Chapter 7
Towards a Theory of Need-Based Justice

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Abstract In the previous chapters, we summarized the academic debates and findings on need-based justice in five scientific disciplines: philosophy, psychology, economics, sociology, and political science. The objectives of this concluding chapter are to confront the results and theoretical approaches of the individual disciplines with each other and to draw some preliminary conclusions for the design of an interdisciplinary theory of need-based justice. In each of the following ten sections, we present a thesis on the further development of a theory of need-based justice and subsequently, explain it in more detail. In the previous chapters, we summarized the academic debates and findings on need-based justice in five scientific disciplines: philosophy, psychology, economics, sociology, and political science. The objectives of this concluding chapter are to confront the results and theoretical approaches of the individual disciplines with each other and to draw some preliminary conclusions for the design of an interdisciplinary theory of need-based justice. In each of the following ten sections, we present a thesis on the further development of a theory of need-based justice and subsequently, explain it in more detail.

7.1 The Concept of Need

> The core element of the concept of need is the notion of something that is necessary, compelling, imperative, indispensable, essentially required—something that goes beyond mere desires or preferences and takes precedence over desires.

Need is different from desire, interest, or preference. A merely subjective definition of need as a desire makes the concept of need obsolete. Need aims at a necessary and compelling determination of personal demands beyond subjective feelings and desires. Need divides the totality of all demands, desires, and concerns into those which are mere wishes and those which are considered as necessary, and therefore, claim priority (Miller 1999; Braybrooke 1987; Hamilton 2003). How the line between

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these two groups of demands should be drawn and what counts as necessary forms the central parts of a theory of need-based justice.

The differentiation between needs and mere desires can be scientifically objectified by means of a list or a hierarchy of needs or it can be entrusted to social and political processes of recognition. The basic requirement for a theory of need-based justice is a method that allows for this demarcation—as always modifiable and revisable—of mere desires from needs. Without such a line, the logical possibility of a theory of need-based justice is no longer given.

Therefore, to define and justify need as necessary is a central subject of theory building. However, a theoretical approach that allows for an indisputable and invariable scientific basis for the definition of needs has not been developed so far. Considerable conceptual efforts have been made, especially in philosophy. Distinctions between instrumental and fundamental needs, between volitional and non-volitional necessities, and between comparative and non-comparative approaches contribute to the task of detaching need from purely subjective aspirations such as preferences and desires (Chap. 2).

From an interdisciplinary perspective, it makes sense to suppose that needs are best understood as a socially constructed necessity resulting from social and political processes in which we bind ourselves by giving a special value to some desires or demands that we justify as necessary especially because of the occurrence of significant harm in cases of rejecting it as necessary (Fraser 1989; Hamilton 2003, see Chap. 5). The supposition that needs are socially constructed and could be defined by using the terminology of necessities and harm should be placed at the *core of the concept of need*. This *socially and politically self-constructed necessity* might use empirical findings on social situations, physiological processes and psychological dynamics as clues in order to assert and defend this attribution of being necessary, but these linkages can only count as specific methods in a complex process of the construction of needs.

An elaborated theory of need-based justice will have to answer a variety of terminological questions, as well as the conceptual ones, especially because of the different understandings and translations of need in scientifically central languages. For example, in German, there is the distinction between "Bedürfnisse" and "Bedarf", which has no complement in English. Minor confusions might also spring from the combination of the two ways in which the concept of need is used. On the one hand, need is what is necessary ($need_1$). On the other hand, need can also mean what is lacking in order to achieve what is necessary ($need_2$). $Need_2$ denotes the gap between the required resources to satisfy the needs and the present resources, while $need_1$ does not establish any relation between available resources and what is necessary. $Need_1$ defines the level of the necessary and $need_2$ aims at the means for the fulfillment of $need_1$. In the following, need will always be understood as $need_1$. $Need_2$ will be referred to as *need gap*.

Terminological clarifications of this kind must accompany the development of a theory of need-based justice as part of a theory of distributive justice. However, the essence of a theory of need-based justice is to demonstrate how the socially and

politically produced necessity of certain wishes and concerns is safeguarded (positive theory) or should be safeguarded (normative theory) as an effective demarcation line to mere desires.

7.2 Positive and Normative Theory of Need-Based Justice

A theory of need-based justice should be based on the promotion of both normative and empirical research.

Normative research on needs and need-based justice investigates justifiable arguments in favor of need as a criterion (or "currency", see Chap. 2) for decisions on distributions. Empirical research analyzes people's everyday judgments on just distributions and the understandings of justice that are inherent in the structure of social interactions and institutions. In psychology, economics, sociology and political science, empirical social justice research has developed rapidly in the last decades (for synopses see Sabbagh and Schmitt Sabbaghetal 2016; Konow and Schwettmann 2016; Liebig and Sauer 2016). Since John Rawls's *A Theory of Justice* (1971), normative theories have multiplied in philosophy, economics, and political science. Some normative theories of social justice (Walzer 1983; Miller 1999) have tried to incorporate the results of empirical research on justice. The recent tendency to move away from a Rawlsian "ideal theory" of justice and instead develop a more "realistic" theory strengthens the call for the incorporation of empirical results in normative theories or even an integration of normative and empirical research. Nevertheless, normative considerations should not be absorbed by the re-narration of empirical results and instrumentalized for the affirmation of the given as a normative ideal.

