

Distributive Justice

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The concept of justice

The word “justice” is used in several different ways. First, justice is sometimes understood as *moral permissibility* applied to distributions of benefits and burdens (e.g., income distributions) or social structures (e.g., legal systems). In this sense, justice is distinguished by the kind of entity to which it is applied, rather than a specific kind of moral concern.

Second, justice is sometimes understood as *legitimacy*, understood as the impermissibility of forcible interference by others. Permissible actions are typically legitimate, but some impermissible actions may also be legitimate (e.g., failing to keep a minor promise). In this sense, justice is concerned with the permissibility of the actions of *others* (their forcible interference) rather than with the permissibility of the action assessed for justice.

Third, justice is sometimes understood as *comparative fairness*—for example, as requiring that individuals get the same *proportion* of what they are *due*. Justice in this sense does not require that individuals get all that they are due; it merely requires, for example, that, if one person gets 10% of what she is due, then so do all others. The notion of being due something is ambiguous between what is owed as a matter of moral right and what is morally deserved (or “fitting”). Thus, comparative fairness is similarly ambiguous.

Fourth, justice is sometimes understood as *fairness*, understood as requiring that individuals get what they are *due*. Unlike comparative fairness, (full) fairness requires that individuals get all that they are due (and not merely the same proportion as others).

Finally, justice is sometimes understood as *what we morally owe each other*, where this is

a matter of respecting each person's rights. This is simply the above notion of justice as fairness relative what is due *as a matter of right*. Justice in this sense may be sensitive to desert as a substantive matter—if people have a right to what they deserve—but it has no necessary connection with desert.

In general, I shall focus on justice as what we morally owe each other. I shall therefore briefly elaborate on this concept of justice. As long as rights are understood very broadly as—perhaps pro tanto and highly conditional—constraints protecting the right-holder's interests and/or will, justice as what we owe each other is compatible with a broad range of theories. Rights, in this very weak sense, need not be absolute or even trumps over other moral considerations. They are merely those considerations that determine when a person is pro tanto wronged. So understood, rights are merely the correlates of the pro tanto duties that we owe to individuals—as opposed to the impersonal duties that we may have. (For a superb analysis of rights, see Kramer, Simmonds, and Steiner, 1998.)

Here, it is important to distinguish between duties *owed to* someone and duties *with respect to* someone. *Personal* duties are sensitive to the interests and/or wills of individuals in ways that impersonal duties (owed to no one) are not. Justice as what we owe each other is only concerned with the duties owed to individuals and not with impersonal duties. If there are no impersonal duties, then justice in this sense is extensionally equivalent to moral permissibility.

Justice as what we owe each other can be understood broadly as that which violates *no one's* rights or narrowly as that which violates no one *else's* rights. If there are no duties to self, then justice in the narrow sense is extensionally equivalent to justice in the broad sense.

The above list of some common senses of “justice” is not meant to be exhaustive. It is merely meant to highlight the importance of being clear about what we mean before entering

debates about what *makes* something just (the grounds of justice).

Sometimes a distinction is made between *distributive justice* and *corrective (commutative, rectificatory) justice*. The former is concerned with the distribution of benefits and burdens in the absence of past wrongdoing and the latter is concerned with how to respond to past wrongdoing (e.g., punishment and compensation). A full theory of justice must, of course, include both components. In general, I shall assume that we are considering full theories of justice—although little will be said here about corrective justice.

A distinction can also be made between ideal and practical justice. *Ideal justice* is what full justice requires in the absence of any empirical constraints (such as limited resources), whereas *practical justice* focuses on what is (perhaps imperfectly) just relative to a given feasible set of options. Suppose, for example, that one must choose between distribution 2-1 (2 units of benefit to first person, and 1 unit to second person) and 3-0. If justice requires equality, then neither is ideally just, but the first would be practically just, since it is the most equal feasible distribution. Ideal justice may be a useful concept for some purposes, but, in general, questions of justice are practical questions (i.e., relative to feasible constraints), and in what follows I shall focus on practical justice.

