
THE LIBRARY OF ESSAYS ON JUSTICE

THEORIES OF JUSTICE

TOM CAMPBELL AND
ALEJANDRA MANCILLA

Theories of Justice

Edited by

Tom Campbell

Charles Sturt University, Australia

Alejandra Mancilla

Australian National University, Australia



ASHGATE

© Tom Campbell and Alejandra Mancilla 2012. For copyright of individual articles please refer to the Acknowledgements.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the publisher.

Wherever possible, these reprints are made from a copy of the original printing, but these can themselves be of very variable quality. Whilst the publisher has made every effort to ensure the quality of the reprint, some variability may inevitably remain.

Published by
Ashgate Publishing Limited
Wey Court East
Union Road
Farnham
Surrey GU9 7PT
England

Ashgate Publishing Company
Suite 420
101 Cherry Street
Burlington
VT 05401-4405
USA

www.ashgate.com

British Library Cataloguing in Publication Data

Theories of justice. – (The library of essays on justice)

1. Justice (Philosophy)

I. Series II. Campbell, Tom, 1938– III. Mancilla, Alejandra.

172.2–dc23

Library of Congress Cataloging-in-Publication Data:

Theories of justice / edited by Tom Campbell and Alejandra Mancilla.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-7546-2972-6 (hardback : alk. paper) 1. Justice. 2.

Law–Philosophy. 3. Social justice–Philosophy. I. Campbell, Tom. II. Mancilla, Alejandra.

K246.T48 2012

340'.114–dc23

ISBN 9780754629726



Printed and bound in Great Britain by
TJ International Ltd, Padstow, Cornwall.

Acknowledgements

The editor and publishers wish to thank the following for permission to use copyright material.

California Law Review for the essay: Samuel Scheffler (2000), 'Justice and Desert in Liberal Theory', *California Law Review*, **88**, pp. 965–90. Copyright © 2000 *California Law Review*.

Cambridge University Press for the essay: T.D. Campbell (1974), 'Humanity before Justice', *British Journal of Political Science*, **4**, pp. 1–16.

John Wiley and Sons for the essays: Michael Buckley (2010), 'The Structure of Justification in Political Constructivism', *Metaphilosophy*, **41**, pp. 669–89. Copyright © 2010 Michael Buckley. Copyright © 2010 Metaphilosophy LLC and Blackwell Publishing Ltd; Iris Marion Young (2001), 'Equality of Whom? Social Groups and Judgments of Injustice', *Journal of Political Philosophy*, **9**, pp. 1–18. Copyright © 2001 Blackwell Publishers; G.A. Cohen (1997), 'Where the Action Is: On the Site of Distributive Justice', *Philosophy & Public Affairs*, **26**, pp. 3–30; Liam B. Murphy (1998), 'Institutions and the Demands of Justice', *Philosophy & Public Affairs*, **27**, pp. 251–91. Copyright © 1999 by Princeton University Press; Thomas W. Pogge (2000), 'On the Site of Distributive Justice: Reflections on Cohen and Murphy', *Philosophy & Public Affairs*, **29**, pp. 137–69. Copyright © 2000 by Princeton University Press; Hillel Steiner (1981), 'Liberty and Equality', *Political Studies*, **29**, pp. 555–69; Barbara H. Fried (2004), 'Left-Libertarianism: A Review Essay', *Philosophy & Public Affairs*, **32**, pp. 66–92. Copyright © 2004 by Blackwell Publishing; Peter Vallentyne, Hillel Steiner and Michael Otsuka (2005), 'Why Left-Libertarianism Is not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried', *Philosophy & Public Affairs*, **33**, pp. 201–15. Copyright © 2005 by Blackwell Publishing; Alistair M. MacLeod (2005), 'Distributive Justice and Desert', *Journal of Social Philosophy*, **36**, pp. 421–38. Copyright © 2005 by Blackwell Publishing; Susan Moller Okin (1987), 'Justice and Gender', *Philosophy & Public Affairs*, **16**, pp. 42–72. Reproduced with permission of Blackwell Publishing Ltd; Kai Nielsen (1989), 'Liberal and Socialist Egalitarianism', *Journal of Social Philosophy*, **20**, pp. 137–54. Copyright © 1989 *Journal of Social Philosophy*; Colin Farrelly (2007), 'Justice in Ideal Theory: A Refutation', *Political Studies*, **55**, pp. 844–64.

Journal of Philosophy for the essay: Amartya Sen (2006), 'What Do We Want From a Theory of Justice?', *Journal of Philosophy*, **103**, pp. 215–38. Copyright © 2006 *The Journal of Philosophy*, Inc.

Oxford University Press for the essays: Owen McLeod (2003), 'On the Comparative Element of Justice', in Serena Olsaretti (ed.), *Desert and Justice*, Oxford: Clarendon Press, pp. 123–44; Shelly Kagan (1999), 'Equality and Desert', in Louis Pojman and Owen McLeod (eds), *What Do We Deserve? A Reader on Justice and Desert*, Oxford: Oxford University Press, pp. 298–314.