Progress in the field of need-based justice can only fruitfully take place in the mode of an *empirically enlightened normative theory* and a *normatively informed positive theory*. Despite the promise of mutual enrichment, however, such approaches might justify normative statements that contradict empirical findings. Normative and positive theory often do not coincide even if one supports an integration of empirical and normative research on social justice. Yet normative and empirical research will face common challenges in the form of terminological and analytical questions. The following thus addresses normative and positive theory jointly rather than separately.

7.3 Pluralistic and Monistic Theories of Distributive Justice

Pluralistic theories of social justice can be distinguished from monistic theories. Need-based justice is listed in all pluralistic theories of justice as one of three, four or five central criteria of social justice.

In the field of social justice, *monistic* theories deduce all essential statements on preferential distributive orders from only one (but potentially complex) criterion of justice. Utilitarian and egalitarian theories of justice are examples of monistic

theories of justice. John Rawls' egalitarian theory of justice (1971, 1993, 1999, 2001) conceives a monistic framework with an internally complex structure based on two principles of justice, the second principle again comprising two rules. However, apart from equality, no other criterion is inserted into Rawls's theory as a supporting element in the architecture of his theory: In particular, need, equity, desert, merit, and performance do not play any significant role in the formulation of the Rawlsian principles of justice.

In psychology, *Equity Theory* (Adams 1965) has long been a widely recognized positive monistic theory of justice. This theory claims to explain all everyday judgments and justice-based decisions by equity as a single, but broadly defined criterion of justice. Adele Diederich outlines in Chap. 3 that monistic theories might be capable of reintegrating different criteria of justice into a monistic approach. The conception of equity, as a continuation of Aristotle's proportional justice, works with inputs and outputs and measures equity according to its proportionality. The decisive question is what can count as input. With an extension of the term input, a reintegration of various criteria might be manageable. Under the name of *Contribution Theory*, which is also used for the equity approach, the term input covers all forms of one's own contribution. Diederich argues that need might also be understood as part of the input, as a negative input. Therefore, one can include requirements on the input side in equity equations. An explicit attempt to reintegrate the need into Equity Theory has not been undertaken yet.

Examples of *pluralistic* theories of justice in the realm of political philosophy include Michael Walzer's *Spheres of Justice* (1983), David Miller's *Principles of Social Justice* (1999) and Amartya Sen's itThe Idea of Justice (2009). Melvin J. Lerner (1974) and Morton Deutsch (1975) have established pluralistic frameworks for the empirical study of justice in psychology that have increasingly replaced Equity Theory. In economics, the works of James Konow (2001, 2003, Konow and Schwettmann 2016) shows that the manifold findings of experimental research on social justice only support a pluralistic theory. In sociology, Stephan Liebig and Carsten Sauer (2016) have presented a theory of distributive decisions and judgments based on four criteria (see Table 7.1). In all these very different theories, need appears as one out of three, four or five criteria of justice. Put differently, a pluralistic theory is inconceivable without the inclusion of need as a criterion of justice—at least for the social sciences.

This might be doubtful in the case of Amartya Sen's theory. He rejects the concept of need within the framework of his "capability approach" and uses solely the terms functionings and capabilities. But in his well-known and programmatic example of three children and a flute (2009, 12–15) he mentions need as one of three basic criteria of justice (Sen 1987). The following table will give an overview of pluralistic theories of justice and the criteria they list as central principles of distributive judgments.

While need or basic needs appear in each pluralistic theory listed above, the terminology and meanings in the context of desert are quite different. Equality is surprisingly absent in some theories. As far as these conceptions reach a certain level of elaboration, three to five criteria are mentioned, among which need seems to play an undisputed role.

Table 7.1 Criteria for distribution in pluralistic theories of social justice

Pluralistic Theories of social justice	Criteria for distribution			
	Need related	Desert related	Equality related	Other criteria of social justice
Lerner (1974)	Need	Equity	Parity	Law
Deutsch (1975)	Need	Equity, Contribution	Equality	—
Walzer (1983)	Need	Desert	—	Free Exchange
Miller (1999)	Need	Desert (Merit)	Equality	—
Sen (2009)[a]	Need	Desert (Work)	—	Desert/Utility (Skill)
Konow (2001, 2003)	Basic needs	Efficiency	—	Accountability
Konow and Schwettmann (2016)	Basic needs	Efficiency	Equality	Responsibility, Proportionality
Liebig and Sauer(2016)	Need	Equity	Equality	Entitlement

Table notes. Source: Compilation by the author. [a] "Three children and a flute"

A pluralistic theory raises the question of how the above mentioned criteria should be related to each other. Which criterion can claim normative validity in which distributive decisions and when should combinations of two or more criteria be required? A model of different "spheres", as Walzer has presented (1983), assigns to each delimited societal area one specific criterion as the guiding principle of justice. The persuasive power of this model is grounded on the assumption that clear divisions between societal spheres are given or can be drawn. Social differentiation must translate into application fields for different justice criteria. The applicability of a criterion is limited to specific areas while combinations of principles as basic arrangements within societal areas are not envisaged. Therefore, Walzer's theory is perhaps the most consistent conception of a *separation model* of a pluralistic theory of justice.

