

THE EMPIRICAL STUDY OF NORMS OF JUSTICE – AN OVERVIEW

MEETING AT SCK-CEN ON JUSTIFICATION – 8/04/2003

1. Justification: the normative stance and the empirical stance.

There are two ways we can use the word « justification »:

- 1) We can try to *justify* on normative grounds (ethical or juridical, for instance) or own position. This normative stance is within the realm of philosophical discussion.
- 2) We can try to *describe* empirically the kind of justifications people effectively use when they are confronted to questions in which justice matters. This is the work of the sociologist.

Of course there are links between philosophical and empirical work; lay people may rely on philosophical reasoning to defend their own views; and on the other way, what lay people think is of great interest to feed philosophical debate.

But the most important is to avoid the confusion between the two ways of thinking. My focus in this short text will be on the empirical point of view: how to describe and try to explain the justifications people actually build on, independently of the fact that we find them well founded or not.

2. The plurality of norms of justice.

If we look in fact to the norms of justice people use in their actual justifications, we cannot avoid the conclusion that, in our societies, at least, there is a plurality of norms. People may think for instance resources (and risks) should be distributed equally, or according to merit, or need.

They may rather emphasize procedural norms of justice, which insist not on the type of distribution but on the legitimacy of the rule of decision: popular vote, free competition in a market, rules of contract, and so on.

Of course, this plurality depends partly from the fact that there are many actual or virtual groups within the society: people differ because they have different ethnical or cultural background, they are young or old, men or women, affluent or poor, more or less educated. Those questions are of course of interest in trying to describe the global landscape of norms of justice within society. But the most important source of pluralism may not be the distributions of norms of justice among different groups, but among different contexts.

In fact, the main finding within the realm of the empirical study of justice is that most people are themselves pluralist: the diversity of norms does not exist solely at the level of global society but within every individual. It means that the same people may vary in their distributive judgments according to the nature of the problem.

Then the first (and probably main) reason for an individual to choose between different norms will be the various elements of the **situation**:

- Which resources are at stake
- Which kinds of actors are involved
- Which “domain of life” is concerned?
- How do actors interpret the situation?

Each of these factors can be illustrated by some examples.

3. The variety of resources: the “spheres of justice”.

“*Spheres of justice*” is the title of a foundational book by Michael Walzer (1983)

The thought of Walzer is sometimes a bit tricky, because it unites in the same work the normative justification of justice criteria and the empirical description of criteria actually used by lay people.

This line of argument rests on the idea that the two tasks are quite normally linked: for Walzer, justice cannot be constructed as a mere abstract philosophical argument, but must rest on the ideas ordinary people have about it. The philosophical work consists of – to put it very shortly – making people more conscious and more coherent about the very notions of justice they have.

It tends to illustrate the very point at stake, namely that to different kinds of resources, in our complex society correspond different kind of distributive criteria. Those resources are said to pertain to different “spheres”.

For example, many goods are distributed following market rules in our society. And it appears to be the “right” criteria for in fact the majority of goods. But important resources do not pertain to the “market spheres”.

- Example 1: health, for instance pertains to what Walzer calls the “*sphere of welfare*». To this sphere corresponds a specific distributive criterion: *need*. It means that it is unjust, for instance, that rich people would be in position to receive better healthcare simply because they can afford it.
- Example 2: power defines a specific sphere for which the criterion of justice is *popular legitimacy*. It means, for instance, that private property (of means of production) can justify the right to buy labour but not the right to organize the life of the workers.
- Example 3: some burdens are distributed according to *citizenship*. For instance, military service, where it is applied, cannot be avoided by paying someone else. Only objective or random criteria are justified in that case.

Following that line of argument, Walzer distinguishes between two kinds of equality, and by consequence, two kinds of inequality, whose meaning is very different.

Simple equality is the situation where one good is distributed equally among the members of the group. The contrary of simple equality is **monopoly**. Walzer argues that “monopoly” (which means, in fact, distributive inequality), is not as such an injustice in the great majority of situations and that people in fact do not think it is. Moreover, a whole society cannot be ruled along a principle of simple equality: to enforce simple equality as a general principle, such a huge bureaucratic control would be necessary than people would very soon reject the principle.

Complex equality is the situation in which every good is distributed along the criteria of the sphere to which it pertains: ordinary goods are distributed according to the laws of market, but health is distributed according to need, power according to popular legitimacy, social recognition according to merit, and so on. The contrary of complex equality is **dominance**, which points to the situation in which all goods are distributed following the same criteria. For example, if all goods may be bought and sold, we are in a situation of dominance because it means that the criteria of market sphere rules all other spheres. In that case, inequalities are cumulative: the rich can buy not only ordinary consumption goods but health, power, culture, security, and even love or at least sexual service. This is for Walzer the very core of injustice because it contradicts our central moral intuitions in complex society. The same would apply, if, for instance, every kind of good were distributed according to political power (as in communist societies) or according to some kind of knowledge (like in meritocratic China of mandarins).

