Етика
Наука
Образование

Издание
на „Лаборатория по приложна академична етика“ и
катедра „Философски науки“

ISSN 3033-005X (Print)
3033-0068 (Online)

Година II, Брой 2, 2024

DOI: 10.54664/CVVK4791

JUSTICE AS FAIRNESS IN A PRACTICAL CONTEXT

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Abstract: This paper deals with John Rawls (1921-2002) and his work *A Theory of Justice* (1975), which Rawls himself calls “justice as fairness.” Basically, his theory is understood as distributive justice. In this context, on the one hand, important aspects of his theory will be explained, and on the other hand, the applicability of his basic ideas on the level of politics will be discussed. In order to trace the justice debate within political ethics a classification between equality ideals as well as a division between deontological and consequentialist theories of justice are carried out.

Keywords: Justice, Fairness, Utilitarianism, Distribution, Equality

A just social order is demanded by everyone. Discussions about fairness are taking place in every democratic society. The question arises as to which distribution of wealth and income should be regarded as fair or not fair. This consensus is not very helpful when it comes to dealing with concrete distribution policy tasks. This paper is dedicated to John Rawls (1921–2002) and his work *A Theory of Justice* (1975) which Rawls himself calls “justice as fairness.” Basically, his theory is understood as distributive justice. In this context, important aspects of his theory will be explained, and the applicability of his basic ideas on the level of politics will be discussed. In order to trace back the justice debate within political ethics, the first section offers an introduction that deals with the structure and assumptions of justice concepts. A classification between equality ideals as well as a division between deontological and consequentialist theories of justice are carried out.

John Rawls’ understanding of justice as fairness contradicts the principles of utilitarianism, whose principle assumes the “greatest happiness of the greatest number.” (Höffe 1998, 5). This paradigm shift leads to the second section, in which utilitarianism is introduced. The consideration of the utilitarian concept, which can be traced back to Jeremy Bentham (1748–1832) and John Stuart Mill (1806–1873), shall facilitate the understanding of the theory of justice according to Rawls. Finally, the third section deals with John Rawls’ *Theory of Justice*. Starting from the original state which corresponds to the state of nature of the traditional contract theory according to John Locke (1632–1704), his contract model will be explained. From this “veil of ignorance,” Rawls develops his difference principle. In the end, the results will be summarized, and a résumé will be given to what extent John Rawls’ concept of justice could find acceptance in practical applicability.

I.

Theories of justice are concerned with the problem of distribution. The problem involves the scarcity of goods since they are not infinitely available in the world.The problem of scarcity is also the justification for economic action because without scarcity there would be no distribution problem. One approach is to make a distinction between consumptive and productive capabilities. Individuals possess consumptive and productive capabilities that allow them to transform resources into goods and to derive utility from them (See Breyer 2010, 31). It is assumed that each individual possesses both capabilities. From an economic perspective, the individual is the set of these capabilities (See ibid.). By using his productive capabilities, an individual generates goods that can be consumed by himself or by others. How one uses his productive capabilities also depends on decisions made by other individuals. An interaction between the individual and society is created. This interaction can lead to a better supply of scarce goods for all individuals. This is based on the paradigm of methodological and normative individualism. The term methodological individualism can be traced back to Joseph Schumpeter (1883–1950), who used this term in his habilitation thesis *The Nature and Main Content of Theoretical National Economics* (1908).

This paradigm maintains that any goal of society, such as the common good, must be traced back to the goals of the individuals who constitute society (Breyer 2010, 33). Therefore, there is no social value beyond the values of individuals. The scope of this principle can be clarified by contrasting it with the corresponding counter position: Methodological collectivism includes the idea that society or an organization is to be regarded as its own existence. It is characterized by properties and actions that cannot be traced back to the properties and actions of the individuals who form these wholes. Various formulations are used to illustrate the collectivist tradition of thought: "the whole is more than the sum of its parts," or "a melody is more than a mere collection or succession of individual notes" (Popper 1974, 61). The next section deals with a further subdivision of several theories of justice. In the next paragraph, three different ideals of equality will be presented.

