

Models of Distributive Justice

Jonathan Wolff
Department of Philosophy
University College London

Abstract: Philosophical disagreement about justice ranges over at least two questions. The most immediate is a substantial question, concerning the conditions under which particular distributive arrangements can be said to be just or unjust. The second, deeper, question concerns the nature of justice itself. What is justice? Here we can distinguish three views. First, justice as mutual advantage sees justice as essentially a matter of the outcome of a bargain. There are times when two parties can both be better off by making some sort of agreement. Justice, on this view, concerns the distribution of the benefits and burdens of the agreement. Second, justice as reciprocity takes a different approach, looking not at bargaining but at the idea of a fair return or just price, attempting to capture the idea of justice as equal exchange. Finally justice as impartiality sees justice as ‘taking the other person’s point of view’ asking ‘how would you like it if it happened to you?’ Each model has significantly different consequences for the question of when issues of justice arise and how they should be settled. It is interesting to consider whether any of these models of justice could regulate behaviour between non-human animals.

Questions of distributive justice, arise, naturally enough, in contexts where some sort of good or service could be provided for two or more people. The reason why this is of interest to philosophers is that in many cases disagreements are possible about what justice requires in a particular situation. There are also disagreements about how these disagreements are to be settled. These ‘meta-disagreements’ ultimately concern the nature of justice, as a philosophical concept, rather than disagreement over which are the ‘correct’ principles of justice. In this paper I shall consider the meta-debate: the philosophical question ‘what is justice’.

To anticipate, I am going to sketch out three competing accounts of justice, which can be called ‘justice as mutual advantage’; ‘justice as reciprocity’ or fair exchange; and ‘justice as impartiality’, and I will illustrate some of the different implications of these accounts,

and finally consider whether any of them can plausibly be applied to non-human animals. When philosophers have discussed these models, often they have taken their task to be to show which one is correct.¹ Here, though, my aim is to explain their differences and their presuppositions to see how this may illuminate issues concerning animal behaviour and capacities.

Like others, we can take as our starting point David Hume's influential conception of what is called 'the circumstances of justice'.² Hume argued that the concept of justice is not applicable to all situations in which issues of distribution are in question. There are, he says, both objective and subjective circumstances of justice. The objective circumstances concern the supply of the goods in question. If the goods were abundant, in the sense that everyone can have as much as they wish without reducing the quantity that others can take, issues of justice simply would not arise. Philosophers illustrate this with the example of manna from heaven, but under normal circumstances, air provides a good case. Given that there is so much air around no one need calculate how much others are using or complain that anyone is breathing too heavily. But this can change. Stuck in a

¹ In fact, the distinction between these models has only recently been clarified, especially in work by Brian Barry, and so elements that properly belong in different models, at least according to this analysis, are sometimes joined together. I will ignore this complication here. See Brian Barry, *Theories of Justice* (Berkeley: University of California Press, 1989), Brian Barry, *Justice as Impartiality* (Oxford: Oxford University Press, 1996), Allen Buchanan, 'Justice as Reciprocity versus Subject-Centered Justice' *Philosophy and Public Affairs* 19 (1990): 227-252, Allen Gibbard, 'Constructing Justice' *Philosophy and Public Affairs* 20 (1991): 264-79. See also Jonathan Wolff 'Rational, Fair and Reasonable' in P. Kelly (ed) *Impartiality, Neutrality and Justice: Re-Reading Brian Barry's Justice as Impartiality* (Edinburgh: Edinburgh University Press, 1998), pp 35-43, on which this present paper draws.

² David Hume, *An Enquiry Concerning the Principles of Morals* Section III Part 1 (Oxford: Oxford University Press, 1998).

lift, or trapped in a mine with the waters rising, we might think very differently. Yet under normal circumstances of abundance of air there is no need to complain if someone seems to be taking more than others, or ‘wasting’ it though unnecessarily vigorous exercise, for example. Some have argued that it is precisely because abundance takes us ‘beyond justice’ that Marx insisted that for communism to be possible it was necessary to achieve abundance.³

At the other end of the scale, Hume argues that gross scarcity also makes justice inappropriate. This is more controversial, but Hume argues that if there is so little that people’s survival is in doubt, no one can be criticized for taking and holding on to whatever they can. We could describe this as the view that there are circumstances where justice begins to become a luxury. But in sum, on Hume’s view, justice is only relevant if the goods in question are neither grossly scarce or hugely abundant. These are the objective circumstances of justice. We need also pay attention to the subjective circumstances. Justice, Hume argues, only arises if there is the possibility of conflicts of interest. As Hume memorably puts it ‘Why raise landmarks between my neighbour's field and mine, when my heart has made no division between our interests; but shares all his joys and sorrows with the same force and vivacity as if originally my own?’⁴ On Hume’s view sometimes some families approach this state and within such families ideas of justice are out of place. Finally, and this was famously disputed by Kant, Hume supposes that if someone were to fall among ‘ruffians’ who were so debased as to have no

³ See, for example, Stephen Lukes, ‘Marxism, Morality and Justice’ in *Marx and Marxism* ed. G.H.R. Parkinson (Cambridge: Cambridge University Press, 1982), p 177-205.