Although justice is typically construed *deontically* (i.e., as *permitting* some things and *forbidding* others), it is also sometimes construed *axiologically* (i.e., as holding that some things are *more just* than others). For simplicity, I shall focus primarily on the deontic conception of justice.

Justice can assess many different kinds of object: actions, the character of agents, social institutions, basic social structures (e.g., constitutions), and distributions of goods. For simplicity, I shall focus on the justice of actions.

Before examining three main theories of justice, we shall examine three generic issues: (1) What kinds of individual are protected by justice? (2) What kinds of benefits and burdens are relevant for justice? (3) What are some of the main patterns of distribution that have been invoked by theories of justice?

To whom is justice owed?

What kinds of beings have “justicial standing”? To whom, that is, is justice owed? Stated otherwise: What kinds of beings have rights? As a substantive matter, it is relatively uncontroversial that contemporary, productive, rational agents of one’s society have some kind of rights against one. Beyond that, there is much disagreement.

The most restrictive view—held by Hobbes ([1651] 1990), Buchanan (1975), and Gauthier (1986)—is that justice is owed only to those rational agents with whom one interacts in a mutually beneficial way. According to this *mutual advantage view*, justice is not owed to any of the following: rational agents with whom one does not interact because they are very far away in space or time, rational agents with whom one interacts but from whom one derives no benefits from cooperation (e.g., perhaps certain severely physically disabled individuals), sentient but non-rational beings (e.g., many animals, children, and severely demented adult humans). This is, needless to say, a rather radical view.

A slightly less restrictive view, *interactionism*, holds that duties of justice are owed to all and only those with whom one interacts in some suitably specified sense. This view agrees that interaction is crucial for determining who is owed a duty of justice, but it denies that mutual advantage is relevant. A common version, *statism*, understands interaction as a kind of political interaction and thus takes justice to be limited to fellow citizens (see, e.g., Dworkin, 1981, 1987).

A different version understands interaction quite broadly (e.g., social, economic, or political). In a world of increasing interaction between people of different countries, this version views justice as increasingly an international matter—although currently we would owe no justice to any beings who may exist on other planets.

The broadest view of justicial standing, *cosmopolitanism*, denies the relevance of interaction for at least some of the duties of justice. Justice is owed to all beings in the world who have the requisite psychological make-up and existential status (e.g., Pogge, 1992; Buchanan 1995). On some cosmopolitan views, the requisite make-up is rational agency (which excludes most animals and children); on other cosmopolitan views, sentience or having relevant interests is the requisite make-up.

In addition to the issue of requisite psychological make-up, different versions of cosmopolitanism require different kinds of existential status for justicial standing. There are two main dimensions: (1) When must the individual exist? Now, or at any time (past, present, or future)? (2) How definite is the required existence for the individual to have justicial standing? One view, *presentism*, holds that only those who now exist are owed duties of justice. Past and future individuals are owed no duties of justice (although there may be impersonal duties concerning them). Another view, *definitism*, holds that duties of justice, at a given time, are owed to all and only those who, given the laws of nature and the circumstances, definitely exist (i.e., with certainty), at some point (past, present, or future). Merely possible future individuals—those who may come into existence, but may not—are not owed duties of justice, but definite future individuals—those who will definitely come into existence at some point—may be owed such duties. A third view, *empirical possibilism*, holds that, at a given time, all those who, given the laws of nature and the circumstances, might exist at some point are owed duties of justice.

Although definitism and empirical possibilism (as opposed to presentism) allow that dead individuals can have justicial standing, they do not require it. There may be additional conditions that must be satisfied: for example, that only individuals with the potential for current or future experience are owed duties of justice.