Pluralistic theories of justice that provide for a combination of the three to five criteria of justice are also conceivable (e.g., Deutsch 1975). It is the objective of the following sections to advance this type of theory, which can be called a *combination model*. It seems much more in line with the findings from empirical work than the separation model. The key challenge for this type of theory is meaningfully integrating the different criteria of justice without transforming the theory into a monistic framework.

7.4 Different Versions of a Pluralistic Theory of Need-Based Justice

> Need is one of several criteria for determining a just order. Need-based justice can only be developed meaningfully as an element of a pluralistic theory of justice. The task of a theory of need-based justice is to determine when which combinations of criteria of just distribution occur empirically and when which combinations are required normatively.

Assuming only three criteria of justice, need, desert/merit, and equality (most notably Miller 1999), there can logically be combinations of equality and need, need and desert, desert and equality, and a mixture of all three principles. If further distinctions should be made between leading and subordinate criteria, mathematically six combinations of two and additionally six combinations of three criteria are possible. Whether a total of four or twelve options must be expected depends on the answer to the question whether it is possible to establish an order of priority of one justice criterion over another or not. While John Rawls' (1971, 1999) priority rules for his two principles of justice as different versions of the criterion of equality provide precise ideas on the relationship between the principles, these are rules for a theory conceived as a non-pluralistic theory of justice. In a pluralistic theory, less clearly structured relationships between the criteria of justice are conceivable. Even equations or connections that represent combinations without internal ordering can be expected. Then the number of combinations would even increase.

Let us first discuss the basic case of a non-ordered combination. A pluralistic theory of justice that does not follow the separation model is most appropriate for situations in which all three criteria are normatively involved in all questions of distribution, and when it can be empirically demonstrated that all three criteria are applied by individuals when evaluating everyday situations. This is to be named as a *weak pluralistic theory*. In contrast, a *strong pluralistic theory* assumes that only combinations of two of the three criteria are normatively relevant and can prove that exactly these combinations are empirically occurring. If it is not possible to identify *types* of situations for which specific combinations are relevant, then we conclude with a *contextualist theory of justice*.

Konow's theory, which in some of its variants acknowledges more than three justice criteria, is close to a contextualist theory with the idea of context-specific weightings between the basic justice criteria. However, Konow seems to be searching for patterns of these weightings and could, therefore, point in the direction of a strong pluralistic theory. Konow and Schwettmann (2016, 99) favor a context-related weighting between a fixed set of five justice criteria and lean towards a specific version of strong pluralistic theory:

> We conclude that justice is context-dependent, i.e., based on shared principles that are sensitive to the context, rather than context-specific, i.e., heterogeneous across different contexts. That is, there is an individual and even cultural variation in the interpretation of or weight placed on different fairness concepts and these respond to the context of the evaluator and the evaluated, but fairness values are shared in common. In addition, the results of surveys and economics experiments strongly support the claim that people value multiple principles, with robust evidence of responsibility, proportionality, efficiency, basic needs, and equality.

A *weak* pluralistic theory might be refuted from a normative perspective if it can be shown through argumentation that only one of the three criteria is relevant for specific types of situations, and from an empirical perspective if in experimental situations only one criterion is applied unambiguously. For example, need might be the only legitimate criterion in a situation where a relatively small number of persons are facing an existentially threatening situation and this can be remedied by a small redistribution of resources from a great many people. In this situation, multicriteriality is empirically not present and argumentatively not required. Therefore, *a weak pluralistic theory cannot be defended*.

If a specific amount for distribution or redistribution has already been fixed, existentially threatening situations of all those affected can be remedied with this, and there is still enough left for payments to additional persons, then we can expect combinations of need and at least one further criterion of justice. The combination of need and equality with strong redistributive effects contrasts with the combination of need and desert that allows for the desert principle to be applied above the need threshold. Both cases support a *strong* pluralistic theory. The inclusion of equality and desert in the combination of criteria, however, does not follow directly from the situation outlined above, but is dependent on further situational characteristics. If the responsibility for the occurrence of need gaps is attributed (at least in part) to the needy, the initial distribution is perceived as performance/desert-dependent and the provision of resources clearly depends on the participants' own contributions. This favors the combination of need and desert principles. If, on the other hand, the need gap is regarded as the result of circumstances that cannot be attributed to the needy, the initial distribution is not considered as performance-related and the resources for (re)distribution does not come from the participants' own contributions, then a combination of need and equality is more likely (e.g. Pritzlaff-Scheele and Zauchner 2017).

