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Clubbish justice

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abstract

Kai Spiekermann shows how groups of people cooperating purely for mutual advantage could solve social dilemmas by 'assortation', deftly including and excluding people from the group of people who are cooperating among themselves. This article explores the normative implications of that result, casting further doubt on normative models treating justice as a 'club good'.

keywords

justice, club, non-ideal theory

Kai Spiekermann's recent article on 'Translucency, Assortation, and Information Pooling' shows (as its subtitle says) 'How Groups Solve Social Dilemmas'.¹ It is an exercise in positive political theory. Its concern is with how groups of people cooperating purely for mutual advantage could solve social dilemmas by 'assortation', cutting some people in and cutting other people out of the group of people who are cooperating among themselves.

The aim of this comment is to tease out of those positive political-theoretic results some important implications for normative theories of social justice. They serve to cast new doubt on models of what I here dub 'clubbish justice'. Some models of clubbish justice (such as 'Form a rich persons club and cooperate with but only with members of that club') are easily discredited. The normatively interesting feature of Spiekermann's results is that they cast doubt on even the most seemingly decent form of clubbish justice: 'Cooperate with those who are prepared to cooperate.'

I.

Within normative political theory, John Rawls taught us to see the difference between 'ideal' and 'non-ideal' moral theory as essentially a matter of perfect

versus imperfect compliance. Rawls offered his as an ideal theory, that is to say, as a theory tailored to ideal situations of perfect ('strict') compliance on the part of all parties with the precepts of justice. What justice might require under non-ideal conditions of imperfect compliance Rawls leaves as a largely open question. But clearly, he says, it will have to be adapted given the non-ideal conditions prevailing in the real world.²

That approach takes the polity as given, and asks what adjustments in the ideal theory of justice are needed in the light of the non-ideal fact of imperfect compliance on the part of people within that polity. There is, however, another possible response to the realization that there are some people who are not prepared to comply perfectly with precepts of justice: simply cut them out of your polity. Whereas the first approach adjusts our theory of justice to a polity with imperfect compliance, the second approach holds onto the ideal theory of justice and adjusts our polity so that it contains only people prepared to comply with it perfectly.³

On that second approach, you would be obliged to cooperate with (and only with) those who are prepared to cooperate by complying with the precepts of justice. Call that 'Regan's Rule'.⁴ That makes 'justice' into a club good, in the technical sense that it would then be a good shared among members of the club, but not with those outside the club.⁵ Our ordinary worry with such clubbiness is that membership will be selective on the basis of criteria which are morally indefensible, famously among them wealth, social status, and such like.⁶

That is formally not built into Regan's Rule, which officially bases selection purely on 'willingness to cooperate by complying with the precepts of justice'. But informally and contingently, the two may well coincide. Treating others justly, on the (possibly false) assumption they will reciprocate, is a risk. Only those with a comfortable margin can easily afford the risk. Less well-off people, with the same basic dispositions but with less of a financial cushion, might perfectly reasonably decline – thus ruling themselves out of schemes of just cooperation specified in this clubbish manner.

II.

By implication, Spiekermann's article exposes a further problem with that second approach to the problem of imperfect compliance. Because his concerns are positive rather than normative, however, Spiekermann does not himself draw out that implication.

Regan's Rule says, 'Cooperate with whoever is prepared to cooperate.' However, Spiekermann shows that 'cooperating in the promotion of justice' can take at least two very different forms. One is abiding by precepts of justice yourself. The other is 'identifying others who are likely to abide by precepts of justice'.⁷

Spiekermann shows that it may well be rational to include in the group of peo-

ple with whom you cooperate some members who are not themselves cooperators (in the sense of themselves abiding by the precepts of justice), but who are good at picking others who are. Because you should thus sometimes cooperate with those who do not themselves cooperate (in that narrow sense), it would therefore be a misstatement of the basic rule of clubbish justice to say 'Cooperate with whoever is prepared to cooperate.'

A.

What then is the proper specification of 'with whom to cooperate' under a scheme of clubbish justice? One obvious candidate rule (let us call it 'Spiekermann's Rule', with apologies⁸) would be: 'Cooperate with those whose inclusion benefits the larger scheme of cooperation.' The more general implication of that would be that we should allow into our cooperative scheme rich cheats, who do not themselves remotely internalize the precepts of justice, but who nonetheless can be made through external inducements to pay more into the cooperative pot than they take out of it. That may seem plausible enough.

But the slogan 'Cooperate with those whose inclusion benefits the larger scheme of cooperation' has other implications that seem far less plausible as precepts of justice. In particular, that criterion threatens to exclude people who are 'poor but just'. Because they are poor, their inclusion would drain 'the larger scheme of cooperation'. By stipulation, however, the 'poor but just', although poor, are nonetheless 'just'. So on Regan's original formulation of the basic rule of clubbish justice ('Cooperate with whoever is prepared to cooperate') they would have qualified for inclusion. And on reflection, we think (at least I think) that they should.

