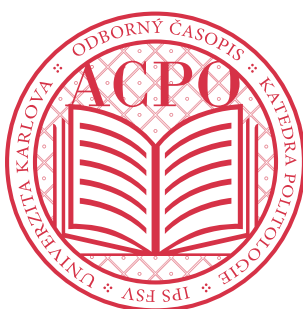


ACTA POLITOLOGICA

www.acpo.cz

RECENZOVANÝ ČASOPIS | PEER-REVIEWED JOURNAL

2017 | Vol. 9 | No. 1 | ISSN 1803-8220



BOOT, Martijn (2017). Does Value Pluralism Prevent Consensus on Justice? *Acta Politologica*. Vol. 9, no. 1, pp. 3-16.

Tento článek podléhá autorským právům, kopírování a využívání jeho obsahu bez řádného odkazování na něj je považováno za plagiátorství a podléhá sankcím dle platné legislativy.

This article is protected by copyright. Copying and use of its content and presenting it as original research without proper citation is plagiarism, which is subject to legal sanctions.

Katedra politologie Institutu politologických studií
Fakulta sociálních věd Univerzity Karlovy

Department of Political Science, Institute of Political Studies
Faculty of Social Sciences, Charles University

Does Value Pluralism Prevent Consensus on Justice?

*Martijn Boot*¹

Abstract:

This paper discusses the consequences of value pluralism for the possibility of achieving consensus on justice. Justice is a multifaceted concept. Its multiple aspects are related to plural values, which may conflict mutually. Besides, elements of justice may clash with other weighty human values. If these conflicts occur, many philosophers believe that we should weigh the relevant demands of justice against each of them or against other important human values. However, under particular conditions, incommensurability of the relevant plural values prevents the assignment or determination of objective and impartial weights. In those cases, an impartial or objective ranking, or the right balance, do not exist. People may recognize the same universally valid human values, principles of justice and human rights. Achieving consensus on all important questions of justice is nevertheless unlikely, due to the problem that there seems to be no right or single right and determinate balance and ranking of these plural and universally valid but sometimes conflicting values and ethical demands.

Key words: *conflicting justice; conflicting values; consensus; ethical deficit; ethical dilemma; incommensurability; fourth value relation; 3NT; incomplete justification; indeterminability; value pluralism*

Introduction

This paper discusses the consequences of value pluralism for the possibility to achieve consensus on justice. Justice is a multifaceted concept. Its multiple aspects are related to plural values, such as basic liberties, non-discrimination, protection of privacy and fair distribution of welfare. Some of these aspects may conflict mutually. Besides, elements of justice may clash with other weighty human values, such as public security, economic growth and efficiency, in the distribution of advantages.

Many philosophers believe that if these conflicts occur we should weigh the relevant demands of justice against each other or against other important human values. I will argue that under particular conditions, incommensurability of the relevant plural values prevents the assignment or determination of objective and impartial weights. In those cases, an impartial or objective ranking, or right balance, do not exist. I will illustrate and support this claim by giving concrete examples.

People may recognize the same universally valid human values, principles of justice and human rights. I will argue that, nevertheless, achieving consensus on all important questions of justice is unlikely, due to the above-mentioned problem that there seems to be

¹ Martijn Boot is an associate professor at the Faculty of Political Science and Economics, Waseda University, Tokyo, Japan. Contact: m.boot@balliol.oxon.org.

no right or single right and determinate balance and ranking of these plural and universally valid but sometimes conflicting values and ethical demands.

Before investigating the question whether value pluralism prevents consensus on all important questions of justice, and before presenting my argument, I will first define and clarify some concepts and assumptions.

What is Value Pluralism?

Value pluralism can be explained by distinguishing it from value monism. Value monism is the view that there is only one ultimate value. For instance, according to classical utilitarianism, all human values can be reduced to a common value – utility in the sense of pleasure or happiness. In this view, values, such as justice, friendship, knowledge and so on, are valuable only in so far as they promote pleasure or happiness; and all options can be measured and compared by this common one-dimensional measure, which enables us to determine in principle a right answer to every value question and question of justice.

According to value pluralism, at least some human values, including some moral values, are ‘irreducible’, ‘incommensurable’ and ‘incompatible’ (or ‘incompletely compatible’) in the following senses:

- i. *Irreducibility*: Values are irreducible if they cannot be reduced to each other or to a common value without distorting their meaning or losing something of specific value.
- ii. *Incommensurability*: Values are incommensurable if they cannot be measured and compared by a common one-dimensional measure.
- iii. *Incompatibility*: Values are incompatible if they cannot be (optimally) realized simultaneously.

According to value pluralism, certain values are generically human. Some human needs are more or less stable; they are universally present and do not significantly change over time. Because of our shared biological nature, human beings share certain basic values, such as the need for adequate shelter and nutrition. Human well-being can be harmed without the protection of basic rights (such as the right to life, the right to a fair trial, the right to privacy, the right to self-respect) and basic liberties (such as freedom of expression, freedom of religion, freedom of conscience, freedom of movement, freedom from slavery, and security). These rights and values are universal; they apply to persons in virtue of their humanity. If they are frustrated or violated, a worthwhile human life is harmed or threatened, wherever it is lived.

