



## Two Concepts of Justice (And Environmental Problems)

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### Abstract:

All environmental problems involve dimensions of justice, not only among existing people belonging to the same community or nation, but also between nations and between generations. The purpose of the article is to give a short presentation of two different main approaches to questions of justice, their respective merits and demerits, and to discuss to what extent they are incompatible. In the first section an Aristotelean approach is presented, in the second section it is contrasted with a Humean approach, whereas the last section discusses a possible area of convergence, political justice. Each section includes a brief sketch of what an application of the different conceptions of justice might look like in relation to international and intergenerational justice.

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# TWO CONCEPTS OF JUSTICE (AND ENVIRONMENTAL PROBLEMS)

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Like all other kinds of societal problems, environmental problems involve dimensions of justice. There are priorities among goals and goods to be made, as well as a variety of values, needs, wishes and interests to be considered. What is special about environmental problems, however, is that their very presence has made questions of justice even harder to cope with than before.

Firstly, many problems cannot be held within borders, and can only be solved on an international basis. National borders cannot stop acid rain nor the transportation of other airborne materials. The pollution of the oceans is a common problem, in relation to which national borders are of little use. Global warming, the depletion of the ozone layer, and the diminishing biodiversity are all immediately measured on a global scale. Thus, we shall have to deal with these problems in a way which, one way or the other, transcends the many particular traditions of justice.

Secondly, the existence of far-reaching environmental problems has given rise to a growing awareness of the needs and interests of future generations. The extensive use of concepts like sustainability and sustainable development is a sign of a widespread agreement, that

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possible obligations towards future generations should be considered more carefully. Thus, the question arises what we should actually do in order to do justice to posterity. This could also be phrased as a question about what kind of nature it would be fair or equitable to leave future generations, and what kinds of restrictions we should impose on ourselves, if any. These questions are obviously more difficult than questions related to justice within a single generation because of the lack of knowledge concerning future values, needs, hopes, and ideals, as well as future environmental conditions and cultural possibilities.

Thirdly, the sharpened focus on problems related to the various uses nature is put to by human beings have made it paramount to some and important to many that other species also be taken into account, when decisions are made. If we want to do justice to all other species, however, it is anything but obvious, what we are actually committing ourselves to.

The way we answer the difficult questions related to the three dimensions mentioned (international, intergenerational, and inter-special justice) will partly depend on the way we use the concept of justice, which, in turn, is coloured by our understanding of the relationships we take part in. The purpose of the present article is to give a short presentation of two different main approaches to questions of justice, their respective merits and demerits, and to discuss to what extent they are incompatible. At the end of each section I will give a very brief sketch of what an application of the different conceptions of justice would look like in the first two dimensions. The question of justice towards other species lies outside the scope of this article; it is obvious, though, that the way the question is answered will very much depend on how the concept of justice is conceived.

### **Aristotelean Justice**

The first approach, which I shall call the Aristotelian approach<sup>1</sup>, has had a renaissance during the last couple of decades. To call it Aristotelian is probably not fully adequate, as some of the authors who are included hardly mention Aristotle. Moreover, one could argue that the approach should at the very least be termed Neo-Aristotelean when used in a contemporary context, in so far as modern history has brought us so many new aspects unknown to Aristotle himself like, say, the nation state, religious wars, and global markets, so that an unreflected adoption of his points seems out of the question.

Names are not what matter, though, so I shall just stick to the term Aristotelean. The fact that many features of the approach have an ancient origin should not disguise the fact that they are highly relevant today, as can also be seen from the revival of Aristotelean themes and tenets in a lot of modern ethics. In the following paragraphs I will name five central features of the Aristotelean approach, all of which are still important in a modern discussion of justice.

Firstly, according to Aristotle, justice (*dikaiosyne*) and friendship (*philia*) are coextensive<sup>2</sup>. The term friendship should be read in a fairly broad sense, however, covering all kinds of friendly and non-hostile relationships, communities, associations, social unions and the like<sup>3</sup>. The basic point is that justice presupposes some kind of social bond in order to be effective<sup>4</sup>. One might prefer another term, if 'friendship' seems too connected to concepts like mutual sympathy, that is, if it is seen as a relation based on fairly intimate sentiments. In less intimate relationships, the sentiments involved may be described by words like 'solidarity' (to use the term preferred by socialists) or 'fraternity' (the favourite term among liberals).

Still, it may still be quite sensible to use Aristotle's own term in order to remind us that the sense of belonging to an association, a community,

or just a weak cooperative scheme, of being part of a "we", which is constitutive of friendships, in this tradition is seen as primary to the conflicts which emerge within the association or community. First there are ties of friendship and a shared life, then there may be conflicts; the social unions are not just so many pragmatic solutions to states of warlike conflict between pre-social individuals.

We participate in various kinds of relationships or friendships, and our obligations are formed by these relationships. Although we may distance ourselves from certain features of the communities to which we belong, and although we may even separate ourselves from some of the associations we have identified with for a period, we cannot separate ourselves totally from all of the friendships we share with others. This is for two reasons. First, through the socialization process our own community's patterns of dealing with the world become integrated into our very personalities. The way we think of ourselves, of our relations to others and to the rest of the world is formed by the shared understandings of the tradition in terms of which we think. Even when we criticize our own communities in the most radical way, we phrase our critique in a way which bears the stamp of our inheritance. We are always situated in advance, one way or the other. Secondly, we cannot fulfill ourselves without participating in various kinds of social arrangements. Human beings are social animals, who need similar creatures to care for, to be aided by, to play, work, and discuss with in order to develop or perfect themselves. We are what we are, because we are being part of friendships in the specific ways we are.

There are many kinds of friendship, however, and therefore also many kinds of justice. We do not have equal obligations to everybody, independent of the specific forms of relationship, and we cannot identify the obligations without taking notice of what kinds of friendship we are involved in. What we owe people partly depends on our relation to them,

and we do not have the same sort of duties in all kinds of friendships. I have tried to show this in figure 1, using the most common examples of friendships to be found in Aristotle<sup>5</sup>. It should be noted, though, that there can be many other kinds of friendships involving other kinds of obligations than those listed in the figure<sup>6</sup>. For instance, one could mention workplaces, neighbourhoods, religious communities, fraternities, school classes, and - not forgetting - the global partnership, which is given so central a position in the documents from Rio. It could actually be said that even though it is possible to identify certain ideal-typical kinds of friendship, each specific relationship has certain more or less unique features, which one should be careful not to overlook when trying to identify one's obligations.

Secondly, justice cannot be discussed separately from more comprehensive conceptions of the overall good (*to agathon*) and of each of the specific goods involved. The ordering of goods related to the specific understanding of goods in each of the friendships, communities, associations, or social unions is primary when trying to do justice to all, or to give everybody his or her due. We can only do justice, when we are aware of the specific kinds of goods and their relation to the overall good of the specific association or community (as part of society). The way we distribute goods and evils is closely related to the way we understand these goods and evils. As Michael Walzer has made clear: there cannot be just one single distributive criterion, nor can there be just one distributor or just one kind of procedure, through which all kinds of goods are distributed<sup>7</sup>.

