Empirical studies show that justice matters in negotiations, but they also document that the parties’ views on justice usually correlate with their self-interest.¹ That is, the parties apparently choose conceptions of justice outcomes of which are close to the position their self-interest suggests to them. This is only possible, of course, if several (interpretations or) conceptions of justice are available from which agents can choose. Given the prevailing pluralism of moral positions in modern societies this premise is nearly always satisfied. Thus it happens that negotiators from developing countries call for historical justice in climate negotiations (many moral philosophers from developed countries, including me, reject this view of justice), whereas negotiators from developed countries find ‘grandfathering’ just, the calibration of emission reductions to existing emission levels.² The justness of the latter approach is, needless to say, denied by representatives of developing countries. Justice is therefore no straightforward guideline towards collective climate policies but often rather proves to be a roadblock on the way to a solution because opposed views on justice breed contention.

There are alternative views on justice even among impartial spectators

This predicament does not imply that justice is a mere mask for self-interest. Rawls’ thought experiment of distributing goods behind a veil of ignorance is commonly believed to neutralize self-interest and to safeguard justice. However, a pluralism of notions of justice also emerges behind a veil of ignorance.³ If evaluators without any stake in an issue and with no clue to the identities of the agents are asked to fairly divide a cake among individuals with different preferences, some evaluators choose an even distribution, others one proportional to the strength of the preferences, and others still another mode of distribution. There are alternative views on justice even among impartial spectators – moral pluralism does not depend on egoism.

We need to remember this now we ask whether it is morally permissible for agents to actively choose their position on justice according to their self-interest. Let us assume that there are n positions of impartial spectators concerning the just solution of a political problem. (That is, an experiment behind a veil of ignorance with sufficiently many well-informed and reasonable persons would produce a distribution in which each of the n positions is chosen by a significant number of persons). Agent i adopts position k, which correlates with her self-interest better than any other position. Is there anything wrong with this choice from a moral point of view, or more specifically, from the perspective of an ethic of negotiations? To motivate the question further, we will shortly discuss its relevance for Political Realism.

POLITICAL REALISM AND THE INTEREST-BIASED VIEW ON JUSTICE

Political Realism, one of the leading paradigms in international relations


theory, has an uneasy relationship with the concept of justice. The more extreme Political Realists deny that justice plays a significant role in international relations, which are all about power and national interest as they claim. In contrast, moderate Political Realists accept a minor role for considerations of justice in the international arena. Such a reduced role is explained by the inapplicability of universal laws of justice or by moral relativism, the view that each community breeds its own, equally legitimate notions of justice. Yet most Political Realists fail to realize that moral pluralism is a much better foundation for their claims than full-scale amoralism or moral relativism. Moral pluralism need not deny the existence of abstract universal moral values such as freedom, peace, and justice. It only states that these notions usually do not help to guide conduct. In practice, a plurality of reasonably adoptable, but conflicting interpretations of ‘guiding values’ such as justice will nearly always exist. This variance occurs within communities, while each of the interpretations also has adherents from different communities. Hence, relativism, the claim that moral positions reflect shared community views, is wrong. On the whole, moral disagreement fosters contention or even conflict. It is therefore hardly a recipe for escaping from the international anarchy on which Political Realists of many colors build their theorizing.

At first glance, Political Realists (or at least many of them) will not worry about the legitimacy of choosing a view on justice according to one’s self-interest. They will simply assume that this is in the nature of human beings. Yet some Realists understand that their approach can profit from an ethical justification. First of all, an ethical justification would show that Political Realism is a decent enough doctrine to be used in modern democracies, and not only an instrument for the worst (and in the end unsuccessful) sort of Renaissance machos, such as Cesare Borgia. Even extreme Political Realists admit that the public standing of their doctrine does not depend on its moral image to which its practitioners have to pay lip service even if they deny it behind closed doors. This seems to be an argument for moral camouflage, but the real thing is always the best camouflage. A real ethical justification for an interest-based choice of one’s view on justice would be truly helpful for Political Realism.

ARGUMENTS AGAINST

Let us first discuss why aligning one’s view on justice with self-interest might not be morally correct. Impartiality is a precondition of justice. We think that justice gives each person her due, it is not merely granting what is in our interest or what our sympathies suggest. Procedures for the fair division of goods have to be impartial, such as the veil of ignorance, which we used to determine the positions of impartial spectators. In fact, the figure of an impartial spectator in ethical theory is a model of a just person. In contrast, choosing one’s notion of justice according to one’s self-interest seems the opposite of being impartial. It might, however, be objected that self-interest and justice need not be as antagonistic as it is popularly assumed. Interests are framed by social context, and people can identify with justice so much that they turn justice into their self-interest. Moreover, some theories of justice include self-interest in their conception of justice. For instance, all theories that rely on welfare or well-being as a measure of a just distribution of goods include the welfare or well-being – hence the interests – of the agent in their consideration. Speaking of self-interest here, I therefore should clarify that I have a peculiar sort of self-interest and self-interested action in mind: domination of others, own welfare without regard for the welfare of others, security at the expense of other agents’ risk. Such kinds of self-interest are familiar enough in the political sphere to be acknowledged as relevant, and they stand in contrast to just political solutions which adequately recognize the interests and moral claims of others.