In his theory of « spheres of justice » Walzer wants to provide at the same time a description of the core moral intuitions in our western societies (mainly USA, we must say) and a guideline to shape the institutions according to this description. It’s the reason why his theory seems so complex: it is at the same time descriptive *and* normative.

4. The variety of actors: the possibility of “providentialism”.

Criteria of justice may also vary according to the nature of the actors involved in the situation.

One main result of the literature on this subject is that large institutional actors are often believed by lay people to possess almost *infinite resources*. It appears that in the case of relations between such institutional actors and individual persons, the central intuition about justice is that the individual must be protected, almost at any cost.

Already in the years fifties some Americans surveys (Smigel) had shown, for instance that stealing seemed less immoral to lay people when the victim was the state or big corporations than when the victim was himself an individual person (for instance, a small shopkeeper).

More recent studies by Swiss scientists (Kellerhals) have shown, in the same line, that the conception of the consequences of a contract varies according to the nature of the contractors. If there is a contract between a large corporation and an individual, it seems fair to exonerate the individual of his responsibility in the great majority of the cases, because the contractors are seen as uneven from the beginning.

The most important application of this common trend is the possibility of charging the state of any responsibility in case of damage, for instance. This is of course of very great importance in the case of allocation of risks within the society. People seems less and less prepared to accept the risky counterpart of what they seem themselves as a common good. They tend to charge the state of a general obligation to compensate any individual damage resulting of the constitution of a common good, which may raise the costs of collective decision to almost unbearable levels.

We could call “providentialism” this trend to credit the state for instance of some kind of infinite resources. Some authors describe the state in that representation as “*a screen between society and itself*”, as great deal of people do not see that any distributive decision consists of arbitrating not between the state and the individuals – which is of course a kind of fallacy – but between different individuals or groups of individuals.

5. The various domains of life.

More generally, some studies have shown that there may be a “general ideological frame” in society, which tends to favour different criteria of justice according to the “domain of life” which is at stake.

One example of this kind of studies is the qualitative research by Jennifer Hochschild (1981) that suggests that American people would not view equally

- The domain of *close relationships*, day to day life and family relations where people would be rather egalitarian in their distributive views (this is the domain of “socialization”)
- The realm of *economic activity*, including questions of income, status, job, and so on where American people would be plainly inegalitarian.
- And at last the domain of *political life* in which people tend to be fairly egalitarian.

According to that research, American people react strongly to uneven distribution of political rights, but do accept great inequalities in the distribution of income or wealth. European data seems to point to a rather different ideological frame but I shall not push this discussion too far here.

6. The interpretation of the situation.

The preceding theories generally accept the idea that some characteristics of the situation determine which norms of justice will emerge. During the nineties, the French sociologist *Luc Boltanski*, in collaboration with the economist Laurent Thevenot has suggested a somewhat different theory of plurality of norms of justice in which the actors keep the possibility of moving among different lines of argument, different principles of justification, which are not – or at least not strictly – determined by the characteristics of the situation. Each line of argumentation (which he calls “cities” or “worlds”) is characterized by a particular definition of the common good.

The ability of making such moves is considered by Boltanski as a general moral cognitive capacity engaged in human agency. Of course, the principles at stake are not random, nor are they a creation of the actors. They are the principles, which are disposable in the cultural background of a given society. For France – but it can easily be extended to a great part of the occidental world – he firstly identified six principles:

- Collective representativity (the “civic world”)
- Fair competition (the market world)
- Respect of tradition (the domestic world)
- Efficiency (the industrial world)
- Creativity (the world of inspiration)
- Celebrity (the world of opinion).

Later, in 1999, he added a seventh principle, which we could call “activity”. But the theory of this existence of this seventh principle remains more controversial, I think.

The interest of this theory is that it is not a theory of the determination by the situation, but rather a theory of the use of moral capacities by the agent. It means that people may try to switch from one principle of justification to another if they think this move will help them to “win” in the situation.

To put those principles at use, people must use some kind of a “grammar of justification”, which one could probably describe, like linguistic grammar, as forming part of the “practical consciousness” of the actors.

7. The framing effects.

Until now, we have simply examined some theories of the plurality of norms of justice, but almost every theorist recognizes the very fact of plurality.

Nonetheless, there are certain universal mechanisms that sustain the diversity of judgments. Firstly, we must stress the importance of *framing effects*.

Framing effects are well known in the literature about cognition. The expression describes the fact that two different descriptions of a formally equivalent situation may easily induce people into different perceptions or different behaviours.

A well-known framing effect in the realm of economics is the *monetary illusion*. For instance, a raise of 5 % of monetary income alongside an inflation of 3 % is strictly equivalent in real terms to a raise of 2 % with zero inflation. But many people will find difficult not to prefer the first solution.