Independently of how the above issues are resolved, there is the further question of whether the beings to whom justice is owed are *temporally extended beings* (e.g., who are born and then live for many years) or *beings-at-a-time* (person-stages). The common sense view, of course, is the former, but Parfit (1984) and McKerlie (1989) have suggested that beings-at-a-time may be the fundamental unit of moral concern. The difference between the views is significant. If, for example, justice requires equality of wellbeing, the temporarily-extended-being view would naturally (although with some additional assumptions) require that whole-life wellbeing be equal, whereas the beings-at-a-time view would require equality at each point in time. The whole-life view does not require equality at each point in time, since, if one life has had more wellbeing than another in the past, this could be offset by it having less wellbeing now or in the future.

All of the above assumes that those owed justice are individuals of some sort. This could, of course, be questioned. One might hold that justice is owed to groups of individuals. This might require, for example, equality among families, among ethnic groups, or between the sexes. The issue here, of course, concerns normative individualism versus normative collectivism.

Distribution of what?

What is the currency of justice? With what kinds of goods or benefits is justice concerned? Some of the main contenders are wellbeing (quality of life), initial opportunity for wellbeing, brute-

luck wellbeing, resources, primary goods, capabilities, social/political status (respect), and freedom. The currency of justice issue has mainly been discussed in the context of egalitarian theories of justice, and, for simplicity, I shall tend to discuss in this context as well. The issue, however, is quite general.

One view is that the currency of justice is wellbeing (quality of life). Wellbeing can be interpreted as happiness, preference satisfaction, or some more objective (or perfectionistic) conception of quality of life (e.g., one that would include knowledge or friendship independently of their value for happiness). Given that wellbeing matters for its own sake, it is a natural candidate for being the good with which justice is concerned. It is, however, vulnerable to a powerful objection: it leaves no room for individuals being accountable for their past choices. Suppose that everyone starts with equal wellbeing and effectively equal opportunities and that this is just. Some individuals then wisely choose to invest in their future while others unwisely choose to live for the moment. Many years later, those who chose wisely are very well off, while those who chose unwisely are not. Equality of wellbeing requires that resources be transferred from those who are well off to those who are poorly off, but this seems unjust. Individuals, it seems, should be accountable for their choices. Why should those who chose wisely have to share their resources with those who chose unwisely?

This objection—raised most forcefully by Dworkin (1981a, 1981b)—may seem to show that justice is ultimately concerned with the distribution of goods other than wellbeing. This inference, however, is mistaken. The point that individuals should (at least in principle) be accountable for their choices establishes that justice must be *historical*, that is, sensitive to how a given distribution of goods arose. It does not establish what kinds of goods are the relevant ones for justice. The problem can be avoided, for example, by holding that justice requires equality of

initial opportunities for wellbeing rather than equality of wellbeing at each point in time. (See, for example, Arneson, 1989, 1990; and Cohen, 1989, 1990; and Vallentyne 2002.) Moreover, focusing on resources, for example, does not automatically solve the problem. Equality (or other distributive pattern) of resources *at each time* (as opposed to initially) also requires transferring resources from those who chose wisely to those who didn't.

One way, then, that a theory of justice can hold agents accountable for their choices is by being concerned with initial opportunities for goods rather than with outcomes. A second (closely related) way of leaving room for agent-accountability—developed by Dworkin (1981b)—is by holding that justice is concerned only with the distribution of goods (of some specified sort) from *brute luck*. An outcome is a matter of brute luck, for a given individual, (roughly) just in case it is not reflective of her agency (e.g., not something that she could have foreseen or deliberately influenced). One's initial opportunities are, of course, a matter of brute luck, but so are unforeseeable lightning strikes later in life. Winning the lottery, on the other hand, is typically not a matter of brute luck (since it is normally a deliberate, calculated gamble).

