

THREE RIVAL VISIONS OF DISTRIBUTIVE JUSTICE THE INDIRECT CASE FOR LIBERTARIANISM

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ABSTRACT: In this paper, I employ the method of reflective equilibrium to analyse background conditions of our considered judgements about distributive justice generated by a thought experiment called “Three Children and a Flute”, proposed and interestingly commented upon by Amartya Sen in his book *The Idea of Justice*. I claim that, contrary to Sen’s conclusions drawn from the thought experiment, for the utilitarian and egalitarian visions of distributive justice to hold other things about distribution of resources and social life that we are not willing to accept must be true and that it is not the case then that it is a ‘difficult decision’ to make what pattern of distribution should prevail in the thought experiment. To boot, I hold that libertarian or natural pattern of distribution does not presuppose these background conditions that we are not willing to accept and which are presupposed by egalitarian and utilitarian distributive patterns. I conclude that taking into consideration the fact that there is a plethora of inconsistencies, counter-intuitive consequences and anti-scientific implications of the utilitarian and egalitarian solutions to the thought experiment, it is a natural pattern of distribution that prevails in the ‘flute dilemma’.

KEYWORDS: distributive justice, libertarianism, utilitarianism, egalitarianism, origin of the state

IN HIS HIGHLY recognised book *The Idea of Justice* a Nobel Prize winner in economics Amartya Sen proposes a sort of thought experiment called “Three Children and a Flute” with the intention to demonstrate that people espouse

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competing ideas of distributive justice, or reasons for distributive justice as he puts it, and that there is no easy, one-sided solution to our quandaries about how to distribute scarce resources. The conclusion that Sen draws from the thought experiment is a claim that “theorists of different persuasions, such as utilitarians, or economic egalitarians, or labour right theorists, or no-nonsense libertarians, may each take the view that there is one straightforward just resolution that is easily detected, but they would each argue for totally different resolutions as being obviously right” (2009: 13). In this paper, I will try to show that Amartya Sen’s conclusion is at least dubious, and that even if some of us have intuitions supporting utilitarian or egalitarian pattern of distribution, there are other things that must be true for these patterns to hold that we are not willing to accept. It means that I will present here a twofold case, one against utilitarian and egalitarian visions of distributive justice, one, indirectly, for libertarian pattern of natural distribution. Distributive justice as a subject-matter of investigation creates a dauntingly intricate challenge for a political philosopher, there is though an advantage that an approach of thought experiments gives; for we will start with a sterile and simplified case that will help us to analyse the very logic of respective distributive patterns without delving into the plethora of immemorial quarrels about justice and without necessarily presuming the existing political regimes optimal, what would glaringly skew our investigations.

In this paper, I will employ the method of reflective equilibrium which aims at putting our considered judgements (intuitions), principles and background theories into the state of coherence (Arras 2007: 46–71; Daniels 1979: 256–282; Daniels 2011; Dominiak 2012: 143–156; Dworkin 2013: 185–222; Haslett 1987: 305–311; Rawls 1951: 177–197; Rawls 1999: 17–18). The objective of this method is not to discover the absolute and universal truth straight away; it has much more modest aspirations, namely to say what is true conditionally, i.e. when other things are deemed true; it discovers what must be true if we find other beliefs true. For instance, if we believe that we do not own the labour of our bodies (someone else owns it), it must also be true that we do not (at least entirely) own our bodies (Nozick 1999: 177, 228–229; Rothbard 1998: 45–50; Rothbard 2002: 28–33; Rothbard 2009: 182; Sandel 2010: 65); or if we believe that essentially we are our brains, it must also be true that abortion is not tantamount to murder (Dominiak 2013: 46–52; McMahan 2002: 267–280; Parfit 1987: 468–477); or if we believe that we can reason behind the veil of ignorance, it must also be true that we are disembodied subjects (Dominiak 2010: 185–203; Sandel 1998: 47–65; Sandel 2005: 156–173). By deploying the method of reflective equilibrium, I will

show what must also be true about our social life, if we believe that distribution of scarce resources should have a utilitarian or egalitarian pattern.

