

## JUSTICE AS SOMETHING ELSE

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Why must nearly all the current normative theories of distribution represent justice as something else? Why are we led to see justice as fairness, as the greatest mutual advantage, as the minimax relative concession, as reciprocity, as the terms of a society-wide agreement that cannot reasonably be rejected, as reversibility, as impartiality? There is nothing in the lengthening series of aliases suggesting that the ingenuity moral philosophers deploy in reinventing justice as something else is about to run out of further variants.

Arguably, Kant has set the precedent. His categorical imperative identified justice as universalizability. However, his was not a principle capable of regulating all distributive conflicts, notably the conflicts that may arise from the distribution of initial endowments of talents, advantages, and possessions. A rule one wishes to apply to oneself is universalizable if it is a requirement of reason to wish it to apply to everyone else, and vice versa.

Universalizability, therefore, is incapable of generating rules of distribution that systematically favor the weak, the unsuccessful, and the poor. The strong, the successful, and the rich cannot plausibly be held to wish redistributive rules to apply to themselves that would predictably work to their disadvantage.

This Kantian defect, to call it that with tongue firmly in cheek, was radically remedied by John Rawls's "justice as fairness," where a sense of fairness impels all adult members of society to accept those principles of justice that it would be rational to adopt in an "original position." In this original position, all initial endowments disappear behind a "veil of ignorance." If people had no endowments, or had equal ones, or were ignorant of what they had, it would be para-

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rational<sup>1</sup> for them to agree that inequalities are to be evened out except if they work to the advantage of the least favored among them. This, Rawls's "difference principle," is the product of prudential reason once fairness has led all to ignore any initial advantages they may have.

Although Rawls (1971: 112, 343) defines fairness as submission by each to the same restrictions all others submit to, if each in fact shares in the common benefits secured by these restrictions—which amounts to "fairness as no free riding"—it is clear that the role he assigns to fairness is far wider.<sup>2</sup> Fairness in his theory requires the more favored to agree to the sort of distributive rule they would prefer if they were not more favored—a very different and more inclusive idea than "no free riding." If fairness were to mean something less than this, or if people did not feel bound to be fair in this radical sense, the sort of agreement that is supposedly rational in the original position (though not elsewhere) could not be reached. Fairness as initial equality is an axiom of justice as fairness.

Instead of simply treating it as an axiom, however, Rawls seeks to deduce it from the claim that initial endowments are morally arbitrary—a claim that might well not impress anyone who has not yet adopted moral rules and must first be induced, by the appeal to fairness, to enter into the "original position" by adopting some. Even if it were not dubious practice to invoke morals in order to generate morals, it is not at all clear why the fact that something is morally arbitrary should oblige us to take no account of it in deliberations about moral rules of distribution.

Among other "justices as . . .," and next only to Rawls's, the most influential is probably Thomas Scanlon's (1982) justice as unrejectability. Brian Barry's (1995) "justice as impartiality" is a synthetic derivative of both, with a preponderance of Scanlon. The three together incorporate most of the currently dominant mainstream theory that, or so I shall argue, treats justice as a matter of social choice rather than, as in the traditional approach, a quality of individual acts.

## Under Just Conditions, What We Accept Is Just

In Rawls, once he has led people into the original position (and some auxiliary assumptions are made), agreement on distributive prin-

<sup>1</sup>I call the agreement upon a maximin strategy equilibrium "pararational" (rather than rational), because while maximin is argued for by a reason ("make the worst possible outcome as good as you can, even if you must make the best possible outcome less good than it might have been"), the reason is obviously not the best possible one. The strategy that maximizes the mathematical expectation of utility is argued for by a reason that is by definition the best, hence better than maximin.

<sup>2</sup>Compare Hart (1983: 119).

ciples is a matter of mutual advantage; it has instrumental value. In Scanlon's contractualist theory, in sharp contrast to Rawls, agreement need not yield mutual advantage in order to be reached. It may yield it accessorially, but people do not seek it to make themselves better off in the ordinary narrow sense.<sup>3</sup> They seek it because they are motivated by a common desire for agreement that is inherent in morality (Scanlon 1982: 128).

So far, there is nothing implausible or far-fetched in Scanlon's construction. Less extravagantly than Rawls, it does not require harsh and heroic renunciation of initial advantages. It is easier to take it that people wish to live in agreement with each other, on the basis of which they can mutually justify their conduct (*ibid.*: 117) than that they commit themselves to a distributive rule that deprives the more favored among them of any advantage over the less favored.

