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# Justice as Historic Experimentalism

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## *Theories of Justice after the Pragmatic Turn in Epistemology*

The firm rejection of a dichotomy between theoretical and practical philosophy has always been among pragmatism's core doctrines. In that spirit I intend to demonstrate that the approaches in justice theory can be better understood from a perspective that takes developments in epistemology into account. Based on that demonstration, I try to develop an account of justice that makes use of the latest developments in epistemology. As, arguably, this discipline has experienced a "pragmatic turn" (Bernstein 2010) in recent decades it will barely come as a surprise that I will argue for a reconstruction of justice theory by building on the work of John Dewey. In the following I intend to present the general line of the argument of this 500-page-project, my dissertation project.

To establish the claim of the influence of epistemology on justice theory it is not sufficient to stay in the abstract – e.g. arguing that justice theory is about knowledge and that epistemology clarifies how knowledge can be acquired – but inevitable to retrace the postulated influence in the concrete material. To do so, I divide the vast literature in both disciplines into three different paradigms, respectively, by distinguishing a neoaristotelian, a neokantian, and some first elaborations towards a pragmatic paradigm in justice theory, a hylomorphic, a *bewusstseinsphilosophisches*, (a term borrowed from Habermas which approximately translates to 'philosophy-of-consciousness'), and a pragmatic paradigm in epistemology. I argue that neoaristotelian approaches (MacIntyre, Walzer, and Miller among others) are influenced by the hylomorphic paradigm, the paradigm prevalent in epistemology when the core ideas of such a justice theory were born, that neokantian approaches (Rawls, Nozick, and Dworkin among others) display similarities to the *bewusstseinsphilosophische* epistemology which was created by Descartes and under the throngs of which Kant himself has been, and that, obviously, pragmatic approaches in justice theory are influenced by the pragmatic epistemology.

In order to provide an idea what I mean when I argue that epistemology has influenced justice theory I will pick out one example and exemplify it here, at least to some extent. There are surprising similarities between the method Rawls uses in his theory of justice and Descartes' method in his meditations. Rawls uses a two-stage procedure to deduce his system of principles of justice: In the first step, an imagined situation without a state is constructed in which actors are supposed to decide on the basic principles of justice behind a veil of ignorance, i.e. without knowledge of the concrete circumstances of the society they are about to create and their individual place in it (1971/1999: 118); in the second step, the hereby created vacuum is filled with the establishment of a hierarchical order of principles of justice all the way down to rules and procedures for the concrete application of the principles of justice in the courtroom and in other governmental institutions (ibid.: 174f.). In a methodically analogous way Descartes has used what could be called a two-stage procedure in order to build up his system of knowledge: In the first step an imagined situation is created in which he rids himself of all his knowledge (1641/2008: 47) – just as Rawls imagines a situation without a state in order to get a grip of the perfect state, Descartes imagines a situation without any knowledge at all in order to derive a comprehensive system of knowledge. In the second

Cartesian step the blank state is filled with a hierarchical order of beliefs which constitute absolute knowledge because they are based on two absolutely secure beliefs, namely the existence of oneself (the Cogito) and the existence of God (ibid.: 85-91) – just as Rawls creates a whole system of principles of justice based on two fundamental beliefs, Descartes erects the complete system of knowledge based on a secure foundation of two beliefs. Besides this basic commonality there are obviously differences between Descartes and Rawls. For one thing Rawls does not understand his principles of justice as ontological claims and his two-stage procedure is embedded into the so called reflexive equilibrium. However, these methodical innovations of Rawls also find an equivalent in the bewusstseinsphilosophische epistemology, namely in Quine's theory of ontological relativity (I interpret Quine to be a threshold figure between the bewusstseinsphilosophische epistemology and the pragmatic one). Due to space considerations I can not go into details here, but it shall be mentioned that Rawls himself drew attention to the similarities between his reflexive equilibrium and Quine's theory of ontological relativity (cf. 1971/1999: 507, n. 34).

The outlined similarities between Rawls and Descartes can be regarded as paradigmatic of the way the thesis of the influence of epistemology on justice theory shall be understood: There are similarities when it comes to the methodical procedure of both disciplines whereby a glance at the history of ideas indicates that it is justice theory that takes epistemology as a role-model and not the other way around. It is not claimed, however, that developments in epistemology, such as an understanding of concepts like meaning, empiricism or anything like that, should influence justice theory from a content-perspective; to put it in more extreme terms: there is nothing that could happen in epistemology that would render some principles of justice or some values as more convincing than others, let alone falsify an approach in justice theory. Hence it does not speak against a theory of justice if it is modeled on an epistemology that can no longer be considered a serious contender.

