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Static and Dynamic Justice and Human Resource Managers

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Abstract

In order to contribute to our understandings of how the principle of justice might apply to human resource management, this paper examines two ways of conceptualising justice that were developed by the social and moral philosopher Agnes Heller. In her work *Beyond Justice* (1987), Heller distinguishes between what she calls ‘static’ and ‘dynamic’ justice. Static justice concerns the fair application of norms and rules, while dynamic justice is about the justness of the norms and rules themselves. Drawing on the findings of in-depth interviews conducted with Australian human resource managers (HRMs) I argue that Heller’s concepts can be used to illuminate important features of HRMs’ roles. I claim the distinction between static and dynamic justice has implications not only for conceptual clarity but also for HR practice. Moreover, I argue, Heller’s distinction reveals how HRMs, as opposed to being protectors of the status quo, can be advocates for social and political change in organisations.
**Introduction**

Justice is an important principle in human resource management. This is evidenced by psychological studies of perceptions of fairness in organisations (e.g. Folger & Cropanzano, 1998, Cropanzano, 2001), the inclusion of material in business ethics textbooks on justice in the workplace (e.g. Shaw & Barry), and a slowly emerging literature in the HR management field (e.g. Barrett, 1999, Miller, 1996). In some of this literature, (e.g. Folger & Cropanzano, 1998) writers distinguish between different types of justice and in particular a frequent distinction drawn is between ‘procedural’ and ‘distributive’ justice. Distributive justice is typically identified as about the fairness of the outcomes an employee receives because of his or her efforts, while procedural justice concerns the fairness of the procedures used to determine the outcomes an employee receives. This distinction is clearly a useful one. It can help practitioners come to grips with the complicated nature of claims for justice. However, in this paper, I would like to provide another way to categorise justice claims, which I think will also be of use to practitioners.

Drawing on the work of Agnes Heller (1987, 1990, & 1996), I distinguish between what can be called ‘static’ and dynamic’ justice and I use both to illuminate moral dimensions of HR professionals’ roles. I argue, that the distinction between static and dynamic justice can be used by HRMs as a means to understanding claims for justice and thus as an aid to professional practice. In
addition, I claim, Heller’s distinction reveals how HRMs as opposed to being the guardians of existing norms and rules can be advocates for social and political change in organisations.

Static and Dynamic Justice

In her book *Beyond Justice* (1987), Agnes Heller identifies static justice as about the fair application of existing norms and rules. Static justice requires, she argues, “the consistent and continuous application of the same norms and rules to each and every member of the social cluster to which the norms and rules apply” (p5, 1988). In other words, static justice is about ensuring that everyone covered by a particular norm or rule is treated consistently and continuously in accordance with that norm or rule.

Static justice requires that people be treated impartially. The norms and rules must be applied consistently and continuously to the members of the relevant cluster regardless of who they are, regardless of their particular situation and regardless of the terms of the norms or rules. Quoting Heller:

“(i)ff ten people are sentenced to death in accordance with the requirements of certain norms and rules, those who are moved by pity and rescue even one of them are unjust. This is so whether those who make the exception do so because the person is a friend or relative or because they are moved by the natural dignity of his behaviour in the face of impending execution. ...Being just is a cold virtue, sometimes even a cruel one. How mild or how cruel it actually is depends on the norms and rules themselves.” (1987, p11)
Static justice is not about challenging the justice of the norms and rules themselves only their application. From this perspective, the inconsistent application of harsh or cruel norms is as unjust as the inconsistent application of a norm that is mild or caring.

Challenges to norms or rules, Heller argues, involve what she calls the process of ‘dynamic justice’ and thus is about the justice of current norms and rules, not whether they have been consistently applied. In *Beyond Justice* (1987), Heller defines ‘dynamic justice’ as a process whereby the justice of existing norms and rules can be questioned and alternative norms and rules proclaimed just. Under static justice, we can *verify* or *falsify* a claim that people are applying norms and rules consistently and continuously; under dynamic justice, the process is about *revalidating* or *devalidating* existing norms and rules.

