

Introduction: Liberalism, Communitarianism, and the Question of Justice

The question of justice has been at the core of political philosophy ever since Plato's *Republic*. It is an old but still current question that has to be answered each time anew—and indeed not only in respect of normative content but also with regard to the methodological justification of a philosophical theory of political and social justice. What norms legitimate the legal, political, and social relations within a political community, and how can these norms be justified?

My study is guided by the conviction that a critical analysis of the controversy between liberalism and communitarianism offers the possibility of making a systematic contribution to the clarification of the basic concepts of a theory of justice. The title *Contexts of Justice* refers (a) to the central *problem* of such a theory; (b) to the chosen *mode of access* to this problem; and (c) to the proposed conceptual *solution*.

(a) At the center of the discussion between liberalism and communitarianism lies the classic problem of a morally justified theory of political and social justice: the norms that are to be designated as just must be both context-immanent and context-transcending; they have to claim validity for a particular community and for its specific self-understandings and institutions but at the same time hold up a moral-critical mirror to the latter. How abstract may such a theory be and yet remain adequately concrete? How can it be simultaneously related to a specific society and yet not be relativistic? This is not just a methodological question, for different answers have different normative, substantive consequences for the theory of a just society.

“Communitarianism” and “liberalism” are vague generic concepts for positions in a controversy that, during the 1980s, unfolded around this problem and developed—even beyond its original Anglo-American context

of emergence—as a productive debate on the fundamental normative questions of political communities. This controversy was sparked primarily by John Rawls's study *A Theory of Justice* (first published in 1971), a work that put an end to the eulogies on the bygone, great tradition of normative political philosophy; a work whose contemporary reformulation of Kantian arguments within the framework of a liberal contract theory proved to be not only an effective counterproject to utilitarian theories but also an impetus for the development of alternative liberal approaches to combining individual freedom and social equality (if one thinks of the work of Ronald Dworkin and Bruce Ackerman, for instance).¹ What especially drew criticism was the character of the justification of Rawls's theory, one that abstracted from concrete social contexts, as well as the theory's emphasis on the priority of equal individual liberties over substantive conceptions of the good. This criticism—inspired in varying ways by Aristotle, classical republicanism, Rousseau, Hegel, or Tocqueville—emphasized the embeddedness of justice in communally constituted self-understandings and traditions. Yet the objections raised in this connection by such theorists as Charles Taylor, Michael Sandel, Alasdair MacIntyre, or Michael Walzer (just to mention the most important ones) exhibit fundamental methodological and normative differences. Hence, I avoid speaking of *the communitarian* or *the liberal* theory in what follows; rather, what is important is to do justice to the complexity of the debate by considering individual positions—and their development—in a differentiated manner.² Not only is it wrong to assume homogeneity on the part of the two sides in the controversy, it is also inaccurate to assert the incompatibility, in principle, of individual liberal and communitarian arguments. For unlike *Gemeinschaft* in the German language, “community” in the United States has a primarily democratic, participatory meaning;³ and the “liberalism” that is being debated here is a kind of “social liberalism,” which is to be distinguished from “libertarian” positions (Robert Nozick's, for instance).

Formulated at a sufficiently general level, however, one communitarian thesis that justifies the use of this label can be regarded as central. It states that the “context of justice” has to be a community that, in its historically evolved values, practices, and institutions—in its identity, in short—forms the normative horizons that are constitutive of the identity of its members and thus of the norms of justice. Only *within* these horizons of value is it possible to pose questions of justice and answer them with reference to what is good and valid for the community against the background of its evaluations and its self-understanding. Principles of justice grow out of such a community context, are valid only there, and can be realized solely within this context; all attempts at a liberal-deontological justification of norms stressing the priority of individual rights or formal procedures remain external and foreign to this context; they presuppose contextless “nonper-

sons” who are supposed to decide matters of justice in an “impersonal” and “impartial” manner, independently of their communally constituted identities. Such theories of the priority of the “just” or the “right” over the “good” are *forgetful of context*. Opposing this diametrically is the liberal response, which criticizes communitarian theory for being *obsessed with context*.

(b) The first four chapters of my study serve the purpose of reconstructing and disentangling this general complex of critique and countercritique, which contains both descriptive and normative assertions. In the process, they distinguish four conceptual levels, four theoretical “problem contexts.” *First*, the critique of the atomistic conception of the person that liberal theories put forward; *second*, the critique of the claim to neutrality of liberal principles of justice and law and the critique of the priority of individual rights over the communal good; *third*, the critique of the insufficiently integrative *sittlich* (ethical) force of liberal accounts of the political community; *fourth*, and finally, the critique of universalist theories of morality.⁴

Though these problems are linked with one another in a complex way, they nonetheless require their own conceptual responses. Questions concerning the theory of the person, legal theory, political theory, and moral theory should not be confounded or connected in the wrong way, as has occasionally happened in the controversy; to draw conclusions for a conception of law, democracy, or morality from an intersubjectivist conception of the person, it is necessary to have arguments located at each of these theoretical levels. The concept of the “good,” for instance, has in each case a different meaning and a different relation to the problem of justice when it refers to (i) the good life of a person, (ii) shared conceptions of the good within a political community, or (iii) a higher good, in a culture-specific or objectivist sense; in the last case, a value such as individual autonomy (and distance from communal conceptions of the good) can, for example, be considered a “good.”

