

Justice and Friendship in Commercial Society

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Montesquieu contends that the “natural effect of commerce is to lead to peace.”¹ It is, he explains, “an almost general rule that everywhere there are gentle mores, there is commerce and that everywhere there is commerce, there are gentle mores.”² Nations that engage in trade become interdependent; “one has an interest in buying, the other has an interest in selling, and all unions are founded on mutual needs.”³ More specifically, commerce “produces in men a certain feeling for exact justice.”⁴ That is to say, those engaged in commerce seek the just middle ground between “banditry,” which is entirely focused on self, and those self-denying “moral virtues that make it so that one does not always discuss one’s own interests alone and that one can neglect them for those of others.”⁵ Montesquieu’s comments echo Aristotle, who notes how “communities of exchange” hold people and cities together.⁶ Such communities of exchange, Aristotle argues, are founded on living out the virtue of justice in friendship. Aristotle’s discussion of the nature of commercial transactions provides a helpful ground for explaining

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¹ Montesquieu, *The Spirit of the Laws*, trans. Anne Cohler, Basia Miller, and Harold Stone (Cambridge: Cambridge University Press, 2009), 20.2.

² Montesquieu, *The Spirit of the Laws*, 20.1.

³ Montesquieu, *The Spirit of the Laws*, 20.2.

⁴ Montesquieu, *The Spirit of the Laws*, 20.2.

⁵ Montesquieu, *The Spirit of the Laws*, 20.2.

⁶ Aristotle, *Nicomachean Ethics*, 2nd ed., trans. Terence Irwin (Indianapolis: Hackett Publishing Co., 1999), 1132b33–1133a2.

Montesquieu's somewhat empirical observations of the relationship between commerce and mores. Established in justice and executed in good faith, commercial (that is, contractual) transactions lead people to perform just actions and care for the good of others.

JUSTICE IN CONTRACTUAL RELATIONSHIPS

Aristotle distinguishes two types of justice, general justice and special or particular justice. The type of justice that we are concerned with is commutative justice, which is one of the two species of special or particular justice. Commutative justice relates to voluntary and involuntary private transactions.⁷ As Aquinas points out in his commentary on Aristotle's *Ethics*, commutative justice relates to transactions "by which a thing is transferred from one person to another," whereas distributive justice, the other type of special or particular justice, relates to "the transfer of a thing from the community to the individual."⁸ Commutative justice includes voluntary transactions such as "selling, buying, lending, pledging, renting, depositing, [and] hiring out," as well as involuntary transactions, such as "theft, adultery, poisoning, pimping, slave-deception, murder by treachery, false witness, . . . imprisonment, murder, plunder, mutilation, slander, [and] insult."⁹ In addition, such vicious conduct, whether adultery, poisoning, pimping, or murder, violates commutative justice (as opposed, for instance, to the same actions considered as violations of general justice), when the vicious actions are committed *for profit*. Consequently, commutative justice in regard to involuntary transactions looks to the harm inflicted and seeks to rectify the unjust profit and loss so as to equalize the victim and aggressor.¹⁰

In regard to voluntary transactions, commutative justice has an important but significant shift in resolution. Involuntary transactions that are unjust are rectified by equalizing the effects of the unjust act. For example, the thief loses the profit of his theft and compensates the victim for his losses. In contemporary legal terms, the plaintiff-victim receives compensatory damages from the defendant-thief. In other words,

⁷ Aristotle, *Nichomachean Ethics*, 1131a2–3.

⁸ Thomas Aquinas, *Commentary on Aristotle's Nichomachean Ethics*, trans. C.J. Litzinger (Notre Dame, Indiana: Dumb Ox Books, 1993), 928.

⁹ Aristotle, *Nichomachean Ethics*, 1131a1–9.

¹⁰ Aristotle, *Nichomachean Ethics*, 1132a1–11.

commutative justice attempts to place the plaintiff and defendant in the position they would have held if the defendant had *not* committed the unjust act by engaging in an involuntary transaction that transferred some property from the victim to the thief.