In general, it can be argued that all theories of justice have an ideal of equality. They differ in the question of which variables are recognized as relevant to justice. In the previous section, it was already explained that every individual has consumptive and productive capabilities. Individual capabilities enable meaning, happiness, and satisfaction to be felt. The term productive capabilities includes the manual skills that are needed to produce goods. Consumptive skills allow deriving satisfaction from a produced good (See Breyer 2010, 31). The first ideal of equality refers to the attainment of benefits from capabilities. This group of theories of justice argues for redistribution when certain inequalities have arisen. In this regard, equality ideals can consider any subset of capabilities. A theory of justice may consider only productive capabilities, only consumptive capabilities, or all capabilities as relevant to justice. Utilitarianism is a theory for which consumptive capacities have normative relevance. Individuals with a greater ability to perceive consumption utility should therefore consume more. The second ideal of equality refers to the equality of freedom to use capabilities. This classof theories of justice regards a society as just if it recognizes individuals as having an equal right to use their capabilities and an equal right to formulate their goals. Classical liberalism isreflected in this theory of justice, which can also be seen in Friedrich August von Hayek (1899–1992) and Robert Nozick (1938–2002). Market economic orders can be justified in a liberal way since the principle of freedom to use capabilities is realized through voluntary exchange. This concept of justice pursues the goal of equal negative liberty rights, which is distinguished from the concept of positive liberty rights. An individual who has no income lives in a country with freedom of travel. This individual has the negative right to travel toany country but may not have the financial means to buy an airline ticket. For this reason, he does not have a positive right of freedom.

The third class of theories of justice considers access to goods. They have an ideal of equality in terms of quantities of goods or income. Tangible goods are distinguished from intangible goods (e.g. education). Representatives of this ideal are Amartya Sen (1933) and John Rawls. The common feature of these theories is that individuals may differ in their abilities (to derive utility from a given set of goods). The distribution deemed equitable is independent of consumptive capabilities. However, the same is

not true for productive capabilities. In this area, differences are classified as relevant to justice and are brought into equilibrium by the distribution of goods (ibid. 36).

Deontological concepts do not judge actions on the basis of their consequences but refer to the motive for action in order to evaluate an action. This concept is based, among others, on the ethics of Emanuel Kant (1724–1804). In the realm of justice, a procedural concept of justice implements the deontological principle, since an ethical evaluation is based solely on an evaluation of the rules of action. Consequentialist concepts of justice evaluate actions based on the resulting consequences. Problems with the deontological view were recognized by Robert Nozick, who developed the example of the deontological paradox (ibid. p. 37). If a deontological theory is only interested in protecting compliance with rules, then it seems logical to choose a policy in which rule violations are minimized. But this is impossible within a deontological view. In the extreme case, if the life of any amount of people were threatened with death and the only way to save them was to sacrifice an innocent life to do so, it should not happen according to a deontological view because killing one person would violate the right to life, even though hundreds of people could be saved (ibid.). Consequentialism needs to be seen critically, as well. A central element in all consequentialist theories is a certain knowledge of the consequences of decisions and actions. Assessments of the consequences of actions usually have important consequences for the future. At the same time, they are characterized by uncertainty in the estimation of their consequences. This has important implications for the legitimacy of a consequentialist position of justice. In the case of completely uncertain consequences of actions, it seems questionable to advocate a consequentialist theory of justice. In this case, theories of justice should be guided by procedural and deontological features.

II.

Utilitarianism is both consequentialist ethics in which the consequences of actions determine value, and normative ethics, whose goal is to work out concrete proposals for action in ethically controversial decision situations on a unified basis. In this context, the concrete design of two variables is crucial to the normative conclusions of utilitarianism. The first variable concerns the hedonistic theory of value underlying utilitarianism. The name utilitarianism derives from its supreme, value-theoretical standard, utility for the purpose of producing "happiness." Thus, the production of the highest possible degree of "pleasure" and the lowest possible degree of "pain" is the guiding principle for judging actions. The utilitarian value theory pursues the goal of maximizing "happiness." If this value-theoretical standard applies, the utilitarian must take a decision regarding the necessary normative specifications and regulations that achieve the highest possible value according to this standard. Certain consequences, which are morally desirable according to the elaborated value theory, are to be brought about by certain courses of action. The utilitarian depends on knowledge of causal relationships in both his social and physical environment. This empirical knowledge constitutes the second core variable of utilitarianism. It is necessary to take into account the local and temporal characteristics of the situation. Hence, it is impossible for the utilitarian to postulate moral wisdom with unlimited temporal validity. Rather, his prescriptions depend on the conditions prevailing in his environment as well as on the empirical knowledge on which they are based. These defaults can experience changes in both the alteration of environmental conditions and advances in the empirical sciences. This gives utilitarianism, on the one hand, an adaptability to the given social context and, on the other hand, proximity to the developments of empirical sciences. Furthermore, its concrete demands on action are dependent on and determinable by these two factors. The moral judgments of utilitarianism are thus not absolute, but relative. It depends in each case on the condition and state of knowledge of the respective society.