This point can be illustrated by a few examples. In closer kinds of friendships, we distribute goods like love, trust, and support to the lovely (or according to the orders of the heart), to the trustworthy, and to the insecure and needy, respectively. In associations like universities we distribute goods like honor, grades, and research grants to those who

Kinds of Friendship	Characteristic Features	Claims of Justice
<b>I) Closer Kinds of Friendship:</b> <b>a) Excess of Friendship (Love)</b>	-exclusiveness: can only be felt towards one person	-no demands at all: each of the parties is more interested in the well-being of the beloved one than in their own well-being
<b>b) Perfect Friendship</b>	-friendship of men who are good and alike in virtue -they wish well alike to each other <i>qua</i> good and they are good in themselves -based on mutual sympathy and goodwill -exclusiveness: we can have only a few close friends	-each of the parties gets from the other the same as, or something like what he himself gives, in all respects -quantitative equality is primary and proportion to merit secondary -affection is rendered in proportion to desert
<b>c) Unequal Friendship</b>	-the parties are unequal in power, or knowledge, or excellence -exclusiveness: the benefactor chooses the beneficiary	-neither gets the same from the other, but proportions should be maintained
<b>II) More Distant Kinds of Friendship:</b> <b>a) Utility Friendship</b>	-mutual and recognized friendship by virtue of the goods which the parties can get from each other -relation based on market exchange, on exchange of gifts and favours, or the like	-distribution in proportion to supply and demand (as reflected in the prices of the goods) -equal exchange in spite of lack of direct commensurability between the goods at hand

Fig. continued

Kinds of Friendship	Characteristic Features	Claims of Justice
<b>b) Voluntary Associations</b>	-community of persons formed with a view to some common goals and/or common tastes	-distribution of appropriate goods in proportion to merit or desert (the best flute to the best flute-player, the highest office to the most qualified, most honour to the hardest working person etc.) -equality (fairness) means primarily distribution proportionate to desert and 'equal in quantity' is only a secondary sense
<b>c) Political Friendship</b>	-association of free and (actually or proportionally) equal persons, living a common life for the purpose of satisfying their needs (creating the possibilities of happiness), and of developing themselves, especially in relations to virtuous dispositions -embraces all specific associations and communities, and aims at the supreme good, understood not as a single unity but as an appropriate unification of a plurality of non-exclusive aims	-the members of the political community share equally in ruling and being ruled, that is to say, in deciding which kinds of goods or activities should be given priority (or be allowed) -distribution of other goods (offices, honour, respect, means etc.) in proportion to merit or desert -distribution of basic means of self-preservation according to needs

Fig. 1: Examples of the relationship between friendship and justice in Aristotle



deserve it (or at least we should do so), and desert cannot be understood independently from the understanding of the overall good of the university (as part of society). In lottery and gambling, on the other hand, only chance ought to rule, as prizes and winnings belong to those goods, which cannot be distributed in any other way.

Even in the political community, which in the Aristotelean tradition is seen as an association of associations, a social union of social unions, the ordering of goods cannot be reduced to neutral regulations of private wishes (or preferences) or of the more or less exclusive interests of each association as seen in isolation. Or rather, if this is the way, a specific community tries to order its goods, then we are dealing with a community with a very peculiar, and by no means universal, self-understanding. Similarly, there is no neutral method which, independently of the specific understanding of the community, can be used in order to aggregate the component goods into a common good. We have to make communal decisions, which depend on the specific understanding of the political community and of its overall good.

For instance, it is a political decision whether an area should be used for industrial development, for recreational purposes, or whether it should be left in a state of wilderness without any kind of human interference. The political community has to decide which of the possibilities fits best into its common goals and aims (as an integrated part of nature). A community may come to the conclusion, of course, that they have no common set of priorities, which makes it possible to decide in favour of one of the possibilities, just as they may decide that the market, a lottery, or a simple power-struggle should determine the outcome. These are all very specific cultural decisions, however, and thoroughly dependent on a particular understanding of the community and of the kinds of criteria which can be used in relation to the goods at

hand; they are not neutral towards the many differing understandings of the good.

The point is not that everybody has to share exactly the same values and understandings, nor that everybody should be engaged in the same kinds of activities. The "we" cannot be reduced to a single and undifferentiated communal "I". On the contrary, every community will have to be pluralist in the sense that various kinds of activities connected to various associations supplement (and sometimes conflict with) each other. In cases of conflict it is a common decision, however, which kinds of activities should be furthered, which should be prohibited, and which should be barely accepted. At least, it should be decided in common, through which procedures an outcome ought to be reached.

Thirdly, standards of justice are rooted in more or less shared understandings within the particular communities. The ordering of goods cannot be universal in any immediate way and cannot be fixed once and for all; to each community there is at any singular period of time an appropriate (Aristotle would say natural) order, which reflects the local understandings and unique circumstances. This order is bound to change along with changing circumstances; even within the single community it cannot be settled once and for all. Every substantive account of justice is, therefore, in a certain sense a local account in time and space. In the words of Michael Walzer: "Justice is rooted in the distinct understanding of places, honors, jobs, things of all sorts, that constitute a shared way of life"<sup>8</sup>. The ways we distribute goods like honor, love, risks, money, land, positions, utilization rights etc. are intimately related to these distinct understandings. When dealing with questions of justice, we should therefore not begin by abstracting from all particularities, but instead use existing institutions as our starting point, and proceed in an immanent, phenomenological or hermeneutic, way.

To say that the understandings are local does not imply that they can only be understood or accepted by locals. What it means is that there are so many specific elements involved, that a judgment cannot be made without knowledge and understanding of the local history and of the local ways of living. There cannot be any universal rule about the proper role for goods or activities like, for example, research, sports, wild life experiences, or the entertainment industry. Different goods play different roles in different societies, and there are no clear-cut universal rules to be used when distributing the goods. As John Rawls has put it: social traditions vary because the human mind is so inventive, that different groups and individuals end up with different, but still reasonable conceptions of complex issues, if unrestricted in their uses of reason.

However, all the more or less local orderings of goods remain open for critique, change, and reformulation. The understanding of the goods, the way they are distributed, or the lack of attention to the side-effects of a certain ordering may all be criticized. This is an important point to be aware of, and I believe that many critics of Neo-Aristotelian ethics have taken too little notice of it<sup>9</sup>. There are only a few (if any) modern authors working within the Aristotelian approach who would claim that reference to an indisputable *ethos* is argument enough. The point is rather, that an argument has to touch some strings within the inherited ethical horizon in order to convince. Even arguments which may seem new or outlandish at first sight can be found convincing this way.

One could probably generalize the point, and argue that all living traditions strive for rationalization in the sense that each of them tries to legitimize its own practices by using the best of the known arguments so far. Flourishing traditions are thus "constituted by a continuous argument", embodying "continuities of conflict", to use a couple of

Alasdair MacIntyre's phrases<sup>10</sup>. Consequently, in order to see oneself as part of a tradition, one does not have to be conservative in the sense of trying to cut oneself off from all possibilities of change. Only dead traditions stay unchanged. Living traditions try to be reasonable; they even try to improve their own standards of reason when needed. I shall return to this important point later.

Fourthly, in the Aristotelean tradition justice is viewed as a virtue (*arete*) of human beings just as much as a quality attached to the social ordering. There are two points involved in this. First, justice is a virtue in the sense of a disposition to act according to the claims of justice. A trait of character which makes it important to its possessor to be able to defend his or her actions in a way which is not reducible to self-interest. Just institutions could not be established nor maintained, if nobody had these traits of character. To this should be added that justice must be considered a virtue of human beings, because the claims of justice itself cannot be identified by someone lacking this virtue. The point that justice is a virtue, is in this way related to the point that justice cannot be reduced to an application of general and impartial rules and principles.

According to Aristotle, justice must be understood as the very king of virtues, because it comprehends all the other virtues. One cannot be truly just, if one lacks some of the other virtues, like, first of all, temperance (*sophrosyne*), as well as courage, friendliness, magnanimity, liberality, etc. Similarly, judgment (*phronesis*), perceptive intelligence, and attention, as well as some sort of inventiveness or productive imagination are needed in the process of ordering the goods. The point is, that where no reasonable, clear-cut, and easily applicable criteria are available, one should strive to do what the virtuous man, *ho phronimos*, would do, or at least what one would do oneself when being on top, so to speak. Otherwise, one would do wrong when judging cases and

setting goods in relation to each other within an always unique set of circumstances.