Rowman & Littlefield Publishing Group for the essay: Charles W. Mills (2004), “‘Ideal Theory’ as Ideology”, in Peggy DesAutels and Margaret Urban Walker (eds), *Moral Psychology: Feminist Ethics and Social Theory*, Oxford: Rowan and Littlefield, pp. 163–82. Copyright © 2004 by Rowman & Littlefield Publishers, Inc.

Sage Publications for the essay: David Miller (2005), ‘Two Ways to Think About Justice’, *Politics, Philosophy and Economics*, **1**, pp. 5–28. Copyright © 2005 Sage Publications Ltd.

Social Theory and Practice for the essay: Zofia Stemplowska (2008), ‘What’s Ideal About Ideal Theory?’, *Social Theory and Practice*, **34**, pp. 319–40. Copyright © 2008 by *Social Theory and Practice*.

Springer Science + Business Media for the essay: Richard J. Arneson (1989), ‘Equality and Equal Opportunity for Welfare’, *Philosophical Studies*, **56**, pp. 77–93. Copyright © 1989 Kluwer Academic Publishers; Anca Gheaus (2009), ‘The Challenge of Care to Idealizing Theories of Distributive Justice’, in Lisa Tessman (ed.), *Feminist Ethics and Social and Political Philosophy: Theorizing the Non-Ideal*, New York: Springer, pp. 105–19. Copyright © 2009 Springer Science + Business Media B.V.

University of Chicago Press for the essay: G.A. Cohen (1989), ‘On the Currency of Egalitarian Justice’, *Ethics*, **99**, pp. 906–44. Copyright © 1989 by The University of Chicago. All rights reserved; Elizabeth S. Anderson (1999), ‘What Is the Point of Equality?’, *Ethics*, **109**, pp. 287–337. Copyright © 1999 by The University of Chicago. All rights reserved.

Every effort has been made to trace all the copyright holders, but if any have been inadvertently overlooked the publishers will be pleased to make the necessary arrangement at the first opportunity.

Series Preface

Justice is one of the most enduring and central concepts within applied philosophy, and generates a vast and varied literature. This six-volume *International Library of Justice* series meets a number of distinct needs. The first volume, *Theories of Justice*, edited by Tom Campbell and Alejandra Mancilla, comprises a selection of some of the most important essays on the general theory of justice published over recent decades. One interesting aspect of this literature is the renewed attention that is being given to the notion of desert within theories of justice. Two further volumes, edited by Larry May and Paul Morrow, and Julian Lamont, respectively, deal with two traditional topics in justice that have undergone significant development in recent years – namely procedural justice, particularly with respect to constitutional law, and distributive justice, taking in important recent work on egalitarianism. Another two volumes, edited by Christian Barry and Holly Lawford-Smith, and Lukas H. Meyer, respectively, focus on the application of justice to less familiar areas, such as global institutions as they bear upon contemporary problems relating to extreme poverty and intergenerational justice. The sixth volume, *Justice and the Capabilities Approach*, edited by Thom Brooks, concentrates on the recent influential work by Amartya Sen and Martha Nussbaum on the relevance the concept of human capabilities in the formulation of policy on distributive justice, especially in developing countries.

Given the political priority that accrues to those matters that are categorized as having to do with justice, there is a tendency to extend the term beyond its distinctive uses and incorporate a very wide range of social values that relate to the proper ordering of social and political relationships. While the editors of each volume have striven to resist this inflation of the term ‘justice’ to cover all aspects of right human relationships, inevitably there is, in each volume, a substantial overlap with the bodies of literature concerned with the ideals of equality, reciprocity and humanity.

One such overlap arises with respect to rights, particularly human rights. Indeed, in some fields the discourse of justice has been largely overtaken by that of rights. The significance of this shift in emphasis within political rhetoric, which is one of the themes that features in *Theories of Justice*, recurs within the subsequent selections, raising interesting questions concerning contemporary political priorities and differing institutional approaches to social order.

The volumes in this series will assist those engaged in scholarly research by making available some of the most important contemporary essays on particular topics within the contemporary discourse of justice. The essays are reproduced in full, with the original pagination for ease of reference and citation.

The editors have been selected for their eminence in the study of law, politics and philosophy. Each volume represents each editor’s selection of the most seminal recent essays in English on an aspect of justice. The Introductions present an overview of the issues in that particular volume, together with comments on the background and significance of the selected essays.

TOM CAMPBELL

Series Editor

*Professorial Fellow, Centre for Applied Philosophy and Public Ethics (CAPPE),
Charles Sturt University, Canberra*

Introduction

Theorizing about justice, equality and fairness has engaged moral and political philosophers for over two millennia. For Plato (1987), justice is a virtue which brings harmony both to the soul and to the state. Aristotle (1984) distinguishes commutative and distributive justice, according to whether it is a matter of punishments and compensation, or with proportional equality in the assignment of social benefits. For Aquinas (2006, II-II, 58, 1) it is justice which makes one render to another his due by a perpetual constant will, while Hobbes (1947) sees justice as strictly limited to the performance of valid covenants. David Hume deems justice to be an 'artificial' virtue that arises from convention for the common interest, to settle disputes between individuals fighting for resources in conditions of moderate scarcity (Hume, 1975, §257, p. 306). His contemporary, Adam Smith, defines justice as a minimal virtue, 'of which the observance is not left to the freedom of our own wills, which may be extorted by force, and of which the violation exposes to resentment, and consequently to punishment' (Smith, 1982, II.II.i.5, p. 79). Kant understands duties of justice as a subset of perfect duties toward others (prescribing or prohibiting certain specific actions always, with no exceptions), which can be legally enforced and the aim of which is to protect freedom (Kant, 1991, pp. 213 and 219). More flexibly, for John Stuart Mill, 'justice is a name for certain moral requirements, which, regarded collectively, stand higher in the scale of social utility, and are therefore of more paramount obligation, than any others' (Mill, 1991, p. 200). Following Marx in his rejection of justice as a bourgeois concept reinforcing inequality, Friedrich Engels discards it as a 'social phlogiston', a non-existent entity (Engels and Marx, 1973).