Maybe even on Spiekermann's formulation including people who are motivated in the right way might be seen as 'benefiting the larger scheme of cooperation', in some sense or another. Here might be one way: just as it benefits altruists to be brought together with needy people towards whom they can exercise their altruism, so too might it benefit 'rich and just' people to be brought together with others towards whom their assistance could justly be directed. All of that seems like rather a large stretch, however.

B.

Surely, what justice stipulates is a disposition, a desire to help those who have just claims to your assistance, if the need arises? But of course it is no part of justice that the need should necessarily actually arise. You do not serve the cause of justice by making or letting people fall into hardship, merely so you can exercise your duty of justice then to help them out of it.

If anything, justice demands precisely the opposite: 'Arrange things, in so far as possible, so that the situation does not arise in which others are in need of assistance.' We are on dangerous ground here, too, however. That rule segues all too easily into an injunction to 'Arrange things in such a way that others will not

have just claims on me.' That, however, is the slogan of a tax lawyer, not of an agent of justice.

C.

Here is another implication of Spiekermann's results that casts the whole model of clubbish justice into further doubt. We improve the reliability of the group as a whole in picking out other 'cooperators' to include only by adding individuals who are themselves more reliable than not at recognizing true cooperators when they see them.

But now imagine someone who is both (1) highly cooperative herself and (2) disposed to think well (in many cases, too well) of others. Because she thinks better of others than they often deserve, she would often end up voting to admit non-cooperators who should actually be excluded. Depending on how overly nice she is and how common non-cooperators are, her vote might be wrong more often than right. She should then be excluded from a group of people who are cooperating for mutual advantage.

Viewed as a 'club of people cooperating for mutual advantage' (which is of course what Spiekermann's article is about) that is surely the correct conclusion. But is that really the right result, viewing it instead as a club constructed in pursuit of justice? Do we really think we ought to exclude from the group of those we treat justly someone who herself complies perfectly with the precepts of justice, merely on the grounds that she takes an overly charitable view of others' propensity to behave justly as well?

III.

Groups of people cooperating purely for mutual advantage should no doubt do precisely as Spiekermann recommends. They should include in their group people who benefit the group on net, in whatever way and for whatever reasons. They should exclude from their group people who are net drains on the group, in any way and for any reason. That is the right way for a group to pursue mutual advantage.

In terms of the pragmatics, whom we need to include and whom we need to exclude for mutual advantage is clear enough. A principled defence beyond the pure pragmatics, however, is missing. Perhaps the lesson is that we ought not be thinking of justice as a scheme for mutual advantage at all. But at the very least, Spiekermann's results ought to make us even less tempted by the thought of turning justice into a 'club good'.

Imperfect compliance with the precepts of ideal justice is a fact of the non-ideal world in which we find ourselves. What adjustments that might require in our ideal theory of justice are hideously complex, as Rawls himself foresaw when dodging the question. It might be tempting to solve that problem by restricting *to whom* precepts of justice will apply, rather than by adjusting precepts of ideal jus-

tice to the facts of our non-ideal world. Doing so, however, would have consequences that are intolerable in anything that can credibly claim to constitute a theory of justice.

notes

I am grateful to Kai Spiekermann for long discussions of the implications of his model during his visits to the Australian National University. The 2006 ECPR workshop on Ideal and Non-Ideal Theory, and particularly discussions with Laura Valentini and Lea Ypi then and later, importantly shaped my thinking on those topics.

1. Kai Spiekermann, 'Translucency, Assortation, and Information Pooling: How Groups Solve Social Dilemmas', *Politics, Philosophy and Economics* 6 (2007): 285–306.
2. This has a great many different aspects to it, including penal sanctions, just war, civil disobedience, and so on. See John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), Sections 2, 25, 39.
3. Note that that is a better solution because of the theory of second best. There is no reason to think that what we ought to do in ideal circumstances provides any guidance as to what we ought to do in non-ideal circumstances. See Robert E. Goodin, 'Political Ideals and Political Practice', *British Journal of Political Science* 25 (1995): 37–56.
4. 'Co-operate with whoever else is co-operating, in the production of the best consequences possible given the behaviour of non-cooperators.' See Donald H. Regan, *Utilitarianism and Co-operation* (Oxford: Clarendon Press, 1980), p. 124.
5. James M. Buchanan, 'An Economic Theory of Clubs', *Economica* 32 (1965): 1–14.
6. Robert E. Goodin, *Political Theory and Public Policy* (Chicago, IL: University of Chicago Press, 1982), Ch. 5; Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA: Harvard University Press, 2006).
7. Note in passing that 'likely' implies the possibility of misidentification, thus putting pressure on the 'ideal' assumptions that compliance is both perfect and certain.
8. Apologies, because Spiekermann does not suggest it as a rule of *justice*, which is how I shall here be treating it.