For Heller, attempts to change a norm or rule because it is unjust can be categorised into two *ideal types*: claims that a different idea of justice should constitute the norm or rule; or claims that seek to redefine the standards associated with the idea of justice. That is, critics could pronounce a current norm or rule unjust because they believe a different *idea* of justice should replace it. For example, we might argue the idea ‘to each according to merit’ should replace the idea ‘to each according to rank’. Alternatively, critics may claim that the standards setting out *what* should be due (for example a pay increase), to *whom*
something should be due (for example employees after a certain period of time), or the interpretation of the specific idea (for example, what rank is taken to mean) should be redefined.

Heller suggests critics can challenge or support norms and rules in this way if they rely upon the observance of normative criteria that contradict the norms and rules\textsuperscript{ii}; if the injustice of the norms and rules follows from an observance of the normative criteria; and if they can suggest alternative norms and rules that accord with the normative criteria\textsuperscript{iii}. She identifies four kinds of normative criteria: particular principles; moral norms and maxims; pragmatic maxims; and ultimately substantive values.

We can draw on particular principles to mount a challenge where there is an inconsistency between different sets of norms or rules in a society. For example, rules exist in Australia giving men and women equal civil and legal rights. However, norms that create unequal wage distributions between men and women doing similar work may nevertheless continue to exist in some organisations. We could use the principle of equal civil and legal rights across the sexes to devalidate the norms that create this workplace inequality.

Moral norms and maxims can be used to reject norms and rules as unjust when devalidation involves claiming certain norms or rules are immoral or inhumane, and if the claimant proposes an alternative set. For example, we could seek to
devalidate a norm if its observance breaches the maxim that ‘no one should treat another as a mere means to his or her ends’ and if we can propose an alternative norm that does not breach this maxim.

*Pragmatic maxims* posit concrete substantive goals as just. They can be used to devalidate norms and rules that if observed would prevent the goal’s achievement. For example, someone could use the goal of establishing universal literacy in a particular community to devalidate as unjust a norm that in effect limits access to education. They must then suggest alternative norms promoting such access.

Finally, Heller argues, regardless of whether devalidation involves particular principles, moral values or maxims, or pragmatic maxims, rejecting norms or rules is ultimately ground in a *substantive value*. According to Heller, in contemporary western societies the ultimate substantive values are freedom and life-chances.

We can interpret freedom and life chances, Heller suggests, in different as well as potentially conflicting ways. Nevertheless, she proposes that in socio–political contexts freedom and life-chances are about a person’s *right* and *ability* (chance or opportunity) to participate in community decision-making (democratic freedom) and to decide their own fate, to choose a way of life and to do anything that does not prevent others from doing what they like doing (liberal freedom). For Heller, life-chances is a substantive value requiring freedom to be more than
just about abstract rights. All individuals should have an equal right and an equal chance or opportunity to be involved in decision-making processes and all individuals should have an equal right to pursue their own way of life and also an equal chance or opportunity to pursue their own way of life.

**Application to the Human Resource Manager’s context**

In the human resource manager’s (HRMs) context static justice is about applying the norms and rules governing human resource practices in a consistent and continuous way. In selection practices, for instance, static justice might be about applying continuously and consistently the merit principle to all applicants for a vacant position. That is, employers should assess all applicants for vacant positions according to their potential to meet job requirements as expressed in selection criteria.

Dynamic justice on the other hand would be about attempts to de-validate or re-validate some set or one particular norm or rule of human resource management. Thus, for example, someone could seek to attack or defend the use in employee promotion exercises of the idea ‘to each according to merit’. The critic could seek to replace merit with some other idea of justice such as ‘to each according to desert’. Alternatively, he or she could contest what should be due according to merit, or to whom it should be due according to merit, or what merit means. In
doing so, he or she would need to rely on some particular principle, moral or practical norm and ultimately freedom and life-chances defined in some way.

