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GESTALT JUSTICE*

The Fusion of Emotion and Cognition in the Gestalt View of Justice

Ekkehart Schlicht

0. Introduction

The Gestalt view of ethics, as developed by the Gestalt psychologists WERTHEIMER, KÖHLER, DUNCKER, and ASCH in the middle of the last century, has been unduly neglected more recently. The purpose of this essay is to simply explain this view. I am presenting a synthetic statement of it, rather than giving a survey of the literature from which the view can be developed.¹ Furthermore, I shall focus on the problem of justice rather than on ethics in general.

In the first two parts, I will sketch two views of justice which I term the "emotive" and the "cognitive" to capture two strands of thought.² The *emotive view* holds that concepts of justice arise from value judgments and ultimately are based on emotions. In Part 1 I describe this view closely following Adam SMITH's "Theory of Moral Sentiments" which states that the rules of justice are determined in such a way as to maximize the utility of the impartial spectator. This approach seems to me to be the essence of many approaches underlying modern welfare economics.

It is also possible to detach the notion of justice from value judgments by concentrating on its semantics. What does this notion really mean? We have to go back to those laws which govern the formation of our concepts, the laws of cognition. These give rise to the *cognitive view* of justice described in Part 2, and is where I will start to draw on Gestalt concepts. According to the cognitive view, judgments concerning justice are factual, rather than value, judgments. A just situation can be considered good or bad. Entitlement theories are cognitive insofar as they do not de

* A first draft of this paper was written at the Institute for Advanced Study, Princeton, in 1985-86, based on an article written in German (SCHLICHT 1984a). The late Solomon ASCH initiated me there, so to speak, to Gestalt psychology. His remarks on cognitive consistency and cognitive dissonance in relation to "requiredness" in Gestalt psychology as well as his criticism of the earlier paper induced me to reformulate my position. My original intention was to incorporate the material in my recent book (SCHLICHT 1998), but I have changed my plan and submit the essay separately, with marginal revisions.

¹ See ASCH (1952) for an account of Gestalt psychology, in particular chapters 12 and 19.

² I am aware that there are different types of cognitive as well as emotive theories both in psychology and in philosophy, but I am using the terms simply as shorthand notations for the views described later.

fund rights or entitlements on utilitarian grounds, but they are not fully-fledged until they spell out where their rules come from.

In Part 3 it is argued that both the emotive and the cognitive approach are flawed. The emotive view derives justice from welfare maximization, but our ordinary notion of justice is different: An undesirable situation can also be a just situation.³ The emotive view, therefore, does not capture the meaning of justice. Ultimately it deals with welfare, not justice.

The cognitive approach is not open to this kind of criticism, but it fails to point out why justice, cognitively conceived, is desirable. At the most, it assumes this. Clearly there is not much sense in discussing the rules of justice if they have no emotive relevance, but if they have, as is clear from observing everyday life, it needs to be spelled out.

Gestalt psychology emphasizes, however, the interconnectedness between cognition and emotion and thus encompasses both views. Cognition and emotion go together, cognition has emotional connotations and emotion is generated by cognition.⁴ People strive for comprehension, they attach, so to speak, utility to it. Aspects of the emotive and the cognitive views are merged. The rules of justice are ultimately generated by our desire to grasp the meaning of the world we live in, and then to live up to it.

In Part 4, I address some selected issues, namely those pertaining to conflict with the intention of demonstrating the potential of the Gestalt approach in dealing with important issues about which other approaches have not much to say. In addition, I discuss briefly why the Gestalt view of justice is neither purely positive nor purely normative, and why this is a desirable feature.

1. The Emotive View of Justice (Adam SMITH)⁵

1.0 Introduction

Judgments on justice can be conceived as value judgments. According to "HUME's law," value judgments cannot be derived from factual judgments alone. It is possible, however, to deduce new value judgments – i.e. derived value judgments

³ When discussing YAARI/BAR-HILLEL (1984) in my seminar at Darmstadt, I sometimes introduced a pareto-inferior but equitable alternative. Students usually considered this alternative as just but not as the best, although none of the theories discussed in YAARI/BAR-HILLEL would ever pick a pareto-inferior allocation as a just one.

⁴ For this very reason, Gestalt psychology has always been suspicious of such juxtapositions as cognitions vs. emotions, values vs. facts, normative vs. positive theories, etc. which are so customary in current discussions and which I am also using in this essay in order to be understood. See ASCH (1952, Ch. 12) on this problem.

⁵ Compare COASE (1976).

– from a combination of given value and factual judgments.⁶ For example: The value judgment "It is good if I am healthy" and the factual judgment "My health will be restored if I stay in bed" give rise to the derived value judgment "It is good if I stay in bed".

Hence, the argument must have arisen from some basic values which are sometimes thought of as being irrational, arbitrary or groundless. It is only possible empirically to establish what they entail and how relevant they are. Any analysis has to start from basic values.

When dealing with justice this notion can be taken as embodying a set of basic values, and it can be empirically determined what people actually consider as just or unjust. This is not very satisfactory, however, since it introduces an arbitrariness into the notion of justice which cannot be found in everyday life. We must have something in mind that is more specific and more tangible when talking about justice. After all, the notion of justice does not cover everything people want, and different conceptions of justice should have something in common in order to fall under the same heading.