However, this judgment about Scanlonian moderation compared to Rawlsian radicalism quickly turns out to require qualification. In Scanlon, for the agreement to produce unrejectable rules that will be morally wrong to transgress, the agreement must be both informed and unforced (*ibid.*: 110–11). The information condition can, I believe, be safely accepted, but what about the condition of unforcedness?

Unforcedness, as Scanlon explains it, means not only that no party must be coerced to agree, but that none must be in a "weak bargaining position" enabling others "to insist on better terms" (*ibid.*: 111). But better than what? Manifestly, there is a hidden norm both for bargaining strength (none must be in a stronger or weaker position than the norm) and for the terms eventually struck in the bargain (they must not be better for some, worse for others). But if such a norm is tacitly pre-set, the desired bargaining solution will be a disguised initial condition of the theory and not a theorem of it. Though Scanlon, to his credit, refrains from saying so, we may take it that people starting from initially equal endowments would find rules providing for continuing equality unrejectable—they are left with no ground for rejection. Hence, they would find inequality in breach of the agreement unjust. This is plausible, but how interesting is it?

<sup>3</sup>Whether the narrow sense makes sense is perhaps questionable. If people like to agree, they must prefer agreement to no agreement, with other things remaining equal. Can one nevertheless say that reaching agreement does not make them better off? One can, if preference is taken as a "subjective" and better off as an "objective" condition. If this distinction is upheld, it is a sensible statement that "he prefers to be worse off," or that "he is better off but ignores it"; if not, not. Austrian value theory and Paretian welfare economics are on one side of this divide, the utilitarianism of the Impartial Observer on the other.

Scanlon's argument is silent on whether reasonable unrejectable agreement could be found if initial conditions were unequal. However, given the norm for bargaining power and for the bargain itself, planted at the base of the theory, it seems that initial conditions that violate this norm could either not produce unrejectable terms, or if they did, unrejectability would cease to signify justice (i.e., cease to be a sufficient condition of it). In either case, the theory of justice as unrejectability would seem to hold if and only if initial conditions were just. If so, it is not justice that follows from unrejectability, but unrejectability from justice.

### The Desire for Agreement, on What Terms?

Scanlon could well object that not all terms that were not in fact rejected were unrejectable in his sense. His unrejectability springs from the reasonableness of the terms, not from such contingencies as the pressing needs of one party and the ease and comfort of another. This defense fails to deal with the objectionable tactics of building equality into the foundations of the theory by the seemingly innocuous device of requiring equal bargaining power. In addition, such a defense also exposes another vulnerable flank of justice as unrejectability, and by extension of other "justices as," too.

All we know of the common desire for agreement is that all are "moved by it to the same degree" (ibid.: 111). But what degree, how high? Given a very high degree, a variety of widely divergent terms may all be unrejectable. Nothing ensures a determinate solution. This might not matter much if the whole set of possible solutions were just by virtue of being unanimously agreed upon, or if there were independent means of identifying a unique just solution, or at least a just subset within the possible set. Would the test of "reasonableness" provide such a means? Or, what is a different proposition, is it that only reasonable terms are truly unrejectable? But what, then, is the test of reasonableness? How do we recognize it? One has the uncomfortable feeling of being led round and round in a circle.

I would submit that we are inadvertently moving back and forth between what are, in fact, two theories separated by the idea of reasonableness, which acts as a "cutout." On the near side, there is a theory in which the desire for agreement and initial equality jointly produce a bargaining solution, which is both unrejectable and normatively unique because it must correspond to the tacit norm built into the initial conditions (i.e., that the terms must not be "better for some and worse for others"). On the far side of the cutout, we find a much simpler theory. Among possible bargaining solutions, there is at least

one set of terms that is reasonable. Since it is unreasonable to reject that which is reasonable, these terms will be unrejectable by reasonable persons, hence they will be just. There is no need for a desire for agreement, and it does not matter whether initial endowments were equal or not, for all will agree to their reasonable redistribution.

For reasonableness to exert the force this theory demands from it, it must signify a particular empirical content. It must function less like the word “warm” and more like the words “25 degrees centigrade”—that is, it must work with little intersubjective variance. Failing that, one man’s reasonable terms may be another’s cruel exploitation. There is little doubt, though, that “reasonable” works at best like “nice weather,” which can mean anything from crisp and cold to sunny and hot.