In what follows I seek to show that the distinction between static and dynamic justice is a useful one by drawing on findings of a series of in-depth interviews I conducted with 23 HRMs employed by Australian companies from a range of industries and sectors. Both men (13) and women (10) were interviewed. Eight interviewees were the most senior HRMs in their organisation and the fifteen others, all of whom ultimately reported to another HRM, were middle managers. I interviewed managers who were the only HR professionals in their organisation (4) and managers who either led or were part of an HR department (19). Two of the HRMs were located in Brisbane, twelve in Sydney, four in Melbourne, one in Canberra and four in rural NSW. This variability provided me with a sample of HRMs whose personal histories and work contexts were very diverse. The in-depth interviews went for between 2 and 6hrs (interviews of 4 to 6 hrs were conducted over two or three separate sessions) and explored the roles HRMs play, the goals they pursue, the moral norms and principles they follow and the difficulties they face in trying to ensure justice and morality in HR processes and decisions.

Based on the interviews I think that the distinction between static and dynamic justice is conceptually useful in the human resource context because it helps to clarify what someone is claiming when he or she asserts that something is unjust.
In addition, I suggest the distinction will also be of practical benefit to human resource managers. For example, several of the HRMs interviewed, when discussing performance management, spoke about the inconsistent application of norms to two or more employees of the same grade in the same way they spoke of what they saw as double standards between managerial and non-managerial employees. The latter involving one set of established procedures for non-managers and another set, or none at all, for managers. The HRMs saw both the inconsistent application and the double standards as unjust. The concepts of static and dynamic justice allow us to draw a distinction between these two issues. Inconsistency as discussed by the HRMs is about breaching norms or rules: the offending manager, in ignorance or wilfully, is inconsistent in his or her application of norms or rules to employees covered by the norm or rule. However, the supposed double standard between managers and employees does not breach existing norms or rules but expresses norms in the organisations that legitimate such distinctions. Thus in the second case there is no ‘static’ injustice. There are simply different norms for different clusters of employees and the HRMs want to change this situation.

The implications of this distinction are important for HR practice. Conflicts around static justice involve the verification or falsification of claims that, for example, particular managers have inconsistently applied existing norms. In such situations, HRMs will be able to draw on the authority of the norm to argue that managers should stop being unjust and should redress the mistake. Conflicts
around dynamic justice, however, involve devalidating or revalidating existing and accepted norms. In this circumstance, HRMs cannot rely on the relevant norms themselves to make a claim for change. Rather they will have to appeal to other criteria and will likely face opposition from other managers who will be able to fall back on the current norms for support. Clearly the two processes are different and HRMs must realise this, especially because the claim that existing norms and rules should be followed is perhaps less likely to create resistance than attempting to change norms and rules. In the former case, the HRM is pursuing a more conservative agenda: he or she wants to ensure others follow current norms and rules. However, in the latter the agenda is more radical: to change the norms and rules that people are required to follow.

The distinction would also be useful for HRMs who occasionally think about breaching rules of justice. For example, one HRM interviewed spoke about purposely breaching rules of justice to meet individual’s needs. He occasionally promotes employees who are less skilful and experienced than other suitable employees. He does this when the less meritorious individual has a family and is genuinely struggling financially. In such cases, others who might be better for the job if considered strictly in terms of merit are single and financially better off. This does not mean, he claimed, that people are promoted who do not meet the required criteria; it is just that they are not as skilled or as experienced as others are. This HRM also spoke of using retrenchment, rather than dismissal, as a way to terminate poor performers. While this breaches established norms and rules
covering retrenchment it is an approach, he felt, that provides poor performers with some dignity, self-respect and help for the future.