The main thesis of my paper is a claim that for utilitarian and egalitarian visions of distributive justice to hold other things about distribution of resources and social life that we are not willing to accept must be true. I claim also that the libertarian or natural pattern of distribution of scarce resources does not suffer from these problems and that none of the controversial things that are necessarily intermingled with the two other distributive patterns hold in a case of natural distribution. Taking into consideration methods used in my research (especially reflective equilibrium and thought experiments) and the subject-matter of it (ought-to-be-state of distributive patterns), the study I present here place itself unequivocally within the purview of political philosophy (Bartyzel 2007: 90–100; Oakeshott 1999: 125–127, 131–138; Raphael 1990: 1–29; Strauss 1998: 69, *passim*).

THREE VISIONS OF DISTRIBUTIVE JUSTICE

Let me start with the extensive quotation from Amartya Sen's book in which he presents the aforementioned thought experiment. The question is: What is your intuition about who should get a flute?

“Let me illustrate the problem with an example in which you have to decide which of three children – Anne, Bob and Carla – should get a flute about which they are quarrelling. Anne claims the flute on the ground that she is the only one of the three who knows how to play it (the others do not deny this), and that it would be quite unjust to deny the flute to the only one who can actually play it. If that is all you knew, the case for giving the flute to the first child would be strong. In an alternative scenario, it is Bob who speaks up, and defends his case for having the flute by pointing out that he is the only one among the three who is so poor that he has no toys of his own. The flute would give him something to play with (the other two concede that they are richer and well supplied with engaging amenities). If you had heard only Bob and none of the others, the case for giving it to him would be strong. In another alternative scenario, it is Carla who speaks up and points out that she has been working diligently for many months to make the flute with her own labour (the others confirm this), and just when she had finished her work, «just then», she complains, «these expropriators came along to try to grab the flute away from me». If Carla's statement is all you

had heard, you might be inclined to give the flute to her in recognition of her understandable claim to something she has made herself” (2009: 12–13).

I believe that despite what Amartya Sen says that “there is a difficult decision that you have to make” (2009: 13), the strongest intuition about who should get a flute is that it should be Carla. We intuitively feel that Carla is the owner of the flute since it had already been hers even before the distributive problem arose in the first place, i.e. before other children “came along to try to grab the flute away” from her; the other children’s claims to the flute are then secondary, whereas Carla’s claims are primary in a sense that she acquired the flute without ‘grabbing it away from anybody’ in any sense of the word ‘grabbing’. If you have the same intuition that Carla should get the flute then you are in favour of natural pattern of distribution. But let’s suppose for the sake of argument that there are people, obviously Amartya Sen seems to be one of them, that feel differently, that opt for one of the two other patterns. If these people want to stick to their guns in a rational manner, i.e. if the pro-utilitarian or pro-egalitarian intuition (let’s call it the original intuition since in our analysis it will serve as its commencing point) is to be a part of a coherent world view, they must accept other intuitions and claims as valid. So the question is what other things must be true for utilitarian and egalitarian patterns of distribution to be valid. In the remainder of this paper I shall discuss with these pro-utilitarian and pro-egalitarian intuitions by confronting them with their necessary background conditions that make them, I believe, untenable.

Before starting in earnest let me have a technical remark about streams of political philosophy. Amartya Sen qualifies Anne’s claims to the flute as an instance of a utilitarian political philosophy. Literally, it is a mistake; Anne represents a teleological or perfectionist vein of political philosophy. According to the teleological way of thinking, before answering the question ‘Who should get a flute?’, we should answer the question ‘What the flutes are for?’, ‘What is the *telos* of flutes?’. Only after answering the latter question we can properly cope with the former. And what is the answer to the latter? Aristotle, the founding father of teleological thinking, would say that flutes are for being played with virtuosity (*Eth. Nic.* 1094a–1102a; Sandel 2005: 254; Sandel 2010: 184–207). So, according to Aristotle, it is Anne who should get the flute because she is the only child who can play it.