### Impartiality and Reasonable Rejection

The same or more, alas, is true of such words as acceptable, fair, unforced, equal footing, equal consideration, equitable sharing, and so forth. They are all unabashedly question-begging, in that they rely on a theory of justice (that tells us what is acceptable, fair, or equitable) and consequently cannot help in first constructing one. Yet it is such words that constitute the stuffing in Barry’s *Justice as Impartiality*, the second volume of his projected three-volume *Treatise on Justice*. It is of course neither convenient nor necessary always to avoid terms that have no intersubjectively stable meaning at least within a language and a culture, let alone cross-culturally. But inherently vague words and concepts can only build an inherently mushy theory, ill suited to yield rules of justice whose chief function is said to be the avoidance of conflicts (Barry 1995: 12)—least of all if the conflicts are about who gets what, how, and at whose expense.

On the face of it, justice as impartiality is mainly about such concerns as freedom of worship, sexual practices, Salman Rushdie, crash helmets and seat belts, “multiculturalism” and race relations, and not or hardly about property and contract. Yet, the appearance of relative unconcern about what for most people is the central issue in justice is due to “economic” questions being held over for treatment in the forthcoming third volume of Barry’s *Treatise*. Much of the treatment is foreshadowed in two essays (Barry 1991 and 1994), and will be taken into account in what follows.

Barry acknowledges a large debt to Scanlon, from whom he borrows unrejectability as the criterion of just arrangements, as well as seemingly innocuous defining features of the hypothetical “original position” that turn out, on inspection, to imply equal bargaining strengths

and an independently postulated normative solution to the bargain (“not better for some and worse for others”). Following both Rawls and Scanlon, he equates distributive justice with the terms of a hypothetical contract to which all would give unforced assent if they found themselves in the “original position” as specified.

Unanimously accepted terms are liable to be trivial or confined to apple pie-and-motherhood issues. There are two ways of making sure that it is the “right” and nontrivial terms that are accepted. Trusting to belt and braces, Barry uses both. The belt, as we have seen, is to specify that the “original position” is one of equal endowments. From such a position the parties could plausibly be supposed to assent to distributive rules whose consequence is, in effect, equal endowments. If the initial position was accepted and just, rules that *perpetuate* it must presumably also be accepted and just. The rules are rules of impartial justice; they do not favor or penalize anyone relative to their initial position, and are not designed to promote anyone’s values. They consecrate the status quo which, praise be, is one of equality that we must on independent grounds deem to be just anyway.

By way of braces, as if the belt were not strong enough, reasonableness is made to do the work all over again. Suppose that, instead of the idealized “original position,” bargaining were to start from a position found in nature, entailing all kinds of unequal endowments. Alternative sets of rules are proposed to its denizens who must agree unanimously on one set. Suppose also that certain rules would permit some people to have more of what all want and others to have less. To prevent the adoption of such rules, reasonableness cannot be allowed to retain the vague and indefinite meaning it has in ordinary language and in most of Barry’s *Justice as Impartiality*, but must be stiffened (as it is in Barry 1994, and presumably in his forthcoming *Principles of Justice*).

Under this stiffer meaning, that is not found in ordinary language, it is unreasonable for better-placed individuals to reject rules of distribution that do not allow them to be *so much better* placed than they were prior to the agreement. What counts is that this rule would still allow them to be somewhat better placed than others. The only people who *can* reasonably reject a given set of rules are those who are not placed better than anyone else—that is, than whom nobody is placed worse. Every set of rules that allows someone to be placed lower than someone else can reasonably be rejected by the lower-placed party as unjust. As long as anyone gets less than someone else, the rules under which this happens can be rejected; the only stable equilibrium set of just rules is one that *no one can veto*. This condition is fulfilled

only when no one is worse off than anyone else. This is Barry's first (and only operative) principle of justice (Barry 1994: 67).

Justice as impartiality, then, whether obtained via the "original position" or via a special meaning given to reasonableness, entails equality of valuable endowments and the enforcement of that equality over time. Consequently, this notion of justice is incompatible with property and freedom of contract, institutions that, when combined, are a powerful generator of inequalities over time, and almost certainly a sufficient condition of them.

