

# A Defense of Nonideal Theories of Justice

## *Uma Defesa de Teorias de Justiça Não Ideais*

Daniela Goya-Tocchetto\*

*College of Charleston, Charleston – South-Carolina, United States*

(...) we should always carefully separate the empirical from the rational part, and prefix to Physics proper (or empirical physics) a metaphysic of nature, and to practical anthropology a metaphysic of morals, which must be carefully cleared of everything empirical, so that we may know how much can be accomplished by pure reason in both cases.

(Kant, Groundwork)

## 1. Introduction

The above quote by Immanuel Kant vividly instantiates a methodological position that has been prevalent in contemporary<sup>1</sup> political philosophy at least since the publication of John Rawls' groundbreaking *A Theory of Justice*, in 1971 – namely, the adherence to ideal theories and rationalism as the proper way to arrive at principles of justice. This methodological stance has been conducive to the present state of affairs in political philosophy, characterized by an ongoing rationalist debate easily recognized in the endless contemporary publications in the major journals of the field.

---

\* Professor in the Departments of Philosophy and Economics at College of Charleston (SC, United States). E-mail: danielagt@gmail.com.

1 "(...) what is connoted by our focus on *contemporary* political philosophy? Within the analytical tradition of thought, as that affects both philosophy and other disciplines, political philosophy has become an active and central area of research in the past three or four decades; it had enjoyed a similar status in the nineteenth century but had slipped to the margins for much of the twentieth. In directing the *Companion* to contemporary political philosophy, we mean to focus on this recent work" (*Companion*, 2012, p. xvii).

As a consequence of this idealist and rationalist attitude, contemporary political philosophers have been making very little use of surmounting evidence about human morality gathered by primatologists, evolutionary biologists, psychologists, experimental economists, and neuroscientists.

There are certainly remarkable exceptions. Even neo-Kantian political philosophers such as Rawls himself have been sensitive to empirical findings from a subset of fields, like economics and other social sciences.<sup>2</sup> In Rawls's case, the degree to which he demonstrated being sensitive to the workings of the empirical world is especially noteworthy. Most political philosophers address empirical data about human behavior solely after the principles of justice are in place, so as to check the *feasibility* and the *stability* of their proposed set of justice principles. Rawls does in part fit with this general way of proceeding shared by the majority of his fellow political philosophers. Nonetheless, he goes beyond this standard *modus operandi*.

In the second part of his second principle of justice, he makes a concession to unequal distributions of income insofar as this inequality is capable of improving the lives of those least advantaged in society—the so-called *difference principle*. This concession is the result of incorporating the teachings of economics, more specifically, the idea that incentives are necessary in order for people to perform their best. In this manner, Rawls fully acknowledges and addresses the empirically demonstrated tradeoff between efficiency and equality, shaping the form of his second principle of justice so as to properly incorporate this economic fact.

Hence, my claim in the present paper does not amount to stating that contemporary political philosophers have been completely oblivious to the results of the empirical sciences. My argument rests on the identification of three problems with the manner in which political philosophers have assimilated the relevance of empirical evidence. Firstly, political philosophers have not yet embraced all sorts of empirical evidence – this is especially true in relation to the findings from the natural sciences. Secondly, the degree to which philosophers have taken account of the results from empirical sciences is still rather incipient. In this sense, it seems necessary to give all the relevant empirical evidence, from the social and the natural sciences, due consideration. Thirdly, most political philosophers have

---

2 It is important to stress at this point that political philosophers have more easily incorporated empirical findings from the social sciences than from the natural sciences.

incorporated empirical findings late in the process of the development of theories of justice. That is, they have turned their attention to actual human moral behavior *after* the principles of justice are already in place, solely in order to check whether these principles pass the tests of being both feasible and stable.

Rawls is an example of a philosopher that incorporated empirical findings in the formulation of his principles. Nonetheless, he still falls short of addressing a variety of empirical sciences that are relevant to the understanding of human moral behavior. All the more, Rawls remains a Kantian in his ultimate foundation of justice, and the rationalist flavor that underlies his works is quite explicit. This is most likely a consequence of his methodological choice to construct an *ideal* theory of justice. As has been the focus of very recent debate, we should pay more attention to the development of *nonideal* theories of justice<sup>3</sup>.

In his book *The Enlightenment of Sympathy*, Michael Frazer offers an interesting analysis of the historical reasons that lead contemporary political philosophers to be hesitant about embracing a broader incorporation of empirical evidence in their theories of justice. Frazer (2010) claims that in the eighteenth century we have witnessed the emergence of two distinct enlightenments: the Kantian enlightenment of reason, and the Humean enlightenment of sentiment. Contemporary political philosophers, Frazer alleges, followed Kant down the rationalist path. As a consequence, they embraced our rational faculties alone as the proper ground for all normative systems. Once it is agreed that human morality can be grounded solely in our rational faculty alone, all moral systems are understood as axiomatic systems based on ideas such as inalienable rights and duties, and usually guided by the core value attached to human dignity. And, once we start working under an axiomatic framework, empirical evidence becomes less and less useful—this is my hypothesis for why we stand where we presently stand.

Recently, however, some exceptions to this traditional approach have been emerging. Pluralists such as David Miller and Michael Walzer have

---

3 I refer here to nonideal theories as exposed by Amartya Sen in his latest book, *The Idea of Justice*. In this book, he argues against the development of what he calls transcendental theories of justice, and in favor of the so-called comparative approach to justice theories. Recent work on the implementation of nonideal theories can be found in Wiens (2012). Yet this debate is not the focus of this paper. Before one argues for nonideal or comparative theories, one has to be certain that all arguments against the broader incorporation of empirical evidence in the development of political philosophical theories of justice are not valid. Therefore the present focus in the assessment (and dismissal) of these arguments.

developed theories of justice that heavily rely on folk intuitions about justice – thus paying closer attention to findings from the empirical sciences regarding human moral beliefs and behavior. In the development of their respective political theories, they demonstrate a high concern with pragmatic viability, which results in the endorsement of a plurality of principles amongst the different spheres of human life. The observance of this plurality emancipates philosophers from the supposed necessity of having a single set of principles that is valid for all types of social contexts.