Now, this does not mean, according to value pluralism, that the relevant universal values can always be combined harmoniously. They may conflict mutually, or clash with other important values. As we shall see, the same applies to the ‘values of justice’. According to Isaiah Berlin: “... *not all good things are compatible, still less the ideals of mankind*” (1969: 167). If Berlin is right, not all values (including moral values) can be optimally realized within one society due to possible conflicts between these values. Thomas Nagel (2001: 106) also believes that different views on the preferred organization of the society often represent competing values that cannot be completely reconciled. He argues that there are alternative good societies that realize to different degrees the different values of

freedom, equality, individualism, economic growth, social coherence, care for the poor and the needy, preservation of nature, development aid and so forth. Such values may conflict: “Values in many cases clash with one another because their realizations are to some degree incompatible.” John Rawls (1996: 197, fn. 32), referring to Isaiah Berlin, expresses a similar view: “[T]he full range of values is too extensive to fit in any one social world; [...] there is no social world without loss [...]. The basic error is to think that because values are objective and hence truly values, they must be compatible. In the realm of values, as opposed to the world of fact, not all truths can fit into one social world.”

If they are right, the incomplete compatibility of values means that, although they are universal, societies have to choose between different realizations of these values, and each choice entails not only a possible gain but also a possible loss in value.

In what follows, I will further explain what incommensurability and incompatibility of values entail for the comparability of options and the justification of choice. For now, I would like to point out that under certain conditions the incommensurability of conflicting valuable alternatives prevents us from determining impartially and objectively a right or single right answer to the question as to which option should be chosen.

Justice

Justice is a multifaceted concept.² The multiple elements of justice are related to plural ethical values, which justice is expected to protect. These values are, for instance, basic liberties, personal privacy, equal opportunities, equal distribution of welfare, legitimate entitlement, concern for the worst-off and desert. Some of these values may conflict mutually. Besides, they may clash with other human values that are not elements of justice (or only indirectly related to justice), such as growth of welfare, efficiency and public security.³

Because these values may conflict, requirements of justice may conflict as well, in at least two different ways:

- 1) the requirements of justice may conflict mutually. Let us call them ‘internal conflicts of justice’;
- 2) the requirements of justice may conflict with other human values. Let us call them ‘external conflicts of justice’.

On the face of it, the idea that requirements of justice may conflict mutually is perplexing. Justice is usually conceived as a virtue that resolves rather than creates conflicts. Still, the idea of conflicting justice is not new. About 2500 years ago, the pre-Socratic philosopher Heraclitus claimed that ‘δίκη ἔρις’, ‘justice is conflict’.⁴

²The multifaceted nature of the concept of justice is accepted by at least the following theorists: Cohen 1989, 2008; Rawls 1996, 1999; Sandel 2009; Sen 1992, 2004.

³Some may think that what I view as another weighty human interest, is in fact an aspect of justice. If so, then the relevant aspect may still conflict with another important value of justice if justice is not one value but several. In that case, it would represent an internal conflict of justice. If an example is questioned, we can change it for another one. My argument does not rely on a particular example but only on the plausibility that some conflicts of values constitute external conflicts of justice.

⁴Heraclitus, fragment 80. McKirahan (1994).

Heraclitus's writings are difficult to fathom, but his remarkable statement seems to mean not merely that elements of justice may *contingently* conflict, but that conflict is the very *essence* of justice; that is, justice is constituted by a tension between competing and conflicting principles, which are in a continuous interaction and strife.⁵

More recent thinkers have also pointed out possible tensions within justice itself. John Stuart Mill argued that justice is not one principle but many; and that these principles do not always coincide in their dictates (Mill 2002: 99). Henry Sidgwick arrived at a similar conclusion: "*the different elements included in the notion of Justice are continually liable to conflict with each other*" (Sidgwick 1981: 447).

As to external conflicts of justice, H.L.A. Hart argues that justice is not the only thing that matters. Justice competes with other virtues (Hart 1997). Similarly, political theorists of different directions of thought, such as William Galston and Gerald Cohen, argue that justice may conflict with other human values in such a way that justice does not always unambiguously outweigh other human values (Galston 2002: 5; Cohen 2008: 304).

Utilitarian philosophers such as Mill and Sidgwick have tried to resolve conflicts of values and conflicting aspects of justice by adopting a single criterion or principle for the assessment of the comparative worth of competing goods and rival claims. According to them, the acceptance of several principles would fail to resolve the conflict, if one side of the conflict is superior according to one principle and the other according to another principle. Mill and Sidgwick regard utility as the ultimate criterion for all our decisions with respect to human goods and moral values, including justice.