⁴ Hume, *op. cit.*

disposition to equity and order, at the least such a person could not be criticized for doing whatever could be done to preserve his own life.⁵

Although Hume's account of the circumstances of justice has been influential, Hume's own theory of the nature of justice brings out its consequences when understood as he intended. Essentially, Hume's central thesis is that ideas of justice only has place where co-operation has a point for everyone involved in the situation. We can put this in terms of the idea of mutual advantage: if everyone went their separate ways, they would achieve a particular result. However with the co-operation of others, they can each do better. A surplus is possible. Justice then is a matter of working out rules for the division of the benefit provided by co-operation. We can see how this relates to the objective circumstances of justice. Where there is already abundance co-operation yields no benefits; where there is extreme scarcity, even after co-operation, then again it is pointless.

Although this may seem quite reasonable, this can generate the view that justice is a type of bargain, in which those with the greatest bargaining power will, as a matter of justice, receive most. Note that bargaining power is determined by how much one – or rather one's agreement - is needed by others, and not the extent of one's contribution. This we see, rather chillingly, illustrated in Hume's own application of his theory, worth quoting at length:

⁵ Kant, I., *Idea for a Universal History* [*Idea for a Universal History with a Cosmopolitan Purpose*], in Reiss *Kant, Political Writings*, trans. H.B. Nisbet, edited with an introduction and notes by H. Reiss (Cambridge: Cambridge University Press, 1991) p. 41-53.

Were there a species of creatures intermingled with men, which, though rational, were possessed of such inferior strength, both of body and mind, that they were incapable of all resistance, and could never, upon the highest provocation, make us feel the effects of their resentment; the necessary consequence, I think, is that we should be bound by the laws of humanity to give gentle usage to these creatures, but should not, properly speaking, lie under any restraint of justice with regard to them, nor could they possess any right or property, exclusive of such arbitrary lords. Our intercourse with them could not be called society, which supposes a degree of equality; but absolute command on the one side, and servile obedience on the other. Whatever we covet, they must instantly resign: Our permission is the only tenure, by which they hold their possessions: Our compassion and kindness the only check, by which they curb our lawless will: And as no inconvenience ever results from the exercise of a power, so firmly established in nature, the restraints of justice and property, being totally USELESS, would never have place in so unequal a confederacy.

This is plainly the situation of men, with regard to animals; and how far these may be said to possess reason, I leave it to others to determine. The great superiority of civilized Europeans above barbarous Indians, tempted us to imagine ourselves on the same footing with regard to them, and made us throw off all restraints of justice, and even of humanity, in our treatment of them. In many nations, the female sex are

reduced to like slavery, and are rendered incapable of all property, in opposition to their lordly masters. But though the males, when united, have in all countries bodily force sufficient to maintain this severe tyranny, yet such are the insinuation, address, and charms of their fair companions, that women are commonly able to break the confederacy, and share with the other sex in all the rights and privileges of society.⁶

The logic, then, of Hume's position is that if others have nothing to offer us, or things we can take from them independently of what they decide or want, then we have no duties of justice, strictly speaking, towards them. Hume does not deny that we have moral duties of humanity in such cases, but not of justice.

The obvious point to make in response is that this simply doesn't sound much like justice, in that it allows one person or group to take from another without making what would appear to be proper payment. Indeed justice as mutual advantage seems a very primitive idea of justice, in which 'might makes right'. The only reason for restraint, from the point of view of justice, is to try to establish a general atmosphere of co-operation, which will be in my long-term interests, rather than allow a damaging power struggle. Justice and long-term self-interest of the powerful seem to converge.

