltd , [20] the Court of Appeal warned against any further extension of the automatic disqualification rule, "unless plainly required to give effect to the important underlying principles upon which the rule is based". Currently, cases from various jurisdictions apply two different tests: The real likelihood test centres on whether the facts, as assessed by the court, give rise to a real likelihood of bias. Lord Goff of Chievely also stated that "the court should look at the matter through the eyes of a reasonable man, because the court in cases such as these personifies the reasonable man". On the other hand, the reasonable suspicion test asks whether a reasonable and fair-minded person sitting in court and knowing all the relevant facts would have a reasonable suspicion that a fair trial for the litigant is not possible. In Locabail, the judges stated that in a large proportion of the cases, application of the two tests would lead to the same outcome. It was also held that "[p]rovided that the court, personifying the reasonable man, takes an approach which is based on broad common sense, and without inappropriate reliance on special knowledge, the minutiae of court procedure or other matters outside the ken of the ordinary, reasonably well-informed members of the public, there should be no risk that the courts will not ensure both that justice is done and that it is perceived by the public to be done". Traditional Chinese Medicine Practitioners Board , [14] Judicial Commissioner Andrew Phang observed that the real likelihood test is in reality similar to that of reasonable suspicion. First, likelihood is in fact "possibility", as opposed to the higher standard of proof centring on "probability". Secondly, he suggested that real in real likelihood cannot be taken to mean "actual", as this test relates to apparent and not actual bias. Reasonable suggests that the belief cannot be fanciful. Here the issue is whether it is reasonable for the one to harbour the suspicions in the circumstances even though the suspicious behaviour could be innocent. On the

other hand, likelihood points towards something being likely, and real suggests that this must be substantial rather than imagined. Here, then, the inquiry is directed more towards the actor than the observer. The issue is the degree to which a particular event is not likely or possible [28]: Although this a lower standard than satisfaction on a balance of probabilities , this is actually directed at mitigating the sheer difficulty of proving actual bias, especially given its insidious and often subconscious nature. The reasonable suspicion test, however, is met if the court is satisfied that a reasonable member of the public could harbour a reasonable suspicion of bias even though the court itself thought there was no real danger of this on the facts. The difference is that the driver behind this test is the strong public interest in ensuring public confidence in the administration of justice. Exceptions to the rule against bias[edit] Necessity[edit] There are cases in which a disqualified adjudicator cannot be replaced, as no one else is authorized to act. It has been observed that "disqualification of an adjudicator will not be permitted to destroy the only tribunal with power to act". It was held that his shareholding in the canal company which barred him from sitting in the appeal did not affect his power to enroll, as no one but him had the authority to do so. It was mentioned this was allowed "for this [was] a case of necessity, and where that occurs the objection of interest cannot prevail". This advice is not wrong in the context of a judicial act under review, where the judgment will be held valid unless reversed on appeal. Lord Esher said in Allison v General Council of Medical Education and Registration [34] that the participation of a disqualified person "certainly rendered the decision wholly void". A fundamental aspect of natural justice is that before a decision is made, all parties should be heard on the matter. It has been suggested that the rule requiring a fair hearing is broad enough to include the rule against bias since a fair hearing must be an unbiased hearing. However, the rules are often treated separately. It is fundamental to fair procedure that both sides should be heard. In his view, the mere fact that the power affects rights or interests is what makes it "judicial" and so subject to the procedures required by natural justice. In the United Kingdom context, this is demonstrated by Ahmed v H. Article 6 does not, however, replace the common law duty to ensure a fair hearing. It has been suggested that Article 6 alone is not enough to protect procedural due process, and only with the development of a more sophisticated common law will the protection of procedural due process extend further into the administrative machine. For example, the common law does not impose a general duty to give reasons for a decision, but under Article 6 1 a decision-maker must give a reasoned judgment so as to enable an affected individual to decide whether to appeal. In Cooper v Wandsworth, [37] Chief Justice William Erle went so far as to state that the lack of notice and hearing afforded to Cooper could be said to be a form of abuse, as he had been treated as if he did not matter. The duty of respect â€” the affected person has the right to know what is at stake, and it is not enough to simply inform him or her that there will be a hearing. The rule of law â€” notice of issues and disclosure of information opens up the operations of the public authority to public scrutiny. The British courts have held it is not enough for an affected person to merely be informed of a hearing. He or she must also be told what is at stake; in other words, the gist of the case. In Ridge v Baldwin, a chief constable succeeded in having his dismissal from service declared void as he had not been given the opportunity to make a defence. In another case, Chief Constable of the North Wales Police v Evans , [50] a chief constable required a police probationer to resign on account of allegations about his private life which he was given no fair opportunity to rebut. The House of Lords found the dismissal to be unlawful. Likewise in Surinder Singh Kanda v Federation of Malaya , [11] a public servant facing disciplinary proceedings was not supplied with a copy of a prejudicial report by a board of inquiry which the adjudicating officer had access to before the hearing. The Privy Council held that the proceedings had failed to provide him a reasonable opportunity of being heard. However, this requirement does not necessarily mean the decision-maker has to meet the complainant face to face â€” "Natural justice does not generally demand orality". Giving judgment in the Court of Appeal of England and Wales, Lord Justice Harry Woolf held that an oral hearing may not always be the "very pith of the administration of natural justice". The best way of producing a fair trial is to ensure that a party to it has the fullest information of both the allegations that are made against him and the evidence relied upon in support of those allegations. Where the evidence is documentary, he should have access to the documents. Where the evidence consists of oral testimony, then he should be entitled to cross-examine the witnesses who give that testimony, whose identities should be