### Justice as Social Choice

Justice as impartiality appears to be a feature, a trait, a distinguishing criterion of a complete state of affairs arranged by society: it is "a sign of an unjust arrangement that those who do badly under it could reasonably reject it" (Barry 1995: 7). Though they *could* reasonably have done so, they *did not* actually reject these arrangements, for if they had, these arrangements could not have come about. Since they did come about, it is up to society to rectify them and make them conform to the norm of reasonableness. Just "institutions should operate in such a way as to counteract the effects of good and bad fortune" (Barry 1991: 142). According to this formulation, impartiality must compensate for inequalities that are not imputable to one's deliberate and free choice. Which choice was deliberate and free is, of course, the whole question. It would seem that a choice by which we accept an arrangement we could have reasonably rejected, is not deliberate and free, but due to pressing need, hence tainted by bad fortune. The test for telling free choice from bad fortune is the reasonableness of what we accept. Impartiality, then, is defined by a substantive norm of reasonableness adopted and applied by society. The question-begging character of the claim that this is the substance of justice stands out clearly enough.

An obvious, and I think quite weighty, objection to Barry's view, as to other views of "justice as something else," is that it confuses the content of the rules of justice with the proper manner of applying them. It is one thing to say that the rules must be applied impartially, fairly, without fear or favor, treating like cases alike—which is of course consistent with the content of the rules being partial to the right, rather than impartial between right and wrong. It is another thing to require the rules to be such as to reduce unlike cases to like ones in an attempt to compensate for fortune, evening out the uneven, on the ground that leaving cases unlike and uneven would not be impartial.

Casting justice in this role is, in effect, to assimilate it to social choice and to merge the theory of justice into social choice theory. Justice becomes a matter of satisfying a selection criterion or choice rule (e.g., “choose the state of affairs no one can reasonably reject”) by which a state of affairs is identified as “just,” in the same way as other selection criteria, choice rules, or choice mechanisms identify a state of affairs as socially “chosen” or “preferred.” Fairness, unanimity, non-rejection, veto right held by the “dictator” (e.g., the worst-placed individual or group) fit very well into the *modus operandi* of social choice theory.

It is almost as if Barry sensed and sought to carry through, yet also to evade, this conflation of justice with social choice. He energetically protests that his central concern, individual “conceptions of the good,” is something quite different from the concern of social choice theory, individual preference orderings: one is a “system of beliefs,” the other a “taste for strawberry ice cream” (Barry 1995: 167). But this is nonsense he must not be allowed to get away with. Conceptions of the good, if they are anything intelligible, are hierarchies of alternative states of affairs, ranked according to how good they are conceived to be. The rankings must be sensitive to every non-indifferent trait of a state, according to how well it is liked, approved, or coveted if it is a good trait, and disliked or disapproved if it is a bad one. Why exclude any trait, good or bad, as improper and irrelevant in judging a state of affairs? If the treatment meted out to Salman Rushdie can weigh in the ranking, why can’t the availability of various flavors of ice-cream? Complete, comprehensive “conceptions of the good” must, almost by definition, take some account of both, except if the individual concerned is totally indifferent to Salman Rushdie or to ice-cream. So must complete preference orderings, subject to the same exceptions. The two are either indistinguishable,<sup>4</sup> or “conception of the good” is a woolly concept that corresponds to nothing in psychology and in practical reason.

It is fascinating to watch how current theories of distributive justice scuttle back and forth across the line that divides social choice theory into a Paretian or “soft” and a non-Paretian or “hard” version. (In the latter, Pareto-superiority is not necessary for “socially preferring” one state of affairs over another; imposing burdens on one individual

<sup>4</sup>Like many other political philosophers, Barry (1995: 135) is worried that some “conceptions of the good” place a premium on the suppression of the beliefs or modes of behavior of others. He believes that institutions giving effect to such conceptions are illiberal, and are contrary to justice as impartiality. He would therefore require institutions to “filter out” such illiberally other-regarding “conceptions of the good.” The same requirement formulated in the language of preferences would have precisely the same effect.



in order to help another can be “better” than not doing so, while in Paretian theory the two alternatives cannot be ranked.) Rawls’s insistence on unanimous consent and on the impropriety of political principles that expect “some citizens . . . to accept lower prospects of life for the sake of others” (Rawls 1971: 178) is Paretian “soft.” Yet his difference principle is a “hard,” non-Paretian social choice rule that makes some people better and others worse off than they would otherwise be.