Commutative justice is fulfilled in voluntary transactions, on the other hand, when they are accomplished. Aristotle describes “communities of exchange” which, he contends, can only exist when people seek to return “good for good.”¹¹ The “proportionate reciprocity” of voluntary transactions maintains the city, holding people together.¹² The importance of these voluntary transactions, these contracts, is highlighted in Aristotle’s description in the *Rhetoric* of the rhetorical strategies best suited for upholding a contract:

We may argue that a contract is a law, though of a special and limited kind; and that, while contracts do not of course make the law binding, the law does make any lawful contract binding, and that the law itself as a whole is a sort of contract, so that anyone who disregards or repudiates any contract is repudiating the law itself. Further, most business relations—those, namely, that are voluntary—are regulated by contracts, and if these lose their binding force, human intercourse ceases to exist.¹³

The quasi-legal nature of the rights created by contract is also reflected in the type of remedies typically associated with an allegation that someone breached a contract. A plaintiff suing over an alleged breach of contract is typically seeking “benefit of the bargain” damages. That is to say, the plaintiff seeks what the plaintiff would have received if the defendant had fulfilled his obligations under the contract. This contrasts with the compensatory damages typical of involuntary transactions, in which the plaintiff typically seeks what he would have had if the defendant had not acted.

Before moving forward, it may be helpful to describe in greater detail what is traditionally meant by a contract. A contract has been defined, for instance in Blackstone’s classic *Commentaries on the Laws of*

¹¹ Aristotle, *Nicomachean Ethics*, 1133a2.

¹² Aristotle, *Nicomachean Ethics*, 1133a2.

¹³ Aristotle, *Rhetoric*, in *The Complete Works of Aristotle*, Rev. Oxford Translation, ed. Jonathan Barnes, vol. 2 (Princeton, NJ: Princeton University Press, 1984), 1376b8–14.

England, as “an agreement, upon sufficient consideration, to do or not to do a particular thing.”¹⁴ By qualifying a contract as an agreement, Blackstone clarifies that it is “a mutual bargain or convention; and therefore there must at least be two contracting parties, of sufficient ability to make a contract.”¹⁵ Unlike theft, which necessarily involves the consent of only one of the parties (i.e., the thief), contracts involve an agreement of both parties to the bargain. That is to say, it is only a contract if the parties have voluntarily entered into the agreement.

But agreement is not enough: a contract must also be based upon “sufficient consideration,” which requires that “there must be something given in exchange, something that is mutual and reciprocal.”¹⁶ The thing that is given and is the “price or motive of the contract” is called the “consideration.”¹⁷ Sufficient consideration, in turn, generally must be “valuable,” “such as money, marriage, or the like, which the law esteems an equivalent given for the grant; and is therefore founded in motives of justice.”¹⁸ That is to say, one element of a valid contract is that something appropriate is exchanged. Perhaps one party gives a specific manufactured good and receives money in exchange.

Returning to Aristotle, communities of exchange necessarily entail the returning of “good for good.”¹⁹ Each person has his need and, based on need, values the good or goods that another has.²⁰ Thus, a homebuilder needs shoes and a shoemaker needs a home, and commutative justice facilitates the exchange of the home for shoes.²¹ But since a home and shoes are not equal or of equal value, the craftsmen will not engage in an exchange if they cannot find a way to identify the proportionate equality of their respective goods. The homebuilder likely does not need the number of pairs of shoes that would equal the value of a home, and the shoemaker needs more than the portion of a home that would equal the value of a pair of shoes. Thus Aristotle claims,

¹⁴ William Blackstone, *Commentaries on the Laws of England*, ed. Wilfrid Prest, vol. 2 (Oxford: Oxford University Press, 2016), 442.

¹⁵ Blackstone, *Commentaries on the Laws of England*, 442.

¹⁶ Blackstone, *Commentaries on the Laws of England*, 444.