The diversity featured in these classic accounts of justice continues today, especially since the publication of John Rawls's *A Theory of Justice* (1971). An extensive literature has emerged in reaction to this landmark work and later ones by the same author (Rawls, 1993, 1985). By expanding, expounding or criticizing this work, contemporary justice theorists are expected – tacitly or overtly – to make clear the extent and nature of their allegiance or their opposition to Rawls's central tenets. Rawls's theory of justice involves a version of the social contract model of political theory in opposition to utilitarian accounts, as the best way to derive substantive principles of justice. His idealized view of a just society is that of a fair system of cooperation between citizens, regarded as free and equal persons. This involves securing certain basic liberties for all citizens, and accepting only such inequalities in the distribution of the benefits and burdens as maximize the holdings of the least well off within that society, provided that such the social inequalities result from equality of opportunity. Importantly, Rawls rejects 'natural', that is pre-institutional, desert as a relevant criterion for distributive justice. His overall delimitation of the primary subject of justice is the 'basic structure of society or, more exactly, the way in which major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation' (Rawls, 1999, p. 7).

The theories of justice in this 'post-Rawlsian' era constitute the focus of this volume, which brings together some of the most important and influential theories published on the subject

in the last 40 years, highlighting at the same time some recent developments, especially regarding methodological issues. Several key authors and texts have been omitted (starting with Rawls himself), on the basis that these have been widely referenced and anthologized elsewhere. This is the case, for example, with Robert Nozick's right-libertarian conception of justice (Nozick, 1974), Brian Barry's account of justice as impartiality (Barry, 1995), and Jürgen Habermas's view of justice as the outcome of a democratic process, where public reasoning plays a fundamental role (Habermas, 1996).

The selected essays have been organized around the following recurrent topics: Part I deals with problems in theorizing justice; Part II concerns the relationship between justice and related concepts such as equality and liberty; Part III contains conflicting views as to the proper scope of justice; Part IV focuses on the relatively novel approach of 'left libertarianism'; Part V brings back into the picture the place of desert within the domain of justice; Part VI presents a selection of essays critical of aspects of the Rawlsian tradition, including feminist critiques; and Part VII deals with 'non-ideal' theories which eschew the abstractions of grand theories of justice.

Building the Theory

The history of political philosophy exhibits a recurrent contrast between universal and utopian theories which seek to establish a vision of justice that should be admired and applied in all societies on the one hand, and relativist theories which hold that the nature and content of justice changes according to the opinions and practices within each particular society and often manifest scepticism about the existence of any one conceptually or morally correct theory. Even in *The Republic*, Plato's universal idea of justice comes up against the contention of the sophist Thrasymachus that justice is nothing more than the will of the stronger party.

Recently some philosophers have sought out a compromise position which allows for the normative justification of diverse ideas of justice without embracing moral scepticism. Thus David Miller (Chapter 1) offers a third possible approach to the traditional dichotomy of universalism and relativism. On his view, justice is neither universal nor relative, but *contextual*. Miller argues that different principles of justice apply in different contexts, and that there is no unifying principle underpinning them. Compared to universalism, contextualism does better at explaining the diversity and divergence of our beliefs about justice; and compared to relativism, it provides a more solid moral basis, insofar as it aims at some form of objective pluralism. This position reflects the debate between cosmopolitans who aspire to a global concept of justice and communitarians, who locate values within distinct communities. This is especially salient in the area of global justice: for the former, global justice is a desirable and feasible goal (see, for example, Beitz, 1979; Shue, 1980; Pogge, 2008; Brock, 2009); for the latter, it is a misguided enterprise, which ignores important cultural variances and seeks to colonize the globe with Western political values. This view is endorsed by Walzer (1983), MacIntyre (1988) and Sandel (2010).

Another important variable is how theories are related to social change and reform. Thus, in *The Open Society and Its Enemies* (1962), Karl Popper distinguished between utopian and 'piecemeal' public engineering. The first, which he attributes to Plato and Marx, aims at an ideal of perfection and happiness on earth, while the latter, which he favours, may not even work toward an ideal, but aims instead to modify the most urgent evils in society in a

piecemeal manner. A similar position is developed by Amartya Sen (Chapter 2), through his contrast between ‘transcendental’ and ‘comparative’ approaches to justice. Ambitious, the transcendentalist aspires to answer the question of what is a just society, full-stop. Leaning toward Popper’s piecemeal approach, the comparativist focuses instead on alternative societal arrangements, ranking them in the absence of an overarching ideal. Sen opts for this second approach, and claims that completeness is neither a necessary nor a sufficient condition for a theory of justice. Through open public deliberation at the national and global levels, he believes that it is practicable to correct particular injustices and thereby attain a comparatively better state of affairs. Sen expands these views in his recent book, *The Idea of Justice* (2009), where he connects the comparative approach with social choice theory and emphasizes its importance in evaluating the desirability of specific ‘social realizations’.