However, it is implausible that we can reduce all elements of justice to the single criterion 'utility' (Rawls 1999; Nagel 1979; Ross 1930, 2002; Williams 1973). If so, we need another way to resolve the internal and external conflicts of justice.⁶

Justice, Weighing and the Problem of Justified Choice

Philosophers generally regard the weighing up of competing human values and normative principles as a way to answer the question what is the right thing to do.⁷ Similarly, when claims of justice conflict, it seems plausible that we have to weigh the competing values of justice against each other in order to be capable of resolving the conflict.

In his magnum opus *A Theory of Justice*, John Rawls argues that "*the assignment of weights is an essential part of a conception of justice*". He emphasizes that justice requires "*a proper balance*" between competing claims and principles and that it is important to know how they "*are to be assessed and their relative weight determined*" (Rawls 1999: 9, 37; Rawls 1999a: 361). Ronald Dworkin (1978: 26) similarly argues that if we want to resolve conflicts between principles, we have "*to take into account the relative weight of*

⁵ Cf. Hampshire (2000).

⁶ Conflicts *of* justice have to be distinguished from conflicts *on* justice – that is, interpersonal disagreements and disputes on what justice requires. My aim is not so much to discuss these latter conflicts about justice but, rather, to discuss tensions within justice itself, and between justice on the one side and other weighty human values on the other. Still, I will briefly explain how disagreements *about* justice may reflect conflicts *of* justice.

⁷ See, for instance, John Broome's *Weighing Goods* (1995), *Ethics out of Economics* (1999) and *Weighing Lives* (2004) in which he discusses many insightful and plausible examples of the need to weigh competing values or goods against each other in ethics, politics and economics. Other leading philosophers who emphasize the importance of weighing are mentioned below.

each". James Griffin (2008: 66) thinks that if the resolution of conflicts between rights is not to be arbitrary, "one must know how to attach weight to them".

Apparently, many philosophers regard weighing, assignment of relative weights and looking for the right balance as requirements for resolving several conflicts of values and tensions between competing ethical principles and moral demands. However, this presupposes that in a given context 'relative weights' and 'right balances' do exist and can be determined, or that they can be assigned.

I will argue that in some cases incommensurability of competing claims of justice and other weighty human values may prevent the determination of objective relative weights. In those cases, the answer to the question which side of the conflict is right cannot be impartially determined via weighing. This means that not all values of justice and other ethical values can be completely ranked.

As I hope to show, in several internal and external conflicts of justice, reason does not show an objective and determinate fact about the relative weights of the relevant incommensurable values. This entails that we cannot determine in several internal and external conflicts of justice whether one claim impartially and determinately outweighs the other. ('Impartial' in the sense of not depending on a specific personal belief, predilection, or opinion; 'determinately' in the sense of 'definitely', 'decisively', 'unambiguously', 'not arbitrary', 'objectively determinable'). I will argue that the cause of this indeterminacy is *not* that the claims have roughly equal weights but because, in the relevant cases, it is neither true that one claim outweighs the other, nor is it true that they have equal weights or roughly equal weights.

We will see that in this kind of conflicts of justice, the justification of the final decision cannot avoid to be partial in the double sense of biased and incomplete. In those cases, each decision will be more or less 'arbitrary' because it will act against reasons that cannot be said to be outweighed by the reasons in favour of which the decision is taken. The result is an ethical dilemma in which neither decision seems capable of avoiding an injustice or an 'ethical deficit'. The dilemma will also make it likely that different reasonable and rational people will make different decisions in the relevant conflict of justice and, consequently, it will prevent achieving consensus on what is the right thing to do.

Examples

I will give two examples of possible conflicts of justice.

Example 1: possible internal conflict of justice

Equality, concern for the worst-off, desert, merit and legitimate entitlement are widely regarded as elements of justice (Raphael 2001). These elements may clash (MacIntyre 1984: 244-5; Sen 2006: 224; Sen 2009: 12-15; 57-8; Raphael 2001: 195, 185, 218, 241). Consider the following concrete example of a possible tension between a distribution of advantage according to legitimate entitlement and desert on the one side and a distribution of advantage according to equality, need and concern for the worst-off on the other side.⁸ Robert works hard to save money from his earnings to buy a modest house. He finds his project threatened by rising taxes. He claims that nobody has a right to take away what he

⁸ I borrowed this example from MacIntyre (1984: 244-245).

has earned through hard work and acquired legitimately. Gerald, by contrast, is impressed with the arbitrariness of the inequalities in the distribution of wealth. He thinks that redistributive taxation to improve the well-being of the worst-off is what justice demands. If a claim based on legitimate entitlement and desert and a claim based on equality and concern for the worst-off are both claims of justice, and if these claims pull in different directions, we are confronted with incompletely compatible claims of justice and a possible conflict of justice.⁹

Example 2: possible external conflict of justice

Residents near Heathrow Airport made a claim against the Government that the flights and noise levels at night were an unjustifiable interference with their private lives.¹⁰ This claim concerns the 'right to privacy', which clashes with significant economic interests connected with the nocturnal flights. Interestingly, two different courts arrived at opposite conclusions with respect to the question which party should be put in the right. The Chamber of the European Court of Human Rights decided in favour of the right to privacy and put the residents near Heathrow Airport in the right. However, on appeal, the Grand Chamber decided in favour of the economic interests and put the Government in the right. So, the judges disagreed about the relative weights of the two sides of the conflict, and, as a consequence, they disagreed about which side should be put in the right. We will investigate whether this disagreement about justice may – at least partly – reflect conflicts of justice itself, based on a clash between the underlying values.