The utilitarian way of thinking is different. To answer the question ‘Who should get a flute?’ in accordance with this stream of political philosophy, one has to decide which solution will bring about “the greatest happiness of the greatest

number” (Bentham 1891: 93). It can be the case that distributing the flute to Anne will yield such a result since Anne is the only child who can play a flute and has a chance to delight the listeners, but we cannot know the answer straight away for there can be other circumstances that influence the utilitarian calculation; for instance, it is possible that Carla’s sense of injustice because of being expropriated and Bob’s suffering because of being left without any toys would outweigh the joy of the listeners. In any rate, there must be the cost–benefit analysis conducted before we can know the answer to the question ‘Who should get a flute?’ (Sandel 2010: 34–57).

TWO MEANINGS OF ‘WHO SHOULD GET A FLUTE?’

There are two possible interpretations of the question ‘Who should get a flute?’ and only one of them is *per se* a political-philosophical one (as Murray Rothbard said [1998: 25], the difference between moral and political philosophy is that the latter “deals with the proper sphere of politics, i.e., with violence and non-violence as modes of interpersonal relations”). These two interpretations of the question ‘Who should get a flute?’ pertain to the word ‘should’, and what it means that somebody should get something, in this case a flute. The first meaning of the word ‘should’ is what I call a moral meaning. It conveys the weaker requirement than in the second interpretation of the word and it means that it would be good for me, as a human being, to do such and such thing. In other words, the question ‘Who should get a flute?’ is a question ‘What should I do with the flute if I have one and if I would like to be a good person and lead a good life?’. It might be perfectly the case that to be a good person I should always act in such a manner as to bring about ‘the greatest good for the greatest number’; and if distributing the flute to Anne provides such an outcome, I should give it to Anne and that is Anne then ‘who should get a flute’. It could also be the case that to be a good person I should always act in such a manner as to bring about the advantage to the worst off; and if distributing the flute to Bob provides such an outcome, I should give it to Bob and that is Bob then ‘who should get a flute’. So, the word ‘should’ in its moral meaning is always placed within the wider perspective of a vision of a good life, in a sense of what I should do in a particular case to lead a good life and to be a good person. The requirement of this moral ‘should’ is a weak requirement since there is no threat of violence or coercion if I do not do what I should do.

The second meaning of the word ‘should’ is what I call a political (or legal) meaning. It conveys the stronger requirement than in the first interpretation of the word and it means that there is an obligation on me to do or not to do a certain thing, for instance, to give the flute to Bob, since there is somebody there who has a right to this thing, for instance, there is Bob who has a right to the flute, and if I do not fulfil my obligation, there will be a coercive measures deployed against me, for instance, a fine or imprisonment. The difference between the moral and political (legal) meaning of the word ‘should’ can additionally be illustrated by Murray Rothbard’s example with Coca-Cola: “What we are trying to establish here is not the *morality* of [a given practice – Ł.D.] (which may or may not be moral on other grounds), but its *legality*, the absolute right of [a given person to something – Ł.D.]. What we are concerned with (...) is people’s *rights* to do or not do various things, not whether they should or should not *exercise* such rights. Thus, we would agree that every person has the *right* to purchase and consume Coca-Cola from a willing seller, not that any person *should* or *should not* actually make such a purchase” (1998: 98). So, the word ‘should’ in its political (legal) meaning is always placed within the wider perspective of lawful and unlawful use of violence and coercion and within the considerations of rights and obligations. It in turn means that the question ‘Who should get a flute?’ in its political sense is an inquiry into conditions of legitimate and illegitimate use of violence against people: would it be legitimate and lawful to take the flute from Carla against her will and give it to either Bob or Anne? Would it be legitimate and lawful to, for instance, fine or imprison Carla if she refused to give the flute to either Bob or Anne?