disclosed. It was held by the House of Lords in AF, [54] applying the decision of the Grand Chamber of the European Court of Human Rights A v United Kingdom , [55] that a person accused of terrorism against whom a control order has been issued must be given sufficient information about the allegations against him to enable him to give effective instructions to his special advocate. If this requirement is satisfied, a fair hearing can be conducted without detailed disclosure of confidential information that might compromise national security. On the facts of the case, a special advocate was not permitted further contact with an applicant or his ordinary legal representatives except with permission of the Special Immigration Appeals Commission SIAC after viewing confidential or "closed" materials. If the evidence against the applicant is largely closed but allegations contained in open material are sufficiently specific, an applicant should be able to provide his legal representatives and special advocate with information to refute it such as an alibi , if the open material alleges he was at a certain place during a certain period without having to know the detail or sources of the closed evidence. However, if the evidence revealed to the person consists only of general assertions and the case against him is based solely or to a substantive extent on undisclosed adverse evidence, the fair hearing rule under natural justice will not be satisfied. First, since the grounds for a reasonable suspicion that a person is involved in terrorist activity can span from incontrovertible evidence to an innocent misinterpretation of facts which can be explained away by the person, in many cases it is impossible for courts to be sure that the disclosure of the evidence will make no difference to the applicant. Secondly, resentment will be felt by the person and his family and friends if sanctions are imposed without any proper explanation of the grounds and when, due to the non-disclosure of information, the person is put in a position where he is unable to properly defend himself. As Lord Phillips put it, "if the wider public are to have confidence in the justice system, they need to be able to see that justice is done rather than being asked to take it on trust". Medical Council of Singapore This meant they did not hear all the oral evidence and submissions. The High Court held that this had substantially prejudiced the appellant and constituted a fundamental breach of natural justice. On the other hand, mere absence from a hearing does not necessarily lead to undue prejudice. Thus, the appellant had not suffered undue prejudice. On the basis of reciprocity, if one side is allowed to cross-examine his legal opponent at a hearing, the other party must also be given the same opportunity. A tribunal has the discretion to admit either a legally qualified or unqualified counsel to assist the person appearing before it, based on the facts of the case. This was enunciated in Singapore in Ho Paul v. Singapore Medical Council Subsequently, he argued that he should have been warned of the legal implications of not being legally represented. The High Court rejected this argument and held he had suffered no prejudice. Ho had been given a fair opportunity of presenting his own case and, most importantly, had not been deprived of his right to cross-examine the witnesses. In Rajeevan Edakalavan v. Public Prosecutor , [65] the accused had appeared in person before a magistrate and had entered a plea of guilt. He later petitioned the High Court for criminal revision, arguing that as the magistrate had not informed him of the defences available to him, his plea had been equivocal. That will be placing too onerous a burden on the judge. Furthermore, the judge will be performing two completely incompatible and irreconcilable roles â€” one as the adjudicator, the other as the de facto defence counsel. In Singapore, the right to legal representation is contingent on the nature of the inquiry. However, since Article 12 of the Constitution of Singapore guarantees equal protection under the law, it has been suggested that greater weightage should be accorded to this procedural right when balancing it against the competing demand of efficiency. If the tribunal does state its reasons, and those reasons are wrong in law, certiorari lies to quash the decision. Such decisions also lacked the regularity and transparency that distinguish them from the mere say-so of public authorities.