Even when general rules and laws have been laid down by the community, the judge has to rely on a sense of equity or reasonableness (*epieikeia*), when he or she uses the rules. Many hard cases (one may even say: most cases) are not covered adequately in general statements<sup>11</sup>, and only a virtuous judge can identify the good and the best outcome. In Aristotle's words: "The ideal judge is so to speak justice personified"<sup>12</sup>. It is never enough just to refer to the general rules and principles, because there can be no rules telling us how to use the rules and principles. Each and every case contains its own peculiarities, which have to be taken into account in an appropriate way.

Finally, the individual's motivation for acting justly is closely connected to the aim of developing him- or herself as a virtuous being, and the development of one's own community into a good community within which it is possible to fulfill oneself. Aristotle's theory is definitely not what Brian Barry has called a two-stage theory; that is to say, a theory in which a first stage, typically characterized by more or less destructive conflicts between exclusively self-advantageous interests, is replaced by a new level of justice, because everybody has found it to be in their own interest to act under common rules<sup>13</sup>. Within the Aristotelean approach, justice is not seen as something external to the individual's personal motives.

Aristotle's account of motivation may still sound rather egocentric, and in a way it is egocentric. However, the crucial points are, firstly, that the individual cannot develop him- or herself separately from the development of the community. He or she cannot flourish if the community to which he or she belongs does not flourish. In order to fulfill oneself one has to do well in each of the functions one serves, including the function of being a citizen. And secondly, there are goods and ends

which cannot be measured on the same scale as ordinary wants and preferences: dignity, deepness, meaningfulness, self-esteem etc. Such higher level goods (to use Charles Taylor's expression<sup>14</sup>) rather determine our identity in the first place, and thereby also our preferences. Moreover, these belong to the kind of goods, which we consider valuable in themselves, independently of whether we become happier or not by aiming for them. Given these further assumptions, there no longer seems to be much point in saying that the motivation is egocentric.

How would the Aristotelean account of justice tackle the problems of international and intergenerational justice? Aristotle himself did not spend much time reflecting on these problems; they were simply not as pressing as they are today. In fact, only a few of his modern inheritors have done so either. One of the reasons is, I believe, that some Neo-Aristoteleans have relied too heavily on an emphatically conceived notion of community, according to which there can be no justice, but only benevolence or charity beyond the communal borders. What one could do instead, however, is to try to extend some of the central points a bit further than they were intended in the first place. I do not intend to give a full account of it here; all I shall do is to give a few hints about which way to look and where the problems lie.

Firstly, it seems necessary to try to define the kinds of relationships involved in the two dimensions. What kind of friendship should we consider the global partnership to be? Or, what kind of partnership do we want it to be (when trying to do what we consider to be right and thus preserve our self-esteem)? To which kinds of partnership could we draw a parallel: should global partnership mainly be conceived as a utility friendship, as an undemanding neighbourhood, or as a more comprehensive political friendship (an association of associations of associations)? Are mutual advantage and non-interference (supplied with a certain amount of charity or benevolence) the only guiding lines,

or should we rely on a fuller concept of friendship when confronted with a growing global integration, where communal and national sovereignty become more and more illusory? How far do the shared understandings across national and cultural borders take us? I do not think that these questions can be settled once and for all, as understandings as well as circumstances are continually changing, but I do think that a discussion is still more urgently needed<sup>15</sup>.

Similarly, we need to define the relationship between present and future generations. I think that the main problem is this: should we consider ourselves as being part of a limited intertemporal community, based on specific values and a shared understanding of the ordering of goods, or should we see ourselves as being part of a more thinly defined community containing all human beings, where some more thinly defined rights of liberty are distributed between generations on an equal basis? Or, to put it another way: are we mainly committed to the values of our own community, or are we rather committed to future people as such, no matter which values they may support?<sup>16</sup> If we take the first path, we are faced with the moral question, to what extent the lives of people outside our community (or nation) matter. On the other hand, if we take the second path, we will have difficulties deciding which kinds of goods and qualities to leave future generations.

The fact is, secondly, that it is necessary to define the kinds of goods which are at stake. In relation to international justice, it is obvious that not all kinds of goods need to be distributed on a global level, and it is just as obvious that the distribution cannot be made by the same agency, nor according to the same criteria. So when we are talking about global partnership, we have to make it clear from the start, what the central goods to be distributed on a global scale are, and which kinds of distributive criteria would be most appropriate in each case, given the sort of relationship involved.

Again, in relation to future generations we have to be careful when defining the goods at hand. One of the hardest problems is connected to the possibilities of substitution and trade-offs. A certain community may say, for instance, that building a highway is more valuable in their shared way of life than the natural qualities which the highway displaces, or that the economic possibilities created by the use of environmentally hazardous technologies are more important - even for future generations - than the preservation of, say, biological diversity or unpolluted groundwater. When society gets richer, the argument may run, it can afford to clean the drinking water; or: the enhancement of human mobility is more important than a couple of species, unknown to anybody except for a handful of zoologists.

There is no other way out of the problem than accepting, that we are making decisions which will influence the lives of future generations substantially, and that it is only our own conception of the good, which can be used as a reference. It is only through our own conception we can decide, how far substitutions and trade-offs are legitimate ways to get around problems like resource depletion, for example. No matter what we do, it is irreversible. No matter what we decide, we will close some options and open up some others. Fairness towards future generations seems to consist in keeping so many options open, that these can compensate those which has been lost. It is an open question, however, which kinds of compensations would make up for losses of, say, rare species or minerals. We have nobody to ask except for ourselves, and there are no neutral methods to lean on.

### **Humean Justice**

As we have seen, according to an Aristotelean conception of justice the right cannot be settled without reference to the good. The need for a separation of the right and the good is one of the core ideas, however,



in the second approach which I shall deal with. It is based on a theory put forward by the Scottish philosopher David Hume, who has been most influential on probably all modern liberal theories of justice<sup>17</sup>. In the following paragraphs I will concentrate on some of the central features of Hume's theory which are of relevance in our context.

Let me begin with Hume's central points about the circumstances of justice. In one of the first chapters of the *Enquiry*<sup>18</sup> he describes various fictive societies in which a concept like justice would have no role to play. And a little later he gives an example of yet another fictive society, the association of saints, in which justice would be very different from what he considers to be possible in the real world, at least as he knows it. His investigations result in a theory of the circumstances of justice or the necessary conditions of justice, and a limitation of the criteria which can be used in the distribution of goods. In figure 2 below, I have listed the various fictive societies, their characteristic features and consequences, and in the column to the right I have listed Hume's conclusions about the circumstances of justice in relation to each of the fictive societies.

Hume's conclusion and the starting point for his presentation of the theory is, that justice only becomes relevant when all of the following circumstances are present. Firstly, there must only be a limited amount of goods and resources. If there were enough for everybody, there would be no need for just distributions. On the other hand, scarcity must be moderate, if a just distribution is to be possible; a state of war would be the result, if the amount of resources were so small, that it would not be possible for everybody to survive.