A different reason for holding that justice is not concerned with wellbeing as such is the claim that individuals are responsible—and thus accountable—for their tastes or preferences. Rawls (1971), for example, defends the view that justice is concerned with the distribution of *social primary goods*, where these are social resources that any rational individual would want more of (such as opportunities, wealth, and income). Dworkin (1981b) defends the view that justice is concerned with the distribution of the competitive value (based on supply and demand) of resources. Both views hold that the relevant value (for justice) of goods is their "general" (or social) value—as opposed to the value that the recipient attaches to the goods. By appealing to general (social) measures of value, and ignoring the value *for the affected individual*, these

approaches hold individuals accountable for any idiosyncrasies in their tastes or preferences.

To the extent that individuals deliberately modify their tastes (or preferences), it may well be that individuals should be accountable for such modifications. A person who deliberately develops expensive tastes for wine is indeed (at least typically) responsible for that development, and justice is arguably not concerned with inequalities in wellbeing due to such development. The initial-opportunity-for-wellbeing and brute-luck wellbeing views agree with this view. Matters are different, however, for tastes with which individuals start or that were imposed by external forces (e.g., the result of an unforeseeable brain tumor). Many would argue that an individual who is born with an expensive taste that is not cheaply alterable (e.g., needing expensive anti-depressants in order to be happy) is not accountable for the presence of that expensive taste. It would be unjust, many would argue, to give the same external resources to this individual as to a similar individual who began life without this expensive taste. Thus, accountability for one's tastes generally is arguably implausible—since for many (perhaps most) tastes there is a significant component for which the agent is not responsible. On the other hand, agents surely are responsible, and hence accountable, for some aspects of their tastes. This does indeed show that *outcome* wellbeing is not the focus of justice. It does not, however, cast any doubt on the brute-luck-wellbeing and initial-opportunity-for-wellbeing views.

Sen (1980, 1985, 1993) and Nussbaum (1988, 1999) have argued that justice is concerned with the distribution of *capabilities*, which are the effective abilities (opportunities) of individuals to *function*. Functionings include both doings (such as singing) and states of being (such as being happy). Sen rightly insists that the primary-goods and competitive-value-of-resources views fail to take into account how effectively an individual is able to make use of resources. One problem with appealing to capabilities, however, concerns the assessment of the

relative importance of the very large number of capabilities that individuals could have. How important is the capability to wiggle one's nose compared with the capability to walk about easily? If the answer to this question is determined by how useful the capability is for wellbeing (having a good life), then the capability view may not be that different from the opportunity for wellbeing view (see, for example, Vallentyne, 2005).

Of course, capabilities need not be construed so broadly and need not be evaluated on the basis of their contribution to wellbeing. One might (see, for example, Anderson, 1999) limit capabilities to those that are necessary for (or at least contribute to) functioning as a *free and equal member of society*. On a narrow version—the political version—it is only one's ability to function *politically* in society that is relevant. On a broader version—the social version—one's ability to function as a member of society more generally is considered. On both views, one's social status (e.g., respect from fellow citizens) is important for one's ability to function effectively. Obviously, a lot turns on what it is to function as a free and equal member of society, but I shall not here attempt to unpack this notion.

Independently of whether justice is generically concerned with the distribution of wellbeing, initial opportunity for wellbeing, brute-luck wellbeing, brute luck resources, etc., there is a further issue. Is justice concerned with these items as such, or only with the component thereof that was *produced by agency* (e.g., as opposed to nature)? The relevant agency might only be that of the individual agent—and thus justice is concerned only with the distribution of goods that she brings about (as opposed to what she allows to happen). More widely, the relevant agency might be that of members of the agent's society (past or present). More widely still, the relevant agency could be that of human agency (anywhere at any time). All these views—see, for example, Buchanan, 1995 and Nagel, 1997—agree that justice is not concerned with nature's

distribution of goods (e.g., the distribution of genes in an age in which there is no social manipulation of this distribution).

There are, of course, many other views about the currency of justice. Here, I shall merely mention one other. It holds that justice is concerned with the distribution of *freedom*. If freedom is understood as the effective ability to get what one wants (positive freedom), then this may not be so different from the opportunity for wellbeing view or the capability view. If, however, justice is understood as freedom from interference from others (negative freedom), then something like a form of libertarianism (discussed below) may result.