NATURAL JUSTICE AND LEGAL JUSTICE pdf

4: Natural justice - Wikipedia

English legal system doctrine that protects against arbitrary exercise of power by ensuring fair play. Natural justice is based on two fundamental rules: (1) Audi alteram partem (Latin for, hear the other side): no accused, or a person directly affected by a decision, shall be condemned unless given full chance to prepare and submit his or her case and rebuttal to the opposing party's.

It is the science which alone can tell any man what he can, and cannot, do; what he can, and cannot, have; what he can, and cannot, say, without infringing the rights of any other person. It is the science of peace; and the only science of peace; since it is the science which alone can tell us on what conditions mankind can live in peace, or ought to live in peace, with each other. These conditions are simply these: The second condition is, that each man shall abstain from doing, to another, anything which justice forbids him to do; as, Edition: So long as these conditions are fulfilled, men are at peace, and ought to remain at peace, with each other. But when either of these conditions is violated, men are at war. And they must necessarily remain at war until justice is re-established. Through all time, so far as history informs us, wherever mankind have attempted to live in peace with each other, both the natural instincts, and the collective wisdom of the human race, have acknowledged and prescribed, as an indispensable condition, obedience to this one only universal obligation: Man, no doubt, owes many other moral duties to his fellow men; such as to feed the hungry, clothe the naked, shelter the homeless, care for the sick, protect the defenceless, assist the weak, and enlighten the ignorant. But these are simply moral duties, of which each man must be his own judge, in each particular case, as to whether, and how, and how far, he can, or will, perform them. But of his legal dutyâ€”that is, of his duty to live honestly towards his fellow menâ€”his fellow men not only may judge, but, for their own protection, must judge. And, if need be, they may rightfully compel him to perform it. They may do this, acting singly, or in concert. They may do it on the instant, as the necessity arises, or deliberately and systematically, if they prefer to do so, and the exigency will admit of it. Although it is the right of anybody and everybodyâ€”of any one man, or set of men, no less than anotherâ€”to repel injustice, and compel justice, for themselves, and for all who may be wronged, yet to avoid the errors that are liable to result from haste and passion, and that everybody, who desires it, may rest secure in the assurance of protection, without a resort to force, it is evidently desirable that men should associate, so far as they freely and voluntarily can do so, for the maintenance of justice among themselves, and for mutual protection against other wrongdoers. It is also in the highest degree desirable that they should agree upon some plan or system of judicial proceedings, which, in the trial of causes, should secure caution, deliberation, thorough investigation, and, as far as possible, freedom from every influence but the simple desire to do justice. Yet such associations can be rightful and desirable only in so far as they are purely voluntary. No man can rightfully be coerced into joining one, or supporting one, against his will. His own interest, his own judgment, and his own conscience alone must determine whether he will join this association, or that; or whether he will join any. If he chooses to depend, for the protection of his own rights, solely upon himself, and upon such voluntary assistance as other persons may freely offer to him when the necessity for it arises, he has a perfect right to do so. Certainly no man can rightfully be required to join, or support, an association whose protection he does not desire. Nor can any man be reasonably or rightfully expected to join, or support, any association whose plans, or method of proceeding, he does not Edition: To join, or support, one that would, in his opinion, be inefficient, would be absurd. To join or support one that, in his opinion, would itself do injustice, would be criminal. He must, therefore, be left at the same liberty to join, or not to join, an association for this purpose, as for any other, according as his own interest, discretion, or conscience shall dictate. An association for mutual protection against injustice is like an association for mutual protection against fire or shipwreck. And there is no more right or reason in compelling any man to join or support one of these associations, against his will, his judgment, or his conscience, than there is in compelling him to join or support any other, whose benefits if it offer any he does not want, or whose purposes or methods he does not approve. No objection can be made to these voluntary associations upon the ground that they would lack that knowledge of justice, as a science, which would be necessary to