Secondly, generosity must be confined for a petty-minded concept like justice to be of interest. The citizens are expected to take little interest in each other's aims and purposes; at least, they are only expected to care about those nearest and dearest to them. The state of

<b>Fictive Societies without any Need of Justice</b>	<b>Characteristic Features</b>	<b>Consequences</b>	<b>Circumstances of Justice</b>
<b>The Golden Age</b>	unlimited abundance of all external conveniences	no need for subdivisions of right and property	limited abundance
	unlimited benevolence and generosity	everybody would care more about others than about themselves	limited benevolence and confined generosity
<b>The State of Nature as a State of Mutual War</b>	desperate need for all common necessities	the strict laws of justice are suspended and give place to the stronger motives of necessity and self-preservation	moderate scarcity
	a society of ruffians: disregard to equity, contempt of order, blindness to future consequences	everybody would be forced to consult the dictates of self-preservation alone	a sense of the good of society in the long-term, and a sense of justice
<b>A State of Extreme Inequality</b>	extreme inequality in strength: the inferior group incapable of any resistance	only the laws of humanity would prevail	reciprocity - similarity in physical and mental powers (no one can dominate the rest)
<b>A Non-Society of Solitary Individuals</b>	individual self-sufficiency	No need for intercourse and cooperation, no need for regulations	human cooperation both possible and necessary
<b>Meritocracy or an Association of Saints</b>	virtue and excellence as the highest goals of society; common ideal and determinate rules of conduct	distribution of goods would be based on a shared understanding of the good as well as on commonly acknowledged criteria of virtue and excellence	variety of ends and purposes as well as uncertainty of merit - the parties take no interest in one another's purposes, and are incomplete in relation to knowledge and judgment

*Fig. 2: The circumstances of justice in Humes Enquiry*

justice is a state of competing wants and interests. Moreover, as there are no common goals and no shared understanding of the good, as well as uncertainty of merit, distributions cannot be based on standards of desert and suitability.

Thirdly, the citizens must not be self-sufficient, nor must they be so extremely shortsighted in their behaviour that they cannot see a point in creating common rules and in establishing a sanctioning authority. They must realize the need for cooperation, and must see a point in setting their immediate preferences aside in order to gain more in the long run.

Finally, the participants must be sufficiently similar in physical and mental powers in order to respect the regulations of justice. If one group of participants were so strong that nobody else could influence their behaviour, they would see no point in accepting limitations in the name of justice. Reciprocity as well as mutual advantage from the establishment of rules and regulations are thus necessary conditions of justice.

It is not as obvious as Hume thinks, that justice is irrelevant without the listed circumstances<sup>19</sup>. Even when there is plenty of mutual benevolence, some goods such as jobs, honor, and positions, still need to be distributed in a proper way. Similarly, it is not at all clear, why extreme scarcity can not be dealt with in a civilized manner. Lack of donor organs, for instance, does not rule out the possibility of distributing those which are available according to standards of justice. And finally, if gross dissimilarity of power is an obstacle to justice, neither animals nor future generations could be included in any sphere of justice. It can be disputed, of course, whether justice is the right concept to use in these relations, but it is definitely not enough just to state the point as if it were obvious to all. It is only when questions of justice are linked to mutual advantage, that the weakest parties are left in the cold. I will not

go further into a discussion of details at this point, however. The general picture outlined here will suffice for the following discussion.

Hume stresses time and again that justice is not based directly on any "innate passion" or "natural impulse" like desire, sympathy, self-love etc. If universal sympathy were the main passion of human beings, it would result in universal benevolence rather than in justice, whereas a society of people, driven by shortsighted and unreflected selfishness would never put any voluntary restraints on themselves, just as they would violate the rules of justice as soon as it seemed beneficial in the short term to do so. Justice is therefore an artificial concept, Hume concludes, invented to deal with the problems which arises under the circumstances described (which he believes to be almost universal).

It should be clear by now that the Humean conception of justice departs from the Aristotelean conception in a number of ways. Firstly, whereas Aristotle and the Neo-Aristoteleans take for granted the existence of friendships, communities and associations, through which the individual's identity and aims, duties and obligations are established, Hume uses the more or less isolated individual as his starting point. When he talks of friendship it is mainly in a narrow and intimate sense. The individual accepts the common institutions of justice only because he or she (and/or their family and closest friends) can benefit from it in the long run, when pursuing exclusively private goals and aims. "We are partial to ourselves, and to our friends; but are capable of learning the advantage resulting from a more equitable conduct"<sup>20</sup>. The parties accept the mutual constraints, because nobody would flourish in a state without them. They need stability, security, as well as the advantages of mutual cooperation. This, however, is rather understood as an expression of human weakness, almost as an unfortunate natural fact, than as a good starting point for social intercourse.

Secondly, whereas Aristotle assumes that the goals of the associations and social unions are common, and that the overall values, aims, and goals of society as an association of associations can be settled in a common discussion, in Hume's theory the individual's aims are exclusively private, and there is no shared understanding of how to order goods involved in the establishment of just institutions. Consequently, desert, merit, and suitability cannot be used as distributive criteria:

It were better, no doubt, that every one were possessed of what is most suitable to him, and proper for his use. But besides, that this relation of fitness may be common to several at once, it is liable to so many controversies, and men are so partial and passionate in judging of these controversies, that such a loose and uncertain rule would be absolutely incompatible with the peace of human society "<sup>21</sup>

The institutions of justice have to be created in a way, which presumes that all participants are acting in a selfish way led by exclusively private aims, and that decisions should not be based on controversial theories of the good determining which of the many different goals and aims to further. The competing private interests can only be mediated through impartial and neutral rules, procedures, or methods, which take no notice of the goods involved, and which refer to no substantial idea of the common good.

In the Humean approach the rules of justice accordingly have to rely on a very thin theory of the good, as well as a thin theory of community. The only goods which are truly common are the mutually advantageous regulations and/or the neutral methods used for aggregating the indisputable private wants and preferences. Whereas the Aristotelean

approach allows various distributive measures to be used when dealing with various kinds of goods in different kinds of relationships, the Humean approach, as far as possible, settles for only one criterium in order to avoid discussing the distinctive features of each of the goods. The Humean approach seeks integration, whereas the Aristotelean approach differentiates.

There are several ways which have been tried in order to avoid dealing with more comprehensive theories of the good and with more differentiated analyses of the separate goods. Hume's own answer is (following Locke) to rely on inflexible rules of private property, taking *status quo* as the bottom line:

No one can doubt, that the convention for the distinction of property, and for the stability of possession, is of all circumstances the most necessary to the establishment of human society, and that after the agreement for the fixing and observing of this rule, there remains little or nothing to be done towards settling a perfect harmony and concord"<sup>22</sup>.

The present distribution of property has clearly emerged as a matter of chance, including war and the lottery of nature, but there are no sufficiently neutral moral grounds for involuntary reallocation, and as no general redistribution scheme would be acceptable to all, all such efforts would only cause instability and social destruction. It should be noticed, that Hume is not conservative in the Tory sense according to which *status quo* must be considered good, because it reflects all the historical experiences put into it - a "wisdom without reflection" as Burke later put it. His point is, rather, that as long as there are no commonly accepted arguments supporting a fair redistribution, a move away from

the established state would be nothing but a majority's (or maybe even a minority's) unjustified attack on the rest.

Preservation of private property is not the only possible answer to the problem, however. In order to see more clearly how alternative answers can be made within the Humean conception, we have to look at another aspect of the theory of justice (or, one could argue, quite a different theory of justice) to be found in Hume. As we have seen, Hume believes that institutions of justice can only be established, if the vast majority expects that these institutions will bring mutual advantage in the long run. What they seek is peace and stability in order to cooperate for mutual benefit, and the *status quo* distribution seems to be without serious competitors, because an application of all other kinds of distributive criteria would cause instability and social crisis.

On the other hand, he also points out that as soon as the institutions are established, another kind of motive takes over, a kind of universal sympathy which may be too weak to result in universal benevolence, and too weak in itself to motivate the establishment of the institutions of justice in the first place, but which is still strong enough to support and influence these institutions, once established, as a lever for common utility. *"Thus self-interest is the original motive to the establishment of justice; but a sympathy with public interest is the source of the moral approbation, which attends that virtue"*<sup>23</sup>.

