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Précis

Albert Weale

Democratic Justice and the Social Contract offers a theory of justice – democratic contractarianism – construed as the product of a social contract in which the contract is modelled as a form of joint agreement that can be empirically realized in a procedural democracy. Its principal claims are:

1. Principles of justice can be determined as the terms to which the parties to a social contract would agree, if they were negotiating to mutual advantage in circumstances of equal power.
2. Such processes of negotiation gives us a distinct procedural understanding of justice.
3. Common property resource regimes provide a relevant empirical exemplification of negotiation in circumstances of equal power approximately satisfying the conditions of procedural democracy.
4. Such regimes incorporate relevant conditions of procedural democracy.

It is taken to be a corollary of the theory that circumstances of equal power make for just practices, although the sustainability of those practices will require internalized norms motivating dispositions of conduct.

Social contract theory captures the basic logic of the social cooperation necessary for a viable political and economic order. The members of any society have both joint and separate

interests. Their joint interests require them to cooperate in the production of public goods such as environmental protection, a well-functioning system of law and order or a reliable set of property rights. By contrast, agents' separate interests put them in competition with one another. Thus, although the members of an agricultural community will find it in their joint interests to protect harvestable resources, like fish stocks or forests, they will each have reason to harvest as much of the resource to their own individual advantage as possible, usually with collectively damaging consequences for all. Where agents have to cooperate with one another in the advancement of their common interests whilst still being in competition with one another in respect of their separate interests, they typically require an implicit or explicit social contract.

Not all social contracts are just, however. Just social contracts are defined as those in which the terms of association are agreed among those having approximately equal power. How do we determine what principles would emerge from negotiations among those with equal power? *Democratic Justice* adopts an empirical method, observing what happens under particular social and historical conditions. The principal question facing those advocating the empirical method is whether we can find observable examples of forms of social organisation that we have reason to believe embody a rough equality of power among their participants.

Democratic Justice claims that one important class of forms of organization in which there is rough equality of power are common property resource regimes. Common property resource regimes are found in agricultural communities whose members harvest resource stocks – like fish stocks, grazing areas, water resources or woodlands – in common but with publicly agreed rules on what individual agents can appropriate from those stocks. They are

empirically observable and they also embody a form of procedural democracy, allowing members to create and modify the rules under which each acts.

What principles are derivable from such social contracts? Because social contracts capture the principles of persons who need to cooperate with one another whilst simultaneously being in competition with one another, the terms of the contract need to provide each person with the assurance that the joint agreement will make them better off than they would be in a 'state of nature' with unconstrained competition. In a state of nature one has a Hohfeldian liberty to appropriate what is not already appropriated by others. From this position an observed point of joint gain is that participants secure the fruits of their own labour provided that those fruits are obtained under conditions of equal access to the means of production. An entitlement to the full fruits of one's labour, subject to equal access to the means of production, is the initial substantive principle of economic justice in democratic contractarianism

The above paragraphs summarize the first three chapters of *Democratic Justice*. Chapter 4 is given over to a discussion of the principal theoretical concepts that define democratic contractarianism, of which the idea of practical rationality is most central. To suppose that the parties to a social contract can democratically overcome the collective action dilemmas they face requires us to posit that they have a form of rationality that goes beyond the standard expected utility account in terms of a consistent rank-ordering of alternatives. Instead, practical rationality requires choice to be the product of deliberation, and in particular of a form of deliberation that is reflective, exhibits the capacity to follow a chain of reasoning from premises to conclusions, ascribes to agents the ability to specify what is required by those conclusions, requires reasons for action to be self-determining and

recognises that all practical reasoning is defeasible. These features of individual deliberative rationality will also enter into our understanding of public reasoning, defining its characteristics.

How far one can generalise that understanding to societies other than those in which common property resource regimes are found, and in particular to large scale societies that follow the great transformation of industrialisation? In reply to this question, a legislative conception of justice is suitable for great societies, so that there is no barrier in principle to prevent the principles of political and economic organization of common property resource regimes being applied, with suitable modification, to great societies. However, in order to apply these principles, Chapter 5 argues that we need to take into account the political transformation from direct to representative democracy, the economic transformation by which corporate hierarchies organize the production of labour and the household transformation by which labour ceases to be based on the family unit and in which production and reproduction are separated.

Because participants in a social contract have interests that are both common and separate interests, the institutions of representative democracy need to serve both types. Chapter 6 shows that in a representative system, the deliberative rationality that characterized successful common property regimes requires representatives to be able to deliberate over common interests and bargain over separate interests in the face of pervasive disagreement. One form of democracy that can manage simultaneously to meet these conditions is majoritarian democracy founded on the principle of the proportionate representation of different interests. With more than one dimension of political conflict, the aggregation of different views will typically lead to majority rule cycling. However, this is not a problem if such cycling is

confined to the set of alternatives that are located in the overlap of available alternatives that cannot jointly be defeated through processes of majority rule.

The economic transformation gives rise to the issues discussed in Chapter 7. In a market economy, the equivalent of securing the fruits of one's labour is that one secures one's marginal product. However, the existence of corporate hierarchies within which work is organized often breaks the link between labour and marginal product. Of itself, this does not undermine the legitimacy of the marginal product principle, since where people receive significantly more by way of income than any conceivable contribution to marginal product, the marginal product principle provides grounds for criticism. A more serious conceptual challenge comes from the claim that increasing returns to scale renders the marginal product principle irrelevant. However, such returns do not license a principle of redistribution; rather they suggest the justice of each person contributing to the common upkeep of the institutions that make for public goods in a great society. The just meeting of needs through some form of redistribution is best conceived in terms of transfers over the life-cycle rather than a transfer from relatively rich to relatively poor. Moreover, given the separation in a market society of the value of marketable production and the value of work done in reproduction, democratic justice argues for child care costs being shared widely in society.

The final chapter discusses the sense of democratic justice among individuals joined in the logic of a social contract. Democratic contractarianism suggests a reconstructive account of how the sense of justice arises, namely as a response to circumstances in which there is a sufficient balance of power among agents such that they need to cooperate on terms of equality to mutual advantage. This is not to say that the consciousness of such a balance of power is an element in the practice of justice, for the sense of justice may arise independently

of its theoretical reconstruction. Nevertheless, the sense of justice acknowledges deep conflicts of interest, so that neither communitarian sentiment nor a notion of civic friendship is sufficient for justice. What is needed instead is a strong sense of civic equality together with a willingness to play one's part in a scheme of mutual cooperation, even when in the short term this may be to one's disadvantage. Only the cooperating partners in a democratic social contract can feel pride in their collective achievement through their civic culture. Only in such a community will persons be for themselves but never only for themselves.