Weighing Values and Reasons

On the face of it, the conflicts under consideration seem to be capable of being resolved by weighing the relevant conflicting values against each other. The weighing of competing values seems to be an essential characteristic of justice. This is also symbolized by the attributes of Lady Justitia – the scales, the blindfold and the sword: they indicate that justice concerns a weighing procedure that should result in a balanced, impartial and decisive judgment. However, the metaphor of weighing conceals an important but often unnoticed difference between two distinct kinds of weighing. Weighing objects on a real pair of scales differs fundamentally from weighing values and reasons in the following sense. If we weigh two physical objects *A* and *B* on a real pair of scales, there are not more than *three* possible outcomes: (1) *A* has more weight than *B*, (2) *A* has less weight than *B*, and (3) *A* and *B* have equal weight. This entails that if neither object outweighs the other, they must have *equal* weights.

By contrast, if we weigh values and reasons this need not be the case. If we weigh two conflicting values *A* and *B*, there is a *fourth* possibility. This fourth possibility is characterized by the following triple negation. It is (1) *not true* that *A* outweighs *B*, (2) *not true* that *B* outweighs *A*, and (3) *not true* that *A* and *B* have an equal weight. I call this fourth

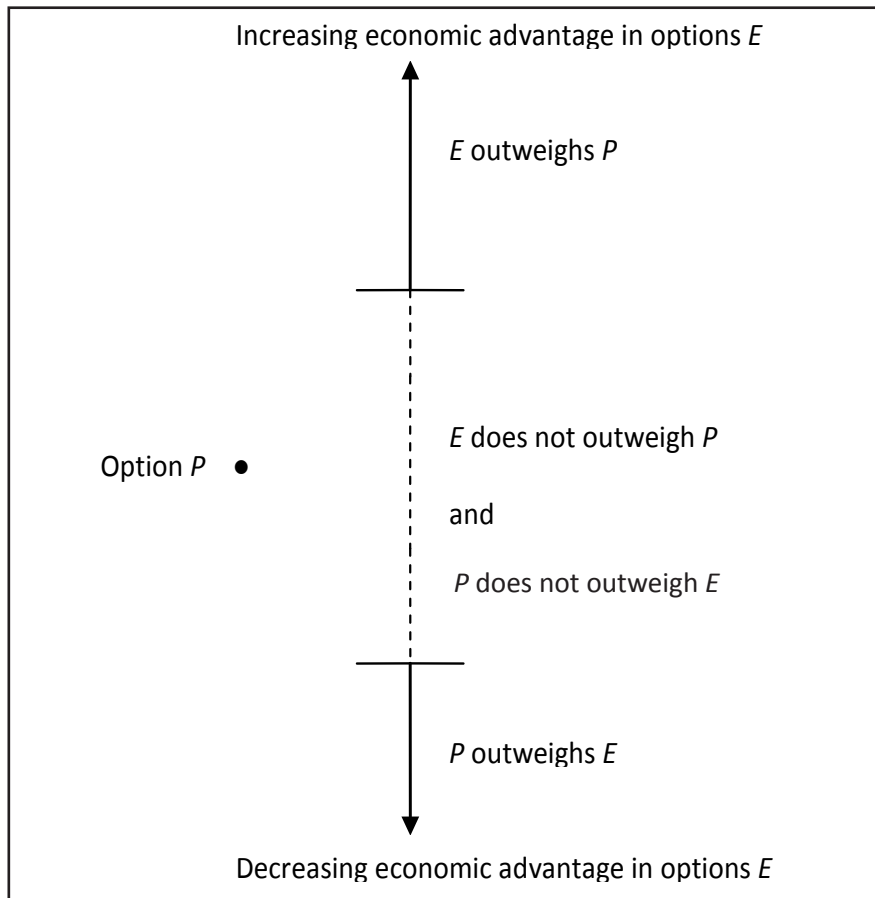
⁹ As Raphael (2001: 218) argues, (partial) incompatibility between two supposed claims of justice “*is no reason to deny the validity of either as a species of justice*”.

¹⁰ I derived this case from Clapham (2007: 114-115).

possibility '3NT', which is short for 'triple-not-true'. It entails that although *A* and *B* do not outweigh each other, they still do not have equal weight either.

To clarify this paradoxical fourth possibility, let us return to the example of Heathrow Airport. The judges had to weigh the right to privacy of the residents against significant economic interests. Call the right to privacy 'option *P*' and the economic interests 'option *E*'. Let us apply to our Heathrow Airport example John Broome's so-called 'standard configuration', in order to get more grip on this question (Broome 1997).