Some characteristics of the situation, such as how a distributive situation is assessed and perceived, are decisive in determining which combination of criteria of justice is chosen and which can appear normatively justifiable. But as the list of these factors expands, the argumentation goes towards a contextualist approach. Only an exhaustive list of factors or types of situations can save a strong pluralistic theory from transforming into contextualism where each situation may lead to the application of a different set of criteria of justice. The more the perception of distributive situations is determined by small differences, the more research is forced to take the road of a contextualist approach and the more difficult it becomes to develop meaningful typologies and theories. In view of the refutability of a weak theory of need-based justice and the ambivalent tendency towards contextualism, it seems most reasonable to continue working on a *strong* pluralistic theory.

7.5 Need-Based Justice and Procedural Justice

> There can be no theory of need-based justice without reference to a process by which needs are determined as socially or politically recognized. Recognition of needs, however, requires specific procedures in which what is recognized as need is also argumentatively identified as what is necessary.

What constitutes a need is determined by a process of social and political recognition (Fraser 1989; Hamilton 2003, see Chap. 5). How does this process of recognition take place? We have to differentiate between the social and the political recognition of needs. *Social* recognition of a desire, a demand, an interest, or a concern as a need is a societal communicative process recognizing that this demand can take precedence over other demands because it is necessary or compelling. Social recognition takes place in diverse processes, in interactions between persons or groups of persons as well as in the various social organizations or on the level of social-media exchange or public discourses. However, social recognition as a whole is not a *procedure* in the strong sense of the concept defined as (legally) ordered temporal sequences (Nullmeier 2018b). Although procedures may be used in individual social organizations to present desires as legitimate needs, social recognition is not absorbed in the use of these intra-organizational procedures. Social recognition of needs is a broad process at all levels, much more "anarchic", never leading to a result or even an interim conclusion, but always dependent on renewal and repetition. The challenges for the social sciences as an observer with the task to measure the social recognition of a need are, therefore, significant. Just as with the measurement of societal norm acceptance and the legitimation of political institutions, reference to surveys is not sufficient. Studies of public discourses, everyday interactions, and social practices within institutions and organizations are also required.

Such requirements increase when it comes to assessing the *quality* of the recognition process. An evaluation of the respective process of social recognition as appropriate, fair, just or not is highly complex given the diversity and plurality of relevant social processes of recognition. Neither the theories of fairness oriented towards market processes (for example Nozick 1974) nor those that construct abstract types of procedural justice (pure, perfect, imperfect; Rawls 1971) are suitable for setting standards for the assessment of the quality of *social* recognition processes.

The situation is much clearer if one looks at the terrain of *political* recognition of needs. Democracies are systems of institutions that know specific procedures for the recognition of desires or demands as needs: legislative procedures. Needs are politically recognized if they have been translated into the form of an applicable law, statutory ordinance or constitutional amendment. Whether a need can be considered as politically recognized can thus be seen from the perspective of positive law and the jurisprudence that accompanies it. Power, lobbying and micro-political strategies shape the outcome of legislation but, as far as the rule of law is respected, this usually takes place within the framework of a given legal procedure.

Therefore, political recognition can be examined as a procedural process embedded in the broader processes of social recognition. In political procedures, social

recognition is translated into political recognition, and attempts to recognize a demand as need in the political realm might result in social recognition that is either more advanced than or skeptical towards the political attribution of need. Social and political recognition may diverge or largely coincide in this respect. Since it is much easier for the social sciences to empirically identify that a need is *politically* recognized, the reference to political recognition is a practical research tool but must not lead to an underestimation of the role of social recognition.

It is also much easier to assess whether the process of political recognition is appropriate, fair or equitable than it is to do the same with social recognition. Since political recognition is procedural, the criteria of procedural fairness can be used as a benchmark for assessing the process of political recognition. This puts *procedures* at the center of a theory of need-based justice. Only legitimate procedures can legitimize the political recognition of needs. If procedures are lacking legitimacy, the recognition of needs can be considered as arbitrary, power-determined, imposed or accidental. It is, therefore, crucial which procedures can be regarded as legitimate in order to recognize needs.

An assessment of the procedure of political recognition cannot rely solely on the established criteria of procedural justice, since this would mean that procedures regarded as just in theories of procedural justice are automatically also considered as suitable for determining legitimate processes of the political recognition of needs. Although need-based justice relies to a high degree on procedures and their legitimacy, the idea of need specifies what can count as a legitimate procedure for recognizing a demand as a need. A legitimate procedure must, in cases of recognition of needs, be aimed at assigning to particular demands the status of necessary, compelling demands called needs. This deviates from the idea of Rawls' "pure procedural justice" (Rawls 1971, 83–87). It is, therefore, not possible to interpret political recognition of needs as a mere application of the theory of procedural justice with pure procedural justice as the highest standard.