Patterns of Distribution: Equality, priority, sufficiency, and desert

Here, we shall briefly examine four of the main distribution patterns that have been invoked by theories of justice. Although each can be invoked as part of a deontological theory (e.g., an action is just if and only if it treats each person equally in some relevant respect), I shall focus, for simplicity, on their role in a consequentialist theory (e.g., an action is just if and only if its consequences maximize the equality of outcomes).

Egalitarianism holds that justice is concerned with equality of some relevant benefits. (See, for example, Rawls, 1971; Dworkin, 1981a, 1981b, 1987; Arneson, 1989, 1990; Cohen, 1989, 1990; Roemer, 1993, 1998; Temkin, 1993; Van Parijs, 1995; Barry, 1989, 1995; and Rakowski, 1991.) *Pure* egalitarianism is a purely comparative theory: it is only concerned with how one person's benefits compare with those of others. It judges $\langle 0,0 \rangle$ (0 units of benefit for each of two people) as equally just as $\langle 90,90 \rangle$. As a theory of comparative fairness, it is highly plausible in contexts in which everyone is owed the same level of benefits. If, however, justice is concerned with more than fairness, then it is implausible. *Pace* pure egalitarianism, if each

person is owed 90, then $\langle 89, 90 \rangle$ is more just (in the sense of giving people what they are owed) than $\langle 0, 0 \rangle$. Pure egalitarianism, however, holds that the former is less just, and requires “leveling down” to $\langle 0, 0 \rangle$. For this reason, no one defends pure egalitarianism as a theory of what people are owed (as opposed to comparative fairness). This leaves open, however, that some kind of impure egalitarian theory (e.g., one that is also sensitive to promoting benefits) is a plausible view of what we owe each other. (See, for example, Tungodden and Vallentyne, 2005.)

A different way combining a special concern for those who are worse off with a concern for making people’s lives better is *prioritarianism* (McKerlie 1984, 1994; Parfit [1991] 2000). Prioritarianism holds that the moral importance of getting the specified benefits is greater for those who have less. The moral importance of increasing a poorly off person’s benefits by one unit, for example, is deemed to be greater than that of increasing a well off person’s benefits by one unit. One version of prioritarianism—invoked by Rawls (1971) in his Difference Principle—is *leximin* (for “lexically maximize the minimum”), which holds that (1) the worst off position(s) should be made as well off as possible, (2) in cases of ties, the second worst of position(s) should be made as well off as possible, and so on for the third, fourth, etc. worst off position(s). It holds, for example, that $\langle 2, 4 \rangle$ is more just than $\langle 1, 900 \rangle$ —even though the latter has a much greater total.

Leximin gives, in effect, infinitely greater weight to the benefits of a worse off person. It holds that giving any benefit—no matter how small—to a worse off person is better than giving a benefit—no matter how large—to a better off person. Many object to this view on the ground that justice sometimes requires giving large benefits to many others rather than a small benefit to one worse off person.

Another form of prioritarianism, *finitely weighted prioritarianism*, gives only finitely

more weight to benefits for those who are worse off. Like leximin, it favors giving a benefit to a worse off person rather than to a better off person. Unlike leximin, however, it sometimes requires giving *larger* benefits to those are better off rather *smaller* benefits to those who are worse off (e.g., it could judge $\langle 1,5 \rangle$ as more just than $\langle 2,2 \rangle$). It will do this when the extra weight assigned to the worse off is offset by the larger benefit that the better off will get. (Arneson, 2000 endorses an impure version of finitely weighted prioritarianism: he also weights benefits by the degree to which they are deserved.)