Sen regards Rawls as a transcendentalist and points to what he sees as the parochial nature of Rawls’s ‘political constructivism’ in which a hypothetical social contract between those who share a particular culture is used to derive substantive principles of justice. If we start from ideas implicit in a society’s culture and derive from them a neutral choice procedure, from which the normative principles of that society are then selected, it is more likely that an ‘overlapping consensus’ will be achieved which provides a certain stability, one of the main political challenges given the fact of pluralism. However, there is a circularity in this process which casts doubt on the universal applicability of its outcomes. Sen therefore prefers a more open process, which he associates with Adam Smith, in which contributions from other cultures are sought and subjected to scrutiny. However, Michael Buckley (Chapter 3) defends a pragmatic version of political constructivism, which starts from a ‘subject-based investigation’ of a concrete political problem and then develops criteria to judge the normative principles (which are the object of a separate investigation). He takes this to be a pragmatic enterprise, which can escape political bias by starting from empirically-based analysis and brings to the fore the ways in which certain factual circumstances within their societies matter to the public. Principles constructed in this way are justified through their capacity to deal with specific practical problems.

Equality of What?

Egalitarianism has been arguably the most popular and prolific strand among theories of justice in the past four decades, its basic assumption being that justice is about reaching equality of some sort. Here the crucial question is: of which sort? The answers given divide egalitarians into two main groups: ‘luck egalitarians’, who wish to eliminate the effects of brute luck over individuals (the term was coined by Elizabeth Anderson; see Chapter 6, p. 137 below); and ‘political egalitarians’, who dismiss the view that justice is about eliminating all undeserved inequalities as misled and quixotic, and, in its place, emphasize the importance of ending oppressive relationships and creating a community of political equals instead.

Luck egalitarians can in turn be divided according to the unit of analysis that they use to measure equality. Thus, welfare-oriented luck egalitarians advocate the distribution of goods among people so that everyone ends up with the same *actual* welfare, or well-being, usually understood as the fulfilment of preferences, an approach which assumes the possibility of cardinal interpersonal comparisons. The problems that arise in trying to measure actual levels of well-being are highlighted by resource-oriented luck egalitarians, who consider that the

aim of justice is to give each person an equal amount of initial resources, so that they can enter the market in fair bargaining conditions. Thus, Ronald Dworkin (1981), the main proponent of this view, suggests the model of an original auction to explain how the distribution of resources should occur, and then justifies further redistributions on the basis of the distinction between what results from individual choice or options and what is the consequence of brute luck. Although the equality-of-resources approach purports to be ‘ambition-sensitive’ (allowing for inequalities due to conscious choices), it is also ‘endowment-sensitive’, so that undeserved differences in native talents (taken as a resource) should be equalized.

Other versions of luck egalitarianism are presented by Richard Arneson (Chapter 4) and Gerald Cohen (Chapter 5). In terms of policy-making and practical implications these versions turn out to be very similar; however, their theoretical bases are distinct. Skipping the contentious issue of how welfare is to be measured, Arneson advocates a system of equal opportunity for achieving increases in welfare, whereby each person should be equal in terms of their prospects for preference satisfaction. Preference satisfaction is analysed in terms of ‘second-best preferences’, which he defines as those we pick up after being well informed on the cost of our ‘first-best or ideal preferences’. The main strength of this theory, Arneson claims, is that the position reached by each person depends entirely on factors under her control, as opposed to equality of resources, which places an excessive burden on the talented, and equality of welfare, which unduly favours those with more expensive preferences.

Going one step further, Cohen proposes ‘equal access to advantage’, according to which advantage is understood in a wider sense than welfare. The core of this view is that all involuntary disadvantages should be eliminated; that is, disadvantages for which people cannot be held responsible because they do not reflect their actual or prospective choices. These include not only deficits in resources and welfare, but also some unchosen expensive preferences. That the state should compensate those who choose professional photography instead of fishing as their hobby is one practical implication of Cohen’s highly demanding theory. The decisive cut for this author is thus not between resources and preferences (à la Dworkin), but between luck and responsibility.

Such theories appear to be very humanitarian, insofar as they strive to ameliorate the situation of the victims of bad fortune in its many forms, be it in terms of external resources, welfare or unchosen preferences; they can, nonetheless, be criticized for focusing on the superiority and inferiority rather than the equality of persons. Luck egalitarianism seem to show lack of concern and respect both for victims of bad luck (who are treated with ‘contemptuous pity’), and losers with respect to option luck (who are judged harshly as deserving their misfortunes). This is the core of Elizabeth Anderson’s critique of luck egalitarianism (Chapter 6). The point of equality, for Anderson, is not to eliminate the impact of brute luck and to ensure that everyone gets what they morally deserve, but rather to construct a community of equals through just institutional arrangements. Instead of focusing on equal patterns of distribution, ‘democratic equality’ – as she calls her proposal – focuses on equal recognition. Anderson adopts Sen’s capabilities approach (Sen, 1992; Nussbaum and Sen, 1993) according to which what ought to be equalized is a person’s capacity to achieve the way of life she values most highly. Anderson proposes an egalitarianism which strives to give equal capabilities to all moral agents in three dimensions: as human beings, as citizens and as members of the economic system. Seen as a fair system of cooperation, society provides a safety net under which no one should fall, no matter how ‘deserving’ or ‘undeserving’.