In a distinct vein, utilitarian theorists such as Peter Singer and Peter Unger are also more open to the usage of empirical evidence whenever it is relevant to their subject matter. The difference is that utilitarians draw on the empirical sciences not to better understand folk intuition, but to downplay its authority on the derivation of moral principles and, subsequently, to argue for consequentialism. Notwithstanding these recent efforts, empirically informed theorizing about justice is far from being part of mainstream contemporary political philosophy.

Hence the fact that the most prominent political philosopher of the twentieth century incorporates a limited range of empirical evidence in his theorizing does not offset the pressing need for a more significant role for the empirical sciences in the development of contemporary political philosophical theories of justice. In this context, we should ask ourselves: are there any reasons to stand in opposition to the aforementioned empirical scarcity identified in the contemporary political philosophical literature on justice? After all, why would all sorts of empirical evidence about human moral behavior be significant for Political Philosophy? And if so, in which ways would it be significant? To address these questions is the aim of the present paper.

The paper is structured in five sections. The second section, following this introduction, presents the two main arguments philosophers have maintained against a broader empirically informed political philosophy. Subsequently, the third section addresses these critiques, expressing all the arguments for their dismissal – together forming a positive case for embracing all the empirical evidence. The fourth section brings out a more ambitious argument in favor of the relevance of empirical data for theorizing about justice. Finally, the fifth section provides a brief discussion about the proper role of the empirical sciences in contemporary political philosophy.

## 2. The arguments against empirically informed theories of justice

According to David Miller, philosophers generally appeal to two main arguments in order to refrain from getting their hands ‘empirically dirty’<sup>4</sup>. The first argument states that empirical research is unable to reveal people’s *considered judgments* about justice; while the second argument relies on the logical gap between what people’s actual beliefs *are* and what they *should* be – the widely known argument for the logical impossibility of deriving an *ought* from an *is* (so-called ‘natural fallacy’). In this sense, Miller claims that political philosophers’ reluctance to give all relevant empirical evidence a significant role to play in the development of justice theories derives primarily from a distinction between justification and acceptance<sup>5</sup>. In this sense, showing that a belief is accepted, philosophers assert, shows neither that it is justified nor that it is normatively obligatory.

The ‘considered judgments’ critique addresses the folk’s alleged lack of specialized knowledge about morality. It is not a claim about the irrelevance of folk intuition for moral theorizing; a point that would be at the very least strange in face of the long tradition of reliance on human intuitions in moral and political philosophy. For instance, philosophers as distinct as Aristotle and Rawls explicitly appeal to folk intuitions about justice in the development of their respective theories. Thus, what prevents the philosopher from relying on the empirical sciences is a methodological stance – a claim that armchair theorizing is the appropriate philosophical way of proceeding given the incapacity of the general population to properly formulate its considered judgments about morality. Numerous philosophers adopt the same methodological attitude. Their claim is not that intuitions are irrelevant; it is specifically that *folk* intuitions are irrelevant.

The ‘natural fallacy’ critique addresses the logical conditions limiting or allowing the collaboration of normative ethical theories and empirical sciences. That is, it constitutes a logical claim. Hume states in *A Treatise of Human Nature* that, while the logical value of being true or false can be attached to empirical statements, the same is not possible for normative statements. Thus, it is logically inadmissible to infer *ought* statements from *is* statements. The issue at stake here, I will argue, is that one does not have

---

4 MILLER, 2003, p. 42.

5 *Ibid.*

to deny this logical impossibility in order to embrace a thoroughly empirically informed political philosophy.

It is important to stress that advocating for the importance of a broad empirical understanding of the main concept of political philosophy, namely justice, neither implicates a naive endorsement of accepted beliefs as justified ones, nor constitutes an infringement of logical rules. The recognition of the relevance of empirical data about the nature of human morality constitutes an acknowledgment of its proper role in helping to develop political theories that are both reliable and feasible, as will be argued in the remainder of this paper.

### 3. The arguments in favor of empirically informed theories of justice

In this section I will address the main arguments against an active collaboration between political philosophy and all of the relevant empirical sciences. This collaboration could be understood in two different ways: political theory informing the empirical sciences, and the empirical sciences informing political theory. Here I restrict my attention to the latter form of collaboration.

In order to address the main contentions against a substantially empirically informed political philosophy, as described in the previous section, the *arguments in favor of taking the relevant empirical evidence seriously* will be organized under two broad groups: (i) Against the ‘Considered Judgments Critique,’ and (ii) Against the ‘Natural Fallacy Critique.’

#### (i) Against the ‘Considered Judgments Critique’

There are over-determining reasons for the dismissal of this critique. For starters, it is crucial to bear in mind that this critique is not aimed at the dependence on human intuitions in political philosophical theorizing. The central point of the ‘considered judgments critique’ is the alleged inappropriateness of employing the methods of the empirical sciences to arrive at philosophical intuitions. The mainstream method that philosophers draw on to assess our intuitions is the so-called armchair philosophical method. This method is characterized by the lonely reasoning about the issues at stake, so as to enable the trained philosopher to envisage by introspection alone which intuitions are relevant to his subject of interest.

In this respect, there are two main grounds on which we should be suspicious of armchair philosophy and in favor of an empirically informed practice. Firstly – and unsurprisingly, there is widespread disagreement among philosophers about which moral intuitions are universally shared by the laypersons. The pervasiveness of this disagreement is a sign that there is something suspicious about armchair philosophy. After all, how can an accurate method of arriving at our *shared* intuitions result in the attainment of distinct – and even divergent – claims? This first argument does not constitute a claim that empirical methods are more adequate for normative philosophical theorizing; it is intended to undermine the superiority of armchair philosophy. I will call this first argument ‘The Disagreement Argument.’

Secondly, the incoherence we encounter amongst folk intuitions does not itself constitute an impediment to the incorporation of commonsense morality in political philosophical theorizing. Many philosophers have argued against relying on folk intuitions based on the claim that it is of the utmost relevance to be able to arrive at a coherent set of intuitions and that, in order to do so, one needs philosophical specialized training. For those philosophers, the incoherence we encounter among the folk is an indication that they lack such specialized knowledge. I will argue against this claim. Moreover, I will contend that folk intuitions serve to illuminate political theories in several ways. This is a positive argument for the incorporation of empirical methods in political philosophy. This second argument is the so-called ‘Expertise Defense Argument.’