Hence economists have chosen a different line of argument: the notion of justice is viewed as being generated by derived value judgments. This idea is most conclusively developed in Adam SMITH's *Theory of Moral Sentiments* (1759) and still remains the implicit point of departure for modern welfare economics (such as SEN 1970), so SMITH's argument can be used to illustrate the emotive view.

1.1 Sympathy

The main motives guiding human action are, according to SMITH, self-love and sympathy. Self-love is dominant; it is the direct, unmediated motive. Sympathy, "that feeble spark of benevolence which Nature has lighted up in the human heart" (SMITH 1759, 137) causes us to imagine the joy or the pain we would feel if we were in another person's position. These hypothetical feelings are our sympathetic emotions. As compared with self-love, sympathy is of a shadowy nature, as it is caused by imagined rather than real feelings.

1.2 Altruism

The impulses of sympathy pertain to how we would feel if put in the position of somebody else. On the other hand, the impulses of altruism or compassion refer to how we would feel if we were that person. As Adam SMITH so convincingly stated, altruism is merely a derivative of sympathy, if it is of relevance at all, but it is not a primary human motive.

"Upon some occasions sympathy may seem to arise merely from the view of a certain emotion in another person [...]. This, however, does not hold universally [...]. Of all the

⁶ For a criticism of HUME's law, see SCHLICHT (1974; 1998, 289-297).

calamities to which the condition of mortality exposes mankind, the loss of reason appears, to those who have the least spark of humanity, by far the most dreadful, and they behold that last stage of human wretchedness with deeper commiseration than any other. But the poor wretch, who is in it, laughs and sings perhaps, and is altogether insensible to his own misery. The anguish which humanity feels, therefore, at the sight of such an object, cannot be the reflection of any sentiment of the sufferer. The compassion of the spectator must arise altogether from the consideration of what he himself would feel if he was reduced to the same unhappy situation and, what perhaps is impossible, was at the same time able to regard it with his present reason and judgment" (SMITH 1759, 11; see also HUGHES/ TRINGLE/ SWAIN 1981).

This argument precludes a possible derivation of justice from altruism. As altruism is not a primary motive, then the concept of justice cannot be grounded on it.

1.3 Utilitarianism of the Impartial Spectator

As compared to self-love, sympathy is a weak motive. If self-love is not affected, however, then sympathy becomes decisive. As the impartial spectator conceived by SMITH is not personally involved in deciding an issue, he is motivated by sympathy, not self-love. He would imagine the utility obtained if he were put into the position of the winner, and the dis-utility he would experience in the position of the loser, and he would prefer the state, which, provides the best balance.⁷ Hence the evaluation of different states of the world arises from an utilitarian calculation of pleasures and pains by the impartial spectator, whose utility is induced by sympathy alone.

1.4 General Rules Arising from Pride

Pride is an important component of self-love. We look for the admiration of others. Pride influences us to adopt the maxims of the impartial spectator out of self-interest:

"It is not the love of our neighbor, it is not the love of mankind, which upon many occasions prompts us to the practice of those divine virtues. It is a stronger love, a more powerful affection, which generally takes place upon such occasions; the love of what is honorable and noble, of the grandeur, and dignity and superiority of our own characters" (SMITH 1759, 137).⁸

Thus, in this way, pride turns our weak, sympathetic emotions into maxims which we follow out of self-love, thus generating moral principles which we tend to follow even if they contradict our impulses of immediate self-interest:

⁷ I use "utilitarianism" in a broad sense here, which permits different weightings for different individuals or even a welfare function which is determined by the sympathetic emotions of the impartial spectator. SUPPES' grading principles offers a modern formalization of SMITH's idea (SEN 1970, 146-150, 152-156). If the impartial spectator is de-individualized a little further, this borders very closely on the theories of HARSANYI and RAWLS, cf. SEN (1970, 135-146, 156-160).

⁸ In this, as in other cases, SMITH assimilates ideas from MANDEVILLE, who examined this proposition extensively and concluded: "We are possessed of no other quality so beneficial to society than pride" (MANDEVILLE 1732, 124).

”Our continual observations upon the conduct of others, insensibly lead us to form to ourselves certain general rules concerning what is fit and proper to be done or to be avoided. Some of their actions shock all our natural sentiments [i.e., our sentiments arising from sympathy - E.S.]. We hear everybody about us express the like detestation against them. This still further confirms, and even exasperates our natural sense of their deformity. It satisfies us that we view them in the proper light, when we see other people view them in the same light. We resolve never to be guilty of the like, or ever, upon any account, to render ourselves in this manner the objects of universal disapprobation. We thus naturally lay down to ourselves a general rule, that all such actions are to be avoided, as tending to render us odious, contemptible, or punishable, the objects of all those sentiments for which we have the greatest dread and aversion. Other actions, on the contrary, call forth our approbation, and we hear everybody around us express the same favorable opinion concerning them. Everybody is eager to honor and reward them. They excite all of those sentiments for which we have by nature the strongest desire, the love, the gratitude, the admiration of mankind. We become ambitious of performing the like; and thus naturally lay down to ourselves a rule of another kind, that every opportunity of acting in this manner is carefully sought after.

It is thus that the general rules of morality are formed. They are ultimately founded upon experience of, in particular instances, what our moral faculties, our natural sense of merit and propriety, approve, or disapprove of. We do not originally approve or condemn particular actions because, upon examination, they appear to be agreeable or inconsistent with a certain general rule. The general rule, on the contrary, is formed, by finding from experience, that all actions of a certain kind, or circumstances in a certain manner, are approved or disapproved of.” (SMITH 1759, 159).