enable them to maintain justice, and themselves avoid doing injustice. Honesty, justice, natural law, is usually a very plain and simple matter, easily understood by common minds. Those who desire to know what it is, in any particular case, seldom have to go far to find it. It is true, it must be learned, like any other science. But it is also true that it is very easily learned. Although as illimitable in its applications as the infinite relations and dealings of men with each other, it is, nevertheless, made up of a few simple elementary principles, of the truth and justice of which every ordinary mind has an almost intuitive perception. And almost all men have the same perceptions of what constitutes justice, or of what justice requires, when they understand alike the facts from which their inferences are to be drawn. Men living in contact with each other, and having intercourse together, cannot avoid learning natural law, to a very great extent, Edition: The dealings of men with men, their separate possessions and their individual wants, and the disposition of every man to demand, and insist upon, whatever he believes to be his due, and to resent and resist all invasions of what he believes to be his rights, are continually forcing upon their minds the questions, Is this act just? Is this thing mine? And these are questions of natural law; questions which, in regard to the great mass of cases, are answered alike by the human mind everywhere. Thus they very early understand that one child must not, without just cause, strike, or otherwise hurt, another; that one child must not assume any arbitrary control or domination over another; that one child must not, either by force, deceit, or stealth, obtain possession of anything that belongs to another; that if one child commits any of these wrongs against another, it is not only the right of the injured child to resist, and, if need be, punish the wrongdoer, and compel him to make reparation, but that it is also the right, and the moral duty, of all other children, and all other persons, to assist the injured party in defending his rights, and redressing his wrongs. These are fundamental principles of natural law, which govern the most important transactions of man with man. Yet children learn them earlier than they learn that three and three are six, or five and five ten. Their childish plays, even, could not be carried on without a constant regard to them; and it is equally impossible for persons of any age to live together in peace on any other conditions. In truth, it would be impossible to make them understand the real meanings of the words, if they did not first understand the nature of the thing itself. To make them under stand the meanings of the words justice and injustice, before knowing the nature of the things themselves, would be as impossible as it would be to make them understand the meanings of the words heat and cold, wet and dry, light and darkness, white and black, one and two, before knowing the nature of the things themselves. Men necessarily must know sentiments and ideas, no less than material things, before they can know the meanings of the words by which we describe them. If justice be not a natural principle, it is no principle at all. If it be not a natural principle, there is no such thing as justice. If it be not a natural principle, all that men have ever said or written about it, from time immemorial, has been said and written about that which had no existence. If it be not a natural principle, all the appeals for justice that have ever been heard, and all the struggles for justice that have ever been witnessed, have been appeals and struggles for a mere fantasy, a vagary of the imagination, and not for a reality. If justice be not a natural principle, then there is no such thing as injustice; and all the crimes of which the world has been the scene, have been no crimes at all; but only simple events, like the falling of the rain, or the setting of the sun; events of which the victims had no more reason to complain than they had to complain of the running of the streams, or the growth of vegetation. If justice be not a natural principle, governments so-called have no more right or reason to take cognizance of it, or to pretend or profess to take cognizance of it, than they have to take cognizance, or to pretend or profess to take cognizance, of any other nonentity; and all their professions of establishing justice, or of maintaining justice, or of regarding justice, are simply the mere gibberish of fools, or the frauds of imposters. But if justice be a natural principle, then it is necessarily an immutable one; and can no more be changedâ€”by any power inferior to that which established itâ€”than can the law of gravitation, the laws of light, the principles of mathematics, or any other natural law or principle whatever; and all attempts or assumptions, on the part of any man or body of menâ€”whether calling themselves governments, or by any other nameâ€”to set up their Edition: If there be any such principle as justice, it is, of necessity, a natural principle; and, as such, it is a matter of science, to be learned and applied like any other science. And to talk of either adding to, or taking from, it, by legislation, is just as false, absurd, and ridiculous as it would be to talk of adding to, or taking from, mathematics, chemistry, or any other science, by legislation. If there be