III.

John Rawls' work *A Theory of Justice* is a contract-theoretic conception of justice. Accordingly, a just society is characterized by the fact that its political institutions and basic social institutions satisfy principles on which free and equal citizens would themselves agree on the basis of reasonable insight under fair conditions (Hinsch 1997, 10). His theory was intended to provide an alternative to utilitarian-

ism, which Rawls criticized. Utilitarianism implies an increase in the common good even at the expense of a minority, which Rawls was determined to avoid. His theory demands the highest possible justice for all members of society and the highest possible increase in the welfare of all without anyone being disadvantaged (Rawls 2001 8–9) Rawls' ideas are concretized by the concept of the original state, which will be discussed in the next paragraph.

In order to arrive at a conception of justice, Rawls, similar to classical contract theories, designs an original state, the original position, and formulates rules with the help of which the optimal conception of justice can be selected (ibid. 80). In the original position, individuals are systematically deprived of information so that they must abstract from their personal circumstances. Neither do individuals know what their personal preferences and capabilities are nor do they know their moral beliefs and values. Moreover, they do not know their real social position, their real wealth, or their qualifications. Rawls calls this the "veil of ignorance" (ibid. 85). The purpose of this construct is to ensure that fair conditions are ensured for all parties involved. For his original state, Rawls assumes that people behave rationally and egoistically. He assumes that, under uncertainty, they apply the so-called maximin decision rule, which says: Maximize the minimum (ibid. 97). Since individuals in the original state cannot know whether they might be among the worst off, they strive above all to protect themselves for this case. Therefore, they would grant the worse-off group as high a share as possible in the wealth of the future society. However, this model conception is viewed critically in research. Peter Koller claims that if in the original state, all were equal, all people would be like one person, and one could not speak of contract negotiations (Koller 1986, 30). Therefore, it seems unnecessary to resort to the category of contract to justify social norms. Instead, one can immediately argue from the standpoint of morality (ibid). Otfried Höffe argues similarly: the demand for recognition of the principles of justice is only a moral appeal, which would also be possible without appeal to the primordial state (Höffe 1987, 84). Rawls uses the construction of the original position to justify his contract model. However, hypothetical consent in a fictional original position does not necessarily entail obligations in reality. Economic policy can only pursue redistributive measures if they are enforceable, unreal terms. In practical politics, parties are in a struggle for votes and judge distributional issues accordingly. For citizens who know their economic situation precisely, a reference to a fictitious original position cannot be of great importance. The primordial state consensus assumedby Rawls is merely a theoretical construct. Taken by itself, it is incapable of establishing normative liabilities with respect to liberal principles.

John Rawls' theory of justice revisits the idea of a fictional contract in order to develop a social order in which justice is optimally realized. He is thus in the tradition of thecontract models of Thomas Hobbes (1588–1679), John Locke, and Jean-Jacques Rousseau (1712–1778). Rawls' theory, however, differs fundamentally from conventional models of contract. While Locke and Hobbes used the idea of a contract to legitimize stately power, Rawls lacks this dimension. The precondition is that the contracting party members face each other as free and equal persons. Any restriction of freedom is lawful only if the individual wants it as such. Second, they must exclusively represent the common interests of all people. This type ofcontract theory relies exclusively on the consensus of all individuals involved. It can never be implemented in real terms, but always remains a hypothetical construct. John Rawls derives principles of justice from a contract-theoretical construction which should be comprehensible and binding for all people and times. With his understanding of fairness, Rawls is in fundamental contradiction to the doctrine of utilitarianism. As illustrated in the previous section, utilitarianism seeks to maximize the utility of society as a whole. He shows no direct interest in the distribution of benefits among individuals since individual benefitsare offset against each other. The idea that a disadvantage of one person can be compensated by a greater advantage of another is rejected by Rawls as unfair. From the starting point of fairnesscomes his first principle of justice: "(…) from society as a fair system of cooperation to the idea of a well-ordered society, to the idea of the basic structure of such a society, to the idea of the original position, and finally to the idea of citizens, those engaged in cooperation, as free and equal" (Rawls 2001, 24–25). A restriction of these freedoms in favor of material advantages is fundamentally excluded.