All these authors focus on *what* equality is about, and assume that the relevant unit of analysis is the individual person. In contrast, Iris Marion Young (Chapter 7) also includes equalization as between groups. Young believes that an account of social justice that ignores group inequalities is incomplete because group inequalities uncover *structural* inequalities – that is, sets of pervasive institutional practices, stereotypes, rules and conditions that limit the choices and possibilities of some and enlarge those of others. To pay attention to these group inequalities does not mean that individual inequalities will be ignored, but both are necessary for a thorough theory of social justice.

The Limits of Justice

Should the principles of justice apply only to the basic structure of society, as with Rawls, thus leaving individuals free to act and make their own self-interested choices within that regulated framework, or is that not enough to constitute a just society? In other words, what should the *scope* of justice be? This is the question tackled by Gerald Cohen, Liam Murphy and Thomas Pogge in Part II.

In Chapter 8, Cohen targets Rawls's view that the two principles of 'justice as fairness' should be directed to the main social institutions, leaving the individuals free to pursue their goals within that framework. Without an egalitarian *ethos*, whereby people's actions are informed by egalitarian principles, Cohen argues, Rawls's theory is not enough to secure a just society. Whereas Rawls accepts inequalities of income and wealth as long as they benefit the worse-off (the 'difference principle'), Cohen argues that the more talented should be generous and motivated to create more wealth even if they know that it will be distributed equally among everyone. Instead of focusing on the basic structure or the individual's uncoerced choices, what matters for justice is the resulting *pattern* of benefits and burdens created by those structures and choices.

Cohen also criticizes the ambiguous scope of Rawls's idea of a 'basic structure', on the grounds that it includes not only coercive legal institutions, both constitutional and legislative, but also uncoercive – although deeply influential – social arrangements, such as the family and the competitive market. Cohen also points out that Rawls leaves out individual choices and decisions from the theoretical framework of justice when these are often referred to as being unfair and unjust.

The view that the personal and the political go hand in hand is shared by Liam Murphy (Chapter 9), whose main thesis is that the principal normative principles used to design institutions should be one and the same as those that direct the people's conduct and choices. Murphy characterizes Rawls' normative theory as dualist in that it postulates that the principles of justice which apply to legal, political and certain social institutions (that is, the basic structure of society) should be distinguished from those that apply to the realm of personal ethics. By contrast, Murphy endorses monism, whereby the same principles that apply to institutions also apply to individuals. Far from having a special normative status, background institutions are rather the most efficient means to attain the moral goals of the latter.

Murphy examines and rejects four arguments in favour of dualism: (1) the 'institutional division of labour'; (2) the idea that the principles of justice describe the responsibility of institutions and not of people; (3) the claim that institutional interactions generate stronger

obligations toward others; and (4) the view that duties of distributive justice flow only from one's role as a citizen of a closed political community.

Murphy agrees that institutions are crucial for shaping a just society, but insists that this is not a conclusive reason for letting them be governed by special criteria, different from that which directly shapes conduct among individuals. Moreover, like Cohen, Murphy pinpoints to the lack of clarity in the scope of the Rawlsian basic structure, making it impossible to decide to which areas the principles of justice should apply. For example, it is not clear whether contract law should lie inside or outside their realm. The dualist's idea that justice focuses on the responsibility of institutions and not of people is for Murphy an unnecessary detour that monists rightly avoid. Why make people responsible only for aiming at just institutions which in turn aim at creating a society with more equality and less suffering, when one could directly (and sometimes more efficiently) aim directly at the latter? In the non-ideal world, the monist's more flexible position leads for Murphy to more desirable results.

Murphy also rejects the dualism of the 'institutional approach' advocated by Thomas Pogge (2008), who claims that political and economic interaction according to well-established ground rules creates obligations toward others which are much stronger than those that emerge between people outside such a given framework. One of these obligations is to make sure that the ground rules themselves are just, meaning that they aim at the best feasible alternative for those who are worse off under that arrangement. Again, Murphy attacks the indirect strategy of dualism, which demands that people promote and support just institutions, instead of aiming directly at the very same ends sought by those institutions. Moreover, he criticizes the stark discontinuity in moral treatment given to those with whom we have some kind of institutional interaction and those with whom we have not. Finally, Murphy contests the argument from democratic legitimacy endorsed by Rawls and Dworkin, whereby our duties of distributive justice are limited to our role as citizens or, at least, members of a determinate political community. Apart from the unfeasibility of isolationism in a globalized world (which this view takes for granted), the same problem of moral discontinuity posed by the institutional approach arises here between citizens and non-citizens in an even more dramatic way.