Hume does not see humans as plainly selfish in a narrow sense. Quite similarly to Aristotle he holds that self-esteem depends on an ability to distance oneself from self-centered wants or passions, at least to a certain extent. There are certain higher order goods related to the display of virtues. In relation to questions of justice this is stated most clearly in Appendix 2 "Of Self-love" in the *Enquiry*. "

I esteem the man whose self-love, by whatever means, is so directed as to give him a concern for others, and render him serviceable to society: as I hate or despise him, who has no regard to any thing beyond his own gratifications and enjoyments<sup>24</sup>.

In his fellow-citizens he finds dispositions like general benevolence and generosity as well as affections like love and friendship, compassion and gratitude. These dispositions may not be as strong as what he calls "*real* interests", but still, they are strong enough to affect human behaviour, once stability is secured. If such dispositions are taken as seriously in considerations on justice as the more narrow-minded kind of self-love, the love of gain, that is, it will inevitably affect the institutions of justice.

The key concepts of the established institutions of justice thus become weak, but still effective, public affection, impartiality, and social utility. It is not surprising, that Hume is often seen as the forefather of utilitarianism, as well as an important inspirational source of "original position" theories of justice like John Rawls'. These theories choose solutions which differ (sometimes a lot) from Hume's own solution. This should not come as a surprise, though. If impartiality and social utility are generally recognized as the true guiding lines of justice, it is by no means obvious that Hume's solution, the inflexible property rules, would be the only, nor the best, way to cope with questions of justice, once these have become a matter of common concern.

Whatever the specific solutions of the inheritors of Hume's theory of justice may be, all of them share what turns out to be its three most fundamental assumptions: firstly, that interests can be defined independently of an understanding of the specific friendships or communities the individual is involved in, secondly, that the interests are competing for the same limited amount of resources, and thirdly,



that there is no common understanding of the ordering of goods and aims. All (or most) of the different versions of Humean justice thus share the same goal: to set up impartial rules and principles, or methods and procedures, which regulate the competition of interests without relying on any (historically specific) conception of the good.

In contemporary debates this approach can be found, for instance, in those who want us to rely on cost-benefit calculations (perhaps using methods like Willingness To Pay and Willingness To Accept in order to put prices on externalities), those who believe in the possibility of making utilitarian calculi of maximum satisfaction of private preferences (made compatible, for instance, by using various kinds of preference-indices), or those who put their bet on fair and impartial decision procedures like voting or negotiating on fair terms (thus counting political power). Behind them all lies the idea that in relation to questions of justice, it is necessary to scale down the understanding of goods to one single common denominator, whether it be property, price, preference-satisfaction, or political power (the four great P's).

The underlying picture of society is very precisely described by John Rawls as "the notion of a private society", which he himself uses as a "weak assumption", when constructing the original position, from which the principles of justice shall be derived:

Its chief features are first that the persons comprising it, whether they are human individuals or associations, have their own private ends which are either competing or independent, but not in any case complementary. And second, institutions are not thought to have any value in themselves, the activity of engaging in them not being counted as a good but if anything as a burden. Thus each person assesses social arrangements solely as a means to his private aims. No one takes account of the goods of

others, or of what they possess; rather everyone prefers the most efficient scheme that gives him the largest share of assets"<sup>25</sup>.

Rawls does not see this picture as a correct description of human society. Actually, he strongly dissociates himself from it. Nevertheless, he uses it as a heuristic device in order to base his theory on simple assumptions, which do not demand too much of the participants.

Like other Humean inheritors, Rawls tries to avoid a thick theory of the good as part of his conception of justice. He is even more Humean than the utilitarians, as he wants to escape an unsolvable dilemma inherent in utilitarianism: on the one hand it knows of private preferences only, while on the other hand relying on a very strong assumption about mutual sympathy or love of mankind. People are expected to be willing to go as far as to sacrifice themselves, if necessary, in order to enhance the common good; even a good which cannot be expressed in any concrete way, but only as a very abstract, aggregated index of preference-satisfaction. Thus, utilitarians are in a permanent dilemma as to whether to act as egoistic devils or as altruistic saints, each of them trying to find "the level of saintliness of which he is likely to be capable"<sup>26</sup>. Rawls, on the other hand, shares with Hume the more moderate view, that reciprocity stays an important part of the basis of justice, and that self-esteem and moral virtues related to "higher-order desires" (like the desire to act according to moral reasons or principles) preserve institutions of justice rather than some kind of unrestricted benevolence.

What Rawls does share with the utilitarians, however, is a neglect of all the more or less local orderings of goods connected to all the various friendships or associations - at least at the crucial point where he derives the two fundamental principles of justice (that everyone should have an equal right to the most extensive liberty, and that social and economic inequalities are only allowed, if they benefit the least

advantaged). This inevitably forces him to put all kinds of goods on one single, or a few common denominators (based on a thin theory of the good). At the crucial point when the principles of justice are chosen in the so-called original position, all participants are untied from their bonds of friendship and stripped of all more comprehensive understandings of the goods, thus excluding desert, appropriateness, and other goods-sensitive criteria of justice<sup>27</sup>. Only this way the principles of justice can be settled, before turning to the ordering of goods.

However sympathetic one may be towards the two principles which come out of the original position, one cannot help asking oneself, firstly, if not almost all of the important questions of justice lie on the very long road from the general principles to all the everyday decisions, where we actually know where we are, which kinds of goods we need or want, and what kinds of associational bonds we are tied up with. In most of these questions, which I see no reason not to call matters of justice, Rawls' principles will only have little to give; from thin theories of goods only thin theories of justice can be derived. And secondly, one must ask whether something similar to the two principles of justice could not have been found suitable in the appropriate areas of social intercourse without the excursion behind the veil of ignorance. The veil only seems to be needed, because Rawls wants to draw on the private society assumptions, according to which socially numb private gain seeking agents only make contracts where there is mutual advantage. One of the costs is that he thereby exposes a flank for the private society spokesmen to attack, and thus makes it much more difficult to reject inflexible property rules and/or integrated goods-indices as the proper basis for decisions.

Instead of relying on the private society assumption, and turning the justification of the principles of justice into something like an outcome of game theory, it would have been more reasonable to use the notion

of debate (or discussion, or common deliberation) as the key concept. A debate, that is, in which the participants are willing to take the role of others and to acknowledge good arguments even when they go against their own immediate interests<sup>28</sup>. Instead of a game between rational agents pursuing their own private interests we get a debate between reasonable agents trying to reach a common decision. This is also the move which Rawls has taken (if never fully) since the publication of *A Theory of Justice*, as we shall see in the next section.

Before getting so far, however, I shall give a few notes about the two dimensions mentioned in the beginning of the article. First of all, if mutual advantage is an important part of the Humean notion of justice, obligations towards future generations can not be part of this conception. Similarly, in international justice there will be no obligations towards the weakest parties<sup>29</sup>. This is also the reason why Rawls shrinks from extending the two principles of justice to cover the relation to future generations. Instead, he relies on a motivational assumption, according to which everybody cares about their nearest descendants, so that their goodwill stretches over the next couple of generations<sup>30</sup>. Similarly, in international relations he uses a much more restricted concept of justice than in domestic affairs. Instead of using the difference principle, where it might have been most valuable, he relies on the much weaker principles of non-interference and self-determination<sup>31</sup>. The assumption about mutual advantage, or the weaker version of reciprocity, does the work in both cases.

If, on the other hand, love of mankind is as strong as utilitarians are committed to think, associational, communal and national memberships matter as little as location in time<sup>32</sup>. Every single decision should in principle be made in accordance with the claims of total, or average (or complete, or critical level, or whatever) utility, as seen in the light of the aggregated preferences in the total future history of mankind. Apart

from the very impossibility of making such an account, and the vulnerable motivational assumption related to the permanent dilemma mentioned above, there are so many other implausibilities connected to this position, especially when future generations are included in the account<sup>33</sup>, that there seems little to attain from it.