Pure egalitarianism is concerned with the purely comparative concern of giving people equal shares, whereas prioritarianism is concerned with making peoples lives go better, with greater importance assigned to lives that are going less well. A third view, *sufficientarianism*, holds that justice requires that everyone get a sufficient (or adequate) amount of the specified goods, but equality—or even benefit promotion—is not required beyond that. (See Frankfurt, 1987.) The sufficiency view is closely related to the view that justice requires merely that needs be satisfied—since a natural specification of the adequacy level is as the minimum level at which (normally) all basic needs are satisfied. This, of course, raises the question of what needs are (as opposed to wants). (See, Braybrooke, 1987 and Copp, 1992.)

Egalitarianism, prioritarianism, and sufficientarianism each give a certain priority to benefits to those who are *worse off*—at least when they are below average and below the adequate level. This priority in no way depends on how deserving the individuals are. A different approach to justice takes it to be concerned with ensuring that people get what they *deserve*. (See, for example, Sher 1987; Feldman 1997; Arneson, 2000; Olsaretti 2003; and Pojman and McCleod, 1997.)

There is a variety of views about the *desert basis*, that is, what determines how deserving

people are. One could hold that desert is based on features of individuals that have nothing to do with their characters or agency (e.g., those of aristocratic families deserve more than others), but almost everyone agrees that desert must be based on something related to character or agency. Some might hold that desert is based on how virtuous one's character is independently of what choices one has made, but most agree that it is somehow based on the desirability of the agent's past choices. Thus, for example, effort and contribution are often taken to be desert bases. Even here, however, there is disagreement. Agents may, as a matter of brute luck (e.g., genes at birth), differ in their abilities to make an effort or a contribution. Given that they don't deserve these abilities, they don't deserve, it has been argued, the benefits that flow from their exercise.

Equality, priority, sufficiency, and desert, then, are some of the main distributive patterns that are invoked by theories of justice. As we shall see below, some theories of justice deny that there is any distributive pattern that is required in principle by justice. Instead, it may simply be whatever patterns maximizes total benefits, would be agreed to under suitable conditions, or emerge from the free exercise of people's property rights.

Theories of justice

Depending on how justice is understood, almost any theory of morality can be reformulated as a theory of justice. Below I shall outline three of the main theories, and, for simplicity, formulate them as theories of justice of actions (rather than, for example, social structures). Although I shall identify some of the main objections to each view, space limitations prevent me from discussing them at length.

Utilitarianism and consequentialism

Utilitarianism—see, for example, Smart and Williams, 1973—comes in two main forms. *Act utilitarianism* holds that an act is just if and only if it maximizes the total wellbeing in the world. *Rule utilitarianism* holds that an act is just if and only if it conforms to rules that, if generally followed (or satisfying some related condition), would maximize the total wellbeing in the world. Utilitarianism is compatible with many different accounts of wellbeing (quality of life). Some of the main contenders are net balance of pain over pleasure, happiness, preference satisfaction, and various perfectionistic theories that appeal to some kind of objective conception of human flourishing.

Act utilitarianism tough-mindedly focuses on the consequences of actions, evaluates them on the basis of something that clearly matters (wellbeing), and requires that individuals do the best they can. Something about this seems right. Nonetheless, act utilitarianism is subject to several important objections: (1) It is too demanding (since, by requiring the total to be maximized, it leaves almost no room for benefiting oneself—watching TV, for example—or one’s friends and family). (2) It provides too little protection from forcible interference from others (since, it allows horrible things to be done to individuals—such as torturing the innocent—when this is an effective means for maximizing total wellbeing). (3) It is insensitive to what the past was like (since it focuses solely on the future consequences and thus is not sensitive to what promises and contracts were made, what wrong-doings took place, etc.). (4) It is insensitive to distributive considerations (e.g., it requires an action that produces a very unequal distribution of wellbeing when the only feasible alternative is an equal distribution with a slightly lower total).