Now we see that Amartya Sen’s question ‘Who should get a flute?’ constitutes, in fact, two entirely different questions: 1) Would Carla be a good person that leads a good life if she refused to give the flute to either Bob or Anne?; and 2) Would it be justified to use violence against Carla if she refused to give the flute to either Bob or Anne? Which one interpretation is closer to Sen’s intentions? It is explained in an unambiguous way by the author: “the differences between the three children’s justificatory arguments do not represent divergences about what constitutes individual advantage (getting the flute is taken to be advantageous by each of the children and is accommodated by each of the respective arguments), but about the principles that should govern the allocation of resources in general. They are about how social arrangements should be made and what social institutions should be chosen, and through that, about what social realizations would come about” (2009: 15). Thus, it is obvious that it is political interpretation

that Sen has in mind (social arrangements, institutions) and that the proper question is: 'Would it be justified to use violence against Carla if she refused to give the flute to either Bob or Anne'? I believe this clarification changes our intuitions further towards Carla's reasons for getting the flute and for natural pattern of distribution. It also shows that Sen's thought experiment is a kind of trick, since we are much more willing to opt for utilitarian, teleological or egalitarian positions if we understand the question 'Who should get a flute?' in its moral meaning than we are if we talk about its political interpretation.

NECESSARY BACKGROUND CONDITIONS OF NON-LIBERTARIAN DISTRIBUTIVE PATTERNS

As I said beforehand, I will deal here only with the political interpretation of the Sen's thought experiment, both because this is a study in political philosophy and because this is the only correct interpretation of Sen's own words. In this paragraph, I would like to describe and analyse five main background conditions that, by necessity, follow from the non-libertarian distributive patterns; in other words, I want to demonstrate what other things about distribution of resources and social life must be true for utilitarian and egalitarian visions of distributive justice to hold.

(1) *There must be a powerful redistributing institution that takes resources from their original holders against their will and distribute them to other people* (Hoppe 2007: 98). First background condition that must be fulfilled for the utilitarian and egalitarian pattern of distribution to hold is the existence of somebody, let's call him John, that is able to deploy effective coercive measures to take the flute from Carla, its original holder, and distribute it to Bob or Anne. If we stick to the natural pattern of distribution, i.e. Carla's ownership of the flute, there is no need for any additional action or person or institutional arrangements that would conduct this action. The flute is already where it should be, in Carla's hands. She does not have to regain or claim it from any other person. There is no need for John, no need for any redistributing institution. The situation is entirely different with the utilitarian and egalitarian pattern of distribution. Since the flute is in the hands of its maker, Carla, and it is not the place where it should be, there must be somebody, I call him John, who will take it from the maker against his will – consider that this action must be performed against the maker's will since

otherwise we would change the interpretation of the question ‘Who should get the flute?’ from political one into moral one, and that of course would be a logical category mistake. To boot, since the thought experiment is not about an isolated, individual quarrel about the flute, but about “the principles that should govern the allocation of resources in general and about how social arrangements should be made and what social institutions should be chosen” (Sen 2009: 15), it is a physical necessity that John be some kind of organisation or institution. If we in turn mix these two conditions (acting against the will of others and on a large scale), we realise that John must be a powerful institution that is able to employ effective coercive measures against natural holders of resources. So, if we want to persevere in our utilitarian or egalitarian intuition about who should get the flute, we have to accept the existence of John, a powerful redistributing institution.

(2) *If we espouse egalitarianism, there must be a different distributive pattern for the redistributing institution.* If we have a redistributing institution, we, by necessity, need some pattern how to distribute resources to the redistributing institution. In other words, if there is John, we have to know on what basis we can pay John for his service. This generates additional problems and strains our willingness to persevere in the original intuition.