Which procedures can be considered legitimate is pre-structured by the concept of need as a necessary, i.e. compelling, imperative, indispensable, essentially required desire or demand. Procedures for the recognition of needs must, therefore, make it possible to determine what is necessary. A majority decision that recognizes something as a need without having dealt with the question of whether the need is necessary is highly problematic from the point of view of a theory of need-based justice, since the goal of political recognition, *recognition as a need*, has been missed. The concept of need is, therefore, in tension with decision-making procedures that are based exclusively on principles like consensus, unanimity or majority. In such proceedings arbitrary contents can be decided as legally binding without any reference to examinations of whether a demand can be seen as necessary. A theory of need-based justice *requires additional criteria for political procedures*, that can count as legitimate means of politically recognizing needs. In the modification of the well-known properties of fair political procedures, these must also guarantee that the recognition of needs is based on a discussion of what is really necessary.

Against a simple variant of legal positivism, processes of political recognition of needs are subject to an assessment by the social sciences that may be based on

the assumption that not everything that is politically decided in a legitimate political procedure as being a need is a legitimate need. The recognition of needs should only be deemed legitimate if the political procedures include a debate about whether the demands are necessary, imperative, and compelling. Only procedures that include such debates can be regarded as legitimate. What is essential for a theory of need-based justice is a *combination of classical procedural justice and a specific substantive requirement*: the profound discussion of the nature of demands as necessary.

In processes of political recognition of needs, it is common to combine the usual procedures of democratic legislation with some form of expertise (Fischer 2009). Only procedures that include an element of expertise are usually considered appropriate for this purpose. However, the role of expertise is often emphasized to the extent that the democratic majority can only act in accordance with the results of the expertise and thus refrains from making its own decisions. This raises the question of whether the political recognition of needs should instead be realized through a scientific process. However, switching from majority decisions in parliaments to decision by experts transforms the political recognition of needs into a process of scientific investigation and expert consensus. These types of procedures are often criticized as expertocratic or technocratic and lack the inclusion of the public as the main element of democratic decision-making. Moreover, the delegation of decisions to expert bodies and the reframing of political decisions into an investigative process does not reflect the insight that the necessary must be constructed in an open and interactive process in which scientific expertise and research should have a voice but not the only voice (Landwehr (2013), see Chap. 5). A theory of procedural justice that takes seriously the political recognition of needs should include expertise in majority decisions without reifying the false objectivism of expertise.

7.6 Modes of Objectification

> Hierarchies of needs or comprehensive lists of basic needs cover the spectrum of human activity that should be considered in theories of need-based justice, but they do not offer indications as to when needs can be regarded as satisfied.

Lists or hierarchically ordered levels of needs are frequently used in studies of need-based justice. Besides Maslow's pyramid of needs (Maslow 1970 [1954]), perhaps Martha Nussbaum's list of capabilities (Nussbaum 2000, 78–80; Nussbaum 2006, 76–78) is the best known example of such attempts (see also Braybrooke 1987, 33–38; Doyal and Gough 1991). The experience that bread and water alone are not sufficient to lead a prosperous life result in a wide range of human activities as potential sources of needs. In addition to the physical and biological necessities of pure survival, there are other necessities whose disregard does not immediately lead to death but nevertheless causes permanent damage and harm. It is obvious that needs cannot be based on biological principles alone. With the expansion of the list of needs to wider dimensions of human life, to societal, communicative, psychological and perhaps artistic and esthetic issues, the question arises of what may be considered

necessary within this broad understanding of potential needs. All contributors to this debate agree on one statement: Securing survival cannot be the only criterion for deciding what is necessary. Nowadays, participation and inclusion in social life, being able to lead a worthy, valuable, and decent life is the most widely accepted reference point for the definition of what is necessary (Nussbaum 2006; Sen 2009; for Germany: Nullmeier 2018a).

With these categories, however, ethical questions—various notions of a good life over which justified dissent can exist—are used as the basis for a theory of justice. In the Rawlsian tradition, a theory of justice typically wants to free itself from questions of life plans and ways of living in order to develop a strong moral theory capable of universal consensus. In order to escape this tendency to ethics, attempts have been made to define a decent or valuable life negatively as the avoidance of serious harm. In these approaches, harm is understood as an objective event. With the argumentative combination or a type of mutual determination of harm and decent life, these approaches hope to develop a theory of need-based justice independent of deeper ethical questions (see Chap. 2, e.g. Thomson 1987).

While the question of objectification has been addressed in philosophy by clarifying the terms decent life and harm, a more empirical approach may regard the philosophical statements about harm and decent life as important inputs and argumentative sources for the public processes of social and political recognition. Objectification then takes place in the social and political processes, not by theory building and expertise. Additionally, terms like decent, valuable or worthy life leave a lot of room for interpretation and might call for theoretical approaches that further distinguish between the necessary, the appropriate, the affluent, and the luxurious. Alternatively, one can raise the social average or median in a society to the appropriate standard ("normal life") and consider the drop below a certain threshold as a case of need.