Scheme 1: Privacy option (*P*) versus Economic option (*E*)



Source: Author.

Privacy option *P*, that is the option that prohibits the night flights, is taken as the *standard*. This option is compared with a chain of different economic options *E*. Economic welfare in all these options *E* is larger than in option *P*. The larger economic welfare of these economic options is the result of allowing the night flights, which are at the cost of the residents' privacy. In the lower part of the chain, the economic welfare of the economic options *E* is only a little bit larger than in option *P*. Along the chain in an upward direction, the economic advantage of the *E* options gradually increases so that, in the upper part, the difference in welfare between the *E* option and the *P* option is very large.

Let us assume that in the upper part of the chain most, if not all, people agree that those economic options *E* should be chosen rather than the privacy option *P*, because they

agree that the enormously larger amount of economic welfare in these options make it plausible that we should choose them rather than option P .¹¹

Conversely, in the bottom part, the economic options E have less weight than option P because, in those options E , there is only a very small economic advantage compared to option P , while the loss of privacy in E is significant. Let us assume that with respect to these options, most, if not all, people will agree that option P should be chosen rather than the relevant E options.

Now, *between* the upper and lower part, there is a range where neither option seems to outweigh the other. I have indicated this range by a broken line. Unlike in the case of physical objects on a real pair of scales, this need *not* mean that, in this range, P and E have equal weight, not even roughly equal weight. This can be shown in two different ways: first, by what I call the *large improvement phenomenon*; and second, by intuition and common sense.

The '*large improvement phenomenon*' is the following. Take an option E_1 , which, compared to P , represents a significant welfare advantage (for instance, GNP 2, other things being equal). Suppose we conclude that E_1 does not outweigh P , and vice versa. This does not necessarily mean that E_1 and P have equal weight, as can be shown as follows. Take an option E_2 in which the welfare benefit is considerably improved compared to option E_1 (for instance, GNP 4 instead of 2, other things being equal). Suppose we conclude again that this considerably improved option E_2 does still always not outweigh P . In that case, it is not true that (non-improved) option E_1 is equally good, or has equal weight, as P . Indeed, if this would be the case, and we largely increase the welfare benefit of E_1 (in this example we increase the welfare benefit by 100%), then the improved option E_2 must be significantly better or weightier not only than E_1 but also than P . However, this 'transitivity' does not occur. Joseph Raz speaks of "*the failure of transitivity*" (Raz 1986). This '*large improvement phenomenon*' makes it plausible that it is not true that E_1 and P are equally good or have equal weight, not even roughly equal weight. The large improvement phenomenon supports the thesis that the right to privacy and economic benefit represent incommensurable values.

Also common sense and intuition make it plausible that the relevant options do not have and cannot have equal weight – not even roughly equal weight. Common sense shows us that there cannot be an equivalence relation between incommensurable values. This follows, nearly self-evidently, from the nature and definition of incommensurability. Incommensurable values can be defined as follows: two values are incommensurable if they have different dimensions so that their amounts cannot be measured and compared on a common cardinal scale of units of value. This characteristic of incommensurability makes the existence of an equivalence relation between incommensurable values very implausible. Absence of an equivalence relation means that no amount of one value is equal in value to any amount of the other. In the example under consideration, the incommensurable values are 'economic growth' and 'privacy'. This means that no amount of economic welfare is equivalent to any amount of privacy.¹² In other words, the amount of privacy represented

¹¹ Whether the agreement of the people is based on an objective fact, which shows that these options E in the upper part of the chain should be chosen because they definitely outweigh option P , remains to be seen. See the discussion below.

¹² The phenomenon of being "*neither better (or weightier), nor worse (or less weighty), nor equally good (or of equal weight)*" is described by several theorists. Each theorist has given a different name to this interesting 'fourth value-relation'. John Broome calls it 'vagueness' (ibidem), Ruth Chang (1997: Introduction; 2002: 659-688)

by option *P* in the standard configuration is not equivalent to any amount of economic advantage represented by options *E*. The heterogeneity of incommensurable values makes the existence of an (even rough) equivalence highly implausible. As W.D. Ross argued more than half a century ago, it is unintelligible how any amount of a particular value could be equal in value to any amount of a different value, if the two values are incommensurable (Ross 1950: 154).¹³

Incommensurability and '3NT' are sometimes explained as 'vagueness' or 'impreciseness'. I think this is not correct – or at least confusing. Also John Broome (whose way of reasoning I partly adopted when I presented his so-called 'standard configuration') explains problems of incommensurable values in terms of vagueness. I think that the terms 'vagueness' and 'impreciseness' are difficult to reconcile with the large improvement phenomenon. The large improvement phenomenon is an indication of what I call 'incomplete comparability' rather than vagueness and impreciseness. Still, it is not very important how we call 3NT because implications of 3NT for rational and ethical decision-making do not depend on the interpretation of 3NT but on 3NT itself (Boot 2009).