Let’s simplify the matter again and conduct another thought experiment that I call “Three Children, a Flute and Egalitarian Distribution”. Imagine that we have Carla who is the maker of the flute and poor Bob who does not have any toys. Imagine further that we espouse the egalitarian vision of justice. Imagine also that there is John who works as a redistributing institution. If John succeeds in regaining the flute from Carla and distribute the flute to Bob (this is what we believe is a just distributive pattern), on what basis he should be paid? We have three main options to consider, let’s try the first one. John can claim his paycheque on the same grounds that justify Bob’s title to the flute, namely that he is poor. There are insurmountable problems with this justification though. First of all, if John’s poverty (let’s grant for a while that he is as poor as Bob) were the reason for his paycheque, he should get it without doing anything, let alone working and being successful (if Bob got the flute without doing anything whereas John had to work and be successful, that would be jarringly unjust). So, he should not be paid at all (again: that would be unjust to require work from John for a paycheque when we do not require work from Bob for the flute), but supported in the same redistributing manner as Bob by another redistributing institution (John II); but in the case of this second-order redistributing institution

(John II) the same problem would appear, namely we would need a third-order redistributing institution (John III), and so on and so forth – this, of course, is a logical mistake *reductio ad absurdum*. Even though this first argument is strong enough to show that we cannot use the same distributive pattern to John and Bob, I would like to pay attention to the fact that we assumed that John is as poor as Bob. Unfortunately, this assumption is rather implausible; it is much more probable that John would be well-off working as a redistributing institution. If it is the case, the above line of argument is invalid. This though does not help the egalitarian vision of justice since if John is an affluent person, we cannot employ the egalitarian criterion of distribution either. In both cases, we need a different distributive pattern than we chose in the original thought experiment.

The second option we can consider is more intuitive, namely John can claim his paycheque on the most natural grounds that he ‘has been working diligently for many months to regain the flute with his own labour’. Obviously, this justification would be exactly the same as the one we rejected in the first place when we were considering Carla’s title to the flute. Thus, rationally speaking, this justification is not available for us since it is impossible to explain why in Carla’s case her own labour does not grant the ownership of the flute whereas in John’s case it grants the ownership of the paycheque.

From our three options we are left with the last one, the utilitarian pattern of distribution. John can claim his paycheque on the grounds that it will bring about ‘the greatest good for the greatest number’. Here we have at least two problems. First of all, we cannot know straight away if granting a paycheque to John will, in fact, engender this desirable outcome. Let’s assume for a while that it will – I will come back to this crucial problem later on. Secondly, we did not choose the utilitarian pattern of distribution in the original thought experiment since we thought that just distribution consists not in generating the greatest good for the greatest number of people but in acting in such a manner as to bring about the advantage to the worst off. But since these two criteria are inconsistent only indirectly, we can, after all, swallow this bitter inconsistency and admit two different distributive patterns, one for individuals (Bob, Carla and Anne), one for a redistributing institution (John). (By saying that these two criteria are inconsistent only indirectly I mean that the egalitarian criterion directly denies the libertarian criterion by taking the flute from Carla; on the other hand, the egalitarian criterion denies the utilitarian criterion only indirectly by choosing to distribute the flute grabbed from Carla in different than utilitarian a manner.) So, if we espouse the egalitarian vision of justice and if we want to persevere in

our original intuition about who should get the flute, we have to accept another background condition, namely that there would be two different distributive (legal) regimes, a first-order, lower one, governing ordinary people like Carla, Bob and Anne, and a second-order, higher one, pertaining exclusively to John, a powerful redistributing institution (Hoppe 2007: 28). That of course would mean that people would not be equal in the eyes of institutions and law. If John and Bob are governed by different distributive patterns, they by necessity cannot be treated equally. This in turn is a highly undesirable effect for everyone, especially for the proponent of egalitarianism.

(2') *If we espouse utilitarianism, the problem with a lower and higher distributive regimes does not disappear but reformulates itself.* I believe that the case of utilitarian distributive pattern shows in a more sterile way the problem with two regimes that would be created if we stuck to our original intuition. Let's resort to the method of thought experiments again, this time it will be a story about "Three Children, a Flute and Utilitarian Distribution".

