

# The Community of Justice

## Introduction

Political theory commonly deals with questions of what is just, how to organize a just society, and how to justify certain principles of justice. A number of theories address these questions, e.g. Rawls's (1971) theory of justice as fairness, luck egalitarianism (e.g. Dworkin 2000; Cohen 1989; Arneson 1989), Sen's (2009) capability approach, as well as communitarianism (e.g. Sandel 1981; Walzer 1983; MacIntyre 1988; Taylor 1989), and feminist ethics of care (e.g. Gilligan 1982). However, before answering the question "what is just" we should define the conditions under which justice applies. What kind of a relationship between the members of a group of people creates obligations based on justice? How to define the community of justice? This is a relevant question when addressing issues such as global justice, inter-generational justice, or whether justice concerns non-human animals. Does justice oblige Finns to contribute to the well-being of Ethiopians? Should we save the planet to future generations? Do humans have obligations to animals?

The community of justice refers to a group of actors bound by norms of justice. Think of two people A and B living on separate islands. What should A's and B's relation be like to be able to say that they owe something to each other in the name of justice? For example, should A and B have a cooperative relationship involving reciprocal action? If A and B do not engage in mutually beneficial cooperation does it entail that justice is not relevant to A's and B's relation? This chapter focuses on the question of whether justice is relevant to A's and B's relation. Specific theories asking what justice requires from A and B, are omitted here.

The chapter deals mainly with the conceptualization of the community of justice. It reviews four different ways to define a community of justice: justice as mutual advantage, justice as reciprocity, justice as impartiality and justice as equality. These views are analyzed critically, and attention is paid to their relation to specific types of people as well as to their potential to give a motivation for following norms of justice. Justice as mutual advantage and justice as reciprocity are criticized because they exclude certain groups whose treatment many writers see crucial to justice. Real world examples are used to illustrate the potentials and limitations of the different understandings of the community of justice. The aim of the paper is to pay attention to the difficulties in defining the community of justice, the relationship of different views to our everyday understanding of justice and to their relevance to several real world issues of justice.

The chapter is organized as follows. The term cooperation, central to the understanding the community of justice, is first defined. After that, Hume's circumstances of justice are represented. Four views of a community of justice are then discussed. A brief evaluation of the implications of these views concludes the chapter.

## Cooperation and Hume's circumstance of justice

The concept of cooperation is often seen essential to the definition of a community of justice. As understood in this chapter cooperation can take various forms ranging from small scale action within a family to societal level action. Productive cooperation can also take various forms from paid labor to non-paid activities, i.e. taking care of children or the elderly at home. It is clear that not everyone is able to take part in productive cooperation. Phillips (1998) separates four such groups:

- 1) Individuals who are temporarily unable to take part, e.g. children and those who suffer from curable illnesses.
- 2) Individuals who are permanently unable to take part e.g. unfit elderly and physically or mentally disabled.
- 3) Future generations.
- 4) Non-human animals.

The first seems to be the easiest case because it involves those who are only temporarily unable to take part. The third group is different from the others because it consists of people who do not yet exist, and whose existence depends on the choices of the present generation. The fourth group can actually take part in productive cooperation but clearly on different terms than humans. For the sake of simplicity I will concentrate mainly on the second group, and will omit the third and fourth groups, which would require a separate analysis, until a short discussion in the end of the chapter.

Most contractual theories of justice share the same background conditions that stem from David Hume's circumstances of justice delineated in *A Treatise of human nature* (1739–40) and *An Enquiry concerning the principles of morals* (1751). Hume's conditions define necessary and sufficient conditions for the circumstances where justice is relevant to the interaction between two or more individuals. In other words, if Humean circumstances of justice hold for A and B, we can also say that justice entails obligations for A with respect to B and vice versa. For example, if A gets a good crop, and B gets nothing, we can say whether A behaves justly or not when deciding on the distribution of the crop between A and B. Of course, justice defines moral obligations not lawfully binding obligations and neither descriptions of actual or typical behavior. Further, following norms of justice is not the only type of moral motivation that influences behavior. Even when justice does not apply, some other moral norms, e.g. being merciful, can motivate individual behavior. The conditions of justice determine whether A's and B's relationship is one where justice is relevant, whereas theories of justice define how much of her or his crop A should give to B. That might be based on B's merit or need, for example, depending on the applied theory.

Hume's circumstances of justice hold for a certain group of people when the following three conditions are true<sup>1</sup>.