After having established the claim that justice theory has, at least to some extent, always been modeled on accounts in epistemology it is a logical next step to take a look at the latest developments in epistemology in order to improve justice theory, to do explicitly what has hitherto been done implicitly. A look at epistemology reveals that this discipline is now dominated by pragmatism, an epistemological school the nucleus of which was formed by the early Charles S. Peirce in a number of groundbreaking essays published between 1867 and 1878. In opposition to Descartes's epistemology and its start with radical skepticism, Peirce emphasizes the need to inquire into the truth of beliefs only if one is faced with a problem resulting from action: Without „real and living doubts [...] all discussion is idle" (EP I: 115). The early Peirce's program comprises a commitment to a common-sensical approach which questions beliefs only if they no longer yield intended results in actions. With this comes an obligation to a fallibilistic attitude – i.e. a willingness to drop beliefs if they are no longer capable of yielding such results. This attitude is supposed to prevent a dogmatic clinging to currently held beliefs despite the replacement of skepticism by common-sensism. Furthermore Peirce stresses to regard the intersubjective constitution of beliefs in scientific discourse as an important vehicle for the generation of knowledge.

In the meantime the Peircean nucleus has been further developed along two different strands whereby I dub one of these strands 'epistemology in the broader', the other 'epistemology in the narrower sense'. The latter can be regarded as the usual understanding of epistemology, comprising, among other things, the question of how language, truth, and world relate to each other. The former is prior to epistemology in the narrower sense in that it inquires into the biological

conditions of acquiring knowledge. The need to subsume both strands under the heading of epistemology seems to me a natural move for a pragmatist and is advocated in a recent anthology edited by Günter Abel and James Conant (2012). With regards to epistemology in the broader sense, Dewey and William James elaborated on Peirce's nucleus and came up with the so called functionalist psychology that, in turn, led George Herbert Mead to the construction of a social psychology (1934/1969) which explains the emergence of individuals from intersubjective connections within a society in an epoch-making way. Today Mead's work has been elaborated on by the evolutionary biologist Michael Tomasello (2008) and is pivotal for Hans Joas's pragmatic action theory, a theory that comprises an explanation for the emergence of values (1992/1996, 1997). With regards to epistemology in the narrower sense, the development of Peirce's epistemological nucleus ran not as smoothly as in the first one strand. Only after logical empiricism, the last strong school within the *bewusstseinsphilosophische* epistemology, was overcome from within, Peirce's nucleus became visible again. It was Richard Rorty who pointed out that the destruction of logical empiricism relied on the pragmatic approach of Peirce, James, and Dewey (1979/2009). Based on this, a struggle over the correct interpretation of a pragmatist epistemology emerged, a struggle the dissertation will trace by reconstructing the pragmatic positions of Wilfrid Sellars (1963), Karl-Otto Apel (1998, 2011), and the already mentioned Rorty (1989, 1991). It will be argued that merely Sellars's common-sensist position with its emphasis on the possibility for intentional contact with the world does justice to Peirce's nucleus, and, hence, ought to serve as the role-model when laying the ground for a theory of justice that is, from a methodological perspective, established along the lines of a pragmatic epistemology.

In a next step I will reveal that the pragmatic epistemology has already found its way into justice theory. The latest works on justice by Amartya Sen (2009) and Axel Honneth (2011) can be regarded as accounts that are somewhat constructed along the lines the pragmatic epistemology delineates, although both theorists might not be aware of that.<sup>1</sup> The approach of the Indian economist-philosopher as well as the approach of the Frankfurt School theorist comes with a heavy polemic against the Rawlsian theory of justice and its efforts to establish a hierarchical ordering of principles of justice *ex nihilo*, from a state of nature. Instead they argue, first, for starting in the here and now by taking a sociologically informed perspective in order to deal with current problems of society – more heavily emphasized by Sen in his commitment to „realization-based comparisons“ (2009: 8) than by Honneth – and, second, try to make use of the normative structure the society in question is characterized by when it comes to finding the most just solution in a particular situation – more heavily emphasized by Honneth with his Hegelian inclinations than by Sen. One could interpret their approaches as committed to real and living doubts, to use Peirce's terminology: They are merely interested in dealing with actual problems of real societies and not concerned with the physiognomy of the perfectly just society. Moreover, to mention just one of many further analogies between Sen's and Honneth's theories of justice on the one side and the pragmatic epistemology on the other, both reveal a strong commitment to and reliance on real discourses in democratic states which they hold to be a reliable vehicle to find the most just solution to particular problems with a bearing upon justice. Such a commitment is very much in line with the core doctrine of the pragmatic