Imagine that we have Carla who is the maker of the flute and talented Anne who is the only one who can play a flute, and does it beautifully. Imagine further that we espouse the utilitarian vision of justice. Imagine also that there is John who works as a redistributing institution. If John succeeds in regaining the flute from Carla and distributes the flute to Anne (this is what we believe is a just distributive pattern), on what basis he should be paid? Let's skip scenarios with the libertarian and egalitarian bases, since everything we said above pertains to this thought experiment as well (realisation of each of these scenarios would generate double standards), and consider the utilitarian basis: paying John would bring about the greatest good for the greatest number. The strongest case for this answer goes like this: Since distributing the flute to Anne would bring about the greatest good for the greatest number and since without John's work the flute would not go to Anne and since without paying John he would not do his work, paying John is for the greatest good of the greatest number.

Unfortunately for the proponent of utilitarianism, there is a rejoinder to the above line of argument. Consider this, it can be true and we agreed on it in the original thought experiment that distributing the flute to Anne would bring about the greatest good for the greatest number, but it does not follow from it that distributing the flute to Anne *and* paying John would bring about the greatest good for the greatest number. This is a logical mistake *non sequitur*. We do not know any of the three things, neither if distributing the flute to Anne *and* paying

John would bring about greater good than distributing it to Bob or leaving it in Carla's hands, nor if distributing the flute to Anne *and* paying John would bring about greater good than distributing it to Anne *and* paying Mark (some other redistributing institution), nor which manner of doing John's job and which manner of paying him (exactly how much) would bring about the greatest good. How to solve this problem?

To overcome this difficulty we would need somebody to calculate and decide which kinds of actions bring about the greatest good for the greatest number. There are two possible scenarios as far as the question who could be this somebody is concerned. The first option is that there should be some other person (institution) than John that would make this calculation and decision. Let's simplify it by calling Bruce into our story. There are two main problems with this solution. The first one is already obvious from what I said above, namely on what grounds Bruce should be paid for his work and who should calculate and decide which scenario on Bruce's level brings about the greatest good for the greatest number. This leads to *reductio ad absurdum*. The second problem is connected with conflicts between Bruce and John. Since as we know John is a powerful redistributing institution, he would not be willing to accept Bruce's decisions if they were disadvantageous to him; Bruce in turn would not be willing to get into any conflict with powerful John and he would have natural propensity to skew his decisions in John's favour. It is highly probable then that Bruce would basically start working for John and they would merge into a one institution. It shows that the first option suffers from a logical mistake, proclivity towards conflicts and intrinsic unreliability.

The second option is to entrust John with calculations and decisions. This would cut off a *reductio ad absurdum* mistake, though arbitrarily, and avoid some conflicts. Other conflicts would remain, especially these between ordinary people like Bob and redistributing institutions like John; the propensity to skew decisions in John's favour would even grow. But all things considered, it would be better and more feasible to reserve calculation-conducting and decision-making functions to John than to create a new institution, Bruce, that would generate more problems than John and that eventually would merge with John.

Whichever option we choose, it creates the situation where two different regimes and double standards exist: one higher for John and one lower for Bob, Anne and Carla (Hoppe 2007: 83). There is only one subject powerful enough to decide about what pattern of distribution is for the greatest good of the greatest number and it is John, a redistributing institution itself. Ordinary people like

Bob, Anne and Carla cannot make such decisions and cannot coerce others to abide by them. Moreover, this power of the ultimate decision-making would also be deposited in John's hands in the aforementioned case of egalitarian vision of justice since as we established, it is inevitable for John to claim the paycheque on other grounds than utilitarian ones, and utilitarian grounds bring about problems I have just described, namely that there must be an ultimate and exclusive decision maker. So, also in the case in which we espouse the utilitarian vision of justice, if we want to persevere in our original intuition about who should get the flute, we have to accept another background condition, namely that there would be two different regimes, a lower one governing ordinary people like Carla, Bob and Anne, and a higher one pertaining to John, a powerful redistributing institution, who enjoys the exclusive power of ultimate decision-making.