¹⁷ Blackstone, *Commentaries on the Laws of England*, 444.

¹⁸ Blackstone, *Commentaries on the Laws of England*, 297.

¹⁹ Aristotle, *Nicomachean Ethics*, 1133a2.

²⁰ Aristotle, *Nicomachean Ethics*, 1133a28.

²¹ Aristotle, *Nicomachean Ethics*, 1133a6–14.

This is why all items for exchange must be comparable in some way. Currency came along to do exactly this, and in a way becomes an intermediate, since it measures everything, and so measures excess and deficiency—[for instance,] how many shoes are equal to a house.²²

Whereas commutative justice rectifies involuntary transactions by eliminating their consequences, it facilitates voluntary transactions by allowing parties to enter into just commercial relationships, that is, allowing “people who are different and unequal” to be equalized through commercial activity.²³ The craftsmen, in order to engage in commerce, must learn to act in just ways. And while “the just . . . person is not the one who [merely] does these actions, but the one who also does them in the way in which just . . . people do them,” it is also true “that a person comes to be just from doing just actions.”²⁴ Thus, engaging in commerce tends to develop the habit of just action, which is a precondition to being just.

GOOD FAITH IN CONTRACTUAL PERFORMANCE

Though Aristotle repeatedly emphasizes that need and exchange are necessary in order to hold a community together, he does not claim that the justice that results from such interactions is sufficient. Rather, he later comments that “friendship would seem to hold cities together, and legislators would seem to be more concerned about it than justice.”²⁵ Aristotle appears to be drawing attention to a tension that is frequently thought to exist between the “harsh” justice of contractual terms and the good will necessary for maintaining a political order. Shakespeare exemplifies the view of contractual terms as harsh justice in the character of Shylock, who demands a pound of Antonio’s flesh when Antonio defaults on a debt, a contract, he entered into with Shylock.²⁶ During the trial at the end of *The Merchant of Venice*, Portia admits the justice of Shylock’s insistence on enforcement of contractual terms, while Shylock implies that a failure to enforce the contract would undermine the

²² Aristotle, *Nicomachean Ethics*, 1133a20–24.

²³ Aristotle, *Nicomachean Ethics*, 1133a18–19.

²⁴ Aristotle, *Nicomachean Ethics*, 1105b6–12.

²⁵ Aristotle, *Nicomachean Ethics*, 1155a24–25.

²⁶ William Shakespeare, *The Merchant of Venice*, in *The Yale Shakespeare*, eds. Wilbur Cross and Tucker Brooke (New York: Barnes & Noble Books, 1993), 4.1.36–38, 100.

commercial activities of Venice.²⁷ But just as Shylock thinks he has won and prepares to take what would certainly be a fatal portion of Antonio's flesh, Portia points out that Shylock does not have the right under the contract to shed Antonio's blood.²⁸ Moreover, Shylock's evident intention to cause Antonio's death renders Shylock liable for judgment and forfeiture of his goods.²⁹ Shylock has forgotten a key aspect of contract law, an aspect that helps to explain why contractual relationships—relationships of exchange—fall within Aristotle's discussions of justice *and* friendship. As Blackstone would later explain, "the very essence [of contracts] consists in observing the purest good faith and integrity."³⁰

Aristotle points to three species of friendship, "corresponding to the three objects of love:" the good, the pleasant, and the useful.³¹ Those who love another because he is useful "love the other not in his own right, but insofar as they gain some good for themselves from him."³² Such friendships are easily dissolved, as friends can change and circumstances can alter what is useful. Since this friendship of utility is based on the usefulness of the friend, the loss of that usefulness results in the loss of love.³³ As Aquinas explains, "So a doctor is useful in sickness, a sailor for navigation and so on. Since then friendship was cultivated not for the man himself but for the utility he afforded, when the cause of the friendship vanishes the friendship too is consequently dissolved."³⁴ Similarly, the friendship of pleasure is based on the pleasure derived from the beloved and, as feelings change, "their friendship shifts with [what they find] pleasant."³⁵ In contrast, the "complete friendship" is a friendship among good people. Such friends are "those who wish goods to their friend for the friend's own sake."³⁶ Complete friendships last "as long as [the friends] are good."³⁷

²⁷ Shakespeare, *The Merchant of Venice*, 4.39–40, 88–101, 235–37.