*Scarcity.* There is a scarcity of goods that people want or need. It is possible to increase the amount of goods with productive cooperation. Cooperation produces costs and benefits to those who engage in it. For example, if A and B cooperate in fishing it produces certain costs to them but is also likely to increase the number of fish they can catch compared to the size of their catch if fishing on their own. If there was no scarcity distributive justice would not be needed because no conflict of interest would exist. Justice concerns both material and immaterial goods, but the nature of scarcity is slightly different in these two cases. People's action creates the scarcity of immaterial goods. For example, the right to vote or freedom of religion can be forbidden for some groups by regulation but without regulation scarcity does not exist. Material goods, on the other hand, can be scarce because of factors that are outside human control.

*Self-interest.* People are mainly interested to advance their own goals and they are not willing to make major sacrifices on behalf of others, excluding close relatives. Justice would not be needed if people were not self-interested to some extent at least.

*Equality.* In this case equality does not refer to socioeconomic or political equality between people as commonly understood. Instead, it means that people are relatively similar in terms of their ability to take part in mutually beneficial cooperation. There can be some differences in intelligence and talents but each is capable of productive cooperation.

When Hume's circumstances of justice hold among a group of people we can say that justice is relevant to individuals' relationships within that group. However, many writers are not content with Hume's conceptualization. In the following, the first two views build on Hume's conditions but elaborate further on the terms of cooperation paying particular attention to individual motivation for following norms of justice. The last two, on the other hand, deviate more clearly from Hume's basic idea.

## Justice as mutual advantage

Justice as mutual advantage relates to the contractual tradition dating back to Hobbes, Rousseau and Locke. More recent contractual theories of justice give basis to a certain idea of justice by a hypothetical agreement between contractual parties. According to the argument, the choice of ideal people in ideal circumstances gives a justification for the selected principles. Ideal people are usually defined as rational understood in terms of consistent, efficient and (mainly) self-interested preferences. It should be remarked though that there are theories deviating from the rationality assumption (Scanlon 1998). Specific theories characterize the ideal circumstances for the contract, e.g. Rawls (1971) assumes that the contractual parties decide behind a veil of ignorance which covers all information about those characteristics that separate one individual from

<sup>1</sup> Different formulations of Hume's circumstances are found in the literature. This is based on Vanderschraaf (2006).

others. Parties have to evaluate principles from all possible positions because they do not know in which position they will be when the veil is lifted. The veil of ignorance induces an impartial perspective.

But why would self-interested people care about justice in the first place? In *Morals by Agreement* (1986) David Gauthier depicts a view where justice and morality relate to specific relations between individuals. In Gauthier's view, self-interested people care about justice and follow norms of justice if that benefits them. The idea is that self-interested individuals understand that by cooperation each can get more of a certain good, and that regulating cooperative interaction with norms of justice is beneficial to each individually. It is therefore mutual advantage that motivates self-interested individuals to follow norms of justice. This implies that if A and B live on separate islands with no interaction with each other justice is not relevant to their mutual relationship. In other words, if A's crop is destroyed by a hurricane B has no obligations in terms of justice to help A. It should be remarked that B might still have obligations based on other moral norms like mercifulness. On the other hand, if A and B engage in mutually beneficial cooperation B has obligations to help A in terms of justice if A's crop is destroyed.

Barry (1995: 28-51) criticizes justice as mutual advantage by paying attention to two shortcomings in the view. First, he claims that justice as mutual advantage is internally incoherent. Justice as mutual advantage aims to give a motivation to follow norms of justice for those who are least likely to benefit from justice – talented, intelligent, etc. Those who are more likely to benefit from norms of justice – e.g. less talented – do not need a specific motivation. Justice as mutual advantage is based on the view that the motivation for justice is benefit, i.e. even those who are talented and likely to do well on their own would do better under a just system compared with an unjust system. The critics are not, however, persuaded.

Consider A and B, who engage in mutually beneficial cooperation. They tend to help each other whenever one has a smaller harvest than the other, i.e. they engage in a reciprocal relationship. Assume further that it is A's turn to help B, and that A knows that she does not need help from B in the foreseeable future. What would motivate A to help B in this situation? A is by definition self-interested which implies that altruism does not motivate A, and neither does justice as such. Critics pay attention to the fact that justice as mutual advantage can only concern reciprocal relationships that last over foreseeable future, and even in that case individuals would deviate from the norms of justice whenever that would be more beneficial to them as individuals. There is an inherent tension between self-interest and justice as motivating forces.