(4) *To effectively fulfil its function, a redistributive institution must be a monopoly* (Tannehill 2007: 32). As I noticed when I was describing the first background condition, John must be powerful enough to be able to employ effective coercive measures against Carla, a natural holder of resources, who by definition is against redistribution. As I in turn noticed when I was describing the second and second prime background condition, to function effectively John must be governed by a higher regime than Carla, Bob and Anne, and there must be two different sets of rules, one for John, a redistributing institution, and one for ordinary people; what is more, I noticed that for effective functioning there must be only one subject, John, in a given society or territory that wields the power of ultimate decision-making. All these conditions together straightforwardly imply that John must be a monopolist to do his job of taking the flute from Carla and giving it to Bob or Anne effectively. So, if we want to persevere in our original intuition about who should get the flute, we have to accept another background condition, namely that John, a powerful redistributing institution, would be a monopolist in fulfilling its functions of redistributing wealth and ultimate decision-making.

(5) *In the case of conflict with a redistributing institution, this institution will be a judge in its own case* (Hoppe 1998–1999: 27). This is the last background condition that I would like to pay attention to in my paper. The same as in the case of the fourth condition, it is a quite obvious corollary that follows from everything I said beforehand. If there is a conflict between, let's say, Bob and Carla about who should get the flute, John is the one who can settle it, after all he is a monopolistic ultimate decision maker. If Bob and Carla live in an egalitarian

society and if John does not abuse his power, he will distribute the flute to Bob. We agreed on it during our analysis. But what happens when a conflict between, let's say, Bob and John occurs with regard to the question how much John should be paid for his service? For instance, John claims the equivalent of the half of the flute and Bob does not want to pay John so much. What is then? Then John will settle the conflict by himself. Since we granted John the power to unilaterally decide what brings about the greatest good for the greatest number and since conflict with Bob is exactly about this issue (the question 'How much should John be paid?' is just saying in other words 'What would bring about the greatest good for the greatest number?', since this, as we established above, is the reason for paying John), John is the only agent who can adjudicate upon the conflict about how much he should be paid. It in turn means that in the case of conflicts with John, John will be the judge. So, if we want to persevere in our original intuition about who should get the flute, we have to accept another background condition, namely that John, a powerful redistributing institution that is also a monopolistic decision maker, would be a judge in his own case.

CONCLUSIONS

As we have seen, to embrace the utilitarian or egalitarian reasons for justice in the Sen's thought experiment with three children and a flute we must also accept at least five background conditions that work against our other considered judgements. The first background condition is in conflict with at least one intuition that taking something violently from somebody who did not take it from anybody else is not a just practice. The second and second prime background conditions are against our considered judgement that everybody should be equal before the law and that if there are double standards, it is not a just social constitution that we have. The fourth background condition denies economic science and its discoveries according to which every monopoly is disadvantageous to consumers (Mises 1963: 357–384). The fifth condition is in conflict with our considered judgement and with a fundamental principle of natural justice that *nemo iudex in sua causa*.

None of these conflicts exist in the case of libertarian or natural scenario, according to which the flute should stay in Carla's hands. That is why I claim, and it has been demonstrated in this paper, that it is glaringly mistaken a view that "there is a difficult decision that you have to make" about who should get

a flute. Quite to the contrary, taking into consideration the fact that there is a plethora of inconsistencies, counter-intuitive consequences and anti-scientific implications of the utilitarian and egalitarian solutions to the flute dilemma, it is an easy decision to make that it is Carla who should get the flute since only this solution does not suffer from any of these maladies. This of course means that “Three Children and a Flute” thought experiment works as another argument in favour of the libertarian political philosophy.

There is though one thing that can explain Amartya Sen’s hesitation about the solution to the thought experiment. If we take either egalitarian or utilitarian way of solving the flute problem and ask ourselves if these solutions could be implemented in a real political life, the answer is obvious. This is exactly what happened. John fulfils all definitional conditions of a modern state: it is a territorial monopolist of the ultimate decision-making and taxation whose agents are privileged by being governed by the higher public law, whereas its subjects are underprivileged by being governed by the lower private law. Since it is difficult to abstract from and argue against existing political regimes, it explains why utilitarian and egalitarian solutions to the thought experiment could seem to have a sort of appeal at the beginning of our investigations; however, after a thoroughgoing examination we see that this alleged intuitive gloss does not stand up to criticism.