²⁸ Shakespeare, *The Merchant of Venice*, 4.313–20.

²⁹ Shakespeare, *The Merchant of Venice*, 4.358–73.

³⁰ Blackstone, *Commentaries on the Laws of England*, 2:461.

³¹ Aristotle, *Nicomachean Ethics*, 1156a7, 1155b19.

³² Aristotle, *Nicomachean Ethics*, 1156a10–11.

³³ Aristotle, *Nicomachean Ethics*, 1156a20–24.

³⁴ Aquinas, *Commentary on Aristotle's Nicomachean Ethics*, 484.

³⁵ Aristotle, *Nicomachean Ethics*, 1156a36.

³⁶ Aristotle, *Nicomachean Ethics*, 1156b9–11.

³⁷ Aristotle, *Nicomachean Ethics*, 1156b14.

While friendships of pleasure and utility are incomplete, they resemble complete friendship in certain ways. Friendships of pleasure resemble complete friendship in that “good people are also pleasant to each other.”³⁸ Likewise, the friendship of utility resembles the complete friendship, “since good people are also useful to each other.”³⁹ But as already mentioned, such incomplete friendships are prone to dissolution “as soon as the advantage is removed.”⁴⁰

While extolling the benefits of complete friendship, Aristotle also acknowledges certain deficiencies with complete friendship, at least in regard to its ability to sustain a community. First, complete friendship is only possible among good people.⁴¹ Since it would seem unlikely that any community would consist entirely of good people, the community could not be held together by complete friendship. Friendships of utility (and pleasure), on the other hand, are possible for bad people as well as good people and it is also possible for “decent people to be friends to base people, and for someone with neither character to be a friend to someone with any character.”⁴² Second, “[n]o one can have complete friendship for many people.”⁴³ In contrast, incomplete friendships can be had with many people, “for there are many people of the right sort, and the services take little time.”⁴⁴ As has already been implied, the types of people required for friendships of utility need not be, and likely are not, similar. Friendship of utility is the type of friendship that is most likely to arise among “contraries . . . of poor to rich, for instance, or ignorant to knowledgeable for we aim at whatever we find we lack, and give something else in return.”⁴⁵ As Aristotle points out in regard to communities of exchange, no community “is formed from two doctors. It is formed from a doctor and a farmer, and, in general, from people who are different and unequal and who must be equalized.”⁴⁶ While incomplete, such friendships nevertheless involve an equality among the

³⁸ Aristotle, *Nicomachean Ethics*, 1157a2.

³⁹ Aristotle, *Nicomachean Ethics*, 1157a3–4.

⁴⁰ Aristotle, *Nicomachean Ethics*, 1157a15–16.

⁴¹ Aristotle, *Nicomachean Ethics*, 1157a19.

⁴² Aristotle, *Nicomachean Ethics*, 1157a18–19.

⁴³ Aristotle, *Nicomachean Ethics*, 1158a11.

⁴⁴ Aristotle, *Nicomachean Ethics*, 1158a18.

⁴⁵ Aristotle, *Nicomachean Ethics*, 1159b13–15.