Let us now return to the Heathrow Airport example. The judges had to determine whether the relevant privacy outweighs the relevant economic interests or *vice versa*. This can be determined if one can answer the following key question: 'Which amount of economic advantage outweighs which amount of decreased privacy?' The answer can be found if it is possible to determine the relative weights of the competing values; that is, if it is possible to determine which amount of one value is (roughly) *equivalent* to which amount of the competing value. In that case, we can determine which option outweighs the other. However, we have seen that if the relevant values are incommensurable, it is implausible that an equivalence relation exists. In the relevant cases, this makes a determinate and impartial weighing impossible and seems to mean that the final choice may become more or less arbitrary.¹⁴ The possibility of indeterminateness and arbitrariness seems to be corroborated by, and is mirrored in, rival decisions by different courts of justice in one and the same human rights conflict.¹⁵ In the Heathrow Airport example, the Chamber of the European Court of Human Rights favoured the privacy of the residents near Heathrow Airport. However, on appeal, the Grand Chamber put the Government in the right because of the putatively weightier economic interests. These conflicting judgments are to be expected with respect to options that cannot be completely compared and completely ranked. Where the law and reason do not give unambiguous guidance and under-determine the decision – thus, where the fourth value relation applies and where rationally

'parity', Derek Parfit (1997: 202-221) 'imprecise equality' and Joseph Raz (1986: Chapter 13) 'incommensurability'. I myself prefer the terms 'incomplete comparability' and 'indeterminateness' because they indicate that the comparative weight of the options in the relevant range is indeterminate. That the range of indeterminateness may be *wide* rather than narrow is confirmed by Broome, Chang, Parfit and Raz.

¹³ Aristotle (1978: 185) succinctly summarizes the problem: Without commensurability, no equality. Only strict trichotomists assume the existence of a level of equivalence between heterogeneous values. In Chang (1997) only one of 13 leading contributors, Regan (1997), adheres to the trichotomy thesis (the thesis that there are only three positive value relations: 'better than', 'worse than', and 'equally good as').

¹⁴ Ruth Chang would say that the final decision depends on 'the will'. 'Reflections on the Reasonable and the Rational in Conflict Resolution', *Proceedings of the Aristotelian Society Supplementary Volumes* 83, 2009: 133-160. See also her *Making Comparisons Count*, Dissertations in Ethics (New York: Routledge, 2001), p. 172.

¹⁵ Cf. Clapham (2007: 114): "There is plenty of room for different people, different judges even, to come to different conclusions."

determinable relative weights do not exist – personal intuitions and beliefs, predilections and opinions may significantly influence the outcomes of the judges’ judgments. This is confirmed by a large-scale empirical study amongst US judges: in the relevant cases, their judgments and assessments of comparative weights “*may considerably differ and strongly depend on their political and ideological backgrounds*” (Sunstein et al. 2006).

The problem can be summarized as follows: there is no principled way for decisively and impartially weighing claims based on conflicting and incommensurable values.¹⁶ This conclusion is of great importance with respect to decision-making in conflicts of justice. It means that there is no determinately right answer to the relevant conflicts over a wide range of different realizations of the relevant values.¹⁷

Thus, the judges in the Heathrow Airport example were confronted with an ethical dilemma, in which neither decision was capable of avoiding an injustice or ‘ethical deficit’. The dilemma may also explain why the judges of the different courts made different decisions in the same conflict of justice and why there was no consensus on what was the right decision.

Overlapping Consensus

A prevalent belief is that growth of knowledge and the use of reason will finally resolve conflicts of values and lead to convergence of judgments and consensus. This might mean that rational and reasonable deliberation – detached from merely personal beliefs, interests, predilections and opinions – results in agreement on how conflicts of justice should be resolved. This agreement must be seen as a so-called ‘overlapping consensus’, which is not based on one specific metaphysical, moral or philosophical foundation but can be supported by different reasonable comprehensive beliefs. Rawls’s devices of the ‘original position’ and the ‘veil of ignorance’ and the use of public or impartial reason amongst free and equal citizens might lead to an overlapping consensus on the ranking of the values of justice. If we assume that this can be achieved *within* a liberal democratic society, it is conceivable that consensus *between* liberal democratic societies will be achieved as well. Charles Taylor argues as follows with respect to the question of what it would mean to come to a genuine, unforced international consensus’ on justice:

“[He supposes] it would be something like what Rawls describes in his Political Liberalism as an ‘overlapping consensus.’ That is, different groups, countries, religious communities, and civilizations, although holding incompatible fundamental views on theology, metaphysics, and human nature, and so on, would come to an agreement on certain norms

¹⁶ Cf. MacIntyre (1984: 246).