The experience that receiving bread and water is more urgent than making social contacts (McLeod 2014) makes the idea of a hierarchy of needs possible. *Urgency* gradations translate different demands into a hierarchy of needs, with the additional assumption that the less urgent needs only come into play when the most urgent needs are met (Maslow 1970 [1954]). This hierarchy introduces degrees of what is necessary. While all may be needs, some needs are more urgent than, and therefore, prior to others. Every form of hierarchization tends to start a process of inner decomposition of the concept of the necessary, with the danger that the entire attempt at objectification fails. Objectification can fail in a second respect. Maslow and his successors cannot show what resources are needed to satisfy the respective needs (see Chap. 3). Without any means to decide when a need is met, the dynamics of shifting needs from a lower to a higher level cannot be analyzed. If increasing demands for satisfaction over time cannot be ruled out, then the shift thesis itself is at risk.

In the case of lists that only provide clues for fields of human life in which needs can be searched, we have insufficient indications to identify certain levels of needs. A list of abstract fields of human life does not help to identify politically recognizable needs. For a normative theory of need-based justice that includes a comprehensive list of needs, it is meaningful to know the level of resources that is required for meeting the needs.

7.7 A Monistic Theory of Justice or the Role of Oversupply, Undersupply, and Scarcity

The attempt to base a theory of justice solely on needs as a criterion of justice leads to inconsistencies across different contexts. Oversupply and undersupply denote the relationship between available resources and socially and politically recognized needs, whereas scarcity is understood as the relationship between available resources and basically unlimited desires. Situations that in the context of a desire-based definition of scarcity has been regarded as states of scarcity are to a large extent states of oversupply in a need-based analysis.

As stated in Chap. 3, in psychology, no theory of justice has been developed that is solely based on the principle of need. This is also true for the disciplines of political science, economics, philosophy, and sociology. In all these disciplines, no theoretical approach emerges analogous to an egalitarian theory of justice, albeit with need as the only criterion from which the entire theory is developed.

Even if no purely need-based theory of justice has been developed so far, one can learn from a thought experiment of a monistic theory. Is it conceivable to develop a monistic theory of justice as a theory of need-based justice? The answer to this question is closely related to how the relationship between (recognized) needs and economically available resources (understood in a very broad sense) is framed. Let us suppose that the social or political recognition of needs has been completed. Two situations have to be distinguished. Either the resources exceed the sum of the needs or the totality of the needs exceeds the level of resources. The situation of complete congruence of resources and needs is the highly unlikely borderline between these two possibilities. Nevertheless, only such an unlikely case allows the principle of need-based justice to regulate the distribution. Even the smallest deviations from the congruence between needs and resources raise the question of which criteria can be applied in situations of over- or undersupply. If the principle of need-based justice is to solely determine the distribution, the quantitative congruence and the qualitative fit of resources and needs must be induced and constantly reproduced. Congruence and fit between needs and resources can be tackled from two sides: Needs can be adapted to resources or resources can be adapted to needs, both in the state of over- or undersupply.

One objection to the idea that needs should be adapted to resources is that this would destroy the idea of need as what is necessary. If the recognition of needs becomes resource-dependent, the element of necessity seems to be lost. On the other hand, the discussion on poverty in the social sciences has revealed that poverty must be determined relative to the level of prosperity in a certain society. A link between the level of available resources and the recognition of needs cannot be completely denied. Consequently, the notion of ensuring need-based justice as the sole guiding principle by adapting needs to resources cannot be generally rejected.

In the state of oversupply, the argument against a monistic theory of need-based justice is that it cannot be decided with reference to needs whether needs should be adapted to the available level of resources or the resources to the needs. The establishment of congruence by adjusting the needs to resources implies an increase

in needs. The need level might be increased in proportion to the previously recognized needs. Or each person receives the same absolute increase in their needs until the total amount of available resources is reached. In both cases, however, the principle of need is combined with a second principle: either with proportionality or with equality. Such a theory of justice would have to fall back on a second principle and could, therefore, not exist in a strictly monistic form. It is also possible to identify another solution: Once there is a surplus of resources above the level of the recognized needs, a society can enter into a new process of recognizing needs and redefining what is to be considered a need. This process may be repeated until the matching of needs and resources is achieved through upward adjustment of needs. The weakness of this solution lies in the fact that the matching of requirements is predetermined. Why should the necessary correspond exactly with the available? Nothing in the idea of need stipulates that needs and resources must coincide. As long as one only reflects on what is necessary, the need level can be below the level of available resources as well as clearly above this level. The congruence of needs and resources is added as a further criterion. However, this additional criterion is *external* to the idea of need.

The congruence between needs and resources in the situation of oversupply can also be achieved by adjusting, i.e., reducing, the available resources. As far as resources are concerned, which have to be made available by human labor, this means a reduction of the (technically mediated) labor input. If, however, more is available than is needed, why should this not be used for a supply that goes beyond the level of what is necessary? To argue against this option would mean establishing the principle that a greater amount than what is necessary can no longer be tolerated as just. "Only what is necessary" instead of "what is necessary first" then becomes the pinnacle of need-based justice. The conclusion that a theory of justice is intolerant of the production of more than what is necessary cannot be derived from the concept of need.