One of the basic problems in the utilitarian position is that it cannot do away with the private preference assumption, according to which only the intensity of felt preferences counts, and with the idea that all goods can (and should) be put on a common denominator, and counted in some overall welfare (or happiness, or interest- or preferencesatisfaction) aggregations. The funny thing is, that there are often many sensible points to be found in people, who call themselves utilitarians (especially those following the John Stuart Mill wing). They actually reason about practical matters, about the components of the good, and about appropriate distributive criteria, although thereby betraying their own original position, according to which there is nothing but private preferences to appeal to<sup>34</sup>.

In spite of such inconsistencies, the Aristotelean and the Humean notions of justice do seem fairly contradictory in many ways, some may even say incompatible. Defenders of Humean justice might argue, that this is just an illustration of the superiority of their own theory. As long as we do not live in a society which can be compared to an association of saints, we will have to use the private society assumptions as our starting point, when discussing questions of justice. Whether people actually take part in social unions organized in other ways is a matter to be left to their own private choice; it has nothing to do with justice.

Aristoteleans, on the other hand, could argue that Humean justice is at best just one more local understanding. It may or it may not be accepted as a basic assumption in a very specific social setting, where nobody cares for anybody's aims, and where nobody shares any more

comprehensive understanding of goods. It is a very peculiar way to conceive society, they might argue, a way which is very insensible to the qualities of the involved goods (and probably full of self-deception). But if this is the way people actually understand their relations, they will probably have to live with it. Thus, the two traditions could continue without taking much notice of each other.

There does seem to be a way, however, in which the two could be brought closer to each other. The central move from the Humean side is to take a second step away from the description of the circumstances of the original establishment of institutions of justice. Instead of just looking at the possibilities of enhancing total or average utility or Rawlsian justice in a private society (this was, as we saw, the first step), we might put the privacy assumption in brackets, and ask about the proper conditions for deciding on distributive criteria. After all, the notion of a private society is by no means undisputed, and it is not the only way of solving the problem of pluralism. In the following paragraphs I shall therefore take a closer look at the possibility of finding an area of convergence.

### **An Area of Convergence: Political Justice**

One can approach an area of convergence between two conceptions from either side. As I have already given some hints about the central move from the Humean side, I shall now try to show how a move can be made from the Aristotelean side. I made the point above, that all living traditions strive to legitimize and rationalize their arrangements in the sense that they try to defend or change them along the lines drawn by the best arguments they have met (or believe to have met) so far. Some anthropologists might argue, that this is not always the case, because critical discussions are not always part of the cultural setting. I have my doubts whether this is actually true (although it can hardly be

expected everywhere to look like a discussion among academics), but we need not get into that kind of argument here. In any case, in the modern world where cultural traditions so obviously mingle with each other, we can leave this possible objection out of account.

In any process of critique and reflection, different understandings and an uneven weighing of arguments inevitably occur. This is not just because each and every discussion is full of fallacies of all kinds. More important, there is a series of questions to which there are more than one reasonable answer. In fact, all important (and therefore complex) problems seem to leave spaces open for a spectrum of different solutions. In his book on *Political Liberalism*, John Rawls refers to the sources of disagreement as "the burdens of judgment"<sup>35</sup>. When judging on some issue, we have to recognize that we may be wrong in the interpretation of complex and often conflicting evidence, or that other interpretations are just as good. Similarly, we have to realize that we may be wrong when weighing different kinds of considerations against each other, or that other conclusions are just as reasonable. We are always biased by our personal life experiences, we rely on vulnerable and fallible world views, and so on and so forth. Disagreement about an issue can therefore be very reasonable, and not just a question of plain fallacy on one of the sides.

Rawls draws the conclusion, first, that because of the burdens of judgment we shall have to live with what he calls a plurality of reasonable doctrines on the ordering of goods, and secondly, that in order for a doctrine to be reasonable in the first place, it has to take account of this very fact and be willing to bear the consequences. Thus, a certain scheme of understanding can only be counted as reasonable, if it recognizes its own limitations (caused by the burdens of judgment), and therefore includes an answer to the problem of reasonable pluralism

or the coexistence of various doctrines. An answer, that is, which endorses the alternative understandings and orderings of goods as also being reasonable, and as such worthy of respect.

A central task is therefore to find a scheme of cooperation, which pays due respect to the many reasonable ethical doctrines as such. Rawls refers to this as the idea of a well-ordered society, and his basic intention is to give an outline of its necessary components. His starting point is thus the good of a stable and peaceful society, in which justice is done to all reasonable ethical ideals, and the ambition is to state some general points, which could be applauded by all doctrines in an overlapping consensus.

Rawls' conception is fairly complex, of course, but a few of the major points will suffice here. In order for a stable and well-ordered society to work, given the fact of reasonable pluralism, two moral powers together with a series of political virtues are expected to reside (to a sufficient degree) in all society members. Firstly, the citizens are expected to have a capacity to form, revise and rationally pursue a conception of the good life as well as of their own rational advantage in the light of this conception. Secondly, the citizens are expected to have a capacity for a sense of justice, that is, a capacity to understand, apply and act from a publicly accepted conception of justice, which reflects the fact of reasonable pluralism, and which can therefore be explained within and supported by all reasonable doctrines. Finally, the citizens in a well-ordered society must be characterized to a sufficient degree by political virtues like toleration, civility, reasonableness, and fairmindedness, and they must be acting in a spirit of compromise and be ready to meet others halfway.

Virtuous dispositions are not sufficient, though, and a well-ordered society will therefore have to guarantee the citizens a sufficient amount of primary goods, which are defined as the kinds of goods which all



citizens need *as citizens* (developing and exercising their two moral powers), no matter which conception of the good they are pursuing. All reasonable doctrines will have to affirm such primary goods, because they are required in order to fulfill any rational plan of life. Rawls does not give a full list of primary goods (the precise description being partly dependent on social circumstances), but only some general headings, including basic rights and liberties, income and wealth, and the social bases of self-respect (which can be confirmed by the presence of just institutions)<sup>36</sup>. One could add, as Habermas does, safeguards against ecological and technical risks<sup>37</sup>.

What comes out is not what selfish agents in a private society make contract about, according to their mutual advantage, but what civilized citizens will have to agree on as a sound basis for political cooperation in a pluralist society. This is exactly what spokesmen of the Aristotelean conception would call a suitable basis for a just distribution of political goods. That is, the sort of goods which are related to the political friendship, distributed according to its inherent criteria. It is also worth noting that probably all of the modern theorists, which I have included on the Aristotelean side, do recognize the state of reasonable pluralism, and that most of them have some sort of answer to the problem. Just as remarkable is the fact, that all the answers, one way or the other, end up in a kind of liberal democracy. This conclusion can be approached in different ways, though.

One way is to see political friendship as a special kind of friendship (the association of associations) dealing with a specific set of goods, and with its own immanent distributional criteria. Thus, the liberty of conscience, freedom of thought and speech, the opportunity of having political influence or of taking part in political decision procedures can be considered as goods, which in view of the fact of reasonable pluralism, and according to the best understanding so far, should be

allocated to all on an equal basis. This is not to say that everybody should have exactly the same influence - influence should be given to those with the best arguments - but only that it is impossible to single out the best decision-makers before listening to their arguments.