Scanlon’s rules and institutions, which no one can reasonably reject, can hardly be read otherwise than as Paretian: rejecting an arrangement all would prefer is self-contradictory; rejecting one that is indifferent is contrary to the desire for agreement, but I could no doubt reasonably reject (even if I did not actually reject) one that would burden me for the sake of strangers. Scanlon’s theory then moves lock, stock, and barrel over to the “hard,” non-Paretian side as it defines reasonable rejectability from an egalitarian original position. (In a just world, we would have equal endowments. I could not reasonably reject arrangements that equalized them. Therefore, it would be unjust to reject them even if I have more and must give some to you.)

Barry, too, is Paretian in his ambition to devise a social choice rule that will be neutral between “conceptions of the good,” eschewing the attempt to aggregate them (which would involve the dubious exercise of adding together the positive and negative differences justice as impartiality makes to individuals having different “conceptions of the good”).<sup>5</sup> In almost the same breath, however, he defines justice as requiring that better-placed individuals give up some of their valued endowments, or the fruits thereof, in favor of the worse-placed—an overtly non-Paretian, “hard” choice.

This is hardly surprising. In “hard” social choice, almost anything can be advocated without risk of inconsistency; in “soft” social choice, hardly anything can. A theory that was Paretian throughout, and disclaimed any ability to say that as a matter of ascertainable fact,

<sup>5</sup>Barry’s test casts some doubts over his own conception of social choice theory. He makes the startling statement that “the Pareto principle is . . . the ordinal form of cardinal utility maximization” (Barry 1995: 135n). It is the nonadmission of interpersonal comparisons that bars utility aggregation and would do so whether or not utilities were cardinally measured. Once the utilities of different individuals are taken to be incommensurate, they cannot be added up. It makes no difference how they are calibrated, ordinally or cardinally: in *either* case, only Paretian comparisons are possible, and aggregate utility maximization is not. Cardinal apples cannot be added to cardinal oranges, any more than ordinal ones. To say that one is the ordinal, the other the cardinal “form” of utility maximization is, to put it moderately, apt to lead the trusting student into costly errors.

some forced interpersonal transfers made a state of affairs socially *preferred* or, by a hardly perceptible step from goodness to justice, more *just*, can only see distributive justice as a system of voluntary exercises and transfers of rights. Justice is upheld as far as it can be if voluntariness is safeguarded. It is then *just acts* that make for justice. The conformity of a state of affairs to a social selection criterion—fairness, nonrejectability, or impartiality as defined by the respective authors, or what a majority will vote for, or the dictatorship of the poor—is just that, conformity to the postulated criterion and nothing more. That the criterion is the embodiment of justice rests on no objective evidence, such as is provided by actual (as distinct from hypothetical) agreements to create or transfer rights.

### “Pre-Social” Rights and the Lockean Proviso

Acts that are not torts, breach no duty, and respect rights are just. Justice must then be explicated by an independent, noncircular account of torts, duties, and rights. The account must be noncircular in that, unlike fairness or impartiality, it must not rely on some concept of justice to derive justice.

Torts are recognized in immemorial and near-universal cross-cultural conventions that condemn and sanction murder, maiming, trespass, theft, and other offenses against person and property. They are not problematical for the present purpose.<sup>6</sup> Duties are conventionally recognized moral imperatives, and their breaches are conventionally condemned but typically not sanctioned. Unlike obligations, duties do not have the rights of another person as their logical corollary; but neglect of duty is generally taken to disqualify an act from being just. Duties, too, are largely unproblematical for the theory of justice. The ontology of rights and their corollary obligations, however, is more contentious. A plausible and noncircular theory of just distribution stands or falls with a plausible account of rights that does not presuppose some prior account of justice.

Barry (1995: 124) dismisses the idea of “pre-social” or natural rights as preposterous. Though his treatment is a little cavalier, his conclusion is incontrovertible in the somewhat trivial sense that an isolated, extra-social individual cannot have any rights since the exercise of a right by a right-holder requires the fulfillment of the corresponding obliga-

<sup>6</sup>Some torts, notably offenses against property, are rights violations, and the recognition of the right is implicit in the convention that makes its violation a tort. Other torts, however, notably offenses against the person, may be held to be wrong without necessarily supposing that there is a right they violate. It is, I think, not necessary to impute to the person a right to “self-ownership” in order to account for the full system of conventions against torts.

tion by another person, the obligor. However, it is surely a *non-sequitur* to go from here to the proposition that for rights to exist, "society" must recognize them, hence they are the products of collective choice. This contention, however, is what Barry and his inspirators appear to believe when fashioning theories of justice within a framework of social choice theory.