⁴⁶ Aristotle, *Nicomachean Ethics*, 1133a17–18.

friends. Friendships of utility (and of pleasure) “involve equality, since both friends get the same and wish the same to each other, or exchange one thing for another—for instance, pleasure for benefit.”⁴⁷

The friendship of utility, therefore, provides a basis for political community. People who lack complete virtue will necessarily have dissimilar aims, but “proportion equalizes and preserves the friendship.”⁴⁸ “[T]he cobbler receives a worthy exchange for his shoes, and so do the weaver and the others.”⁴⁹ The interests of the craftsmen are aligned, each benefiting from providing what is useful to others. Thus, the cobbler loves the customer, and the customer the cobbler, “not in his own right, but insofar as they gain some good for themselves from him.”⁵⁰ While this friendship of utility lacks the kind of virtue in which one seeks the good of the friend for the friend’s sake, it nevertheless requires that one seek the good of the friend, that is, that one perform under the agreement in good faith.

CONCLUSION

Contractual relationships—voluntary transactions of exchange—require sufficient consideration in regard to the terms of exchange and good faith in the performance of those terms. Thus, first, the existence of contractual relationships is premised on the fact that people voluntarily enter into agreements of exchange because they have dissimilar needs and desires, “since people with no need of each other . . . do not exchange.”⁵¹ Second, since the goods that people have to exchange are dissimilar, they must find some way to establish the proportionate equality of goods (e.g., how many shoes a house is worth), “[o]therwise it is not equal, and the exchange will not be maintained.”⁵² That is to say, people will not engage in contractual relationships unless they can negotiate for sufficient consideration. Finally, while ultimately self-serving, the relationship that results from a contract must be characterized by performance of contractual obligations in good faith.

⁴⁷ Aristotle, *Nichomachean Ethics*, 1158b4.

⁴⁸ Aristotle, *Nichomachean Ethics*, 1163b34–35.

⁴⁹ Aristotle, *Nichomachean Ethics*, 1163b35–36.

⁵⁰ Aristotle, *Nichomachean Ethics*, 1156a10–11.

⁵¹ Aristotle, *Nichomachean Ethics*, 1133b8.

⁵² Aristotle, *Nichomachean Ethics*, 1133a12.

“[T]he cobbler *receives* a worthy exchange for his shoes.”⁵³ Such relationships, though an incomplete form of friendship, are nevertheless characterized by the wish for the good of the other. The cobbler seeks to give something desired as a good by a customer (i.e., the shoes), while the customer seeks to give something desired as a good by the cobbler (i.e., payment). Although each participant in the exchange acts primarily for his own interest, nevertheless the relationship requires the participants to be mindful of the goods sought by those with whom they wish to engage in contractual relationships. As Adam Smith famously put it in the *Wealth of Nations*,

It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our necessities but of their advantages.⁵⁴

Friends of utility need not embody “moral virtues that make it so that one can neglect [one’s own interests] for those of others.”⁵⁵ Rather, friendship of utility reduces the need for a fully self-denying virtue. And it is perhaps due to its incompleteness, as Montesquieu observes, that Plato criticizes the tendency of commerce to corrupt pure mores.⁵⁶ But even if friendship of utility—commerce—might not be necessary for the perfectly virtuous, “it polishes and softens barbarous mores, as we see everyday.”⁵⁷ People are maintained in community by exchange, exchange that requires both the justice of sufficient consideration and the friendship of good faith in the performance of contractual obligations. As Aristotle puts it, “[F]riendship and justice would seem to be about the same things and to be found in the same people.”⁵⁸ Though they may not be perfectly virtuous, communities of exchange lead people to do the just act and to seek the good of others. As Montesquieu says, commerce is the way that leads to peace.⁵⁹

⁵³ Aristotle, *Nicomachean Ethics*, 1163b35. Emphasis added.

⁵⁴ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, vol. 1 (Indianapolis, Liberty Fund, 1981), 2.2.

⁵⁵ Montesquieu, *The Spirit of the Laws*, 20.2.

⁵⁶ Montesquieu, *The Spirit of the Laws*, 20.1.

⁵⁷ Montesquieu, *The Spirit of the Laws*, 20.1

⁵⁸ Aristotle, *Nicomachean Ethics*, 1159b25–26.

⁵⁹ Montesquieu, *The Spirit of the Laws*, 20.2.

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