The presence of reasonable pluralism moreover implies a pluralism of sufficiently strong and coherent arguments, which cannot be evaluated from a single completely neutral point of view; what democracy can do is to present a variety of points of view, and to give everybody an equal chance to bring forward or examine arguments from his or her point of view without interference from external, and therefore irrelevant, sources. As Michael Walzer has put it: "Citizens come into the forum with nothing but their arguments. All non-political goods have to be deposited outside: weapons and wallets, titles and degrees"<sup>38</sup>. Democratic decision making does not always end up with the best solutions (no matter how one would evaluate them), but it is the only way to allocate political power by intrinsic reasons only.

Another way is to see every human being as a culture-producing creature, who should be respected as such. The fulfillment of reasonable aims and the unfolding of human potentialities are goods which the political union seeks to enhance. We do justice to the citizens by respecting their particular creations<sup>39</sup>, as long as they are reasonable in the sense described.

Yet another way is to see the continuing discussion of moral and political issues as a good in itself. This is the way, Alasdair MacIntyre would argue:

Each of us would also have to play a second role, that not of a partisan [of a particular point of view], but of someone concerned to uphold and to order the ongoing conflicts, to provide and sustain institutionalized means for their expression, to negotiate

the modes of encounter between opponents, to ensure that rival voices were not illegitimately suppressed"<sup>40</sup>.

MacIntyre is probably the one Neo-Aristotelean, who is most hesitant about accepting liberal democracy as the most suitable kind of political regime, probably because he identifies it so strongly with private society assumptions, according to which impartial decision-making is nothing but "tallying and weighing of expressions of preferences...: counting votes, responding to consumer choices, surveying public opinion"<sup>41</sup>. Instead of arguing for public political discussions about the ordering of goods, he stresses the role of independent institutions like universities, and endorses the preservation of local communities. As already noted, I find his notion of communities too emphatic; if loosening up on this point, again, I believe the conclusion would be some kind of liberal democracy showing due respect to local self-determination.

It is also worth noting, however, that liberal democracy can only deliver the general conditions for the more substantial deliberations on the ordering of goods. Liberal democracy, political participation, and a proper amount of income, personal freedom, and ecological safety are goods in themselves, but they are not the only goods. Whether or not we accept Rawls' (or Habermas') points about political justice, we are still faced with the task of ordering all the other kinds of goods. It is important to notice, that there is nothing in the theory of political justice which makes it necessary for the ordering to be based on private society assumptions, nor that the ordering must be based on common denominators. The basic structure puts various restrictions on the ordering, but that is all. As Rawls puts it: the first principles of political justice are not suitable for a general theory. In most cases they only give unreasonable directives. There must be different principles for different kinds of subjects.

Indeed, it seems natural to suppose that the distinctive character and autonomy of the various elements of society requires that, within some sphere, they act from their own principles designed to fit their peculiar nature<sup>42</sup>.

In different spheres of justice, different criteria will be suitable.

Now, where does all this bring us in relation to future generations and to international justice? Let me take the relation to future generations first. As mentioned above, we seem to be faced with a dilemma, whether we are committed to the specific values of our own community, or whether we are committed to future people as such. When taking political justice and the fact of reasonable pluralism as our starting point, the dilemma may no longer seem quite as insurmountable. The reason is, that the values or demands of political justice must now be seen as an inevitable part of any of the reasonable doctrines, whose supporters want to influence the future with their values and understandings. If we want the dialogue between rival voices to continue, and this is what political justice demands we make a central part of our understandings, we also have to guarantee future citizens a proper amount of the primary goods needed for an exercise of the two moral powers.

This is not all, however. Political justice, when extended into the future, only puts a certain number of restrictions on the ordering of goods. We will still have to make decisions about which kinds of goods (or which kind of nature), we should leave future generations. There is no simple method, the use of which will tell us which kinds of goods should be preferred. There is no other way than discussions about the goods themselves and about their proper place in the good life. The basic principles of political justice can not tell us whether to choose highways or nature parks. Both kinds of goods are compatible with the

exercise of the moral powers, although both put certain limits on future orderings of goods. It may be necessary (and often suitable) to turn the discussions about goods into discussions about procedural rules. There are no neutral rules and methods, however, which can be decided on before looking at the goods themselves.

In relation to international justice, we are once again stuck in a kind of dilemma. On the one hand it can be argued, that membership is important, and therefore also borders, because this is the only way self-determination according to a shared understanding of goods and values can be secured<sup>43</sup>. Were there no borders, we would be left either with a libertarian private society on a global scale, or with a kind of global socialism which would have to allocate goods equally, based on some common denominator, because this would be the only way to square incompatible understandings. A loss of cultural differences would be the cost in the last case, while community would vanish as private borders replace all other borders in the first case.

On the other hand, one could ask whether political justice is not precisely the answer to a situation in which there are no common unbroken understandings even within communal or national borders. To talk about keeping up national borders in order to safeguard an authentic self-determination in accordance with shared understandings would be illusive, because there are no unbroken shared understandings, but only a state of reasonable pluralism. The universalism of political justice recognizes no important cultural borderlines, but only various degrees of political freedom and therefore various degrees of reasonableness and of pluralism. Citizenship is not determined by cultural (or ethnic) affiliations, it is not a question of belonging to a nation with some peculiar homogeneous identity. It is rather a pragmatic or functional matter, a way of distributing special duties and responsibilities<sup>44</sup>.

A way out of the dilemma would be to adopt a principle of subsidiarity, according to which decisions should be made on as decentralized a level as possible. This way a variety of more or less shared understandings can prevail in different communities, and different orders of goods can be furthered. This does not take the burden of responsibility off our shoulders in matters which cut across communal or national borders. If political justice is more than just a pragmatic way out of mutual conflict between comprehensive doctrines, based on a reciprocity assumption reaching no further than the national borders, it seems difficult not to stretch beyond all kinds of borders the safeguarding of a fair amount of primary political goods for all. This way world history has certainly begun.

## Notes

<sup>1</sup> This covers a very broad variety of writers, who in many respects are very different. Among the central works could be mentioned H.G. Gadamer: *Wahrheit und Methode*, Tübingen 1960; Iris Murdoch: *The Sovereignty of Good*, London 1970; Alasdair MacIntyre: *After Virtue*, London 1981, and *Whose Justice? Which Rationality?*, London 1988; Michael Sandel: *Liberalism and the Limits of Justice*, Cambridge 1982; Michael Walzer: *Spheres of Justice*, Oxford/N.Y. 1983; and Charles Taylor: *Sources of the Self: The Making of the Modern Identity*, Cambridge, Mass. 1989. In relation to environmental ethics could be mentioned Mark Sagoff: *The Economy of the Earth*, Cambridge 1988; John O'Neill: *Ecology, Policy and Politics*, London 1993; and Avner de-Shalit: *Why Posterity Matters*, London 1995.

<sup>2</sup> Aristotle: *Nichomachean Ethics*, (ed. H. Rackham), London 1934, VIII.ix.1160a. *Dikaiosyne* is derived from *dike*, which means custom and usage as well as that which is due or right. To be *dikaios* is to be observant of custom and social rules as well as to be righteous, fair and civilized. The term seems to have changed its meaning from Homer to Aristotle in a way which made it less and less dependent on the existing order (cf. MacIntyre: *After Virtue*, p. 134, and *Whose Justice? Which Rationality?*, chp. II-VII). For the same reason Aristotle separates natural justice (which still varies with the circumstances) and mere convention, cf. *Nichomachean Ethics*, V.vi.1134b. The separation of ethics (*ethike*) from the conventional *ethos* (which, again, means custom and usage) constitutes a parallel development.

<sup>3</sup> The greek term for both communities and associations is *koinonia*. Aristotle did not make a terminological distinction between these two kinds of relationships, as it has been common since the English translation of Ferdinand Tönnies' distinction between *Gemeinschaft*

and *Gesellschaft*. *Koinonia* covers all kinds of social relationships, including the *polis* itself (cf. also: R.G. Mulgan: *Aristotle's Political Theory*, Oxford 1977, pp. 13ff). In this article, I shall follow Aristotle and use the terms community, association, and social union in a broad way.