Revealingly, Barry (*ibid.*: 205) speaks of property rights being "assigned" to persons without saying who "assigns" them. The underlying suggestion seems to be that society will assign property to persons to the extent that it finds it desirable to let them have "their own toothbrush" and, beyond strictly personal possessions, property representing some area of discretion. Barry makes clear, however, that this area must be neither large nor unequal as between persons.

Society, of course, does not create rights by way of voluntary agreements with itself, except metaphorically as in the social contract. (The creation of rights must be kept conceptually distinct from their enforcement. Whether society enforces rights, or more precisely what part of enforcement services it performs, is contingent on historical accidents and is an altogether different question.) The synoptic view of a set of rights as a product of social choice legitimized by some overall hypothetical agreement contrasts sharply with the more positivist and grassroots view in which each right is created by the assumption of a matching obligation, with value to be given for value received, in a formal or informal contract entered into by a pair of individuals. The contract is not hypothetical or metaphoric, but actual; it may or may not be reasonably unrejectable, but it has not been rejected; both parties would rather have it than not.

There are at least two (and perhaps more than two) ways of looking at such pairwise agreements. One is to find that the agreement, by virtue of being untainted by force, fraud, or unconscionability, is just, since those concerned jointly chose it, rather than something else. By extension, the distributive consequence of the totality of all such agreements, past and present, is a just distribution. The other view is that the agreement was just if and only if the values exchanged or promised under it have been justly come by. The employee acquired a right to a salary by assuming and performing an obligation to work as directed. That his right to be paid for his work is justly acquired does not seem to be in dispute. Any dispute is about the right to his labor acquired by the employer who, endowed with more property than the employee, has greater bargaining power.<sup>7</sup>

<sup>7</sup>We may accept this supposition for argument's sake, though the very meaning of "bargaining power" is unclear, and if it were clear, we would almost certainly find that it is not correlated with property in any simple way.

Here is the final parting of the ways between justice as a socially chosen trait of a distribution and as a just distribution resulting from the totality of just acts. For the one, unequal bargaining strength is *eo ipso* unjust, and so is any formal right acquired by using it; such rights deserve no respect. For the other, no inequality—whether of bargaining power, property, or any other kind of endowment—is unjust as such, but only if it was brought about by unjust acts. Therefore, if the employer's greater wealth is the result of a chain of voluntary transactions, combined with his own abstinence from consuming capital, no injustice tarnishes it. Barring force and fraud, the only remaining source from which injustice might have sprung is inequality in first possession.

The essentially deontological theory of just acts corresponding to the exercise of rights and the performance of obligations, inspired by John Locke and most lucidly developed by Robert Nozick (1974), which justifies property by working backwards along a chain of voluntary transfers, loses confidence (and much of its consistency) when it arrives at first possession at the end of the chain. It subjects the justice of finding, enclosing, inventing, and thus appropriating valuable resources, to conditions. The chief condition is some form of the Lockean proviso that "enough and as good" must be left for others to appropriate. Nozick shows that in its stringent form the proviso can never be met. He then explicitly assumes that at least the weaker form, which can be met, must be incorporated as a condition in any adequate theory of justice.<sup>8</sup> One can, of course, assume anything, for any reason or none, but the assumption sits ill with the deduction of justice from rights, and of rights from agreements. Where rights must first be created, finding, enclosing, inventing, and appropriating that which was previously unowned is exercising one's liberties, for it cannot violate anyone's rights where *ex hypothesi* there are no such rights. In their absence, it is hard to see why the justice of appropriation of one resource by one person should be dependent on other persons having comparable scope for appropriating other, equally good resources, though of course it would be nice if they did have it. The supposition that they must have it rests on the prior and tacit adoption of some egalitarian moral axiom.

Almost any form of the Lockean proviso can be levered up to a requirement that equates justice with conformity to some general feature of the social state of affairs. Equal initial endowments, or some other broad equality, is the privileged feature. Theories of justice

<sup>8</sup>"I assume that any adequate theory of justice in acquisition will contain a proviso similar to the weaker of the ones we have attributed to Locke" (Nozick 1974: 178).

can either do this, or they can define justice by reference to individual rights that are independently accounted for. They can hardly do both at the same time.

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