1.5 Justice and Sympathizing Utilitarianism

In this way, general rules of morality emerge such that their observation maximizes the utility of the impartial spectator who is motivated by sympathy alone. These general rules include, of course, the rules of justice.⁹

Hence the emotive argument leads eventually to a ”sympathizing utilitarianism” and to rules of justice which are derived from maximizing the utility of the sympathizing impartial spectator.¹⁰

2. The Cognitive View of Justice

2.0 Introduction

When we talk about a good table, or a good pistol, we are referring to properties which are implied in the notion of a table, or a pistol, and which are independent of the arbitrariness of the possible sympathetic emotions of an impartial spectator: A good table ought not to be wobbly, and a good pistol should shoot accurately -

⁹ When identical feelings of sympathy are postulated for all individuals (SEN’s ”identity axiom”), this procedure leads to an utilitarian calculus, cf. SEN (1979, 159).

¹⁰ Altruism - which has been bracketed out in Section 1.2 - leads accordingly to classical utilitarianism.

though an impartial spectator might well prefer that all pistols should be bad, or rather, defective. HEGEL (1816, 344) puts it as follows:

"The predicates good, bad, true, fine, right, etc., express that the object is gauged with a general notion which is assumed to be the absolute presupposed norm, and that it is either congruous to that notion, or not."

The emotive evaluation can be dealt with separately. An impartial spectator might appreciate good tables but despise good pistols.

We can talk about justice, too, but abstain from emotive evaluation. We can describe "rules of justice" without implying from the beginning that it is right to adopt them. We can leave aside the argument as to why they should be implemented, or if it would be preferable to disregard them, and under what circumstances. This is impossible in Smith's scheme, where justice is linked to welfare from the start. There can be no conflict between justice and welfare for the impartial spectator, since they coincide.

The cognitive view requires us, however, to spell out in some more detail that which constitutes justice in a given society and this is the theme of the following sections.¹¹

2.1 The Notion of Justice

Justice means that the rules which are valid in a given society are observed. If these rules are violated there is injustice.

It remains to be clarified, however, what is meant by "valid rules." Let me discuss this step by step.

2.2 Levels of Justice and the Validity of Rules

Take a rule which appears unjust but which is generally employed, like the preferential treatment of childless married couples versus childless unmarried couples as governed by the tax laws. If this - supposedly unjust - rule is violated by giving preferential treatment to Christian but not to Muslim marriages, this would appear as an additional injustice, rather than an improvement. Or - to take another example - the pay for a certain job might be too high or too low as to appear definitely unjust. If we were to pick out a single individual in that occupation and pay him or her what we consider a just remuneration but leave the other worker's wages unchanged, this would also appear unjust since he or she is denied the set payment.

This illustrates that different levels of justice ought to be distinguished. If we consider an action unjust, we refer to its nonconformity with the rules pertaining to this class of events. But these rules, although valid and well established, could be

¹¹ This follows WERTHEIMER (1935), KÖHLER (1938), DUNCKER (1939), ASCH (1952), and SCHLICHT (1979). As remarked by IRLE (1975, 443), the psychological discussion of these questions is still at a rather rudimentary stage.

unjust if they violate other rules, such as the rule of equality, which pertain to a higher level. These higher-level rules too can be both just or unjust.

Thus we have the following proposition: *If we consider something just or unjust, this refers to conformity or nonconformity with the relevant rules, but does not imply the justice or injustice of the rules themselves which, in turn, is judged with regard to the relevant higher-level rules, etc.*

A rule is valid with regard to a certain issue if it is usually applied to this kind of issue, but it is not necessarily just.

2.3 Infinite Regress, Conventionalism, and A-priorism

If we adopt this view, the general notion of justice might appear to evaporate in an infinite regress of relativistic notions of justice. The problem of infinite regress can be avoided if we have recourse to the basic notions of justice which are considered ultimately certain. This is an application of "HUME's law" in a different guise, cognitive rather than emotive a-priorism.

On the other hand, the identification of valid rules with established notions of justice could lean towards a concept of justice which would amount to reviewing the rules of justice as mere conventions; and the a-priorism discussed above might lead to conventionalism as well if the basic notions of justice are conceived as historically contingent rather than absolutely certain.

However these impasses can be avoided if we take into account how the rules of justice establish themselves in a given society. If we can pinpoint the laws governing the establishment of valid rules of justice, we are not necessarily adopting an "a-priorism of the second degree" since our cognitive and social laws could be accessible to further analysis, they are positive rather than normative. We have to argue about how norms are actually generated and stabilized, and here we are working on a prolific terrain. The notion of justice can be conceived both as obligatory and as historically changeable whereas it tends to vanish in the sterility of infinite regressions and a-priorism, or to get bogged down in conventionalism.

2.4 The Explanation of Norms in Social Darwinism

Another simple theory of justice can be developed along the lines of social Darwinism. This has been proposed by others, e.g. HAYEK:

"The development of morals is a process of adoption and not, as the rationalist theorists believe, an outcome of deliberate human decision. Those groups, which were lucky enough to develop the right habits, have obtained thereby the faculty to develop faster than other groups. This implies, of course, that the content of our rules of moral conduct is not the creation of the human intellect but rather the outcome of an evolutionary process of incessant experimentation in which those groups which hit upon the right rules by accident, came into a position to propagate faster than others and to establish themselves. This leads to the conclusion (first drawn by David HUME, by the way) that human morality is not formed by human reason; we are never able to understand why we might have preferred this morality

and not the other. We are unable to justify our morality rationally since we do not know what it has accomplished for us" (HAYEK 1983, 21).