Unhappiness with the idea that 'proper payment' is missing from justice as mutual advantage generates the next theory of justice, which was called 'justice as reciprocity'

⁶ Hume op. cit.

above, but might be called 'justice as fair exchange'. On this view justice requires not so much bargaining as proportionality: those who make the greatest contribution should, in justice, receive the greatest return. It is easy to see that ideas of desert naturally fit into this picture, although as soon as this is said it will also be seen that there are many ways of fleshing this out. Does desert attach to effort? Or to achievement? Or to some hybrid of the two. Many theories are possible, but the general notion of justice as fair exchange has great resonance with many people, underlying slogans such as 'a fair day's pay for a fair day's work'. It is this notion which makes the biblical 'parable of the workers in the field' so troubling. In this story the farm-owner pays the same both to those who have worked only half a day and those who have worked a whole day. Although the farmer appeals to the argument that those who worked the full day received exactly what they were promised, it is very easy to see why they should have thought themselves hard-done by.

While justice as reciprocity appears intuitively more acceptable, a problem with both justice as mutual advantage and justice as reciprocity is that it leaves out of account those who may have nothing to contribute or exchange. Consider those people who are so severely disabled that they are unable to make any productive contribution. Few will want to argue that such people are not owed anything by those who are able to work, but our question is whether these are duties of justice or, perhaps, merely of charity. On the two views discussed so far there is no obvious way of generating duties of justice. But to many this will seem wrong, and that others have a duty of justice to help the unfortunate. A different theory is needed to explain this.

The most prominent candidate is ‘justice as impartiality’, where justice requires taking everyone’s situation and interests into account in determining what is to count as a just outcome. Here mechanisms for determining just outcomes take as their inspiration the thought ‘how would you like it if you were in that situation?’ So, for example, Adam Smith’s device of the ‘impartial spectator’⁷, or more recently John Rawls’s ‘veil of ignorance’⁸ require the decision maker to take on the perspective of every individual involved or affected. To apply Rawls’ model to the case of the disabled (something Rawls himself does not do, in fact) would be to ask the question: ‘what provisions for the disabled would you want in your society if you didn’t know whether or not you were disabled. Here a balance needs to be struck between the interests of those who are disabled, and those who will have to work to provide things that the disabled cannot provide for themselves. Nevertheless, one may conjecture that if this method were seriously applied then arrangements for the disabled may be more congenial than they presently are, at least in some societies.

In considering whether behaviour between animals could be regulated by norms of justice that correspond to these models, we should note that each model is more demanding, both cognitively and morally than the previous one. Hence justice as mutual advantage is a fairly minimal standard, and requires a creature only, first, to be able to distinguish immediate interest from longer term interest, and second, to understand that other

⁷ Adam Smith, *Theory of the Moral Sentiments*, ed. K Haakonssen, (Cambridge: Cambridge University Press, 2002), Part 3, Chapter 3.

⁸ John Rawls *A Theory of Justice* (Oxford: Oxford University Press, 1971).

creatures may well modify their behaviour in the light of their expectation of how others will behave. In other words, it requires animals to be able to behave as game theorists, in a dynamic environment, rather than as decision theorists making choices in a static environment. It is not implausible that evolutionary mechanisms could encourage the development of such traits in some animals, and it would not be a surprise to learn that animals can develop forms of co-operation which yield outcomes that are consistent with justice as mutual advantage.

Justice as reciprocity or fair exchange requires a much more sophisticated understanding. Specifically it requires a creature to be able to deploy a concept of proportionality. This could be proportion between effort and reward for an individual, or, across individuals, an idea of similar treatment. In the latter context I understand that there is experimental evidence that some apes are able to make this judgement, refusing to accept a lesser 'payment' when another ape has been lavishly paid for undertaking the same task. Note, though, this does not seem to require empathy in the sense of seeing things from another's point of view. Rather it requires only some notion of comparison. Note, too, that a sense of *injustice* is not yet the same as a sense of *justice*. The latter would be displayed by the lucky ape offering a portion of the over-payment to the unlucky ape. Observing this would be very interesting indeed. It would be hard to see what could motivate such behaviour, if were ever to happen, other than a sense of empathy.

The final idea of justice, justice as impartiality, also requires empathy. We should note, however, that this is not the empathy a mother may have for her offspring, which can be

closer to a sense of merging identities, but rather empathy for another creature understood as a distinct individual. It would be consistent, for example, with a group of animals sharing their kill with a member of the group who is too old and infirm to perform any useful task, and yet is not a family member. However, even if such behaviour is observed no doubt there would be competing explanations, perhaps based on an ‘accidental over-spill’ of norms of mutual advantage.

In conclusion, in understanding whether animals are capable of following norms of justice, and the relation between justice and empathy, it is important to keep in mind that there are different models of justice, not all of which pre-suppose empathy. Hence one must be clear in each case which model of justice is in play, and what conceptual demands it makes on its participants. Keeping this in mind may help understand and classify animal capacities and forms of behaviour.