### *The Disagreement Argument*

One instance of the philosophical disagreements about folk intuitions generated via armchair methodology is provided by an analysis of the traditional ‘justice as impartiality’ approach<sup>6</sup>. This conception of justice can be found in a variety of cultures and historical periods, as explicitly exemplified by the pervasiveness of the *Golden Rule*: “do unto others as you would have them do unto you.” Contemporarily John Rawls and John Harsanyi, defenders of the opposite ethical systems liberal egalitarianism and utilitarianism, respectively, have both endorsed this methodology. Frohlich & Oppenheimer show that, from a theoretical perspective, they

---

6 FROHLICH; OPPENHEIMER, 1992.

should both have arrived at precisely the same principles<sup>7</sup>. Yet this is not what happened.

Frohlich & Oppenheimer contend that, once we achieve philosophical agreement on the role of impartial procedures for judgments of justice and on the ideal conditions of impartiality, *the specific content of the principles will be better arrived at through the proper design of experiments than through armchair reasoning*<sup>8</sup>. That is, armchair philosophy would still have an essential function, namely, the definition of the appropriate role of impartiality and of its ideal conditions.

This example illustrates just one possible relation between empirical inquiry and theories of justice, but one that has already generated an entire research program in political science: the use of laboratory experiments, usually with college students, designed to reveal the judgments of individuals under controlled conditions of impartiality<sup>9</sup>. Unsurprisingly, the political philosophical community has largely ignored this research program.

In the face of widespread disagreement amongst philosophers about which intuitions are universally valid, we cannot help questioning the alleged superiority of the armchair methodology. After all, if it is assumed both that there are *common* intuitions *shared* by every average human being concerning moral issues and that the right method to arrive at these intuitions is armchair philosophy, how can one justify different philosophers arriving at incongruent intuitions via the exact same supposedly accurate and impartial method?

### *The Expertise Defense Argument*

Another reason one can present in favor of an empirically informed methodology in political philosophy is the aforementioned claim that incoherence among folk intuitions is not sufficient for their dismissal as irrelevant. Quite the contrary, folk intuitions illuminate political philosophical theorizing in several ways.

One of the usual routes philosophers take to argue that laypersons' incoherent intuitions are a sign of their incapacity to achieve considered

---

7 FROHLICH; OPPENHEIMER, 1992.

8 *Ibid.*

9 For a good review, see "Empirical Social Choice: Questionnaire-Experimental Studies on Distributive Justice" (GAERTNER; SCHOKKAERT, 2010).



judgments is the so-called ‘expertise defense.’ The expertise defense maintains that philosopher’s professional training is a necessary condition for the attainment of accurate philosophical intuitions<sup>10</sup>.

Yet this defense is not sustainable. There is overwhelming data showing that expert philosophers behave in much the same way as the laypersons. Moreover, there is data revealing that personality traits exert influence on the intuitions of verifiable experts – and that they also remain unaware of this influence<sup>11</sup>.

Additionally, contemporary research in moral psychology has been providing cumulative evidence that most human intuitions are messier than we had anticipated – and the philosopher’s intuitions are not immune to this messiness. Yet the fact that our intuitions are muddled does not straightforwardly imply that we should not take them seriously, or that the task of the philosopher is to render them coherent – as one could flippantly think.

On the contrary, this *incoherence* may be illuminating in several ways – many of which we may to date be still unaware. There are at least four ways in which data about this incoherence has already been illuminating present research – individually discussed in the following paragraphs: (i) uncovering the biases that generate some of these incoherencies; (ii) revealing the distinctive psychological and neurological mechanisms responsible for the generation of these differences in our moral intuitions; (iii) informing us about the roles that distinct moral intuitions played evolutionarily and psychologically in human development; and (iv) revealing how our intuitions are subject to the influence of personal characteristics.

Regarding the first way, there is an extensive body of evidence that shows that our moral intuitions are subject to a wide variety of framing effects<sup>12</sup>. As a result, philosophers have started arguing that we should discard moral judgments that we have good reason to suspect are distorted by morally irrelevant factors. They claim that considered judgments should be held on the basis of undistorted, unbiased reasons. Thus, it is useful to learn whether there are conditions under which our judgments about justice are distorted by morally irrelevant factors.

---

10 FELTZ; COKELY, 2012, p. 238.

11 For a review of this evidence, see *Ibid*.

12 Classic examples of such distortions are illustrated in Kahneman & Tversky, “Choices, values, and frames” *In: American Psychologist*, 39, 1984, pp. 341–350.

In light of these framing effects, Sinnott-Armstrong argues that we are becoming more and more capable of distinguishing which intuitions are originated through reliable mechanisms and which are not<sup>13</sup>. Moreover, Sinnott-Armstrong claims that we are now aware of the fact that not all of our intuitions are readily reliable. As a result of this awareness, the author makes a case for the permanent need of *confirmation* of our intuitions before we can confidently rely on them for the purposes of normative theorizing.

The second manner in which the incoherence amongst folk intuitions can shed light on philosophical issues is by revealing the distinctive psychological and neurological mechanisms responsible for its origin. In this regard, Haidt contends that psychological research has been revealing that it is an emotional process that ultimately generates our moral judgments. Haidt takes this reasoning even further, maintaining that:

Reason can let us infer that a particular action will lead to the death of many innocent people, but unless we *care* about those people, unless we have some *sentiment* that values human life, reason alone cannot advise against taking the action<sup>14</sup>.

In a related vein, Greene gathers evidence from neuroimaging that corroborates Haidt's findings<sup>15</sup>. Greene shows that our deontological moral judgments are associated with the activation of brain parts responsible for our emotions. Additionally, he shows that different parts of the brain are activated when we engage in consequentialist moral judgments. Under this latter case, the parts that are activated the most are the ones associated with rational cognition.