2.5 The Purpose of Rules

This view functionalizes (and, in a sense, demolishes) morality. Principles of moral behavior, and in particular the notions of justice which guide our action, have certain functions, they improve the chances for the success of a given society, and the most successful rules survive.

The obedience of generally accepted and efficient rules certainly offers important advantages. Transaction costs as well as problems of information, conflict, and control can be kept within limits. In a less advanced society a thoroughgoing division of labor can be realized by no means other than by assigning different roles to various individuals, and this assignment works through a system of normative rules. There are, however, not only economic purposes for general rules but they also have cognitive functions. Their existence leads to cognitive relief, since the world then appears to be less complex. Rules, especially those congealed to institutions, lead to a "reduction of complexity" in social life (LUHMANN 1971).

2.6 Group Selection and Individual Selection

Notwithstanding its great importance, the Social Darwinist argument is open to criticism. Firstly, from the outset it adopts a perspective known as that of "group selection" in biology. It is assumed that rules are formed which are instrumental for group survival. It is possible, however, that individuals establish themselves within a group by violating the group norms. It might be advantageous, for instance, to tell lies while living in an absolutely honest society. In order to protect a system of collectively efficient rules, a system of sanctions must be added which would enforce rule-obedience on the part of the individual. This leads to additional costs which could be avoided if the individuals were strictly law abiding from the start. The necessity for sanctions is, hence, inefficient and would have been eliminated by unhampered group selection.¹²

If we start from individual rather than group selection, however, and assume that the individual with successful strategies will gain dominance and this changes their rules into those which prevail in society, we are unable to explain cooperative behavior in cases of conflicting interests. But this is the very purpose of general rules!¹³ In a prisoners' dilemma game, where it is always advantageous to select non-cooperative strategies, this behavior will dominate under individual selection

¹² Deviations from established rules can be considered efficient in so far as they lead to mutations and enhance adaptation to a changing environment. The optimal rate of mutations however, should not be so high as to require costly sanctions to keep it in check.

¹³ See also FIELD (1984).

even if the outcome were better under thoroughgoing cooperation.¹⁴ It has been empirically established, however, that rules of conduct are not formed in this way. In repeated prisoners' dilemma games even informed players play non-cooperatively in the last few periods only, but cooperatively at the beginning (SELTEN/ STOECKER 1986). This "irrational" cooperation, which prevails in the absence of group selection or individual sanctions, leads to a better outcome for the players than non-cooperation; it does not lead, however, to the best and most fully cooperative outcome.

To my mind, however, the most important argument against the Social Darwinist approach seems to be that a successful society can collapse because it is considered unjust. An important determinant of whether a rule is accepted or rejected is if it is considered just or unjust. As long as we are dealing with cultural rather than physical survival, the selection criteria culturally determine themselves, and the formation of binding rules has to be built not only on functional requirements, but also on other rules already present in society. Hence there are no stable conditions for selection, and this blunts the Darwinist argument in this context. Propositions like that of SCHUMPETER (1943) that capitalism will collapse in spite of its success because it is undermining the moral foundations on which it rests, seem to be unthinkable from the Social Darwinist's point of view.

2.7 Cognitive Selection

If we want to employ the idea of selection in our context, we have to consider cognitive selection while making proper allowance for functional requirements.

We have touched on this idea already, while referring to the "reduction of complexity" achieved by rules which is a correlate of LUHMANN's (1971) view that meaning is to be considered as the central category of sociology. The idea is that the selection among rules is viewed as brought about by cognitive desires. "Reduction of complexity," for instance, refers to a preference for simple rather than complicated rules.

This perspective, which I think is the appropriate one for a discussion on justice, will be expounded presently.

2.8 Rule Formation According to Gestalt Principles

Rules are cognitive entities. (This renders a discussion of cognition unavoidable when dealing with the rules of justice). We summarize various items by means of a rule in order to grasp and to reproduce them more easily.¹⁵

¹⁴ VANBERG (1984), SELTEN (1978). HOBBS' (1651) visions reappear here. Individually irrational moral conduct of individuals would solve these problems (KREPS/ MILGROM/ ROBERTS/ WILSON 1983).

¹⁵ The following example is taken from SCHLICHT (1984b) and is discussed there more extensively.

The sequence of numbers:

$$(1) \quad 3, -3, 3, -3$$

is, for example, spontaneously perceived by means of the rule

$$(2) \quad x_i = -x_{i-1}, \quad x_1 = 3; \quad i = 1, 2, 3, 4.$$

However, infinitely many formulas exist which lead to the sequence (1) such as:

$$(3) \quad x_i = 45 - 68i + 30i^2 - 4i^3; \quad i = 1, 2, 3, 4.$$

But rules, which are that complex, are not adopted spontaneously - they seem to be too complicated with regard to their object, and we view them as alternative representations of the data, but not as rules. A rule should reduce complexity. This is implied by the notion itself.