in nature such a principle as justice, nothing can be added to, or taken from, its supreme authority by all the legislation of which the entire human race united are capable. And all the attempts of the human race, or of any portion of it, to add to, or take from, the supreme authority of justice, in any case whatever, is of no more obligation upon any single human being than is the idle wind. If there be such a principle as justice, or natural law, it is the principle, or law, that tells us what rights were given to every human being at his birth; what rights are, therefore, inherent in him as a human being, necessarily remain with him during life; and, however capable of being trampled upon, are incapable of being blotted out, extinguished, annihilated, or separated or eliminated from his nature as a human being, or deprived of their inherent authority or obligation. For if no one brings any rights with him into the world, clearly no one can ever have any rights of his own, or give any to another. And the consequence would be that mankind could never have any rights; and for them to talk of any such things as their rights, would be to talk of things that never had, never will have, and never can have an existence. If there be such a natural principle as justice, it is necessarily the highest, and consequently the only and universal, law for all those matters to which it is naturally applicable. And, consequently, all human legislation is simply and always an assumption of authority and dominion, where no right of authority or dominion exists. It is, therefore, simply and always an intrusion, an absurdity, an usurpation, and a crime. On the other hand, if there be no such natural principle as justice, there can be no such thing as injustice. If there be no such natural principle as honesty, there can be no such thing as dishonesty; and no possible act of either force or fraud, committed by one man against the person or property of another, can be said to be unjust or dishonest; or be complained of, or prohibited, or punished as such. In short, if there be no such principle as justice, there can be no such acts as crimes; and all the professions of governments, so called, that they exist, either in whole or in part, for the punishment or prevention of crimes, are professions that they exist for the punishment or prevention of what never existed, nor ever can exist. Such professions are therefore confessions that, so far as crimes are concerned, governments have no occasion to exist; that there is nothing for them to do, and that there is nothing that they can do. They are confessions that the governments exist for the punishment and prevention of acts that are, in their nature, simple impossibilities. And this law is the paramount law, and the same law, over all the world, at all times, and for all peoples; and will be the same paramount and only law, at all times, and for all peoples, so long as man shall live upon the earth. If there be no such science as justice, there can be no science of government; and all the rapacity and violence, by which, in all ages and nations, a few confederated villains have obtained the mastery over the rest of mankind, reduced them to poverty and slavery, and established what they called governments to keep them in subjection, have been as legitimate examples of government as any that the world is ever to see. If there be in nature such a principle as justice, it is necessarily the only political principle there ever was, or ever will be. All the other so-called political principles, which men are in the habit of inventing, are not principles at all. They are either the mere conceits of simpletons, who imagine they have discovered something better than truth, and justice, and universal law; or they are mere devices and pretences, to which selfish and knavish men resort as means to get fame, and power, and money. Natural law, natural justice, being a principle that is naturally applicable and adequate to the rightful settlement of every possible controversy that can arise among men; being, too, the only standard by which any controversy whatever, between man and man, can be rightfully settled; being a principle whose protection every man demands for himself, whether he is willing to accord it to others, or not; being also an immutable principle, one that is always and everywhere the same, in all ages and nations; being self-evidently necessary in all times and places; being so entirely impartial and equitable towards all; so indispensable to the peace of mankind everywhere; so vital to the safety and welfare of every human being; being, too, so easily learned, so generally known, and so easily maintained by such voluntary associations as all honest men can readily and rightfully form for that purposeâ€”being such a principle as this, these questions arise, viz.: Why is it that it does not universally, or well nigh universally, prevail? Why is it that it has not, ages ago, been established throughout the world as the one only law that any man, or all men, could rightfully be compelled to obey? Why is it that any human being ever conceived that anything so self-evidently superfluous, false, absurd, and atrocious as all legislation necessarily must be, could be of any use to mankind, or have any place in human affairs? The answer is, that through all historic times,