If needs are socially and politically recognized and the society identifies a lack of resources in comparison to the total sum of recognized needs, we speak of undersupply. The ideal of congruence then requires either the adaptation of the needs to the available resources, i.e., a reduction of the recognized needs, or an expansion of the available resources to the point of meeting the needs. A discussion of these cases would lead to the same conclusions as in the situation of oversupply. A second criterion different from need is essential to justify the congruence between resources and needs. Any pure theory of need-based justice quickly gets entangled in contradictions. A monistic theory can, therefore, be excluded as logically impossible.

Beyond the discussion about either monistic or pluralistic theories of justice, the literature on needs deals intensely with the question of assessment and measurement of needs in situations of scarcity (see Chaps. 2 and 6). In economics, scarcity is understood as the relationship between available resources and basically unlimited desires. By contrast, the terms oversupply and undersupply refer to the relationship between available resources and socially and politically recognized needs. Because the level of needs is significantly lower than the level of desires, and needs is a concept limited to what is necessary, situations deemed as states of scarcity according to the

desire-based definition of scarcity are largely considered states of oversupply in a need-based analysis.

The controversial question of the satisfaction of needs in the case of scarcity (Chap. 2, e.g. Miller 1999), which is so dominant in the literature, concerns a much smaller range of situations than previously assumed. Nevertheless, in these special situations, if it is not possible to satisfy all recognized needs, how can we evaluate the degree or fulfillment of the principle of need-based justice? If the lack of resources is seen as given and not changeable, is it possible to determine a just distribution solely by the criterion of need? Purely need-based solutions are conceivable by redefining the necessary as the most essential. However, this is an attempt to gradate the category of the necessary. Linear or proportional reductions of need might fall under the verdict of using a second criterion and offering a mixture of the principle of need and the principle of equality or proportionality as a solution. In their contribution to this volume, Siebel and Schramme (Chap. 2) offer a new solution to this problem by integrating elements from non-comparative (Platonic) and comparative (Aristotelian) versions of the principle of need.

7.8 Need Gaps and Corrective Justice

The origins of need gaps are decisive for the role need plays as a criterion of justice. Socially and politically recognized needs are often not met or only met to a limited extent if the origins of the need gap can be attributed to the person in need and his or her intentional behavior. A self-inflicted need gap leads in many cases to a denial of the distribution to this person according to need. If such a need gap, caused actively or by inactivity, is assigned to a group in a generalized manner, this can lead to the rejection of need fulfillment for this group. The normative question of the legitimacy of group-specific differentiation of need fulfillment raises questions of the interference between distributive and corrective justice and the existence of a kind of negative desert-based justice.

Certain perceptions of the origins and causes of need gaps can raise questions of responsibility and guilt (Miller 1999, 228–229). A recognized need may not be met because the need gap seems to be self-inflicted. This does not affect the social or political recognition of the need in general, but it does restrict the fulfillment of the need in a special case. Self-inflicted need gaps usually lead to punishment in the form of a (partial) denial of the meeting of these needs. The assumption is that the situation of need is entirely avoidable, i.e., that the need gap is the result of the individual's intentional behavior and not the effect of social institutions or economic situations or some type of misfortune. Guilt, responsibility, and punishment are *classical topics of corrective justice*, a type of justice that is concerned with the reversal of wrongs or the undoing of transactions. In the Aristotelian framework, it is an element of commutative justice, just like its counterpart distributive justice. The rejection of need fulfillment in these cases may be interpreted as an *overlapping of distributive and corrective justice*.

The second interpretation of these cases remains within the realm of distributive justice and does not raise the question of how distributive and corrective justice can

be offset against each other or related to each other. This would be possible within the framework of Equity Theory developed in psychology. However, this would imply a return to a monistic theory in which the character of need-based justice would be completely lost. Within Equity Theory, the argument of guilt can be understood as the attribution of a lack of individual contributions. The rejection of need fulfillment is not a response to misconduct that has to be punished, but rather the consequence of a lack of contributions by the individual. Being at fault is interpreted as lacking achievement. Instead of the criterion of need, the criterion of desert dominates. The existence of a need might be accepted, but the self-inflicted need gap leads to the predominance of the criterion of desert in the fulfillment of needs. The inclusion of self-inflicted lacks in the provision of one's own contributions as an argument for the fulfillment of needs represents a specific variant of the *combination of need-based and desert-based justice*.

7.9 Empirical Findings and Future Tasks for Theory Formation

> Deciding which criteria of justice to apply in a situation, and in which combination and with which weighting, depends not only on the specifics of the situation or on its perception, but also on the social relationships in which the persons concerned are involved and on the individual characteristics of the persons acting or judging. Situational, social and personal characteristics together determine the extent to which the principle of need is met.

Extensive empirical research in psychology, economics, and sociology has identified three groups of causes that determine the criteria used to evaluate distributions: situational, social, and personal determinants.