Basic structures and people can relate to the common ethical goal either *performatively* (by acting in such a way that the goal is *in fact* promoted), or *inspirationally* (so that they act *motivated* by that goal). In Chapter 10, Thomas Pogge calls these views 'mastergoal monism' and 'supergoal' monism and, against Murphy, goes on to reject both as unworkable theories of justice.

Mastergoal monists criticize Rawls's theory of justice on the grounds that, if it can compare two alternative distributions as more or less just, then it can surely determine one distribution that is the best of all possible ones, and thereby set it as its ultimate goal. This, however, is a misunderstanding of Rawls's aim to offer the 'morally best *public* criterion of social justice' (Rawls 1993, pp. 9–10), which does not necessarily coincide with the ultimate moral goal of justice. In this respect, Rawls' political goal is much more modest than that of mastergoal monism.

Supergoal monists, meanwhile, suggest that, once the aim of a theory of justice is specified, individuals, as well as institutions, should directly strive to achieve it. For Pogge, this is doubly problematic: first, it assumes that the goal assigned to the basic structure is the mastergoal (which is not necessarily the case, as was said above); and it assumes that the goal will best

be achieved by people aiming directly at it, a questionable assumption, as many critics of consequentialist theories have pointed out (Hodgson, 1967; Williams, 1973).

As for Cohen's critique of Rawls, Pogge attacks it on various fronts. First, he says it is unrealistic to think that the talented can actually get organized in order to fight for a tax rate that benefits them to the detriment of the worse-off. Secondly, it is unfeasible and impracticable to demand that the most talented redirect the economic-rent portion of the extra rewards they receive to raise the pay rates of the worse-off. This could also turn out to be counterproductive: instead of contributing to the creation of wealth, the more talented could maybe turn to less skilled jobs, therefore creating a general levelling-down effect. The alternative to force them to maximize their output by working in the most productive job for the longest possible shifts, even if they don't like the job and would not get equal pay to everyone else, would not only be un-Rawlsian in spirit, but also extremely burdensome for the talented. This point is also made by Rawls when arguing against a head tax on native endowments (Rawls, 2001, p. 158).

Between Liberty and Equality

The biggest challenge for liberal egalitarian theories of justice has come from right-libertarians, who focus on private property rather than fair distribution and highlight the importance of the Lockean right of self-ownership, which includes the right to one's life and bodily parts and to the free enjoyment of further possessions that one may acquire by 'mixing' one's labour with the external resources, as long as by so doing one does not violate the equal rights of others.

The most prominent advocate of this type of position has been Robert Nozick (1974), who opposes egalitarian end-state principles of justice – which require, according to him, the continuous meddling of the State with people's lives – to his own historical principle of justice. What matters, according to Nozick, is not the *structural* arrangement of individual possessions or 'holdings' in society, but how they were *initially* acquired and subsequently transferred. 'From each as they choose, to each as they are chosen' (Nozick, 1974, p. 160): no more and no less should be the goal of justice, and a minimal State should be enough to secure it.

An interesting third path between left-leaning egalitarianism and right-leaning libertarianism is 'left-libertarianism', a position which seeks to capture the best of both positions. On one side, left-libertarians fully endorse the idea that autonomous agents own themselves and that the only restrictions to their liberties should be those incurred through voluntary contracts; on the other side, they believe in some kind of egalitarian ownership of natural resources, inspired by a strong version of the Lockean proviso, i.e., to leave 'enough and as good for others' (Locke, 1924, Second Treatise, §27, p. 130). Thus, Hillel Steiner argues, in Chapter 11, that the only way to guarantee a society in which everyone is equally free (as Nozickeans would have it) is by endorsing some moderate form of socialism, where each individual has a veto on the initial allocation of property. Other proposals along similar lines include Philippe Van Parijs's advocacy for a universal basic income as a precondition for a maximally free society (Van Parijs, 1995), and Michael Otsuka's denial that the right to one's endowments and one's labour implies necessarily the right to the products of those endowments and labour (Otsuka, 2003).

The difficulties which arise in deriving specific individual rights from the concept of self-ownership, and of pinning down the practical implications of the view that natural resources

are owned in common, are the focus of the critique made against left-libertarians by Barbara Fried (Chapter 12). Sympathetic to their goal of reconciling individual liberty with economic equality, Fried pinpoints, however, the pending theoretical tasks that left-libertarians have to resolve. Among them are whether the right to self-ownership includes a full right to inheritance, whether *inter vivos* transfers include the right to sell oneself as a slave; and whether natural resources cover only external and tangible resources, or include also personal endowments, cultural heritage and even functioning markets.

In Chapter 13, Peter Vallentyne, Michael Otsuka and Hillel Steiner defend left-libertarianism against such criticisms and underline what they see as its main strengths: against right-libertarians, they show that it is theoretically plausible to be as committed to individual rights of self-ownership as to some strong version of egalitarianism; and, against standard liberal egalitarians, by focusing on the ownership of world resources they achieve a wider normative focus, global rather than societal.

To Each His Due

The Roman motto that justice is about giving each person his or her due is one of the most perennial conceptions of justice. In the realm of political philosophy, however, following Rawls, the connection between desert and justice has come to be increasingly contested. Several questions can be raised regarding their relationship, among them: Is desert a key criterion of distributive justice, or is its role secondary or even inexistent? Is there an asymmetry between the place occupied by desert in theories of retributive and distributive justice? Can one get what one deserves, and be treated unjustly nonetheless? And can the demands of equality and desert be reconciled?