wherever any people have advanced beyond the savage state, and have learned to increase their means of subsistence by the cultivation of the soil, a greater or less number of them have associated and organized themselves as robbers, to plunder and enslave all others, Edition: These bands of robbers, small in number at first, have increased their power by uniting with each other, inventing warlike weapons, disciplining themselves, and perfecting their organizations as military forces, and dividing their plunder including their captives among themselves, either in such proportions as have been previously agreed on, or in such as their leaders always desirous to increase the number of their followers should prescribe. The success of these bands of robbers was an easy thing, for the reason that those whom they plundered and enslaved were comparatively defenceless; being scattered thinly over the country; engaged wholly in trying, by rude implements and heavy labor, to extort a subsistence from the soil; having no weapons of war, other than sticks and stones; having no military discipline or organization, and no means of concentrating their forces, or acting in concert, when suddenly attacked. Under these circumstances, the only alternative left them for saving even their lives, or the lives of their families, was to yield up not only the crops they had gathered, and the lands they had cultivated, but themselves and their families also as slaves. Thenceforth their fate was, as slaves, to cultivate for others the lands they had before cultivated for themselves. Being driven constantly to their labor, wealth slowly increased; but all went into the hands of their tyrants. These tyrants, living solely on plunder, and on the labor of their slaves, and applying all their energies to the seizure of still more plunder, and the enslavement of still other defenceless persons; increasing, too, their numbers, perfecting their organizations, and multiplying their weapons of war, they extend their conquests until, in order to hold what they have already got, it becomes necessary for them to act systematically, and co operate with each other in holding their slaves in subjection. But all this they can do only by establishing what they call a government, and making what they call laws. They have been mere bands of robbers, who have associated for purposes of plunder, conquest, and the enslavement of their fellow men. And their laws, as they have called them, have been only such agreements as they have found it necessary to enter into, in order to maintain their organizations, and act together in plundering and enslaving others, and in securing to each his agreed share of the spoils. All these laws have had no more real obligation than have the agreements which brigands, bandits, and pirates find it necessary to enter into with each other, for the more successful accomplishment of their crimes, and the more peaceable division of their spoils. Thus substantially all the legislation of the world has had its origin in the desires of one class of persons to plunder and enslave others, and hold them as property. In process of time, the robber, or slave holding, classâ€”who had seized all the lands, and held all the means of creating wealthâ€—began to discover that the easiest mode of managing their slaves, and making them profitable, was not for each slaveholder to hold his specified number of slaves, as he had done before, and as he would hold so many cattle, but to give them so much liberty as would throw upon themselves the slaves the responsibility of their own subsistence, and yet compel them to sell their labor to the land-holding classâ€”their former ownersâ€—for just what the latter might choose to give them. Of course, these liberated slaves, as some have erroneously called them, having no lands, or other property, and no means of obtaining an independent subsistence, had no alternativeâ€—to save themselves from starvationâ€—but to sell their labor to the landholders, in exchange only for the coarsest necessaries of life; not always for so much even as that. Their means of subsistence were perhaps even more precarious than when each had his own owner, who had an interest to preserve his life. They were liable, at the caprice or interest of the land-holders, to be thrown out of home, employment, and the opportunity of even earning a subsistence by their labor. They were, therefore, in large numbers, driven to the necessity of begging, stealing, or starving; and became, of course, dangerous to the property and quiet of their late masters. The consequence was, that these late owners found it necessary, for their own safety and the safety of their property, to organize themselves more perfectly as a government, and make laws for keeping these dangerous people in subjection; that is, laws fixing the prices at which they should be compelled to labor, and also prescribing fearful punishments, even death itself, for such thefts and trespasses as they were driven to commit, as their only means of saving themselves from starvation. These laws have continued in force for hundreds, and, in some countries, for thousands of years; and are in force to-day, in greater or less severity, in nearly all the countries on the globe. The purpose and effect of these laws have been to maintain,

in the hands of the robber, or slave holding class, a monopoly of all lands, and, as far as possible, of all other means of creating wealth; and thus to keep the great body of laborers in such a state of poverty and dependence, as would compel them to sell their labor to their tyrants for the lowest prices at which life could be sustained. And the real motives and spirit which lie at the foundation of all legislationâ€”notwithstanding all the pretences and disguises by which they attempt to hide themselvesâ€”are the same to-day as they always have been. The whole purpose of this legislation is simply to keep one class of men in subordination and servitude to another. What, then, is legislation?

NATURAL JUSTICE AND LEGAL JUSTICE pdf

5: Natural Justice Law and Legal Definition | USLegal, Inc.