In the same line of arguments, it is known that people will use credit device depending of the formulation of reference price: if the reference price is the cash price, with an extra charge for credit payment, people will be more averse to credit than when the reference price is the credit price with a discount for cash payment. This particular kind of framing effect is known in the literature as *loss aversion*: people tend to emphasize more an effective “out of the pocket” loss than the missing of an equal gain. Loss aversion is of great importance in justice questions because it reveals that people do not reason in terms of “opportunity cost”.

Social psychologists, like Amos Tversky and Daniel Kahneman, who have patiently studied the framing effect, think that they may represent “perceptive illusions” rather than “cognitive illusions”. They mean that, in some circumstances, it’s not simply a matter of faulty reasoning, but a quasi impossibility to “perceive” the equivalence between two formulations even when it has been formally demonstrated.

The politologist Thomas Schelling reports a striking example. When teaching to his student some principles of taxation, he asks them what seems fairer in matters of tax reduction for those who have children:

- A fixed amount of reduction
- Or a reduction proportional to the income of the taxpayer.

In that case, almost all his students judge that a fixed reduction is fairer.

He then turns the problem the other way round and suggests that the reference is the amount of tax for the median American household with one child. The question is now what is fairer:

- A fixed amount of extra tax
- Or an amount proportional to the income.

Then, judgments of the students reverse: the proportional extra tax seems fairer.

Schelling found it very difficult to explain to his children that the two situations are exactly equivalent: **what is saved for having one child is what is lost for having none**. So, if we prefer fixed reduction in the first description, we should prefer fixed amount of extra tax in the second description.

Other framing effects more familiar to the social scientists are the effects of item formulation in surveys for instance. Average American respondents are generally much more favourable to social security benefits when it is explained in terms of “relieving poverty” than when it is formulated in terms of “welfare benefits”.

7. The feeling of an immanent justice: the theory of a “just world”.

If all social scientists preoccupied by justice agree that there is actually a plurality of norms in our societies, some have argue that there is also a general emotive and cognitive mechanism that guides our justice related behaviour, which would be the basic and rather unconscious strive toward an immanent justice.

In more accurate terms, the idea that people tend to receive the fate they “merit” – in any possible sense of the term “merit” – may be, in our culture, a basic asset to insure our ontological security about the world.

That theory, formulated in the 80s by the social psychologist Melvin Lerner, implies that when we are confronted with an evident discrepancy between someone’s “merits” and what he gets in return, we enter in a situation of very disturbing stress.

One way of relieving this stress is, of course, to act in order to rebuild a more “balanced” situation where we find equilibrium between people’s behaviour and fate. Bur in many situations, acting in that way may be out of our hands. We may, for instance, help a poor old beggar in the street, but we know we cannot relieve all the world’s tremendous poverty.

In those situations, our sense of ontological security may be reconstructed by a purely cognitive reinterpretation of the situation: we find “reasons” – occasionally purely rhetorical ones – to justify what we have perceived, at first sight, as an injustice. That’s what Melvin Lerner calls “*blaming the victim*”. For instance, when confronted to extreme poverty, we may protect our basic sense of justice by perceiving poor people as ugly, dirty and lazy, which in some sense is a way to say that their poverty must be their own fault.

In the same way, there is a tendency, in cases of rape, to say that the victim must have been provocative. In surveys conducted in England, when interrogated about the causes of rape, one third of respondents argued in such way.

Our own implicit “just world theory” so induce cognitive reinterpretation which resembles very much the mechanism of cognitive dissonance reduction.

In order to gather evidence related to just world theory, Lerner used among other devices scenarios of rape. He presented to a random sample of people the portray of a young woman, associated with a story explicating that she had been victim of a rape. Then he asked the respondents to tell if how sympathetic (or not) he found the young girl, judging on the picture. There were two experimental conditions:

- In the first one he told the young woman was a prostitute.

- In the second was the young woman was described as a nun.

The hypothesis of Lerner was that the necessity of “blaming the victim” was stronger in the second story because given the stereotypes and the moral norms of our society; it would seem more unjust to have a nun victim of a rape than a prostitute. The results of the experiment was exactly what Lerner expected: the respondents who were told it was a nun found the girl much less sympathetic than the respondents who were told it was a prostitute.

The theory of Lerner does not provide an explanation of why certain norms of justice emerge in certain situations. But it helps us to understand some mechanism underlying stereotypes and moral judgements: the way we evaluate people depends partly on their fate. We tend to adjust our perceptions so as to reduce the gap between what a person “merits” and what he or she receives.

8. Conclusion.

The ways people assess justice is of course influenced by many factors. Introducing the different ways of explaining the plurality of norms, the effects of framing, and the role of justice in our sense of ontological security, I think to have addressed the main questions. Now it would be of great interest to generate hypotheses about the influence of those different factors in the specific case of distribution of risks. So we could sketch a theory of justification in risk situation. This could be a very fruitful cooperation between risk theory and justice theory.

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