IMPARTIAL JUSTICE:
CONDITIONS AND IMPLICATIONS

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Institutions in Context: Inequality
Workshop 2013, Tampere
OUTLINE OF THE PRESENTATION

1. Main questions
2. Definition of impartiality
3. Type of impartial procedures
4. The separateness of persons assumptions and outcomes of impartial decisions
5. Conclusions
MAIN QUESTIONS

What is impartiality?
What are the implications of impartiality?
WHAT IS IMPARTIALITY?

• An impartial choice position is used as a heuristic device in argumentation on behalf of a certain idea of justice.
• The idea of justice is defined as if it would be the result of an impartial decision making procedure.
DEFINITION OF IMPARTIALITY

- For two individuals i and j and two social positions $s_1$ and $s_2$, an impartial decision making procedure requires that
  - $s_1$ and $s_2$ cover all relevant positions
  - the procedure is independent of whether i is in $s_1$ and j in $s_2$ or the other way around.
- Impartiality implies that h’s relationship to i and j cannot influence her/his impartial judgment
A “PROBLEM” WITH IMPARTIALITY

• The concept as such does not entail a specific characterization of an impartial choice situation that would entail specific principles of justice.

• Impartiality has been given various characterizations and it has been used as a justification for many types of views about justice.
The specific principles derived from an impartial situation depend on the characterization of the situation as well as on certain additional features connected to the choice situation.
### Classification of Impartial Procedures

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<tr>
<th>Time of decision</th>
<th>Target group</th>
<th>Outsider</th>
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<tr>
<td><strong>Ex ante</strong></td>
<td>Rawls</td>
<td>Harsanyi</td>
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<td><strong>Ex post</strong></td>
<td>Scanlon</td>
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<td>Sen</td>
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John Rawls: Theory of Justice, 1971
Thomas Scanlon: What We Owe to Each Other?, 1998
Amartya Sen: The Idea of Justice, 2010
TARGET / EX ANTE: RAWLS, HARSANYI

- Veil of ignorance (Rawls); veil of uncertainty (Vickrey, Harsanyi, Buchanan and Tullock)
- Rawls justifies his principles of justice by the choice of people behind the veil of ignorance
- Veil of ignorance
  - Parties do not have information on those characteristics that distinguish them from others
- A need to imagine oneself in each position
- Choice behind VI: Rawls’s principles of justice
RAWLS’S ASSUMPTIONS

- Veil of ignorance
- Rationality
- Preferences for more primary goods
- Maximin rule
- Equal bargaining power
TARGET / EX POST: SCANLON

- Justification of moral principles
- Outcome: agreement on principles nobody can reasonably reject
SCANLON: ASSUMPTIONS

• Reasonableness: interest not only in one’s own ends but also in the ends of other people
• A desire to reach agreement on principles of morality; justifications that others’ can accept as well
• No veil of ignorance
• Equal bargaining power
TARGET / EX POST: SCANLON

- To evaluate reasonable rejection: the need to put oneself in others’ position.
- What counts as reasonable? (fairness/avoiding harms)
- Reasons should relate to agents in certain positions (e.g. a single mother), not general/universal moral principles
Impartial spectator: An outsider, who does not have own interest in the issue

- Judges, referees, impartial spectator (Smith)
- Rationality, benevolence
- Impartial spectator represents open and closed impartiality
- Decides the distribution of capabilities
- Sen does not define a specific set of principles as the spectator’s decision
WHAT ARE THE OUTCOMES OF AN IMPARTIAL PROCEDURE

- Specific assumptions about the impartial decision making situation determine, to a large extent, the outcomes.
- Does impartiality restrict the possible set of outcomes?
- How does it restrict the set of outcomes?
SEPARATENESS OF PERSONS

- Taking account of and respecting each individual as a separate person
- SOP has been represented as an argument against utilitarianism which allows the sacrifice of certain individuals’ interests for the sake of the general good.
JUSTIFICATION FOR SOP

- It is justified for one person to sacrifice her/his happiness for the sake of her/his later pleasures.
- It is all right to volunteer in making sacrifices for the sake of other people.
- What is not all right is that a society obliges part of the people to make sacrifices for the sake of others (Rawls).
The perfectly sympathetic spectator experiences the pains and pleasures of the target group, i.e. those that will be affected by the principles, and tries to maximize the net balance of pleasures and pains.

The impartial spectator is able to do this because s/he feels the pleasures and pains of others in her/himself as one person.

The problem with this approach, according to Rawls, is that it fails to respect SOP.
• Brian Barry (1995): the choice behind the veil of ignorance actually reduces to the choice of one randomly chosen individual because the parties behind the veil are clones – they have the same information about general facts and do not know anything about those things that separate one from the other.

• Choice of utilitarianism and violations of SOP possible.

• Barry: Only *ex post* contracts guarantee SOP.
• Iwao Hirose (2007): Ex post contracts could violate SOP because they allow some forms of aggregation
• However, unrestricted utilitarianism could not be the choice of ex post contractual parties
• What is relevant in the contractual scheme?
  • the power to veto violations of basic rights and vital interests
CONCLUSION

- Various concepts of impartiality share the idea of seeing things from all relevant perspectives
- Impartiality as such is indeterminate
- The operationalization of the impartial situation and additional assumptions mostly determine the outcomes of an impartial procedure
- Impartiality rules out unirestricted utilitarianism only if operationalized as an ex post contract