¹⁷ Because the relevant issues concern incommensurable conflicts of justice, a coin flip or a lottery would not resolve the issue in a single right way. Besides, one could argue that important issues of justice should not be dealt with via a coin flip, a method where not reason but randomness determines. Also, because the conflicts concern justice, a majority rule or aggregation of opinions would not resolve the relevant issues in the right way. Justice based on changing majorities lacks stability, predictability and equal treatment of equal cases. Further, minorities who have a legitimate claim in a conflict of justice will be disadvantaged by the power of the majority. A majority-based outcome would confirm Thrasymachus’ view in Plato’s *Republic* that ‘justice is the advantage of the stronger’.

that ought to govern human behaviour. Each would have its own way of justifying this from out of its profound background conception. We would agree on the norms while disagreeing on why they were the right norms, and we would be content to live in this consensus, undisturbed by the differences of profound underlying belief.” (Taylor 1999: 124)

However, if my argument is correct, then an overlapping consensus on more than basic justice is unlikely, even in principle. I think that the difficulty to achieve consensus is, to a large extent, caused by three characteristics of justice itself:

1. Justice is a multifaceted concept.
2. The multiple aspects of justice generate manifold directives, which may lead to conflicting demands.
3. The competing aspects and demands of justice are incommensurable so that their comparative weights are not always rationally, impartially and objectively determinable.

These characteristics easily lead to conflicts of justice itself, that is, clashes between rival demands of justice, which are not always rationally resolvable, even not in principle. Even removal of all human shortcomings such as insufficient knowledge, non-compliance, bias or insufficient rationality and reasonableness would not yield a single rational, reasonable and impartial solution to conflicts between competing demands of justice. If so, then the exercise of impartial reason will not lead to the same ‘rankings of justice’, and will, consequently, not yield consensus.

As said, the multiple aspects and rules of justice often lack, due to their incommensurability, comparative weights that are rationally determinable. That is why they must receive their weights from other sources than reason alone in order to resolve conflicts between competing demands and rival directives of justice. The ‘resolution’ of the relevant conflicts will often follow from our personal beliefs, predilections or opinions about their relative importance, which depends upon and are shaped by our background beliefs and total experiences, which differ between reasonable and rational people.¹⁸ As a result, they will often arrive at different answers about how the relevant conflicts of justice should be resolved. Besides, the final decision will be more or less arbitrary and not impartial because one rationally and ethically permissible resolution of the relevant conflict of justice will act against reasons that cannot be said to be outweighed by the reasons in favour of which the decision is taken.¹⁹ If so, neither decision in the relevant conflicts of justice is capable of avoiding an injustice or another ethical deficit.

¹⁸ Cf. one of Rawls’s burdens of judgment or sources of reasonable disagreement: “*the way we [...] weigh moral and political values is shaped by our total experience, our whole course of life up to now; and our total experiences must always differ. Thus, [peoples’] total experiences are disparate enough for their judgments to diverge [...] on many if not most cases of any significant complexity*” (Rawls 2005: 57).

¹⁹ Compare Thomas Nagel: “[...] *when each [of two choices] seems right for reasons that appear decisive and sufficient, arbitrariness means the lack of reasons where reasons are needed, since either choice will mean acting against some reasons without being able to claim that they are outweighed*” (Nagel 1979: 128; emphasis original).

Conclusion

I have tried to show that even if values of justice are universally valid (as I do believe), there need not always be a universally valid and (single) right ranking and weighing of these values.²⁰ I have argued that an important although not sufficient cause of the absence of a right or single right ordering and weighing is the incommensurability of the relevant values. The upshot is that where incommensurable values of justice conflict or cannot be realized simultaneously, there is, in the relevant cases, no right or single right solution. If one society resolves conflicting or incompletely compatible claims or duties of justice in one way, and another society in another way, this does not necessarily mean that one of the two ways is ethically superior. This conclusion has nothing to do with relativism because the relevant values and principles of justice may be assumed as being universally valid, but the weight assigned to these values and principles may differ.

In other words, in the relevant cases the exercise of reason will not lead to the same 'rankings of justice', and will, consequently, not yield consensus. Disagreements *on* justice seem (at least partly) to reflect conflicts between, or incompletely realizable, elements of justice itself.

REFERENCES:

- ARISTOTLE (1978). *Ethics*. Translated by J.A.K. Thomson. London: Penguin Books.
- BERLIN, Isaiah (1969). Two Concepts of Liberty. In BERLIN, Isaiah. *Four Essays on Liberty*. Oxford: Oxford University Press, pp. 118-172.
- BOOT, Martijn. (2009). Parity, Incomparability and Rationally Justified Choice. *Philosophical Studies*. Vol. 146, Issue 1, pp. 75-92.
- BROOME, John (1995). *Weighing Goods: Equality, Uncertainty and Time*. Oxford: Blackwell Publishers.
- BROOME, John (1997). Is Incommensurability Vagueness? In CHANG, Ruth (ed.). *Incommensurability, Incomparability, and Practical Reason*. Cambridge: Harvard University Press, pp. 67-89.
- BROOME, John (1999). *Ethics out of Economics*. Cambridge: Cambridge University Press.
- BROOME, John (2004). *Weighing Lives*. Oxford: Oxford University Press.
- CHANG, Ruth (1997). Introduction. In CHANG, Ruth (ed.). *Incommensurability, Incomparability, and Practical Reason*. Cambridge: Harvard University Press, pp. 1-34.
- CHANG, Ruth (2001). *Making Comparisons Count*. New York: Routledge.
- CHANG, Ruth (2002). The Possibility of Parity. *Ethics*. Vol. 112, No. 4, pp. 659-688.
- CHANG, Ruth (2009). Reflections on the Reasonable and the Rational in Conflict Resolution. *Aristotelian Society Supplementary Volume*. Vol. 83, No. 1, pp. 133-160.
- CLAPHAM, Andrew (2007). *Human Rights: A Very Short Introduction*. Oxford: Oxford University Press.
- COHEN, Gerald Allan (1989). On the Currency of Egalitarian Justice. *Ethics*, Vol. 99, No. 4, pp. 906-944. ISSN 0014-1704.

²⁰ Cf. Sen 2009: 201.

- COHEN, Gerald Allan (2008). *Rescuing Justice and Equality*. Cambridge: Harvard University Press.
- DWORKIN, Ronald (1978). *Taking Rights Seriously*. Cambridge: Harvard University Press.
- GALSTON, William A. (2002). *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice*. Cambridge: Cambridge University Press.
- GRIFFIN, James (2008). *On Human Rights*. Oxford: Oxford University Press.
- HAMPSHIRE, Stuart (2000). *Justice is Conflict*. Princeton/Oxford: Princeton University Press.
- HART, Herbert Lionel Adolphus (1997). *The Concept of Law*. Oxford: Oxford University Press.
- MCKIRAHAN, Richard D. (1994). *Philosophy Before Socrates*. Indianapolis/Cambridge: Hackett Publishing Company.
- MILL, J. S. (2002). *Utilitarianism*. Edited by Roger Crisp. Oxford: Oxford University Press.
- NAGEL, Thomas. (1979). The Fragmentation of Value. In NAGEL, Thomas. *Mortal Questions*. Cambridge: Cambridge University Press, pp. 128-141.
- NAGEL, Thomas (2001). Pluralism and Coherence. In DWORKIN, Ronald William; LILLA, Mark; SILVERS, Robert (eds). *The Legacy of Isaiah Berlin*. New York: New York review Books, pp. 105-111.
- PARFIT, Derek (1997). Equality and Priority. *Ratio*. Vol. 10, Issue 3, pp. 202-221.
- RAPHAEL, David Daiches (2001). *Concepts of Justice*. Oxford: Oxford University Press.
- RAWLS, John (1996). *Political Liberalism*. New York: Columbia University Press.
- RAWLS, John (1999). *A Theory of Justice*, revised edition. Cambridge: Belknap Press of Harvard University Press.
- RAWLS, John (1999a). Social Unity and Primary Goods. In FREEMAN, Samuel (ed.). *Collected Papers*. Cambridge: Harvard University Press.
- RAZ, Joseph (1986). *The Morality of Freedom*. Oxford: Oxford University Press.
- REGAN, Donald (1997). Value, comparability, and choice. In CHANG, Ruth (ed.). *Incommensurability, Incomparability, and Practical Reason*. Cambridge: Harvard University Press, pp. 129-150.
- ROSS, William David (1950). *The Right and the Good*. Oxford: Oxford University Press.
- SANDEL, Michael (2009). *Justice: What's the Right Thing to Do?* New York: Farrar, Straus and Giroux.
- SEN, Amartya (1992). *Inequality Re-examined*. Cambridge: Harvard University Press.
- SEN, Amartya (2004). Incompleteness and Reasoned Choice. *Synthese*. Vol. 140, Iss. 1, pp. 43-59.
- SEN, Amartya (2006). What do we want from a theory of justice? *Journal of Philosophy*. Vol. 103, Iss 5, pp. 215–238.
- SEN, Amartya (2009). *The Idea of Justice*. Cambridge: The Belknap Press of Harvard University Press.
- SIDGWICK, Henry (1981). *The Methods of Ethics*. Indianapolis/Cambridge: Hackett Publishing Company.
- SUNSTEIN, Cass R.; SCHKADE, David; ELLMAN, Lisa M.; SAWICKI, Andres (2006). *Are Judges Political? An Empirical Analysis of the Federal Judiciary*. Washington, D.C.: Brookings Institution Press.
- TAYLOR, Charles (1999). Conditions of an Unforced Consensus on Human Rights. In BAUER, Joanne R.; BELL, David A. (eds.) *The East Asian Challenge for Human Rights*. Cambridge: Cambridge University Press, pp. 124-146.



WILLIAMS, Bernard (1973). A critique of utilitarianism. In SMART, John J. C.; WILLIAMS, Bernard. *Utilitarianism for and against*. Cambridge: Cambridge University Press, pp. 73-147.