Another problem critics raise is that justice as mutual advantage only concerns those who are capable of mutually beneficial cooperation (Barry 1995; Nussbaum 2006). This definition excludes the disabled whose treatment is often seen as a real test of justice. Take A, B and C, from which A and B are fit and talented, and engage in productive cooperation. C, in turn, has a physical disability, and is not able to engage in mutually beneficial cooperation. On the contrary, C needs extra resources, and for A and B he or she is a financial burden. According to justice as mutual advantage, justice would concern A and B, whereas C's treatment could not be evaluated in terms of justice. The

critics see this as problematic because in their view C's treatment is a crucial issue for justice. Intuitively, it seems unfair to exclude somebody from the community of justice just because he or she is disabled. What about other definitions of a community of justice? Could they account for the disabled?

## Justice as reciprocity

Another way to define the community of justice is justice as reciprocity. The idea is that justice concerns reciprocal relationships, that is if A and B engage in a reciprocal relationship justice obliges A to return favors or goods to B and vice versa. At a group or societal level reciprocity is not necessarily restricted to its direct form, i.e. giving back favors one has received from the other, meaning that more indirect forms of reciprocity can also be relevant (e.g. Herne et al. 2013). In general reciprocity A does a favor to B, and B reciprocates, instead of A, to a third person C. In indirect reciprocity, C observes A's behavior toward B, and instead of B, it is C who rewards or punishes A based on her behavior toward B. Consider Finland, where donating blood is not financially compensated. The motivation for donating blood can hardly be direct reciprocity, whereas general reciprocity might motivate donation – someone who has her or himself got blood from an anonymous donator in case of injury donates blood later on to others. Indirect reciprocity is involved if the motivation for blood donation is the donator's anticipation of getting blood from a third person if in need. It seems that general and indirect forms of reciprocity are relevant in large societies where forms of anonymous interaction are common.

Justice as reciprocity takes two forms (Buchanan 1990; Page 2007). Justice as self-interested reciprocity is roughly the same as justice as mutual advantage – rational individuals engage in reciprocal relationships because they anticipate benefits for oneself. The same critique applies as well – justice as such does not motivate self-interested individuals, and they will withdraw from a reciprocal relationship whenever that is individually the most beneficial strategy.

Another view is justice as fair reciprocity which is not based on the assumption of self-interested actors. The idea is that everyone who benefits from the reciprocal relationship is also obliged to contribute. However, both views of justice as reciprocity share the idea that only those who contribute to cooperation belong to the community of justice (Buchanan 1990). Therefore, if A and B engage in mutually beneficial cooperation and follow the norm of reciprocity while C does not, justice does not oblige A and B to help C when he or she is in need. Even though the community of justice would be based on fair reciprocity it would exclude those that are not capable of productive cooperation.

Critics argue that this would again give an inadequate picture of justice – we would like justice to account for the treatment of the weak and disabled. The problem, however, may lie in the definition of productive cooperation rather than the definition of the community of justice. Martha Nussbaum (2006) writes about a child with Asperger syndrome who is not able to show reciprocity in the usual way. However, the child can show affection and caring if the conditions are right. The same goes for various groups



of people that are not able to take part in productive cooperation understood in the usual way, e.g. children, the elderly, disabled. However, they can take part and be useful to the society if usefulness is not defined too narrowly (Buchanan 1990).

One answer to the critics' concerns would be to understand reciprocity differently, in terms of the costs it produces to the subject rather than in terms of the benefits it creates to the object of reciprocal action (Smith 2001). Parents, for example, can expect their children to reciprocate week allowances with small domestic tasks. However, it seems more relevant that the costs these tasks create to children are in line with the allowance rather than the benefits they create to the parents. Accordingly, smaller children might be asked to do less than their older siblings.

Furthermore, many writers pay attention to the fact that what is beneficial to the community is highly context dependent (e.g. Buchanan 1990; Smith 2001; Nussbaum 2006). Modern societies call for different qualities than agricultural societies, for instance. Think of the physicist Stephen Hawking. He had hardly been productive in an agricultural society, whereas his contribution to modern science and society has been considerable.