<sup>4</sup> Aristotle: *Nichomachean Ethics*, VIII.i.1155a.

<sup>5</sup> See in particular Aristotle: *Nichomachean Ethics*, Books V, VIII, and IX. The claims of justice in political friendship are discussed in various parts of *The Politics* (ed. H. Rackham, London 1932), particularly in Books III, IV and VII.

<sup>6</sup> Michael Walzer's *Spheres of Justice* is the most thorough study of the obligations involved in different types of groups, associations, and communities.

<sup>7</sup> Walzer, p. 6; see also: Charles Taylor: "The Nature and Scope of Distributive Justice", *Philosophy and the Human Sciences*, Cambridge 1985, p. 312.

<sup>8</sup> Walzer, p. 314.

<sup>9</sup> This is the case, for instance, in Herbert Schnädelbach: "Was ist Neoaristotelismus?", in: Wolfgang Kuhlmann (ed.): *Moralität und Sittlichkeit*, Frankfurt am Main 1986, and Jürgen Habermas: "Kohlberg und der Neoaristotelismus", in: *Erläuterungen zur Diskursethik*, Frankfurt am Main 1991.

<sup>10</sup> MacIntyre: *After Virtue*, p. 222.

<sup>11</sup> Aristotle: *Nichomachean Ethics*, V.x.1137b.

<sup>12</sup> Aristotle: *Nichomachean Ethics*, V.iv.1132a.

<sup>13</sup> Brian Barry: *Theories of Justice*, London 1989, chp. VIII.

<sup>14</sup> Taylor: *Sources of the Self*, pp. 19ff.

<sup>15</sup> A good starting point is given in *Our Global Neighbourhood. The Report of the Commission on Global Governance*, Oxford 1995. See



also the discussions in Robin Attfield & Barry Wilkins: *International Justice and the Third World*, London 1992.

<sup>16</sup> Avner de-Shalit's *Why Posterity Matters* can be taken as an example of the first position; the second position is defended, for instance, in Edith Brown Weiss: "Intergenerational equity: A legal framework for global environmental change", in: E. Brown Weiss: *Environmental change and international law: New challenges and dimensions*, Tokyo 1992.

<sup>17</sup> David Hume: *An Enquiry Concerning the Principles of Morals*, ed. John B. Stewart, La Salle 1966; and *A Treatise of Human Nature*, ed. Páll S. Árdal, London 1972, Book III, Section II. Central parts of the Humean concept of justice have been used or defended - again very differently - by a series of writers, among whom could be mentioned John Rawls (*A Theory of Justice*, Oxford 1972), David Gauthier (*Morals by Agreement*, Oxford 1986) and Robert Nozick (*Anarchy, State, and Utopia*, Oxford 1974). As we shall see, utilitarians should also be included among the inheritors of Hume. In Brian Barry's *Theories of Justice* Hume's theory is related to a series of modern authors, who all share some or several of his premisses. It should also be noted, that Alasdair MacIntyre makes a sharper distinction between Hume and modern liberal authors than I shall do here, cf. his *Whose Justice? Which Rationality?*, chps. XVI-XVII.

<sup>18</sup> Hume: *Enquiry*, pp. 15ff. The fictive societies also appear in *Treatise* - although in a less developed form.

<sup>19</sup> Cf. the discussion in Barry, pp. 152ff, and Jonathan Harrison: *Hume's Theory of Justice*, Oxford 1981, pp. 264ff.

<sup>20</sup> Hume: *Enquiry*, p. 21.

<sup>21</sup> Hume: *Treatise*, p. 231.

<sup>22</sup> Hume: *Treatise*, p. 222. In John Locke's "Essay Concerning the True Original, Extent and End of Civil Government", the corresponding

statement runs as follows: "The great and chief end ... of men's uniting into commonwealths, and putting themselves under government is the preservation of their property" (*The Second Treatise on Government*, ed. J.W. Gough, Oxford 1966, p. 63)

<sup>23</sup> Hume: *Treatise*, p. 229. Similar points can be found elsewhere, especially in the *Enquiry*, for instance on pp. 54, 67 and 109ff.

<sup>24</sup> *Enquiry*, p. 139.

<sup>25</sup> Rawls: *A Theory of Justice*, p. 521.

<sup>26</sup> R.M. Hare: *Moral Thinking*, Oxford 1981, p. 201.

<sup>27</sup> Rawls: *A Theory of Justice*, pp. 103f. For a critique on this point, see MacIntyre, *After Virtue*, chp. 17. It should be noted, though, that Rawls' theory is fairly close to the Aristotelean tradition in various ways. For instance, he accepts the Aristotelean principle that the good life of humans consists in realizing abilities and virtues rather than in mere preference-satisfaction, he has a much more sophisticated theory of goods than is usually presented, and discussions of friendship or fraternity occur time and again in his book. He even has a section on The Morality of Association, which (together with the more well-known remarks on social unions) could have brought him even closer to the Neo-Aristoteleans, had it not been for his anxiety to separate the more comprehensive morality of associations from the thin morality of principles, which he sees as the right area for considerations about justice.

<sup>28</sup> This is also the conclusion, which Brian Barry draws at the end of his book on *Theories of Justice*, cf. especially section 45, "The Content of Justice", pp. 366ff.

<sup>29</sup> Cf. on these points, Barry: *Theories of Justice*, pp. 183ff. Hume himself was very clear on the last point: if the intercourse between nations is not advantageous to one of the parties, the rules of justice need not be followed rigorously (*Treatise*, pp. 288ff).

<sup>30</sup> Rawls: *A Theory of Justice*, pp. 128ff.

<sup>31</sup> Rawls: *A Theory of Justice*, pp. 377ff.

<sup>32</sup> More differentiated opinions about membership and particular loyalties can be found in utilitarians like R.M. Hare: *Moral Thinking*, pp. 201ff, and Peter Singer: *Practical Ethics*, Cambridge 1993, chps. 8-9.

<sup>33</sup> For an overview of the peculiarities related to future generations, made by an author sympathetic to utilitarianism, see John Broome: *Counting the costs of global warming*, Cambridge 1992.

<sup>34</sup> More extensive arguments against the utilitarian view can be found in the books by Sagoff and O'Neill cited above.

<sup>35</sup> John Rawls: *Political Liberalism*, New York 1993, pp. 54ff.

<sup>36</sup> Rawls: *Political Liberalism*, pp. 181 and 308ff.

<sup>37</sup> Jürgen Habermas: *Faktizität und Geltung*, Frankfurt am Main 1992, pp. 156f. There are a great many similarities between Rawls' theory of political justice and Habermas' discourse theory of the democratic, law-governed society. I shall not deal with Habermas here, though. For those, whose who are familiar with Danish, I can refer to my article "Samtalens ret. Jürgen Habermas' rekonstruktion af retten", *Retfærd*, vol. 19 no. 1, 1996.

<sup>38</sup> Walzer, pp.303f.

<sup>39</sup> Walzer, p. 314.

<sup>40</sup> Alasdair MacIntyre: *Three Rival Versions of Moral Enquiry*, London 1990, p. 231.

<sup>41</sup> Cf. MacIntyre: *Whose Justice? Which Rationality?*, p. 343.

<sup>42</sup> Rawls: *Political Liberalism*, p. 262.

<sup>43</sup> Walzer, chp. 2 "Membership".

<sup>44</sup> This is the position of Habermas in his "Staatsbürgerschaft und nationale Identität", in: *Faktizität und Geltung*, pp. 632ff.