It has been emphasized by Gestalt psychology that perception takes place in forming rules such, that the object is grasped (recognized, memorized, and reproduced) as easily and succinctly as possible. If the subject matter is somewhat more complex, we proceed along these lines as well. We perceive the sequence:

$$(4) \quad 3, -3, 3, -3, -45$$

by means of the rule (2) together with the "exception"

$$(5) \quad x_5 = -45$$

for instance. (The exception might be linked to the pure rule by some mnemonic device, such as $x_5 = -5*3*3$). Quite generally our mind proceeds by generating a simplified "schema" and grasps the object by noting correspondences and divergences between the subject-matter and its schema.¹⁶ Hence we talk about a semi-circle and not about a curve with certain properties or about a triangle with a dissected upper corner and not about a degenerated dodecagon.

The "law of *prägnanz*" governs perception and the formation of notions. The mind tends to organize consciousness in a way as succinct as possible.¹⁷ The "law of *prägnanz*" can be viewed as being enforced upon us by natural selection as an

¹⁶ Recent research on the prototype paradigm (ROSCH 1975 a; DAHLGREN 1985) reconfirm this.

¹⁷ *Prägnanz* is hard to translate. It means succinct, simple, clear, terse, definite. I am following the psychologists by sticking to the German term. See also SCHLICHT (1979) for a more detailed discussion.

optimal mental system of data processing and storage since the perception of animals seems to be subject to this law, too, and parallels to optimal data processing abound.¹⁸ But this is an issue we need not elaborate on. When talking about rules, we are presupposing implicitly that the “law of *prägnanz*” is operative in our minds, and this is sufficient for the purposes of my argument.

If we take the “law of *prägnanz*” as the starting point for our considerations, rules are manifested in the very process of perception. We perceive the social world by forming simple principles - schemata - that grasp the essential features, and note deviations and correspondences. The rules originate from the Gestalt principles, which govern the formation of notions in the mind.¹⁹

2.9 Rules, Justifications and Justice

If rules have emerged which capture certain phenomena in a stylized manner, these rules generate meaning and justification. They justify what conforms to the rule, but exceptions from the rule require additional justification. The last number in the sequence 3, -3, 3, -3, -45 requires justification, for instance. The schema, which is generated by the sequence, requires as 3 instead of a -45. The number -45 cannot be justified by the spontaneously generated rule. It therefore, appears *unjustified*.

HEGEL's (1816, 344) remark:

”The predicates good, bad, true, fine, right, etc. express that the object is gauged with its general notion which is assumed as the absolutely presupposed norm, and that it is congruous to this notion or not”

now gains a more precise meaning. The “general notion” is what is required by the rule which is formed spontaneously in our mind, and this gives rise to what WERTHEIMER (1935) and KÖHLER (1938) have termed “requiredness,” a standard implied by the circumstances themselves, and not imposed from the outside.

The notions of justice and injustice gain specific meaning in this way; they refer to a match between requiredness and circumstances, or to a mismatch. If the facts can be justified by means of the implied rule, they appear just, if not, unjust.

In this sense, the number -45 in the sequence 3, -3, 3, -3, -45 is unjust. But this is not the customary usage of the term. We employ the notion of injustice only in a social context where rules of some generality are violated and distributive effects are involved, and speak about irregularity elsewhere. The following examples illustrate this: We do not consider it unjust if our neighbor does not go to church although this violates a customary rule in our community and we might resent it; but if he gained materially thereby we would consider it unjust. A woman might not

¹⁸ KÖHLER (1929, 158-163, 177; 1944), SCHLICHT (2000).

¹⁹ Adam SMITH is compelled to postulate the same, implicitly, when talking about the “natural” formation of rules, see section 1.4. An excellent account of gestalt laws and their workings in visual perception can be found in METZGER (1975).

consider it as unjust if she gives birth to a handicapped child, but she would consider the many uncompensated hardships caused by this to be unjust. We would consider it unjust if we had to pay for an accident caused by somebody else's neglect of a customary prudential rule. We would not think it unjust if our neighbor replaced the beautiful flowers, which he used to grow in his garden, with vegetables.

2.10 Modifications

However, the basic view developed until now needs some modification. Different rules could have similarities. There could be correspondences which give rise to some higher-level rules implied by the initial rules and serve to justify the latter. In this way, various levels of justice (discussed in Sect. 2.2) are generated. From the perspective of those higher-level rules, some lower-level rules might appear unjust, hence the formation of rules is not simply determined by factual circumstances alone, but also by the existing set of other rules.

The violation of certain lower-level rules might also appear justified when judged from the view of higher-level rules. If these cases increase in number, however, the higher-level rules will be weakened and it could happen that they are replaced by other rules allowing for fewer exceptions and a higher degree of *prägnanz*. If the private property rule - *ius utendi et abutendi* - is curbed too much, for instance, by way of introducing various side-constraints stemming from other principles, this rule might lose its superior status and turn into one particular lower-level rule which requires justification by some higher-level rule. Hence the view developed here offers a perspective for dealing with problems of the evolution of norms.²⁰

An infinite regress is avoided since the rules support each other mutually. The higher-level rules gain relevance only with reference to the lower-level rules, and the lower-level rules are justified by the higher-level rules. A-priorism is present, in a sense, since the "law of *prägnanz*" is presupposed from the outset. The Gestalt laws are, however, non-normative, and are amenable to theoretical and empirical support. In view of the fact that we have to start from some assumptions, the reproach of a-priorism seems to be rather weak here.

The problem of conventionalism does not arise since, under the Gestalt view, rules are not considered as being pure conventions. The conventional aspect of rules, which is certainly of importance, seems to be sufficiently held by the rigidity and stability of a mutually supportive system of rules.