In fact, it is possible to separate between two models that define people as disabled – medical and social (Smith 2001). The medical model pays attention to the properties of the individual, whether he or she is physically and mentally capable to function productively. The social model, on the other hand, emphasizes the relevance of the environment to one's productivity. According to the social model, it is the social context that defines some people as disabled. A Finnish philosopher Matti Häyry (2014) writes about his experiences of working at the University of Manchester in the UK. Because of his allergy he was not able to work at his office with a carpet. The university physician defined him as disabled on the basis of his allergy. Häyry was astonished for being labelled as disabled, and of the opinion that he would not "qualify" as disabled just because he is allergic. In the same vein, many people we nowadays call disabled are not actually disabled if the societal infrastructure is organized so that they can take part and be productive members of the society. Deaf, blind and those in wheelchairs are often capable to work if they are provided with appropriate aid, infrastructure and equipment. It can be provocatively claimed that it is employers' attitudes that prevent the disabled from working rather than the disability itself. Nussbaum (2006) pays attention to the fact that various disabilities are not actually much different from properties such as skin color, gender or ethnic background that we do not accept as valid reasons for leaving someone out of the labor market.

"The case of citizens who are deaf, blind, and wheelchair-users is much closer to the cases of race and sex than people usually think. For people with impairments of this sort can usually be highly productive members of society in the usual economic sense, performing a variety of jobs at a sufficiently high level, if only society adjusts its background conditions to include them. Their relative lack of productivity under current conditions is not "natural"; it is the product of discriminatory social arrangements. People in wheelchairs can get around just fine, and do their work, so long as buildings have ramps, buses have wheelchair access, and so on. People who are blind can work more or less anywhere these days of varied audio technology and tactile

signage, if the workplace includes these technologies. People who are deaf can take advantage of e-mail in place of the telephone, and of the many other visual technologies—again, so long as workplaces structure themselves so as to include such persons. [...] [I]t is discrimination against people with impairments not to provide such supports for their productivity, even though it is a biological fact that only they will need them.’ (Nussbaum 2006: 113)

## Justice as impartiality

Barry (1989, 1995) criticizes heavily the view that the community of justice should be based on mutual advantage. As stated above, he doubts that mutual advantage would give a motivation for rational self-interested actors to behave as justice requires. He is also critical of leaving those incapable of productive cooperation out of justice. Barry argues that instead of relying on self-interested actors we should acknowledge that individuals have a desire to justify their actions to others without appealing to personal interests. Barry’s argument is based on T.M. Scanlon’s (1982, 1998) theory of morality that Barry applies to justice. Both justice as mutual advantage and justice as impartiality can be understood as contractual views. The main difference is that the first focuses on the contract of rational actors, whereas the latter focuses on the contract of reasonable actors. However, Scanlon (2009: 183) detaches his theory from the contractual tradition, and argues that his theory offers “a way of understanding what moral thinking is”. Scanlon points out that his theory does not describe what people would reject under certain hypothetical conditions but rather “what it would be reasonable for them to reject under certain conditions” (Scanlon 2009:184; see also Howard 2013).

Scanlon’s theory prescribes how moral reasoning should be like. It emphasizes that in moral reasoning we should appeal to reasonableness instead of rationality. The rough distinction between rationality and reasonableness is that the first is about the relationship between an individual’s means and ends, whereas the second is about the ends of one individual with respect to the ends of others. Individual behavior is reasonable when it takes account of the aims of other people. More specifically, Scanlon talks about justifications for action, and argues that an act is morally right if it cannot be rejected on reasonable grounds. In other words, Scanlon thinks that in order to behave morally we should be able to justify our actions to others. Purely self-interested action can hardly be justified to others.

Justice as impartiality is clearly different from justice as mutual advantage or justice as reciprocity (Gibbard 1991). Justice as impartiality is not linked to mutually beneficial cooperation, and it obligates A to help B whenever A cannot give a reasonable justification for not helping. An important feature is that the provided justification cannot be based purely on A’s self-interest.

It is notable that justice as impartiality does not provide a motivation for a self-interested individual to behave justly. Barry, however, argues that justice as mutual advantage does not succeed to provide such motivation either. Further, Barry does not see it necessary to justify the community of justice on such basis. Both justice as

impartiality and justice as mutual advantage are based on a contractual logic – justice is seen as a result of a hypothetical contract. However, the premises of these two views are different because justice as mutual advantage tries to show why self-interested rational actors could agree on rules of justice. Justice as impartiality, in turn, relies on reasonable actors who are willing to justify their action to others on reasonable basis that other reasonable actors can also accept. Justice as mutual advantage and justice as impartiality rely thereby on a different logic. The first is based on the idea that we should think how justice might arise in the most unlikely case, that is, in the case of rational and self-interested actors. Relatively thin assumptions are made about the actors because it is seen as no surprise that altruists would behave as justice requires. Justice as impartiality, in turn, is based on the thought that we should not think how rational and self-interested individuals would define principles of justice or morality but rather to consider how reasonable people would decide on ethical issues.