Situational: Decisions about just distribution may be made in a constructed state of nature, about social policy in a particular country or about constructed constellations of social problems in a laboratory experiment. Empirical evidence from different fields concludes that the characteristics of the respective situation do not remain without influence on the weighting between the different criteria of justice and the respective role of the principle of need. Today, the total available (but highly unequally distributed) resources are far greater than the sum of basic needs, defined as the socio-cultural subsistence minimum or the enabling of social participation. A situation of oversupply is given, and not only in OECD countries. For distributive decisions, however, it is not the situation as such but the *perceived situation* that plays the decisive role. Minor deviations in the situational constellation have a lasting effect on distributive decisions and can vary normative constructions of a just distribution. A plethora of detailed findings can be found in Chaps. 5 to 6 of this book. As mentioned above, a preliminary review of these findings seems to support a contextualist version of a theory of need-based-justice. To turn these findings into building blocks of a strong pluralistic theory of need-based justice, further research will be needed on how to classify the relevant aspects of distributive situations. Based

on such classification, it might be possible to integrate the diverse empirical results by developing a multifaceted *typology of distributive situations*.

Social: The existence of particular relationships between the persons concerned plays a significant role in the weighting of the criteria of justice (Chap. 4). If this were the case in general, the scope of need-based justice would be severely limited, and the idea of meeting global needs to overcome hunger and extreme poverty as the cornerstone of global justice would be nearly impossible (Brock 2009). Need-based justice would be re-framed as a normative ground for human aid and bringing it closer to parental love, compassion, and mercy. For a normative theory of need-based justice, it would be highly problematic to accept that close social relationships are a prerequisite for a need-based distribution. However, empirical studies from psychology (Chap. 3) show that need-based decisions can be made even if there is no strong interdependence or relationship between the decision makers and the persons in need. These findings should initiate theoretical efforts to develop typologies of social relationships with several dimensions as a baseline for systematic testing in experimental settings.

Personal: Studies in psychology, economics, and sociology have shown that the extent to which needs are taken into account and how they are combined with other criteria of justice is determined by socio-demographic, cognitive, and attitudinal characteristics of the persons involved in the distributive decision. However, the individual characteristics do not seem to be so powerful that certain combinations between different criteria of justice are consistently preferred for all situations and all forms of social relationships. There is no such close connection that one could speak of a more need-oriented and a more performance-oriented group of persons. Personal factors do not determine the results of distributive decisions, but they modify the relationship between need, equality, and desert in a particular situations in a particular way. The drift to contribute to a contextualist theory of justice seems to be strong. Therefore, systematic variations in personal characteristics should be a mandatory consideration when testing the validity of previous findings in certain experimental settings.

7.10 The Principle of Basic Priority for Needs as Part of a Strong Pluralistic Theory of Need-Based Justice

> Need is applied as a central criterion for distributive decisions in experimental settings. Need is also mentioned as one of the few criteria of justice in normative theories. Need is, therefore, an indispensable part of any theory of justice. An integrated theory of need-based justice can be developed as part of a strong pluralistic theory of justice.

The findings on the determinants of justice criteria allow for a merely contextualist theory as well as for a strong pluralistic theory of need-based justice. It is still unclear whether the determinants identified in the huge bulk of literature can be theoretically united in such a way that there are clearly defined types of distributive constellations

for which a particular combination of criteria of justice is characteristic. Until now, research on need-based justice from empirical as well as normative perspectives has oscillated between a strong pluralistic theory and contextualism. It is still unclear to what extent theory formation in the field of need-based justice will be successful.

Nevertheless, it is evident that a monistic theory grounded on need cannot be defended. Everything speaks for a pluralistic theory of justice with need as a central criterion for fair distributions. Need is a central point of reference in distributive decisions both in experimental settings and in normative theories. Consequently, the most promising perspective of a theory of need-based justice consists in the development of an *integrated and strong pluralistic theory of justice with need as a central and indispensable component*.

Perhaps a theory of need-based justice might go further in the *normative direction*. A strong pluralistic theory allows for the justification of a demanding principle of need-based justice, the lexicographic principle that before any other criterion comes into play, the complete satisfaction of all needs must take place. This *"lexineed" principle* or some of its variants has been rejected so far because the search for efficient allocation of resources demands a distribution according to desert. The Rawlsian difference principle ("leximin") is based on an argument of this kind as a reason for the deviation from the principle of equality.

The key argument in support of the priority of the criterion of need is that there is such a wealth of resources worldwide that the needs of all people could be met easily—and there would still be a huge surplus of resources. Globally, and in all macro dimensions, there is a situation of considerable oversupply, which does not immediately collapse even by cutting back on distribution according to performance. A *principle of basic priority for needs* always applies when the condition of a considerable oversupply of resources exists. Naturally, the prioritization of needs in assessments and decisions on distribution does not apply in those cases of local distribution in which underproduction, measured against the level of what is necessary, still prevails for certain individual resources. Aside from these rare cases, a theory of need-based justice would strongly contribute to general political debates on economic and social distribution.

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