²⁰ An attempt in this direction is made in SCHLICHT (1979), which also stresses the importance of taking functional considerations into account.

3. The Gestalt View of Justice

3.0 Introduction

Both the emotive and the cognitive views of justice are flawed, however. Emotivism basically redefines justice as welfare and thus merges inappropriately distinct concepts. Possible conflicts between justice and welfare are not to be denied, a negative situation can be considered as just. This is a flaw not only confined to the version of emotivism which has been described in Section 1; it is a fundamental flaw of many theories of justice starting from utilitarian or RAWLSian presuppositions. They can be put aside. Nevertheless there is an important truth in them. They try to explain why justice is desirable. If the emotive explanation is false, another explanation must be given.

The cognitive view of justice does seem to describe how we think about justice in a better way, but fails to explain its emotive relevance. Why is it that people require justice, and why is their well-being affected merely by feeling justly or unjustly treated?

It seems puzzling, indeed, that people feel unhappy merely because they consider themselves to be unfairly treated, and that the same bundle of commodities might produce quite different levels of well-being depending on whether the endowment process is considered just or unjust.

The failure to account for the emotive relevance of justice is, to my mind, the basic flaw, not only of the particular theory described in Section 2, but also of many other theories where rules are considered axiomatic, e.g., those governing just transfer procedures. However this flaw can be corrected by giving reasons why people should think it is desirable to obey the rules of justice. The Gestalt view of justice attempts to do just this.

I shall endeavor to explain this view by first drawing on the well-known theory of cognitive dissonance (Section 3.1-3.2), and then develop the Gestalt view.

3.1 *The Theory of Cognitive Dissonance*²¹

The theory of cognitive dissonance assumes a fundamental striving for meaning that is common to all human beings. Using the language of Gestalt psychology, there is a fundamental desire in people to interpret themselves, their views, their preferences, or their actions as succinctly as possible. We are endowed with a basic drive for cognitive consistency, and an aversion to cognitive dissonance. For example people can persistently act against their convictions, however, they will develop justifications for their actions, either by changing their convictions or their

²¹ A survey is given in SCHLICHT (1984a).

actions, or by adopting new reasons which avoid the dissonance between their actions and their convictions.

Social psychology provides a vast amount of theoretical argument and (sometimes dramatic) empirical findings in support of this view. It has been shown, for instance, that circumstances which permit a reduction of cognitive dissonance only by a change of preferences (i. e., for political views or repulsive food) actually lead to those preference changes predicted by cognitive dissonance theory.

I cannot offer any detailed account of cognitive dissonance theory here but the theory seems to be well-founded. The drive for cognitive consistency seems to be more fundamental than tastes or value judgments, since it can be used to shape or modify them. It has been shown, furthermore, that cognitive dissonance actually impairs the well-being of individuals.

3.2 Injustice and Cognitive Dissonance

If the premises of cognitive dissonance theory are accepted, the emotive impact of the cognitive view of justice emerges naturally. Injustice means unjustness and hence cognitive dissonance. This is viewed as an impairment and is therefore avoided.²² Adam SMITH's idea of justice as emerging from pride (Section 1.4) appears to be a basically correct insight flawed by a wrong perspective. Justice might be viewed more appropriately as arising from man's striving for cognitive consistency, for meaning. The impact of justice on welfare is conveyed by the welfare effects of a meaningful existence. Hence the cognitive dissonance argument provides a link between the emotive and the cognitive view: Rules of justice can emerge as described in Part 2 and the preference for cognitive consistency establishes the utility of these rules.²³

3.3 Cognitive Consistency and Requiredness

The Gestalt view of justice is based, however, on a concept which is broader than that of cognitive consistency. It uses the concept of "requiredness" instead, which has been introduced already in Section 2.9. With regard to cognition, the notions actually coincide, and in this sense, the notion of justice developed up to now can be taken as the Gestalt view.

The notion of requiredness is, however, different from consistency. It is broader in that it comprises not only cognition but also emotion, and it is less ego-centred. It embraces, for instance, "good continuity," "filling a gap or disjunction." It also en

²² Hence we might argue in the opposite direction that the actual relevance of considerations of justice provides further evidence for the drive towards cognitive consistency.

²³ Cognitive dissonance applies to many things, not only to the rules of justice, of course. It quite a different notion from injustice, but can be applied to it.

compasses the thought that a certain view about facts requires certain evaluations, or even that a certain situation requires the introduction of some sort of dissonance.²⁴

Unfortunately, "requiredness" is as ill-defined as "cognitive dissonance," but it seems to correspond to psychological reality.²⁵ It refers to a fundamental psychological human predisposition to give meaning to experience, and then to live up to that meaning.

3.4 Requiredness and Justice

The concept of requiredness permits us to merge the arguments that the rules of justice refer to requiredness (Section 2.9.) and that deviations from these rules cause cognitive dissonance (Section 3.2.): To put it simply: justice refers to what is required by the rules of justice. This amounts to the Gestalt view of justice.

The definition sounds tautological (but then it is correct!), but actually it is not, since the notion of requiredness builds on the laws of concept formation, which govern the formation of the rules of justice, and these laws are accessible to positive analysis. Requiredness also refers to the desire to obey these laws, and this can be tested, too, if it is not already obvious.²⁶

3.5 The Gestalt View of Justice

The Gestalt view of justice can be summarized as follows. People live in a given society. They try to understand the world they live in by forming cognitive schemata

²⁴ See HIRSCHMAN (1982, 14-17) who criticized cognitive dissonance theory for neglecting this possibility.