## **Justice as equality**

Justice as equality attaches justice to all relations between human beings. Justice is seen to be based on the fundamental equality between people. It is not considered to need productive cooperation between people or mutual advantage as a justification. The idea is that to treat people equally requires justice. According to the view, justice obligates A independent of the relationship she has with B. Justice as equality is a subject centered view (Buchanan 1990). Subject centered views emphasize that the fundamental moral status of people is independent of their ability to be productive. Each person is equal and this is not related to the person's abilities, properties or qualities. Utilitarianism is an example of a subject centered view. Utilitarian morality covers all sentient beings, everyone who can feel pleasure or pain. Like justice as impartiality, justice as equality avoids the difficulties that are related to justice as mutual advantage or reciprocity, i.e. it does not exclude non-productive people from the community of justice (Buchanan 1990). However, it neither provides a motivation to behave justly.

## **Discussion**

It should be pointed out that the views about the community of justice presented here are not mutually exclusive. In particular, justice as mutual advantage and justice as reciprocity are related, and so are justice as impartiality and justice as equality although the first might be more restrictive – not everyone might be willing to live in reasonable terms with others. However, it seems that the need to justify one's action to others on reasonable terms is based on the view of mutual equality between all humans.

Further, specific views of justice are not necessarily related to only one concept of a community of justice. For example, Rawls's (1971) theory of justice as fairness seems to fit to justice as mutual advantage as well as to justice as reciprocity. However, it is also true that justice as impartiality is reflected in Rawls's theory because behind the veil of ignorance contractual parties are actually in conditions where self-interested



choice is not possible – impartiality characterizes their circumstances. As stated above, utilitarianism seems to represent justice as equality, and Scanlon's (1982; 1998) theory is, according to Barry (1989, 1995), an example of justice as impartiality. Further, luck egalitarians, who emphasize the choice – circumstance – distinction in theorizing about justice, represent justice as equality. This is reflected in luck egalitarian criticism of the inability of Rawls's theory to account for the just treatment of disabled people (e.g. Dworkin 2000). Further, some luck egalitarians explicitly criticize cooperation as a basis for a community of justice (e.g. Arneson 2011). Likewise, Sen's (2009) and Nussbaum's (2006) capability theory of justice with its emphasis on the fulfillment of everyone's basic needs seems to represent justice as equality.

I will finally briefly comment on three real world cases where the definition of a community of justice is a relevant issue. The cases are used as illustrations to emphasize the relevance of the conceptualization of the community of justice to the discussion of issues of justice in general. However, a thorough analysis of these complicated questions is beyond the scope of this chapter. Apart from the treatment of the disabled, a crucial issue in theorizing about justice is the relevance of national borders to the community of justice. This question divides justice as mutual advantage or reciprocity and justice as impartiality or equality into two camps. The first two would condition justice between different nationalities on productive cooperation. In an interdependent world this would not indicate that justice is restricted to relationships within a nation state. However, the view would not give basis for unconditional helping of other nations in terms of justice. Justice as impartiality or equality, in turn, would easily give basis to justice between people from different nations not conditional on mutual benefit or cooperation.

What about future generations? Apart from justice as mutual advantage, all views considered here could give basis to inter-generational justice. In the case of justice as impartiality or equality this seems rather straightforward, whereas justice as reciprocity would require that reciprocity is understood to include its general form. This means that justice obliges us to take account of the future generations because there is a serial reciprocal relationship between different generations. We are obliged to help the next generation if the preceding generation has helped us.

Does justice then create obligations toward non-human animals? The answer seems to be that it might, depending on how we interpret cooperation or reciprocity in the case of justice as mutual advantage or reciprocity. Justice as equality could also be understood to be enlarged to at least those animals that are able to feel pain. Including animals to justice as impartiality seems to require a notion of a human representative because animals are not capable to understand and evaluate reasons or justifications. It should be remarked that while justice would not oblige us toward animals, for example, there are other normative rules that forbid causing pain.

Finally, an important question related to the community of justice is the following: what if someone voluntarily excluded her or himself from the community of justice by claiming that he or she does not want anything from the community, and is neither obliged to give anything to it? Justice as mutual advantage or reciprocity would exclude such person from the community of justice on the condition that he or she does not

harm the community.<sup>2</sup> Justice as impartiality or equality might not, however, exclude a person based on her or his voluntary exit. Reasonable justification or common humanity might not give basis to exclude even a voluntary lone wolf from the community of justice although it is not totally straightforward to say how these views would treat voluntary exclusion.

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<sup>2</sup> It is another issue that in modern societies a complete withdrawal is seldom possible.

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