To the first question, very different answers have been given. In what has become one of the classical essays on the topic, Joel Feinberg (1963) argues that desert is a very important factor of justice, but not the only one. This can create clashes between valid claims, especially between entitlement (an institutional notion) and desert (which Feinberg understands as being pre-institutional). This happens, for example, when we say that the athlete who should have won the race did not get the prize. Another view is that a society is just if all the existing inequalities are either deserved *or* freely consented to by its members. The advantage of this view, according to Michael Slote (1973), is that it works both for capitalist and socialist conceptions of justice, depending on whether what is deserved is measured by one's actual contributions to society or by one's efforts. Taking this second line, Wojciech Sadurski (1985) offers an 'equilibrium theory of desert': a society is just when the distribution of benefits and burdens is in accordance to the distribution of good and ill desert (which is in turn measured by the person's conscientious efforts to bring about socially beneficial consequences). This makes personal responsibility central to the idea of justice and tries to minimize the impact of luck in a social distribution. Less ambitiously, David Miller (1976) defends desert as an important criterion of social justice and connects it with a descriptive statement about some feature of the person, which in turn generates an appraising attitude, such as gratitude or resentment. Together with needs and rights (which, on the contrary, do not refer to any particular individual characteristic), desert is one of the three conflicting principles of social justice, to which different weights are attached in different societal arrangements.

Against these views, which see desert not as coextensive with justice, but as an important criterion of it, Alistair MacLeod (Chapter 14) downplays the role of desert in theories of distributive justice. A case to illustrate his point is that of theories which allow for inequalities in wealth and income if they are ‘deserved’. The main problem, MacLeod argues, is that they start from a false assumption; namely, that there is a perfect correlation between what people deserve (given, in this case, their entrepreneurial skills) and their actual success, thereby ignoring the crucial role of luck. Samuel Scheffler agrees with MacLeod that desert might not be a relevant criterion for liberal theories of distributive justice, but keeps its crucial role in theories of retributive justice (Chapter 15). Although a liberal theory such as Rawls’s reverses the traditional dependence of justice and desert regarding just distribution (that is, what just institutions allow for is what one deserves to get), it does keep this dependence intact in the case of retributive justice (that is, if one has acted wrongly, one deserves to be punished).

In Chapter 16, Owen McLeod elaborates an ‘economics of receipt’ to address the issue of whether a person can get what she deserves (in non-comparative terms) and still be treated unjustly or unfairly (in comparative terms). He seeks to understand justice as a holistic notion, whereby what satisfies or fits the person’s desert is relative to what others receive. The strength of this view, he claims, is that it reconciles two apparently conflicting understandings of justice: as fairness and as getting one’s due.

Any egalitarian theory of justice which takes responsibility into account (that is, any egalitarian theory of justice which accepts the conscious and deliberate choices of individuals as a valid basis of inequality), has to deal with the question of how equality relates to desert. One possibility is to argue that equality should have priority (see, for example, Young, 1992); or to say that both values are needed to obtain a just outcome, either one along the other or together (see, respectively, Olsaretti, 2002, and Feldman, 2003); or to hold that desert not only outweighs equality but is actually the only relevant value. This latter position is advocated in Chapter 17 by Shelly Kagan, who analyses different cases where it is usually thought that both equality and desert are playing a role, to show that we could explain them without appealing at all to equality.

Justice: Not Enough

Since Rawls declared his ‘intuitive conviction of the primacy of justice’ and erected it as ‘the first virtue of social institutions’ (Rawls, 1999, pp. 3–4), this claim has been contested by a number of critics, especially feminists who either reject the idea that justice should be limited only to the public sphere, or highlight the importance of other values apart from justice – most notably care – that should inform it (see, for example, Gilligan, 1982; Noddings, 1984; Held, 1995). These critiques have taken many shapes.

Targeting the welfarist claim that social justice is mainly about distributing resources in proportion to the *needs* of the potential recipients, Tom Campbell endorses instead a meritocratic view, which holds that justice is analytically linked to *desert* in standard discourse (Chapter 18). If we seek to identify what is distinctive about ideas of justice, its most evident feature is its connections with desert, in one form or another. For a distribution to be just, it must at least take into account the desert of the recipients. This does not mean, however, that needs should be discarded as a valid criterion when distributing benefits and burdens; it means rather that considerations of humanity (that is, to minimize total suffering) should sometimes override

considerations of justice when tackling the problem of distribution. Instead of turning justice into an ‘umbrella concept’, under which all other important political values are subsumed, the author proposes to limit its conceptual space and thus prevent it from becoming too broad and thereby irrelevant and meaningless (see also Campbell, 2010).