²⁵ In cognitive dissonance theory it is often emphasized that consistency refers to a psychological rather than to a logical fit. This relates the concept to requiredness, but it makes it very ambiguous as long as nothing is said about the conditions under which psychological dissonance might arise. Although this is a valid criticism of cognitive dissonance as well as requiredness, there are clearly instances where we agree that cognitive dissonance and requiredness, respectively, will arise, and experiments have dealt mainly with these cases. Although the concepts are ill-defined, they give rise to some insights and allow for predictions. They "require" a better definition rather than being scrapped. I have tried to avoid this problem by using the well-established, but also ill-defined, concept of a "schema" on which observations are gauged. This usage shifts the problem of ambiguity to the notion of a "schema" and the relevant Gestalt principles. These certainly require much elaboration by the psychologists and are still not well-defined. But Gestalt research on perception as well as cognition (e. g., ROSCH 1975 a, 1975 b; THORNDYKE 1977; DAHLGREN 1985) clearly suggest that these concepts correspond to psychological reality.

²⁶ Requiredness and *prägnanz* are of course closely related. *Prägnanz* refers to the psychological tendency towards maximum clarity in organizing psychological phenomena, and it can function either to produce greater accuracy or, under certain conditions, it results in inadequate organization (ASCH 1952, 59). Requiredness refers, so to speak, to the tendency towards overall *prägnanz* of our cognitions and emotions. There are obviously close ties between Gestalt and PIAGET. In view of KÖHLER (1929), PIAGET's (1971) remarks on these inter-links are rather unsatisfactory. The family resemblance carries over to KOHLBERG (1983), which can be read as giving additional support to the inter-relatedness of values and cognitions as postulated by the Gestalt view.

which generate requiredness. The schemata pertaining to the general patterns of social interaction with distributive consequences and to the patterns of those patterns, are the rules of justice.

The laws of concept formation as well as the tendency towards requiredness, towards the overall *prägnanz* of our cognitions, emotions and actions, are universal, they are part of our psychological make-up. They might lead, however, to different schemata and rules of justice for different states of knowledge and experience or different cultures, and changes in knowledge and experience could lead to changes in schemata and, hence, the rules of justice (ASCH 1952, Ch. 13).

4. Some Implications

4.0 Introduction

The Gestalt view of justice, as developed up to now, is rather vague. This is certainly a drawback (but not a decisive one) for two reasons. Firstly, in my opinion it seems better to be vaguely right than to be precisely wrong; and secondly, the vagueness of the notion is a spin-off from the vagueness of the underlying notions of *prägnanz* and requiredness, which is, in principle, amendable by positive analysis.²⁷

However the Gestalt view of justice can be clarified by discussing its implications. This part makes an attempt in that direction.

I shall discuss, in the following, issues of conflict and change (Sections 4.1-4.3). Furthermore I shall argue that the Gestalt view is neither purely positive nor purely normative, and that it benefits from this feature (Section 4.4).

4.1 Contradictions

Schemata of perception are organized groups of individual perceptions, they refer to the *Gestalt*, that is, to the whole of what they are intended to summarize. This

²⁷ To my mind this requires a comprehensive rather than an exclusively piecemeal approach to theoretical psychology. Behaviourism and Freudianism offered, for example, comprehensive theoretical approaches, but they have faltered and have since been replaced by a set of various theoretical paradigms. The connections between them remain largely unexplored. It surprised me, for instance, that I could not find a single paper on the relationship between requiredness and cognitive consistency. The lack of theoretical analysis in psychology is perhaps due to the disappointment with the rigid and oversimplified approaches of Behaviourism and Freudianism, but it seems questionable to remain satisfied with a bag of paradigms which may contradict each other. This makes it difficult for the other social sciences to benefit from psychology.

gives rise to the so-called "framing effect": New observations, when added to the previous set of observations, could alter the schema of perception.²⁸

When confronted, for instance, with the sequence of numbers

$$(6) \quad 1, 2, 3, \dots$$

the following schema of an arithmetical sequence is generated

$$(7) \quad x_i = x_{i-1} + 1.$$

If the sequence continues as

$$(8) \quad 1, 2, 3, 4, 5, 6, \dots$$

the arithmetic schema is reconfirmed. If however, the series actually continues as

$$(9) \quad 1, 2, 3, 5, 8, 13, \dots$$

the FIBONACCI schema is formed

$$(10) \quad x_i = x_{i-1} + x_{i-2}.$$

In this way, the formation of schemata (and requiredness) depends on the context. This context dependency has been used in Section 2.10 to establish the interconnectedness between various levels of justice. But the argument can also be used in a different way.

Denote by B the beginning of the series (8) and (9)

$$(11) \quad B = 1, 2, 3,$$

and by $C1$ and $C2$ the two continuations

$$(12) \quad C1 = 4, 5, 6, \dots$$

²⁸ Gestalt psychology uses the term "gestalt switch" here. In PIAGET's learning theory, it is an accommodation, in KUHN's theory of scientific progress, it is a change of paradigm. See SCHLICHT (1975) for a more extensive discussion.

$$(13) \quad C2 = 5, 8, 13, \dots$$

If by "&" the concatenation of these strings are denoted, we can rewrite (8) as $B\&C1$ and (9) as $B\&C2$. Consider now two groups of people. Both have to memorize B , but group 1 has to memorize the continuation $C1$ and group 2 has to memorize the continuation $C2$. This will lead to different schemata in the two groups: Group 1 will adopt the arithmetic schema (7) and group 2 will adopt the FIBONACCI schema (10).