The difference principle establishes a principle of distribution. Rawls assumes that equality is basically to be regarded as just (ibid. 43). Therefore, deviations from it require justification. Rawls states

that through the stimulating effect of inequality, a greater redistributive mass can be achieved. If the worst-off members of society receive a share of it, then inequality is just in Rawls' sense. The difference principle demands that deviations from equal distribution are justified to the extent that the worst-off individual is in the best possible position. In this context, Rawls abandons the application of individual utility, which is significant for the difference principle. Instead, it refers to an index of basic social goods. Basic goods include income and wealth, as well as public departments and social recognition. Basic goods are a multidimensional concept. Therefore, such a vector of basic goods must be aggregated to a one-dimensional measure with a valuation function so that a minimum can be determined. To make this statement more precise, it is useful to use the following model according to Amartya Sen. It is assumed that there are *no different alternatives*. These are composed of the basic goods that the individuals consume. From this, an alternative quantity is formed. This is denoted by {x1, ..., xn} □ X □ IRn+, the vector x 1 = {xA1,xB1,... } describes an alternative with different goods (Breyer 2010, 50). Individuals are interested in goods because they have certain properties. An apple or a banana satisfies hunger, it is tasty and has certain nutrients. Therefore, individuals are not directly interested in the goods, but in their characteristics. People have different needs. Tall people need more food than short people. To take into account this fact, individual functions can be introduced, which can be mapped from the characteristics into a multidimensional vector. Such a vector indicates the way in which an individual translates the available sets of characteristics into opportunities and positions. From this set a valuation function can be defined. This valuation function tells how an individual is given a particular alternative. In this respect, John Rawls' concept is similar to Amartya Sen's. However, according to Rawls, this valuation function is not comparable to an individual's utility function. Rawls left it open to how such an index should be formed (Breyer 2010, 50).

IV.

John Rawls assumes a decision situation in the original state. In the second section, it was shown that the acceptance of Rawls' principles of justice in reality does not depend on the appeal to the original state. In the original state, all information about personal characteristics is elusive, thus all individuals have similar preferences. This distinguishes this concept from utilitarianism since utilitarian theory assumes individual preferences. What remains unclear in the Difference Principle is interpersonal comparability, which is partially given in utilitarianism by the utility function. Rawls further assumes that individuals are very risk-averse behind the veil of ignorance and choose the distribution that maximizes the minimum. However, the maximin principle is subject to criticism. John C. Harsanyi (1920–2000) noted that the Maximin Principle can lead to irrational behavior. Harsanyi illustrates this with an example: Suppose a person, settled in New York, is offered two jobs. The lower-paying job is in New York. In Chicago, however, the job pays very well. In order to accept the job in Chicago, one would have to travel to Chicago via airplane on the same day. This circumstance brings with it a small but possible probability of being killed in a plane crash. Based on the Maximin principle, the person would choose the New York job with a worse salary due to the possibility of a plane crash (Harsanyi 1957, 595). John Rawls conceptualizes the original state as all individuals, not knowing what social status they would possess. In the veil of ignorance, all individuals would act risk-averse and make their decisions accordingly rational. Harsanyi's example proves that this is not necessarily true. Extreme risk aversion does not correspond to the empirically observable behavior of individuals in daily life.

Rawls considers a theory of justice that applies independently of historical and social changes. This is a fundamental distinction from utilitarianism, which always adapts to the respective present. Moreover, Rawls' conception of society is structured in such a way that no one selfishly pursues his interests. All individuals make their decisions with a strong sense of justice. The question arises to what extent is this concept applicable to reality. Anthony Dawns (1930) explains in his book *An Economic Theory of Democratic* (1957) that in reality, citizens of the state mainly pursue their self-interest. Politicians are dependent on elections and think accordingly only in short-term categories of responsibility. In a world with a strong sense of justice among individuals, Dawns presupposes a "motivation assumption." This would mean that rich citizens would favor laws that raise property taxes and let poor citizens

share in their wealth. Politicians would make decisions according to their own moral convictions, and thus also take unpopular actions. The consequence would be a poorer chance of re-election (Harsanyi 1975, 604). Harsanyi sees Dawn's reasoning as indicating that the public consensus of justice expression would have to be at such a high level that it could not be stable in reality. Harsanyi further argues that historical experience shows that such a state of justice could hold only for short periods. As an example, Harsanyi cites the period during a revolution.

The question arises to what extent a just society needs such high moral ideals in order to exist in a healthy state. The question also arises to what extent methodological individualism can serve as an assumption for that case. In methodological individualism, a society is traced back to the behavior of individuals. To what extent can holism, which assumes that a society or organization is more than just the sum of individuals, constructively contribute to this? Answering those questions is beyond the scope of this paper. However, the question of a healthy balance between public interest and self-interest should be explicitly discussed.

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