REFERENCES:

- Aristotle. (trans. 1999 by W.D. Ross). *Nicomachean Ethics*. Kitchener: Batoche Books.
- Arras J.D. (2007). *The Way We Reason Now: Reflective Equilibrium in Bioethics*. [in:] *The Oxford Handbook of Bioethics*. B. Steinbock (ed.). New York: Oxford University Press.
- Bartyzel J. (2007). *Filozofia polityki*. [in:] *Encyklopedia polityczna*. J. Bartyzel, B. Szlachta, A. Wielomski (eds.). Radom: Polwen.
- Bentham J. (1891). *A Fragment on Government*. Oxford: Clarendon Press.
- Daniels N. (2011). *Reflective Equilibrium*. [in:] *The Stanford Encyclopedia of Philosophy*. [online] <http://plato.stanford.edu/entries/reflective-equilibrium/>; [accessed 09.07.2014].
- Daniels N. (1979). *Wide Reflective Equilibrium and Theory Acceptance in Ethics*. “The Journal of Philosophy” 76 (5).
- Dominiak Ł. (2012). *Metoda równowagi refleksyjnej (reflective equilibrium) w filozofii polityki*. „Athenaeum. Polskie Studia Politologiczne” 36.
- Dominiak Ł. (2013). *Prenatal Harm and Theory of Identity*. “Political Dialogues. Journal of Biopolitics and Contemporary Political Theories” 1 (15).

- Dominiak Ł. (2010). *Wartość wspólnoty. O filozofii politycznej komunitaryzmu*. Toruń: Wydawnictwo Adam Marszałek.
- Dworkin R. (2013). *Taking Rights Seriously*. London: Bloomsbury Academic.
- Haslett D.W. (1987). *What Is Wrong With Reflective Equilibria?*. "Philosophical Quarterly" 37/148.
- Hoppe H.H. (2007). *Democracy: The God That Failed. The Economics and Politics of Monarchy, Democracy, and Natural Order*. New Brunswick: Transaction Publishers.
- Hoppe H.H. (1998–1999). *The Private Production of Defence*. "Journal of Libertarian Studies" 14 (1).
- McMahan J. (2002). *The Ethics of Killing. Problems at the Margins of Life*. New York: Oxford University Press.
- Mises L. von. (1963). *Human Action: A Treatise on Economics*. San Francisco: Fox&Wilkes.
- Nozick R. (1999). *Anarchy, State, and Utopia*. Oxford: Blackwell Publishers.
- Oakeshott M. (1999). *Wieża Babel i inne eseje*. Warszawa: Aletheia.
- Parfit D. (1987). *Reasons and Persons*. New York: Oxford University Press.
- Raphael D.D. (1990). *Problems of Political Philosophy*. London: Palgrave Macmillan.
- Rawls J. (1951). *Outline of a Decision Procedure for Ethics*. "The Philosophical Review" 60 (2).
- Rawls J. (1999). *A Theory of Justice*. Cambridge: Harvard University Press.
- Rothbard M. (1998). *The Ethics of Liberty*. New York: New York University Press.
- Rothbard M. (2002). *For a New Liberty: The Libertarian Manifesto*. New York: Macmillan Publishing.
- Rothbard M. (2009). *Man, Economy, and State with Power and Market*. Auburn: Ludwig von Mises Institute.
- Sandel M. (1998). *Liberalism and the Limits of Justice*. New York: Cambridge University Press.
- Sandel M. (2005). *The Procedural Republic and the Unencumbered Self*. [in:] *Public Philosophy*. M. Sandel. Cambridge: Harvard University Press.
- Sandel M. (2010). *What's the Right Thing to Do?*. London: Penguin Books.
- Sen A. (2009). *The Idea of Justice*. Cambridge: Harvard University Press.
- Strauss L. (1998). *Czym jest filozofia polityki?*. [in:] *Sokratejskie pytania*. L. Strauss. Warszawa: Aletheia.
- Tannehill M.L. (2007). *The Market for Liberty*. Auburn: Ludwig von Mises Institute.