While Campbell seeks to limit the range of application of justice, Susan Okin, like Liam Murphy, proposes to extend it to the private sphere, a territory which –she thinks– has been largely neglected in the history of Western political philosophy (Chapter 19). By systematically failing to apply the principles of justice to this domain of social life, Okin claims that standard liberal theories of justice, left and right, have tacitly created a deeply entrenched ‘gender system’, which institutionalizes sex differences to the detriment of women. She focuses on John Rawls’s *Theory of Justice* and Michael Walzer’s *Spheres of Justice* as the most prominent attempts so far to question this bias, but she concludes that they are still insufficient: the latter, because his first criterion of justice – the autonomy of the different social spheres – is undermined by his second criterion – that justice is relative to the shared understandings of a community (Walzer, 1983). Thus, for example, in a society with shared patriarchal values, the possibility to question these (as the first criterion would allow) would be in practice quite limited. Rawls’s justice as fairness, provides a better way to modify the gender system, thanks to the device of the original position. Unfortunately, he does not develop these ideas and remains mostly silent regarding the situation of women and the family in his well-ordered society. In a later text, Okin expands this critique on two fronts: first, that justice has to be practised within families if we want society to be formed by truly free and equal members; and, second, that, unless women’s unpaid labour is recognized, formal equality is as insufficient for them to achieve justice as fairness as the promise of ‘forty acres and a mule’ was to the freed slaves after the American Civil War (Okin, 2005).

In Chapter 20, Anca Gheaus highlights the importance that caring for other people has in shaping our opportunities as individuals in society, but acknowledges the impossibility of redistributing care so that everyone gets a fair amount, as luck egalitarians would have it. Although there are institutional ways to promote caring relationships, such as achieving more just arrangements for those who do this kind of work unacknowledged, developing models to make child-rearing equally shared between parents, and turning care into a civic duty, there are major and persistent limits to what institutions can do to integrate care and justice which are underestimated by theories which idealize humans agents as independent human beings.

Finally, in Chapter 21, Kai Nielsen offers a socialist critique of contemporary liberal theories of justice. Agreeing with left-libertarians that individual freedoms require for their effective exercise a fair amount of equality, Nielsen thinks that the execution of such an ideal requires a radical change in society. To establish genuine justice, it would be necessary to establish a status-less democracy, where the means of production are publicly owned (see also Nielsen, 1985).

Ideal and Non-Ideal Justice

That he will ignore practical difficulties (like limited information) and make simplifying counterfactual assumptions in the design of an ideal is Ronald Dworkin’s declared intention when formulating his theory of equality of resources. (Dworkin, 1981). John Rawls, meanwhile, warns us that his discussion of the nature and content of justice for a well-ordered

society is set at the level of ideal or strict compliance theory: that is, it assumes that '(nearly) everyone strictly complies with, and so abides by, the principles of justice' (Rawls, 1985, p. 13). Going further, Gerald Cohen claims that the fundamental principles of justice do not depend on their feasibility or on facts about human nature (Cohen, 2003).

How detached a normative theory can be from reality before it loses its action-guiding power is the question posed by a group of philosophers who show growing scepticism not only for extremely idealizing theories of justice – like Cohen's luck egalitarianism – but also for even 'moderate' ones, like Dworkin's and Rawls's. This is the case for Colin Farrelly and Charles Mills, who argue, in Chapters 22 and 23, that the tendency in recent political philosophy has been to make so many questionable assumptions at the level of theory that the resulting prescriptions are cognitively dissonant with reality. Abstraction, when taken too far, falls into idealization and ends up working against the original normative enterprise. Instead of taking this path, Farrelly opts for second-order theories, like deliberative democracy, which seek for reasonable balances rather than ultimate solutions, and are better able to assess which constraints to take into account when constructing a theory of justice. Mills adopts a starker view against ideal theory, accusing it of being in practice ideological, in that it perpetuates the power of a small group of white males from the middle and upper educated classes. This is displayed, for example, in its silence on the oppression of minorities, racial, sexual and cultural, which continues to serve and further maintain the unequal status quo.

While critics of ideal theory usually centre their attack on its inputs (its being based on false assumptions), in Chapter 24 Zofia Stemplowska defends the point of ideal theory mainly in terms of its output or function. At this level, non-ideal theory offers achievable and desirable recommendations which are useful here and now, while ideal theory does not. Notwithstanding, she contends, ideal theory serves us to clarify our moral values and principles, and pulls us toward goals that are achievable, even if we do not fully comply with them here and now. At the same time, it uncovers what we most deeply care about, even if achieving it might be unfeasible at a given time and context. Ironically, much the same thing might be said of many ideal theories of justice.

Conclusion

It is not clear in which directions non-ideal theory will develop. It could follow the lines set out in Karl Popper's piecemeal approach to social reform or Amartya Sen's more globally oriented 'comparativism', or it might generate renewed attempts to reconceptualize the ways in which social, political and economic relationships are perceived in the tradition of Plato, Hobbes, Mill or Marx. The latter path would involve engaging with a sustained critique of the economic system associated with liberalism, as Nielsen suggests. It would also take justice studies further into the realm of the sort of democratic theory associated with Habermas, dealing with the ways in which the adoption of acceptable political processes may replace blueprints for social reform. In both cases, they face major theoretical issues in reconciling the discourse of justice with the increasing dominant ideology of human rights and its associated institutional developments that focus on legal rather than political solutions to social and economic problems. Given the strong objections to ideal theory's neglect of empirical realities as they are experienced by ordinary members of developed societies or the grim conditions of life for most people in poverty-stricken and politically corrupt dysfunctional states, non-ideal