The levels distinguished by this mode of access to the debate enable not only a clearer analysis of its philosophical dimensions and distinct issues but, taken together, constitute—and that is what is special about this controversy—the domain within which a theory of justice has to prove itself.

(c) The fourfold differentiation of theoretical problems and levels serves as the key to a systematic proposal for conceptual clarification. If the communitarian thesis, according to which persons are always community-bound and principles of justice always context-bound, is queried as to *what* conceptions of *person* and *community* are at the center of discussion at each of these particular levels, then it becomes evident that four different conceptions of person and community can be distinguished, which in turn correspond to four different *normative contexts*. Thus the discussion of the constitution of the self revolves around the conception of the *ethical person*

(as a member of an identity-constituting *ethical community*), which is to be distinguished from the conception of the *legal person* (as a bearer of individual rights and a member of a *legal community*)—a conception of central importance to the issue of legal neutrality. Problems of political legitimization and integration refer, however, to the correct understanding of *citizenship* (as membership in a *political community* of politically responsible citizens), whereas in the controversy about moral universalism and contextualism the conception of the *moral person* (and the *moral community* of all morally autonomous actors) plays an essential part.

In distinguishing these conceptual-normative levels, one secures the possibility of appropriately discussing liberal and communitarian arguments—also with the help of other, in particular, feminist or discourse-theoretic approaches—in order to be able to contribute (*horizontally*, on one specific level) to a clarification of the particular problems. Thereby one can ascertain which normative context is addressed in a particular question, and which conception of person and community is understood in a specific way by the opposing positions (e.g., the various understandings of citizenship), or how moral autonomy is explained in each case. In this way, it is possible to determine more precisely, first, what the real points of difference are (and thereby avoid misinterpretations that arise from confounding different questions); second, what criteria ought to be applied in the individual contexts; and, third, how these contexts, whose conceptual differentiation is not to be understood in the sense of a disjunction, are to be linked to one another. What thus unfolds in four stages (*vertically*, in working through the individual issues) is the outline of a theory of justice that takes these four *contexts of justice* adequately into account without reducing them to one another—this being the central thesis of the book. The basic structure of society can be considered just(-ified) to the extent that it does “justice” to persons in all these dimensions.

The proposal to differentiate various normative community contexts of an ethical, legal, political, and moral kind, and attempt to analyze the manner in which they cohere, makes it possible to scrutinize the compatibility of individual rights and the common good, of political generality and ethical difference, of moral universalism and contextualism, and to avoid false opposites. The resulting critical-constructive position “beyond liberalism and communitarianism”⁵ is developed in the discussions of the first four chapters, the central results of which are brought together in chapter 5 (in the section “Justice and the Good”) and then in a further step consolidated from a moral-theoretic perspective. The latter is based on a principle of practical reason according to which justification for the validity of values or norms is sought in the *particular* intersubjective “contexts of justification” within which validity is claimed. Located in the Kantian tradition, this non-metaphysical conception of practical reason does not turn out to be an

authoritarian source of context-insensitive norms; rather, in the absence of “ultimate” substantive reasons, it is founded on the necessity of “good” reasons and reflects the different meanings and criteria of normatively good reasons in these contexts. Correspondingly, the concept of “autonomy” must also be differentiated (in a fourfold manner) according to these contexts. The reconstruction of the logic of normative justification is augmented in a final step by a theory of “contexts of recognition,” where it will be seen that the proposed conception presents a meaningful account of interpersonal relationships that is not exposed to the critique of abstractness.⁶

The analysis of the debate between supposedly “context-forgetful” liberal-deontological theories and “context-obsessed” communitarian theories thus leads to a differentiation of four normative contexts in which persons are “situated” as members of various communities; that is to say, they are intersubjectively recognized and are authors and addressees of validity claims in various communities: communities of ethical, constitutive bonds and obligations; a legal community that protects this “ethical identity” of a person as a free and equal legal person; a political community in which persons are the authors of law and mutually responsible citizens; finally, the moral community of all human beings as moral persons with the right to moral respect. A *theory* of justice is at the same time context-bound and context-transcending insofar as it takes these normative dimensions into consideration, without absolutizing any particular one. According to this theory, the *society* that unites these contexts in the appropriate manner can be called just.