The third way in which the incoherence of folk intuitions illuminates our understanding of morality is by informing us about the roles that distinct moral feelings played evolutionarily and psychologically in the course of human natural history. Here again Greene presents us with an interesting line of reasoning based of his empirical findings. He contends that our deontological judgments are in place so as to enable us to live in groups and cooperate with one another. Yet, evolutionarily, these judgments are

---

13 SINNOTT-ARMSTRONG, 2005.

14 HAIDT, 2001, p. 345.

15 GREENE, 2001; *Ibid.*, 2004.

only fit for small-scale societies – the ones in which we have been living in for the greater part of human history. In his own words, Greene says:

I believe that consequentialist and deontological views of philosophy are not so much philosophical inventions as they are philosophical manifestations of two dissociable psychological patterns, two different ways of moral thinking, that have been part of the human repertoire for thousands of years<sup>16</sup>.

The fourth and final manner in which the incoherence of folk intuitions can enlighten political philosophical theories is by revealing personal biases in existing approaches. That is, the data can show that allegedly accurate intuitions reached through the traditional armchair process are actually the result of a psychological distortion. Empirical research has shown that individual's conceptions of justice tend to be related with personal characteristics. For instance, Alesina & Giuliano report that more educated individuals tend to be more averse to redistributive policies, while the opposite holds for women, blacks and respondents with a history of unemployment, or those who were raised Catholic or Jewish<sup>17</sup>. This evidence signals the necessity of making a conscious effort to be aware of these sources of biases, so that philosophers can at the very least try to avoid them. Nagel points in a similar direction when he argues that individual personal characteristics flavor every great philosopher's version of reality:

(...) philosophical ideas are acutely sensitive to individual temperament, and to wishes. Where the evidence and arguments are too meager to determine a result, the slack tends to be taken up by other factors. The personal flavor and motivation of each great philosopher's version of reality is unmistakable<sup>18</sup>.

Hence, there is no good argument for the dismissal of folk intuitions. The claim that laypersons are not capable of arriving at considered judgments, while expert philosophers would enjoy this capacity, is not defensible. As maintained in this subsection, we hold good reasons for paying due attention to folk intuitions when developing political philosophical theories.

---

16 GREENE, 2008, p. 37.

17 ALESINA; GIULIANO, 2009.

18 NAGEL, 1986, p. 10.

## (ii) Against the ‘Naturalistic Fallacy Critique’

In this subsection I will address the arguments in favor of the dismissal of the natural fallacy critique. Once again, I emphasize that this group of arguments does not in any manner imply a refutation of the natural fallacy; the logical claim it states remains valid. The arguments that are exposed in this subsection are only intended to refute the use of the natural fallacy as an impediment to empirical and normative collaboration. The arguments that will be respectively examined in this subsection are: *The Feasibility Argument*, *The Public Support Argument*, *The Translation Argument*, *The Measurement Argument*, *The Motivational Argument*, *The New Insights Argument*, and *The Complementation Argument*.

### *The Feasibility Argument*

Schleidgen et al. argue that Hume’s Law logically substantiates the boundaries of empirical-normative collaboration in philosophy, while the Kantian “ought implies can” principle clarifies its particular prospects<sup>19</sup>. They refer in this clarification to the first argument one can make for an active collaboration between the empirical sciences and normative theories: the so-called ‘feasibility argument’. Notably, contemporary political philosophers hardly ever deny this argument.

The clarification made by Schleidgen et al. regards the necessity of better understanding human moral behavior so as to demarcate the realm of possibilities for the behavioral dictates of political philosophical theories. In this sense, it is imperative to comprehend what we as humans are *capable of* doing before we establish what we *should* be doing – can must precede ought. As Schleidgen et al. emphasize, “it is not sufficient for moral norms to demand acts which are logically possible, but empirically impossible due to factual incapacities of moral real subjects”<sup>20</sup>.

In this first manner of collaboration, the empirical social and natural sciences can contribute to normative theorizing by helping political philosophers to: (i) specify internal cognitive and motivational capabilities and limits of human agents; (ii) understand externally determined conditions, which are the basic conditions of specific situations which structure the

19 SCHLEIDGEN *et al.*, 2010.

20 *Ibid.*, p. 8.

range of possible actions but cannot be influenced by the agents; and (iii) answer questions like how agents actually act in certain situations (which is important in order to evaluate the viability of the norm). Even if we decide to stick with a norm that is initially not viable, it is still important to understand, as well as possible, how difficult it will be to change human behavior so as to fit the norm and in which ways this change can be achieved.

Hence empirical evidence is crucial at least insofar as political philosophical theories aim at providing guidance for real institutions in real world situations. Once one has a theory of justice and its principles, how can one be sure that people will actually be capable of abiding by them? As nicely stressed by Gaertner & Schokkaert: “Thinking about the content of justice without the desire of making the world more just, is like pouring out a glass of water and then refusing to drink”<sup>21</sup>.

### *The Public Support Argument*

The second argument in favor of interdisciplinary research in political philosophy can be called the ‘public support argument’. If principles of justice are to serve as guidance for the implementation of public policies, it is of the utmost relevance that these principles share the support of the general population. The fact that this support is directly dependent on the folk’s values and preferences makes it essential for a political philosopher to know what these values and preferences are and to understand as much as possible how they originate and how they evolve over time<sup>22</sup>.

Even if the political philosopher is not going to have his convictions a bit shaken due to the fact that no one shares his considered judgments about justice – already a difficult pill to swallow – it is still paramount to know that such is the case. This relevance is due to the fact that this widespread rejection will be a measure of the likelihood with which policies based on those principles will be effective in the real world.

Alesina and Angeletos provide an interesting example of such relevance. Their research focuses on the reciprocal influence between social values and economic policy<sup>23</sup>. The authors show that the values that peo-

---

21 GAERTNER; SCHOKKAERT, 2010, p. 8.

22 “Empirical research on the acceptance of notions of justice by different social groups is therefore essential to understand the social environment in which policy decisions are taken.” (*Ibid.*).

23 ALESINA; ANGELETOS, 2002; *Id.*, 2004.

ple hold about social justice matter for policy makers insofar as these values exert direct influence on the levels of government social expenditure. At the same time, the levels of social expenditure implemented by governments also matter for political philosophers insofar as they directly affect the beliefs about justice held by the folk. In this sense, the relevance of empirical evidence is undeniable. As once again nicely framed by Gaertner & Schokkaert, “Even if one considers the majority opinions to be ethically unacceptable, one still has to convince a sufficient number of citizens if one wants to implement one’s own supposedly superior conception of justice”<sup>24</sup>. In a democratic State, folk intuitions can be shaped and molded, but they cannot be bypassed altogether.