This chapter first discusses how the courts have devised a code of fair administrative procedure based on doctrines which are an essential part of any system of administrative justice.

In a memorable scene from the history of philosophy, Socrates, awaiting execution, is visited by his wealthy friend, Crito, who offers to help him escape from prison and flee into exile. Being a just person matters more than injustice generated by institutions. Indeed, for Socrates, it matters more than life itself. Instead, social justice dominates public discussion. As I understand it, social justice has at least three distinguishing features. First, social justice focuses primarily on the evaluation of institutions, not individual actions. Second, social justice is concerned with outcomes, rather than procedures. Third, the justice in social justice refers to fairness understood as equalityâ€”usually social or economicâ€”not adherence to existing law. Taken together, then, social justice is a matter of making institutions fair, by righting the wrongs of social and economic inequalities. Whether intentionally or not, social justice tends to destroy what in earlier ages was called natural justice. Natural justice refers to established institutional legal and interpersonal social norms for resolving conflict and maintaining order. Such is the shared inheritance of the system of English Common Law on which many beneficial legal systems rest. While social justice strives for ideally just institutions, natural justice is content with the justice that obtains approximately from one person in relation to another within a system that prevents mutual injury and induces cooperation. The rules of such a game matter more than who wins or loses , which is why, all things considered, a just procedure is preferable to a just outcome. Lastly, what makes individual action just is adherence to law, to the rules of the game, not the fairness of an imagined alternative game, which realizes a more equal outcome. Natural justice has roots in ancient Greek ethics, particularly in Stoicism. Despite their influence on the natural law tradition, Stoics did not regard the justice of institutions as a centrally important ethical matter. Well-ordered lives come before the well-ordered society. Sometimes this invited the charge of quietism, especially when some Stoic philosophers, like the Roman Emperor, Marcus Aurelius, had the authority though perhaps not the ability to dismantle very great institutional injustices, such as slavery. If you have the correct theory of justice and the power to implement itâ€”say the criticsâ€”then you must do so, no matter the cost. Contemporary philosophers have mostly ignored the ancient emphasis on virtue and justice. After the social changes brought about by the s, it is no accident that most of this scholarship has been egalitarian and social justice-oriented. Indeed, for Rawls, because natural and social advantages in a society were arbitrary from a moral point of view, inequalities stemming from them must be justified. Thus, equality became the moral baseline. What remained to discuss was not whether inequalities were unjust, but which inequalities mattered and what should be done about them. After all, the realm of things that might be considered unfair because unequal is potentially unlimited. For instance, political philosophers like Philippe Van Parijs have worried about such trivial matters as whether surfers ought to be subsidized for what Ronald Dworkin calls expensive tastes, which they have blamelessly developed, yet unfairly bear the burden of financing. Or there is the issue raised by G. Cohen of whether one can support egalitarian policies while remaining wealthy oneself e. And, most egregiously, Adam Swift asks: Can we be partial to our own children and remain faithful to the cause of social justice? Whatever its intellectual value, all of this talk renders justice bloated and abstract, too far removed from the moral concerns of ordinary people, and conceptually stretched beyond recognition. Famously, Rawls, for instance, invites his readers to abstract from the particulars of their own lives e. While a great many things appear unfair from behind the veil of ignorance, as Aristotle understood, fairness is a part of justice, not the whole of it. Justice is one virtue: What is the alternative to social justice? I propose we revive natural justice, resurrecting the ancient wisdom about justice and its deep connection with the good life. The idea is not to blindly follow existing procedures and norms, but to do so virtuously, with knowledge, informed by emotion, and with a view to what is truly good for oneself and others. But what is just, all things considered, rests with the judgment of the virtuous person, as an ideal toward which we aspire. The ancient Greeks called the norms of the social structure nomoi, and they were generally understood to be laws in the legal and social sense. Hence,