Of course, it is assumed here that the set of positions from which the agent chooses emerges from behind a veil of ignorance. The positions in question are therefore those of impartial spectators, and any chosen position is therefore in some sense impartial. Why should this not suffice to satisfy the requirements of justice? The point is probably best explained with respect to fair procedures. It is not enough for being overall
fair if a procedure is fair in some of its steps. Partiality in other steps derails the fair processes and renders them unfair all things considered. If a jury’s decision in a criminal case is rigged, the correct evaluation of circumstantial evidence does not save the trial—or its impartiality. In the same way, a self-interested choice of a notion of justice renders the actions of the choosing agent partial. The agent in question is no longer giving justice its due. As outlined, however, the agent’s position as such can be considered impartial because it is one of the possible positions of impartial spectators in the respective case. Yet justice requires more: impartial positions must be assumed for the right moral reasons.

A further complication arises from the fact that many agents, negotiators included, do not consciously choose their views on justice to satisfy their self-interest. Empirical studies only show that an ex-post correlation exists between views on justice and self-interest, which only allows for a subconscious influence of self-interest on our moral positions. Allowing for a conscious influence would conflict with the self-image of most people. Most of us would reckon it unjust to calculatively select a view on justice so as to maximize their self-interest, and thus render such a venture self-defeating. Hence, keeping blinders on with respect to the powers of self-interest enables us to choose a self-interested position as just. However, after its correlation with our self-interest is revealed, the position appears as what it is: biased.

ARGUMENTS FOR

Wait a minute. Is not the position we talk about a possible position of an impartial spectator and hence impartial? The only flaw we found was that the agent chose it for the wrong moral reasons. (Had the agent chosen it behind a veil of ignorance, all would be good). But in the case of a mere correlation of a view on justice and self-interest, the agent does not act for the wrong reasons. Her reason-guided action is directed at finding an impartial or generally morally sound solution, pretty much as it would behind a veil of ignorance. The agent need not assume that her choices are predominantly chosen because of self-interest. That is, her intentions are moral enough. On the whole, therefore, an impartial position is chosen with legitimate intentions. There is nothing morally objectionable here. Take the example of NATO’s expansion to Eastern Europe.
Europe and the strengthening of NATO’s ties with non-NATO countries in what Russia considers its Eurasian backyard. It can be defended on the political-cum-moral principle that sovereign countries are free to engage in military cooperation with any country or alliance that suits them. Of course, applying this principle fits the traditional interests of NATO as conceived in the Cold War era. Is the principle therefore less valid or less eligible? Even from a moral point of view, many observers would hardly think so.

Moreover, the behavior of the agent’s opponents should also be taken into account. Negotiations are strategic interactions, and thus the approaches of others matter for the moral evaluation of an agent’s actions. Some moralists deny that. They demand that we should follow moral laws even if nobody else complies with them. Kant is usually invoked as the patron saint of such views, because he demanded that we always follow the moral law [for him, the Categorical Imperative]. Yet for Kant, the Categorical Imperative does not require us to cooperate in providing goods if nobody else cooperates. Hence, attempts to enlist him as patron saint for naïve moralism are misleading. A robust morality that allows agents to reciprocate uncooperative or hostile behavior is reasonably tenable and probably the only morality suited for real politics and negotiations. In the present case, one can therefore argue that others’ interested views on justice justify the acceptance of interested views on justice by oneself. Like in adversarial competition between two attorneys, justice is served by the equilibrium of antagonistic forces inherent to both positions. As long as complete impartiality of all parties at the negotiating table cannot be guaranteed (and when could it?), a negotiated equilibrium of interested positions is the best justice we can get.

CONCLUSION

These were some arguments for and against the moral legitimacy of interest-based views on justice in negotiations (and more generally in strategic interaction). They offer a taste of a likely outcome, namely that the issue can be argued on both sides, although it should be clear that a full ethical investigation would require deeper argumentation and more space. Nevertheless, we may by way of conclusion shortly reflect on what would be the case if both sides could be reasonably defended. Given the prevalence of persistent disagreement among well-trained moral philosophers on almost all levels of ethical analysis, this is hardly far-fetched. Thomas Scanlon has formulated the widely accepted claim that everybody is entitled to uphold [ethical] positions that cannot be reasonably rejected. Positions on which the best moral philosophers disagree cannot be rejected on grounds that every reasonable person must accept [this is the operational criterion for reasonable rejectability]. Hence, those who argue for the legitimacy of employing interest-based views on justice can legitimately uphold their view as long as reasonable disagreement concerning this issue persists.

We are approaching a point of general relevance here. Under the premises of ethical pluralism and reasonable moral disagreement, legitimacy needs to be assessed on a second level of ethical consideration. That is, it has to be asked which positions are legitimate given that even the best moral evaluators disagree on the legitimacy of positions. As long as this disagreement persists (and it is not going to vanish anytime soon), we seem to be morally free to choose the positions that we consider best for whatever legitimate practical reasons we have, self-interest included. This brings us back to Political Realism. Political Realism advises its adherents to focus on interests in international negotiations. The present considerations suggest that this might be legitimate and prudent even from a moral point of view. A compromise between interests will often be the best way to break a deadlock between rival views on justice.

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