#### *The Translation Argument*

The third argument for the use of empirical research in ethics can be called the ‘translation argument’<sup>25</sup>. It states that empirical data should be used as a means to the translation of more general and abstract principles into specific and action-driven directives and guidelines that are both morally justified and workable in practice. The translation argument diverges from the feasibility argument because it claims that empirical data is only relevant *after* the basic principles are already in place; the only parts of the theory that can therefore be questioned by empirical findings are the so-called *practice rules*.

Schleidgen et al. argue that, when dealing with moral justifications for basic principles, it is best to focus on fundamental and systematic analysis, not on empirical issues<sup>26</sup>. They advocate for two levels of analysis: (i) one level that explores the basic principles, which are “pure” and the development of which is the task of normative theorists alone; and (ii) one level that explores the practice rules, which should be empirically informed and tested.

The idea is that normative conclusions have to be translated into practice in accordance with its specific context and conditions. In this sense, the basic principles have to be translated into practice rules so as to come to terms with the specific limits of human thinking and acting. The ac-

---

24 GAERTNER; SCHOKKAERT, 2010, p. 9.

25 SCHLEIDGEN *et al.*, 2010.

26 *Ibid.*

knowledge of this necessity poses a problem to the process of deriving practice rules exclusively from ideal conditions or ideal agents: the real world is not ideal and real people have cognitive and motivational limitations. Hence the derivation of normative practice rules has to be informed both by the ways in which the real world is not ideal and by our knowledge of people's cognitive and motivational limitations. In the following passage, Schleidgen *et al.* add that:

However, empirical analysis is neither part of the process of developing a moral norm nor included in the methodological repertoire of normative sciences. Hence, normative theory must rely on collaboration with empirical social sciences (a) when translating basic principles into practice rules and (b) when clarifying the criteria for applying a moral norm<sup>27</sup>.

Under this view, basic principles should only get 'empirically dirty' when they include the so-called bridging principles. A bridging principle assumes the following form: an action A is demanded in accordance with a moral norm N iff criterion C is met; whereby criterion C must be tested empirically. This means that the conditions of applicability of the principle must be tested empirically.

We can find several examples of bridging principles – which can also be understood in terms of implementation conditions, such as: (1) All sentient beings should not be inflicted pain; the implementation condition is that the being in question is sentient, and this is an empirical claim; and (2) If acting according to N helps in stabilizing society one should act according to N; the implementation condition is that the norm N actually helps stabilizing society, and again this is an empirical claim.

Yet it seems questionable if the "implementation conditions" determine only whether the norm is applicable or not. Sometimes the implementation conditions seem to be determining whether the norm is *actually* valid or not. Some principles only make sense if the world is constituted in some specific way rather than others. For example, taking an extreme case, rational principles only make any sense if we are actually rational creatures. Respecting the rights of individuals only make sense insofar as individuals actually have rights – for example, look at the debates about natural rights

---

27 SCHLEIDGEN *et al.*, 2010, p. 5.

and economic rights, or new rights such as the right to labor. In the case of Rawls, for instance, the difference principle is only valid if in fact incentives are needed so as to make people work harder.

#### *The Measurement Argument*

The fourth argument can be called the ‘measurement argument’. It states that empirical data is significant because it helps us to grasp, describe, and explicate collective processes and changes, which in turn help us to measure the effects of certain norms or rules on the actual performance of agents. This measurement is especially important for the implementation of consequentialist principles insofar as their implementation is dependent on the various effects of distinct alternatives.

#### *The Motivational Argument*

The fifth argument can be called the ‘motivational argument’. It expresses the importance of psychological knowledge about the nature of human motivation. If justice principles are to have any real effect in the world, they should specify rules such that real individuals are motivated to follow. Sometimes empirical research may reveal why people diverge from moral norms while being at the same time cognitively able to agree with them. In this way, it may be possible to open novel approaches to motivate people to observe these rules<sup>28</sup>.

#### *The New Insights Argument*

The sixth argument can be called the ‘new insights argument’. It highlights a different manner via which the empirical sciences can contribute to the development of ethical theories: by providing political philosophers with new insights, puzzles, and ideas, which may inform and change their theories. One example of such contribution can be found in the work of Yaari & Bar-Hillel<sup>29</sup>. These researchers provide evidence for different perceptions of justice about the distribution of goods, depending on whether the distribution is characterized in terms of needs or in terms of tastes. This difference was not accounted for by welfarist theories of justice, and the evidence helped theorists to improve their comprehension of the subject.

---

28 SCHLEIDGEN *et al.*, 2010, p. 12.

29 YAARI; BAR-HILLEL, 1984.



Another example of this type of contribution is illustrated by the Pigou-Dalton principle, which states that every transfer of income from a richer to a poorer person that does not reverse the original income ranking of the two individuals is inequality decreasing. Amie & Cowell showed that a large parcel of the population does not accept this principle<sup>30</sup>. One could have interpreted this as evidence of the folks' stupidity, but Ebert decided instead to take this evidence seriously<sup>31</sup>. Ebert's work led to the development of the principle of concentration (formerly introduced by Kolm<sup>32</sup>), being followed by the reinterpretation of the idea of relative deprivation by Magdalou & Moyes<sup>33</sup>.

In addition to providing novel insights in these and related ways, empirical research is also capable of pointing to new facts about the world—such as technological innovations, which demand new or revised principles<sup>34</sup>. A prominent example of this sort of normative revolution initiated by changes in the world is the emerging field of neuroethics. Before the recent rise of brain research this new field would be unimaginable. Yet today it is one of the most promising areas of investigation in ethics.

### *The Complementation Argument*

The seventh argument can be called the 'complementation argument'. It stresses yet another way in which the empirical sciences can collaborate with normative philosophy, namely, through the complementation of ethical theories. That is, empirical evidence may be needed so as to fill in the gaps of political theories.