for Aristotle, the person who is law-abiding nomimos not only follows the formal legal norms of her community, but also the informal social norms. The critical role of the nomoi is that they establish a system of mutual expectations. But by observing socially-sanctioned roles, offices, and relationshipsâ€”even if not perfectly justâ€”we can cooperate peacefully and beneficially, without fear of defection or betrayal. Law is the institutionalization of trust. What about unjust laws? How does natural justice account for unjust nomoi? For example, the nomoi of the antebellum South marginalized and brutalized the slave population. And there are plenty of other cases in which institutions fall short in less extraordinary, but altogether unsurprising, ways. For natural justice might seem unduly prejudiced toward the status quo and hostile to new proposals for beneficial social change. Indeed, one of the attractions of social justice is that it begins from the premise that existing institutions are very likely unjust because unfair and unequal and therefore must be made just through social activism or in the extreme, political revolution. An important feature of the nomoi is that they are bounded in time and place. They are the path-dependent result of successful responses to social problems that existed in the past, to which their mere existence testifies. The existing nomoi of a community are successful because they have gone through a process of social evolution. They are justified not because they comport with ideal justice, but because they are our best solutions to our worst problems. And, since one of our problems is the imperfectability of human beings, we must continually fine-tune our institutions to make up for our own fallibility. The necessity of new proposals for social change is grounded in the fact that over time the nomoi of a society inevitably ossify. Part of the reason for that ossification is natural decay. But it is also the result of human iniquity and our inability to keep pace with the dynamics of a complex world. Now, according to natural justice, changeâ€”at least salutary changeâ€”comes about because of the just person, who looks to change the nomoi, not by reference to ideal justice, but by reforming the existing nomoi in a way that improves upon the existing political tradition. This change in individual judgment eventually becomes widespread enough to change the nomoi, and ultimately, though perhaps slowly and uncertainly, moves the society closer to something approximating ideal justice. For instance, refusing people opportunities and services based on an immutable characteristic was once an accepted and widely practiced social norm in the United States. But, over time, individual judgments about the evils of this practice consolidated to make this kind of discrimination one of the worst transgressions of a social norm one can commit. The moral judgment of the just person alerts us to ways in which the nomoi are deficient, and therefore fall short of a standard of perfect justice that is imperfectly embedded in the institutions of a political tradition. We must balance contested ideals of justice with the very real risks of social change. This is one reason why just persons must argue for their reform proposals in public, and, if they are to be persuasive, ground their proposals in the ideals of a shared political tradition. The distinguishing feature of natural justice is that it places the emphasis on reform from an initial place of conformity, rather than on the transformational change of social justice. On the one hand, insisting that institutions conform to an ideal of justice without paying attention to existing nomoi undermines the very institutions that make reform possible. On the other hand, maintaining manifestly unjust institutions for the sake of short-term stability can undermine the long-term legitimacy of existing institutions and fail to respond to the dynamic nature of a complex world. While there is no perfect balance between stability and change, and there are no guarantees that the just person will be successful in achieving a recognizably just much less liberal society, natural justice nevertheless locates justice in the actions of persons, rather than in the design of institutions. Socrates accepts, as a matter of justice, the nomoi of his political tradition because they answer to an implicit standard of justice that he recognizes as a virtuous person. To flee punishment, even unjustly deserved, would be an act of injustice, and therefore is unacceptable to a just Socrates. In the aftermath of social justice, we should follow Socrates in seeking firm ground on the stable foundation of natural justice. If you enjoy our articles, be a part of our growth and help us produce more writing for you:

6: Natural Justice

Natural justice refers to established institutional (legal) and interpersonal (social) norms for resolving conflict and

maintaining order. Such is the shared inheritance of the system of English Common Law on which many beneficial legal systems rest.

7: Natural Justice and Legal Justice - Law Trove

The great body of case law which has done precisely this, has resulted in the formulation of what is now known as "the principles of natural justice". Although these follow fom Article 14 of the Constitution, these principles of procedural fairness, and the right to be heard, are so fundamental to the dispensation of justice, that our.

8: Natural justice or procedural fairness

The argument of Natural Law and Justice is that the philosophy of natural law and contemporary theories about the nature of justice are both efforts to make sense of the fundamental paradox of human experience: individual freedom and responsibility in a causally determined universe.

9: Principles of Natural Justice In Indian Constitution

In India, the principles of natural justice are firmly grounded in Article 14 & 21 of the Constitution. With the introduction of concept of substantive and procedural due process in Article 21, all that fairness which is included in the principles of natural justice can be read into Art.

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