None of these objections is fatal, since act utilitarians have ways of softening or denying

their problematic implications. Some utilitarians, however, endorse these objections against act utilitarianism and propose rule utilitarianism instead. Given that the rules that will best promote total wellbeing will probably leave agents a reasonable amount of liberty, give them a reasonable amount of protection from forcible interference, and be sensitive to the past, rule utilitarianism is largely immune to the first three objections. Moreover, if the focus on the *total* wellbeing is replaced with a view that is sensitive to distributive considerations (e.g., equality, priority, sufficiency, or desert), the resulting theory will be sensitive to distributive considerations and can largely avoid the fourth objection. The resulting theory, however, is no longer a version of utilitarianism, since it has abandoned assessing distributions on the basis of *total* wellbeing. Instead, it is a version of *rule consequentialism*, which is like rule utilitarianism, except that it leaves open how consequences are assessed. (See, for example, Hooker, 2000.)

Rule consequentialism, then, can overcome most of the problems confronting act utilitarianism. It confronts, however, one main objection: Does justice really require obeying some optimal rule even when doing so would have bad consequences in particular circumstances? The question here is whether the justice of an action is based on the desirability of its consequences or on that of rules to which it conforms. To many, the focus on the consequences of rules generally—rather than of the specific action that the agent performs—seems like a form of “rule worship”.

Contractarianism

Contractarian (contractualist) theories of justice hold that an action is just if and only if it, or principles to which it conforms, would be agreed to (or at least not rejected) by the members of society under certain specified conditions. Most contractarian theories are *indirect* in that they

first select principles (or rules) on the basis of the hypothetical agreement and then assess actions in terms of their conformance to those principles. Although contractarianism is sometimes construed broadly to include theories based on *actual agreement*, it is confusing to lump these two kinds of theories together. The moral force of actual agreement is much clearer than that of hypothetical agreement. We shall here consider only hypothetical agreement theories—although, in the next section, we will consider libertarian theories, which take actual agreement very seriously.

Contractarian theories differ in their specification of the conditions under which the hypothetical agreement is to take place. There are three main issues: (1) What is the non-agreement outcome (what happens if they fail to agree)? (2) What beliefs do the contractors have about themselves and their position in society? (3) What kinds of desires do the contractors have (e.g., purely self-interested vs. partially altruistic desires) and on what basis do they choose (e.g., on the basis of expected utility)? Broadly speaking, there are three main traditions in how these questions are answered: Hobbesian, Lockean, and Kantian.

Hobbesian theories (following Hobbes, [1651] 1990) tend to hold that the non-agreement outcome is some non-moral and fairly miserable state of nature. The contractors are assumed to have their normal beliefs about their capacities and position in society, and they are assumed to be purely, or at least predominantly, self-interested. (See, for example, Buchanan 1975.) *Lockean* theories (following Locke, [1689] 1963) have a similar view, except that they view the non-agreement outcome as a moral state of nature in which people have basic rights that are generally respected, but in which various public goods are not provided. (See, for example, Gauthier, 1986—although his view also has significant Hobbesian elements.)

Kantians (following Kant, 1785) differ from both Hobbesians and Lockean in that they

impose conditions that ensure that the contractors choose without special consideration for their own interests. One Kantian, Rawls (1971), specifies that the contractors are behind a “veil of ignorance”, where this means that they know nothing about their capacities or their place in society. Each chooses on the basis of her self-interest, but, since she does not know specifically what that is, each chooses on the basis of general considerations that apply equally to all. A different kind of Kantian view is defended by Scanlon (1998). It allows that agents have their normal beliefs, but stipulates that, for the purpose of the contract, agents choose principles for the general regulation of behavior that others, similarly motivated, could not reasonably reject as a basis for informed, unforced, general agreement.

One of the strengths of contractarianism is that, by requiring unanimity, it takes the separateness of individuals seriously. Each person must agree. This arguably ensures that each individual has significant moral liberty to pursue her own projects and significant protection from interference from others. It also arguably ensures that justice is sensitive to the past and to distributive considerations. Kantian contractarianism tends to be more egalitarian than Lockean contractarianism, which in turn tends to be more egalitarian than Hobbesian contractarianism. The main objection to contractarianism is that it is unclear why hypothetical (as opposed to actual) agreement carries any normative force. For example, does the fact that, under suitable conditions, I would have agreed to your borrowing my car justify your taking it without even discussing it with me? Moreover, hypothetical agreement is arguably simply a device for identifying what is a just distribution of benefits on independent substantive grounds. If so, then it is really the underlying distribution of benefits that is doing the moral work—not the hypothetical agreement.