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<sup>1</sup> That there is a similarity between Sen and pragmatism has been noted by Hilary Putnam who compares Sen to the practical philosophy of Dewey (2002). It is also rather unsurprising that there are similarities between Honneth and the practical philosophy of pragmatism as both share a common forebear, namely Hegel's philosophy of objective spirit.

epistemology in the broader sense, e.g. Mead's claim for the centrality of interaction when it comes to the phylo- as well as to the ontogenetic development of humans.

Based on the pioneering work of Sen and Honneth I intend to fully flesh out a justice theory that makes use of the methodical moves and conceptual innovations the pragmatic epistemology holds ready, doing explicitly what has been done implicitly by Sen and Honneth. I argue that a development of their theories could be achieved by a loose connection to Dewey's theory of inquiry which Dewey considered as a program for all sorts of very different action problems (LW 12). Developing core ideas of this theory with regards to political philosophy in general and justice theory in particular would lead to an approach in justice theory that consists of four elements, so I will argue. Within the limits of the current occasion I can merely give a very short overview of these four elements:

I call the first element 'creative democracy'. Problems with a bearing upon justice should be the starting point of any theory of justice and ought to be considered as emerging within societal contexts. Thereby the aim should not be to try to mute such problems from the get-go by trying to subsume solutions to any problem with a bearing upon justice under the fiction of a perfectly just institutional structure. The goal should rather consist in a commitment to criticizing existing structures in order to detect shortcomings so that a creative democracy can develop better practices. Within such a democracy the aim of philosophy mostly consists in detecting such problems by being vigilant to implicit or explicit complaints raised in society. As such complaints are mainly raised by minority groups the oft-demanded fraternization of philosophy with the weak and wounded is to be found here. This element will draw inspiration mainly from Dewey's *The Public and Its Problems* (LW 2).

The second element is what I will refer to as 'historic experimentalism'. It looks for richer descriptions of societal problems by regarding history as a laboratory for experiments in justice. The idea is that the best way to deal with problems of justice is not by taking a look at which options of action a society currently has and then trying to determine which of these is most conducive to our principles of justice; the idea is rather to learn from the past – a possibility very much downplayed by political philosophy over the last decades – by taking a look at the genealogy of a societal problem with a bearing upon justice and by taking a look at how we or others have dealt with similar problems in the past and why this has worked or not. Such former ways of dealing with problems can be regarded as experiments in justice – explorative experiments instead of the test experiments familiar from the natural sciences, to use a differentiation by Steinle (2005). The idea is to make use of experiences societies have made in the past in order to get a grip on problems with a bearing upon justice. This element will draw inspiration mainly from later work of Dewey, work that exists only in a programmatic way but has not been developed (LW 17: 351-360; LW 1: 330-364).

The third element I dub 'instrumental applied ethics'. It is assigned with delivering tentative solutions to the pressing problems. The idea is to come up with hypothetical sentences in the sense of 'if you want to be true to norm x you should do action a'. The hope thereby is that philosophy can come up with a set of possible solutions without being insensitive to different, maybe even conflicting perceptions of the problem of justice. At the same time, the role of philosophy is not seen in providing final solutions but rather in enriching democratic deliberations between citizens. This element will draw inspiration mainly from the third part of Dewey's later *Ethics* (LW 7).

The fourth element I call a 'forward-looking identity politics'. It is somewhat to be understood as providing a cultural memory of the different paths that have been taken by particular societies and of the different ways it has dealt with problems in order to shape a shared identity as the basis for political communities. It is connected with the first element of the outlined theory of justice in that the narrative of a society this element comes up with is, again, up for criticism. Far from intending to be self-congratulatory of the achievements of a particular society, the fourth element tries to facilitate self-criticism in that it makes explicit, and thus more easily attackable, the norms that are behind a political community's practices. This element will draw inspiration mainly from Dewey's *A Common Faith* (LW 9).

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