There is one paradigmatic example of this sort of collaboration: Roemer's theory of equality of opportunity<sup>35</sup>. Roemer advocates for what is known as 'leveling of the playing field', arguing that every person is entitled to an equal chance to succeed. In order to achieve this equality while at the same time making it possible for persons to reach different levels of success, he builds on the classical distinction between effort and circum-

---

30 AMIE; COWELL, 1999.

31 EBERT, 2009.

32 KOLM, 1996.

33 MAGDALOU; MOYES, 2009.

34 SCHLEIDGEN *et al.*, 2010.

35 ROEMER, 1998.

stances. Individuals are to be held responsible for the former, and compensated for the latter.

There exists a world of philosophical debate as to where the line between luck (social and natural lottery) and effort (taken to be within the realm of personal control) should be drawn<sup>36</sup>, but Roemer has a different view on the subject. He states that the line is culture-dependent: “Because the choice by society of these parameters cannot but be influenced by the physiological, psychological, and social theories of man that it has, the present proposal would implement different degrees of opportunity egalitarianism in different societies”<sup>37</sup>. Hence he leaves an open invitation for empirical work on cultural disparities in the levels of responsibility attribution. His theory offers a general and coherent framework that can be applied for any division between effort and circumstances, while empirical work supplies the necessary information about where the boundary is to be drawn in different societies.

Another example by Gaertner & Schokkaert addresses what should be done when we face a conflict of valued interests between, for instance, generating economic growth and violating individual rights (such as the right to strike). They claim that:

A priori (‘objective’) theories of well-being (such as the one by Nussbaum, 2000, 2006) might offer a framework for dealing with the resulting trade-offs, but even these theories often remain silent about the structure of relative weights and are therefore not very helpful in specific situations. Another approach, which is much more in line with the economic tradition, is to respect (‘subjective’) individual opinions and preferences about these trade-offs. In this latter approach, empirical work is needed to collect the necessary information about preferences<sup>38</sup>.

In this case, it is important to stress that the principle of respect for preferences is *a priori* and therefore needs philosophical justification. Nonetheless this necessity does not eradicate the need of empirical work to provide this principle with practical substance. In this sense, Gaertner &

---

36 FLEURBAEY, 2008.

37 ROEMER, 1993, p. 166.

38 GAERTNER; SCHOKKAERT, 2010, p. 13.

Schokkaert provide a series of cases in which the general public has clear preferences about trade-offs in relation to which theories have not provided clear guidance<sup>39</sup>. They claim that in these cases empirical evidence can provisionally provide this necessary guidance, at least until we have a complete normative theory.

#### 4. Reflective equilibrium and public justifiability

There is yet a more substantial—and ambitious—claim in favor of taking empirical work seriously in the development of political theories. This claim is related to a particular way of doing political philosophy, one that is exemplified by the valuable Rawlsian conceptions of reflective equilibrium and public justifiability.

Firstly, it is worth stressing once again that moral intuitions play a crucial role in Rawlsian reasoning. As John Rawls writes, “One may regard a theory of justice as describing our *sense of justice*. (...) A conception of justice characterizes our moral sensibility when the everyday judgments we do make are in accordance with its principles<sup>40</sup>”. That is, principles of justice must emerge from a balance between some of our principles and some of our intuitions and considered judgments.

This is not to say that a theory of justice is merely a catalogue of folk intuitions. Here is where the conception of reflective equilibrium enters into the scene. Moral intuitions are important insofar as they are the starting point to the process of achievement of a narrow reflective equilibrium. As nicely delineated in the Stanford Encyclopedia of Philosophy:

In carrying through this method one begins with one's considered moral judgments: those made consistently and without hesitation when one is under good conditions for thinking (e.g., “slavery is wrong,” “all citizens are political equals”). One treats these considered judgments as provisional fixed points, and then starts the process of bringing one's beliefs into relations of mutual support and explanation as described above. Doing this inevitably brings out conflicts where, for example, a specific judgment clashes with a more general conviction, or where an abstract principle cannot accommodate

39 GAERTNER; SCHOKKAERT, 2010.

40 RAWLS, 1971, p. 41.

a particular kind of case. One proceeds by revising these beliefs as necessary, striving always to increase the coherence of the whole. Carrying through this process of mutual adjustment brings one closer to *narrow reflective equilibrium*: coherence among one's initial beliefs.

After we have achieved this narrow reflective equilibrium, we proceed to the process of wide reflective equilibrium. We engage in this second stage by adding to our responses the major theories in the history of political philosophy, as well as the theories that are critical of political philosophizing as such. We continue to make adjustments in our schemes of beliefs as we reflect on these alternatives, aiming for the end-point of *wide reflective equilibrium* in which coherence is realized after many alternatives have been considered.

As Rawls emphasizes, the best account of a person's sense of justice is one that "matches his judgments in reflective equilibrium"<sup>41</sup>. The idea is not to simply read off principles of justice from common sense moral judgments—but these judgments nevertheless serve as important inputs into the process. Moral intuitions must be filtered by a procedure of impartial reflection. That is, we seek an account that systematizes, in Rawls's terms, our considered moral judgments.

Moreover, a person may be right to accept a theory of justice that fails to accommodate some of her considered moral judgments. She may decide that this theory does an otherwise admirable job of explaining her most highly esteemed considered judgments. Hence she chooses to revise or discard the particular considered moral judgment that conflicts with the theory rather than to revise or discard the theory.

We bring considered moral judgments into reflective equilibrium by undergoing a process of revising general principles against particular judgments. We discard a general principle if it yields a particular judgment we refuse to accept; we discard a particular judgment if it violates a general principle we refuse to revise. Eventually we reach a satisfactory balance of principles and judgments. Thus, the principles of justice are not meant to serve as *ad hoc* explanations of our common sense intuitions. Our goal is to arrive at a systematic articulation of the verdicts of moral *common sense*. These principles bring out the so-called *deep structure* of our moral beliefs<sup>42</sup>.

41 RAWLS, 1971, p. 43.

42 MILLER, 2003.

Miller stresses the importance of a second Rawlsian core idea, contending that the possibility of justifying a theory of justice to the general public is a precondition for its being ethically acceptable—the so-called public justifiability argument. The goal is to ensure that all valid principles of justice will be capable of being publicly justifiable. That is, valid principles must be such that citizens of a well-ordered society can justify them to one another using only commonly accepted modes of argument.