Since it has been argued that the formation of the rules of justice is tied up with the formation of cognitive schemata, this ambiguity is carried over to the rules of justice: People will use different schemata to describe the same event (i.e., the beginning B) if they have different conceptions about related events (i.e., the continuations $C1$ and $C2$ in our example). By using lawyer's terminology, people make different analogies.²⁹ If different analogies are equally appropriate, we are talking about a contradiction.³⁰ An ambiguous figure can, for instance, be interpreted in two mutually exclusive ways, giving rise to a contradiction.³¹

Likewise, different principles can lead to different evaluations of the same situation. Wages cannot be paid simultaneously according to both the need and to the productivity of the worker. In this way, thoroughgoing contradiction, i.e., contradictions which permeate the whole labour market, can be explained, and conflicts between principles are not merely boundary conflicts.

4.2 Conflict

When there are two possible interpretations for a given issue, people look for additional reasons for selecting the one or the other principle. They look for a framework which selects one of them. This includes their own advantages and selecting the appropriate interpretation. Once an interpretation has been chosen, each group will consider the selected principle as being the right one, and selective exposure to new information will reconfirm this belief. Other views will be considered as immoral tactics, and we all know the fights that result from this.³²

These conflicts arise from ambiguity. But there are also other conflicts which can be understood in Gestalt terms, namely those arising from dysfunction. The rules of justice are generated by the surface regularities of the social processes. But sometimes it is impossible to realize these norms in all cases. People may think that wages ought to correspond to responsibility simply because it is typical to observe a

²⁹ The Gestalt view is thus capable of explaining the extensive use of analogy in jurisdiction.

³⁰ This comprises, I think, what was meant by contradictions in Marxism. These were not conceived as logical contradictions but as contradictions between equally valid principles, or their consequences.

³¹ Thus the Gestalt view improves on WALZER's (1983, 318) discussion.

³² I have discussed this issue in more detail in SCHLICHT (1984b, Section 4.4).

close correlation between wages and responsibility produced by some underlying economic mechanism.³³ But if the wage-responsibility link is violated in some cases, due to competitive forces, these exceptions would be considered unfair.

4.3 Change

Principles are established by regularities and weakened by exceptions. This implies a view on the change of norms. If distinction between the sexes becomes, in many respects, less important for many disparate reasons, it will appear unjustified and the rules based on this distinction will appear unjust. In this way, the Gestalt view can make historical changes understandable. It can even lead to predictions. I have argued elsewhere, for instance, that an increase in firm-specific knowledge will lead, through market forces, to a de-facto immobility of labour (SCHLICHT 1979). This will obviate the view that the labour contract is an exchange contract, since this view is of no practical relevance to the agents, as any outside opportunities appear totally unattractive. Instead, the labour contract will be viewed as a reciprocity relationship involving a set of obligations and commitments, and the normative convictions will change accordingly.

4.4 The Gestalt View as Self-Referential

According to the Gestalt view of justice, positive and normative convictions are closely inter-linked. Cognition generates values. This is a positive hypothesis which is testable and is basic to the view. Thus the Gestalt view can be taken to be a positive, albeit rudimentary, theory of justice.

The question arises whether it is also normative: Should we aim for the type of justice described by the Gestalt view? The answer is clear for the theorist who maintains the Gestalt view, since it applies also to the way in which he forms his own judgment on justice. It is self-referential and therefore both positive and normative. The theorist takes the view as establishing norms. This does not imply that all theorists, or all people for that matter, will arrive at the same conclusion, since they might have different convictions with regard to other issues, and these differences could, through the framing effect, induce varying evaluations. The agreement can only refer to the way in which justifications are generated.

It can be argued that a particular theorist might actually dislike Gestalt justice. This would be a quirk without any reason, but then it is his personal taste and is clearly irrelevant for society. But if the theorist can give valid reasons for his evaluation, he would invalidate the Gestalt view of justice. As long as the view is held, it must carry normative conviction.

The mixture of normative and positive aspects might appear puzzling, but is, I think, actually a feature indispensable to any theory of justice. If values and facts are

³³ See SCHLICHT (1980).

kept distinct, it is the values which are always irrational and arbitrary. Anything goes, and then there can be no theory of justice which expresses more than personal taste. Any claim for some kind of validity, which transcends a coincidence of tastes or class interests, would be futile. The Gestalt view avoids this.

Zusammenfassung

Die von den Gestaltpsychologen in der Mitte des vergangenen Jahrhunderts entwickelte Theorie der Gerechtigkeit verknüpft Emotion und Kognition. Nach einer Gegenüberstellung von emotiver und kognitiver Sicht wird erläutert, wie diese scheinbar entgegengesetzten Sichtweisen aus der Gestaltperspektive integriert werden können. Daran anschließend wird an einigen Beispielen erläutert, in welchem Sinne die Gestaltsicht Probleme analysierbar macht, die aus rein emotiver oder aus rein kognitiver Sicht unzugänglich sind.

Summary

The Gestalt view of ethics, as developed by the Gestalt psychologists in the middle of the 20th century, led to a particular theory of justice which avoided the shortcomings of other (emotive or cognitive) approaches. It took the rules of justice as being based ultimately on the fundamental laws of psychological make-up.

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