Libertarianism

Libertarianism focuses on individual liberty and freedom from interference. It holds that an action is just if and only if it violates no one's libertarian rights—where these are rights derived from the exercise of initial *full self-ownership* and of a *moral power to acquire property rights* in unowned external (non-agent) things.

The core idea of full self-ownership is that agents own themselves in just the same way that they can fully own inanimate objects. This maximal private ownership includes (1) full *control rights* over (i.e., power to grant and deny permission for) the *use* of their persons (e.g., what things are done to them), (2) full *compensation rights* (which require others to compensate them if they violate their rights), (3) full *rights to transfer* the rights they have to others (by sale, rental, gift, or loan). It also includes various enforcement rights and immunities to loss.

At the core of full self-ownership are control rights over the use of one's person. Killing, torturing, or enslaving innocent individuals without their consent, for example, are unjust no matter how effective these actions are as means to equality or other moral goals. Moreover, there are various things (such as physical contact of various sorts) that are unjust when done to an agent without his/her consent, but which are just when the agent gives his/her consent.

Two versions of libertarianism have come to be distinguished. Both hold that agents fully own themselves; they differ in their views about the powers agents have to acquire private property in the rest of the world. *Right-libertarianism* (e.g., Nozick, 1974, Rothbard 1978, 1982)—which is the traditional form of libertarianism, holds that natural resources—resources that were not created by any human agent—may be privately appropriated without the permission of, or any significant payment to, the members of society. It views natural resources

as essentially up for grabs by the first person who discovers, claims, or (depending on the account) mixes her labor, with them (perhaps subject to some weak version of a proviso that enough and as good be left for others).

Left-libertarianism, by contrast, holds that natural resources are owned in some egalitarian manner. This egalitarian ownership can take many forms (see for example, Vallentyne and Steiner, 2000a, 2000b and Cohen 1995). A common form is the view that natural resources may be privately appropriated, just as right-libertarians claim, except that agents must pay the competitive value (based on supply and demand) of the rights that they claim over natural resources. Rights over resources that no one wants require little or no payment, but rights over resources that many people want may be very expensive. The social fund generated by such payments is then divided up in some egalitarian manner. Here, again, this can take several forms. One (e.g., Steiner, 1994) is to divide the pot equally. Another (e.g., Otsuka, 2003) is to divide it so that it best promotes equality of some specified sort (e.g., effective opportunity for wellbeing).

Libertarianism leaves agents lots of moral liberty to choose how to live their lives (since many actions violate no libertarian rights) and provides lots of protection from interference (from the rights of self-ownership and rights in external resources). It is also sensitive to the past because current rights depend on the past in a variety of ways: who initially acquired property rights in what external things, who transferred their rights to others, and who violated the rights of others. Right-libertarianism, however, is subject to the objection that it is insufficiently sensitive to distributive considerations—since it is compatible with great inequalities in wealth and opportunity for wellbeing. Left-libertarianism, on the other hand, is much more sensitive to distributive considerations (e.g., requiring that the value of natural resources be divided equally, or perhaps even to promote equality of opportunity). If it holds, however, that agents have an

enforceable duty to share the value of natural resources equally, however, left-libertarianism may be subject to the objection that it leaves agents insufficient liberty or protection from interference.

Other theories of justice

The above theories are arguably the three most prominent theories of justice. Other theories include Dialogue/Discourse theories (e.g., Ackerman, 1980; Habermas 1973) and communitarian theories (e.g., Walzer, 1983; Sandel 1997). There are, of course, many others as well.

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