In this case, Miller insists that:

It seems much more plausible to regard the set of beliefs that are publicly justifiable in a given society *S* as the beliefs currently held in *S* adjusted to take account of empirical error, faulty inferences, the distorting effect of self-interest, and so on—that is, the deficiencies that are already commonly understood to produce erroneous beliefs<sup>43</sup>.

Gaertner & Schokkaert agree with this view, clarifying that:

Views such as the one of Miller certainly do not conflate social scientific research on justice with normative theory. Popular vote is not the ultimate justification of an ethical position. Opinions of the public are no more than an input (albeit a necessary one) into a broader philosophical debate aiming at a reflective equilibrium between theoretical principles and specific considered judgments. Putnam gives a larger weight to majority opinions, but also in his view there remains an essential tension between public opinion and normative thinking. (...) Therefore, the role of theoretical thinking remains essential. Yet, in these approaches, theoretical thinking should necessarily integrate in a critical way the findings of empirical work. The latter therefore is an essential ingredient into the normative debate<sup>44</sup>.

Rawls continuously remarks that principles of justice should express the fundamental ideas implicit in the public political culture of a democratic society. At the same time, he repeatedly states that when a principle is tested via reflective equilibrium the only opinions that count are those of the philosopher and of the reader of his book. Hence Rawls is pulled

---

43 MILLER, 2003, p. 56.

44 GAERTNER; SCHOKKAERT, 2010, p. 17.

in different directions when it comes to empirical evidence: he simultaneously adheres to a form of contractarian reasoning (which does not rely on empirical evidence) while relying on judgments that are supposedly shared by the general public.

Thus we are left with the following question: is it possible to decide whether a judgment is considered simply by scrutinizing it in solipsistic fashion, relying only on internal evidence to establish how much confidence we should place in it, or whether it has been influenced by one of the distorting factors that Rawls mentions? It is surely of the greatest relevance to check whether the judgments we make are shared by those around us, and if they are not, to try to discover what lies behind the disagreement<sup>45</sup>.

In this sense, experimental evidence should function as actual guidance to normative theories. That is, we should make use of folk intuitions and beliefs as an active source of information in order to better understand the content of the principles of justice. This is not to say that we can simply derive normative principles from descriptive ones. It is instead a claim about the nature of ethical beliefs and its objectivity. This argument is nicely developed by Amartya Sen in his work *The Idea of Justice*:

(...) public reasoning is clearly an essential feature of objectivity in political and ethical beliefs. (...) In seeking resolution by public reasoning, there is clearly a strong case for not leaving out the perspectives and reasonings presented by anyone whose assessments are relevant, either because their interests are involved, or because their ways of thinking about these issues throw light on particular judgments – a light that might be missed in the absence of giving those perspectives an opportunity to be aired<sup>46</sup>.

If theories of justice are to articulate our shared conception of justice—in Rawls's terms, a conception “which is congenial to the most deep-seated convictions and traditions of a modern democratic state”—we should conduct empirical research to learn which conception of justice is actually shared by the citizens of modern liberal democratic states<sup>47</sup>. We cannot

---

45 MILLER, 2003, p. 55.

46 AMARTYA SEN, 2009, p. 44.

47 RAWLS, 2005, p. 300.

simply assume from the armchair that the philosophers' intuitions are representative of the intuitions of laypersons. Claims about the distribution of intuitions are ultimately empirical claims. Thus, Miller highlights that "in setting out a theory of justice, the normative theorist who is guided by something akin to the Rawlsian ideas of reflective equilibrium and public justifiability needs evidence about what people do in fact regard as fair and unfair in different social settings," reckoning that "a theory of justice needs to be grounded in evidence about how ordinary people understand distributive justice"<sup>48</sup>.

## 5. Final considerations

We are now living under a new paradigm whereby we are beginning to better understand how our brains operate.<sup>49</sup> As a result, we are becoming increasingly capable of developing political philosophical theories for *real* institutions and persons. Moreover, as we have discussed, the empirical sciences provide an array of relevant data about human beliefs and behavior that can inform political philosophers in a variety of ways.

In this context, Weaver and Trevino envision three possible ways in which science and normative philosophy can actively collaborate<sup>50</sup>. The first way is the so-called *symbiotic collaboration*. The symbiotic type of interdisciplinarity advocates for a relation amongst ethics and the empirical sciences in which one supplements the other in its limitations. That is, the symbiotic approach entails a pragmatic and collaborative relation between normative theorizing and empirical research, in which the cores of each approach remain essentially separated.

The second approach for the collaboration of empirical sciences and normative theories is the so-called *parallel*. This approach implies the utter denial of any possible integration between empirical and normative theories, on both conceptual and practical grounds. Advocates of this approach argue for the strict separation between that which is normative and that which is descriptive. As they emphasize, normative theorists and

---

48 MILLER, 2003, pp. 59-61.

49 The novel findings from behavioral and brain research will be properly addressed in the second paper that composes this dissertation.

50 WEAVER; TREVINO, 1994.

empirical scientists should work as ‘parallel lines’; they should never allow their researches to ‘touch’ each other.

The third and final manner of collaboration is the so-called *integrative* approach—which rejects the very idea of a distinction between normative and empirical claims. The supporters of the integrative approach go even further, stating that ‘there is no fundamental distinction between fact and value’ or ‘between descriptive and prescriptive science’<sup>51</sup>. Under this approach, it is understood that empirical research about normative practices are able to generate normative philosophical theories<sup>52</sup>.

As I have argued throughout this paper, the parallel approach lacks significant support. Therefore, we are left with the remaining two forms of collaboration: the symbiotic and the integrative approaches. The latter constitutes a bold claim that may not sound as implausible as one might think; yet, it would require more arguments in its favor than I was able to consider in the preceding sections. Hence, we are left with the former, a fruitful approach that fits well with the ideas developed in this work.

According to the symbiotic approach, political philosophers can no longer afford to ignore all the relevant empirical information from the natural and the social sciences in the development of their theories. Normative theories ultimately concern the *actual* behavior of *real* institutions and *real* human beings in the *real* world, not the *assumed* behavior of *idealized* institutions and *idealized* human beings in *hypothetical* worlds.

## References

- ALESINA, A. & ANGELETOS, G.M. Fairness and Redistribution: US versus Europe. *In*: Harvard Institute of Economic Research Working Papers, Harvard Institute of Economic Research, 2002.
- \_\_\_\_\_. Fairness and Redistribution. *In*: *American Economic Review*, vol. 95(4), 2005.
- ALESINA, A. & GIULIANO, P. *Preferences for Redistribution*, NBER Working Papers 14825, National Bureau of Economic Research, 2009.

---

51 MOLEWIJK *et al.*, 2004.

52 VAN DER SCHEER; WIDDERSHOVEN, 2004.



- AMIE, Y. & COWELL, F. A. *Thinking about Inequality*. Cambridge University Press, 1999.
- FELTZ, A. & COKELY, E. The Philosophical Personality Argument. In: *Philosophical Studies*, 161, pp. 227-246, 2012.
- FRAZER, M. *The Enlightenment of Sympathy: Justice and the Moral Sentiments in the Eighteenth Century and Today*. New York: Oxford University Press, 2010.
- FROHLICH, N., OPPENHEIMER, J. A. & EAVEY, C. Choices of principles of distributive justice in experimental groups. In: *American Journal of Political Science* 31, pp. 606-636, 1987.
- FROHLICH, N. & OPPENHEIMER, J. A.. *Choosing Justice: An Experimental Approach to Ethical Theory*, 1992.
- FROHLICH, N., & OPPENHEIMER, J. A. Experiencing Impartiality to Invoke Fairness in the n-PD: Some Experimental Results. In: *Public Choice*, 86, pp. 117-135, 1996.
- GAERTNER & SCHOKKAERT. *Empirical Social Choice: Questionnaire-Experimental Studies on Distributive Justice*, 2010.
- GREENE, J.D., MORELLI, S.A., LOWENBERG, K., NYSTROM, L.E. & COHEN, J.D. Cognitive load selectively interferes with utilitarian moral judgment. In: *Cognition*, 107, pp. 1.144-1.154, 2008.
- GREENE, J.D., NYSTROM, L.E., ENGELL, A.D., DARLEY, J.M. & COHEN, J.D. The neural bases of cognitive conflict and control in moral judgment. In: *Neuron*, 44, pp. 389-400, 2004.
- GREENE, J. D., SOMMERVILLE, R. B., NYSTROM, L. E., DARLEY, J. M. & COHEN, J. D. AN FMRI investigation of emotional engagement in moral judgment. In: *Science* 293, pp. 2105–2108, 2001.
- HAIDT, J., KOLLER, S. H. & DIAS, M. G. “Affect, culture, and morality, or is it wrong to eat your dog?” In: *Journal of Personality and Social Psychology* 65(4), pp. 613-628, 1993.
- HAIDT, J. “The new synthesis in moral psychology.” *Science* 316, pp. 998–1002, 2007.
- \_\_\_\_\_. “The Emotional Dog and its Rational Tail: A Social Intuitionist Approach to Moral Judgment.” In: *Psychological Review* 108, pp. 814–34, 2001.
- \_\_\_\_\_. “The moral emotions.” In R. J. Davidson, K. R. Scherer, H. H. Goldsmith (Eds.), *Handbook of Affective Sciences*. Oxford: Oxford University Press, 2003.

- \_\_\_\_\_. & Hersh, M. "Sexual morality: the cultures and emotions of conservatives and liberals." In: *Journal of Applied Social Psychology* 31, pp. 191-221, 2001.
- HUME, DAVID. *A Treatise on Human Nature*. Eds. David Fate Norton & Mary J. Norton. Oxford Philosophical Texts, New York, Oxford University Press, 2000.
- KAHNEMAN, D. & TVERSKY, A. "On the Psychology of Prediction." *Psychological Review*, 80(4), pp. 237-51, 1973).
- \_\_\_\_\_. "Prospect Theory: An Analysis of Decisions Under Risk." *Econometrica*, 47(2), pp. 263-291, 1979.
- KANT, I. *Groundwork of the Metaphysics of Morals*. Edited by Gregor, M. J. Cambridge University Press, 1997.
- MILLER, D. *Principles of Social Justice*. Cambridge, MA: Harvard University Press, 2003.
- MOLEWIJK, B., STIGGELBOUT, A. M., OTTEN, W. et al. Empirical Data and Moral Theory: A Plea for Integrated Empirical Ethics. In: *Med Health Care Philos*, 7, pp. 55-69, 2004.
- MOLEWIJK, B. "Integrated empirical ethics: In search for clarifying identities." In: *Med Health Care Philos* 7, pp. 85-87, 2004.
- NAGEL, T. *The View from Nowhere*. New York: Oxford University Press, 1986.
- RAWLS, J. *A Theory of Justice*. Cambridge, MA: Harvard University Press, 1971
- ROEMER, J. *Equality of Opportunity*. Cambridge, MA: Harvard University Press, 1998.
- SCHLEIDGEN et al. Mission: Impossible? On Empirical-Normative Collaboration in Ethical Reasoning." In: *Ethic Theory and Moral Practice*, 13, pp. 59-71, 2010.
- SEN, A. *The Idea of Justice*. In: The Belknap Press of Harvard University Press: Cambridge, Massachusetts, 2009.
- SINNOTT-ARMSTRONG, W. "Moral Intuitionism Meets Empirical Psychology". In Terry Horgan & Mark Timmons (Eds.), *Metaethics After Moore*. Oxford University Press, 2005.
- SINNOTT-ARMSTRONG, W., Young, L., & Cushman, F. A. "Moral Intuitions as Heuristics." In J. Doris et al. (Eds.), *The Oxford Handbook of Moral Psychology*. Oxford University Press, 2010.
- UNGER, P. *Living High and Letting Die: Our Illusion of Innocence*. New York: Oxford University Press, 1996.

- YAARI, M. E. & Bar-Hillel, M. "On dividing justly." *Social Choice and Welfare*, 1, pp. 1-24, 1984.
- WEAVER, G. R. & TREVINO, L. K. "Normative and Empirical Business Ethics: Separation, Marriage of Convenience, or Marriage of Necessity?" *Business Ethics Quarterly* 4, pp. 129-143, 1994.
- WIENS, D. "Prescribing Institutions Without Ideal Theory." *In: The Journal of Political Philosophy* 20, no. 1, pp. 45-70, 2012.

### Autor convidado