Here the HRM is clearly breaching static justice and thus committing moral offences. However, the concept of dynamic justice points towards a way this HRM could justly pursue his wish to meet the needs of struggling employees or poor performers. Rather than breach norms, he could seek to change them by entering into discourse or negotiation with other managers and those affected by the potential change and in doing so appeal to relevant criteria and ultimately freedom and life-chances. Likewise an HRM I interviewed who believed ‘seniority’ is a less ambiguous principle than ‘merit’ could seek to convince his colleagues to move towards the acceptance of seniority as the relevant ‘idea’ of justice, rather than unilaterally doing it himself and thus risking the accusation of partiality. Seniority, this HRM argued, if backed up by a good performance management system that measures people’s performance over the long run delivers less ambiguous information for decision-making. He wanted to change the norms but is clearly likely to face stiff resistance and thus might be tempted to simply ignore or defy the rules and hope no one notices. However, by trying to devalidate the norms and rules instead, he will preserve his decency and reduce the risk of others accusing him of applying double standards when he challenges managers who breach norms.
Further, Heller’s distinction helps to reveal how HRMs as opposed to being simply guardians of the *status quo* can be agents for social and political change in organisations. The interviews revealed that the HRMs were not purely interested in seeing the norms and rules associated with human resource processes complied with consistently and continuously. Many spoke of their efforts to change the way managers do things in a wide variety of areas. Looking at this activity from the perspective of Heller’s approach reveals that where their efforts concern questions of justice and rely ultimately upon appeals to freedom or life-chances, HRMs are organisational advocates for social and political justice. For example, HRMs spoke of pushing for employee autonomy and participation in decision-making, which is ultimately about pushing a political agenda around the value of freedom. Others spoke of their plans to broaden the application of norms of performance appraisal to senior managers, or to eliminate processes and principles that marginalise women and particular ethnic groups, or initiatives they had taken to ensure managers give feedback to all unsuccessful job applicants and set up appeals procedures, or to institute 360-degree appraisals. All these plans and initiatives ultimately involve pushing a social agenda around the value of life-chances.

Of course, ascribing this social and political justice role to HRMs is more credible if they themselves see their attempts to change processes as ultimately ground in the pursuit of freedom or life-chances. In this respect, the HRMs interviewed acknowledged the importance of freedom and life-chances in the broader social
arena. However, they argued that defining freedom as democracy or liberty and then using it to challenge norms and rules is out of place in the organisational context. This did not mean the HRMs rejected freedom when defined this way; they simply did not see democracy or liberty as ultimate yardsticks or ‘trumps’ of justice at work.

HRMs typically interpreted democracy at work as about participation in decision-making and argued that there should be more of it. Nevertheless, it was portrayed as a limited right. It was agreed that employers only give employees the right to participate in decisions directly affecting their job or immediate work group. Senior management, they suggested, must control the broader organisational strategic decisions and policies.

In discussing freedom as liberty, many HRMs spoke of the importance of worker autonomy. Nevertheless, they stated that when compared to broader society, autonomy is restricted in organisations. They spoke of limitations on such things as people’s behaviour, modes of dress and, because of technological and organisational constraints, people’s freedom to carry out their jobs how and when they wish.

However, for Heller freedom is a value idea that people can interpret in a variety of ways. While the HRMs interviewed appeared to reject the claim that democratic freedom is an ultimate value, other interpretations of freedom
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appeared to be acceptable. The HRMs put a strong emphasis on respecting people’s backgrounds, personal values and beliefs and not violating them physically or mentally, or manipulating or deceived them into acting in certain ways. This emphasis is at core about freedom. People, the HRMs argued, must be free to hold their own beliefs and values and they must be free from violation, manipulation and deceit. HRMs saw freedom in these terms as of considerable importance and all the HRMs put it at the top of their identified values.

Turning to life-chances, it not only relates to the opportunity to participate in decision-making processes and in the structuring of one’s own fate and forms of life. It is also the claim that people should have equal opportunity to carry out the function they are best able to perform because of their talents rather than position at birth. The HRMs concentrated upon this interpretation in interviews and portrayed it as about equal employment opportunity. Most emphasised the importance of equal opportunity and saw its importance as going beyond the legal dimension. Equal opportunity is a legal requirement but also a principle or value of great importance in itself. A commitment to equal opportunity for all persons regardless of background clearly underpins the emphasis all HRMs put on fairness and impartiality in selection, performance appraisal, managing poor performers and training. The HRMs also appeared to demonstrate a commitment to life-chances in their identification of respect for people’s beliefs and values as an important moral principle. The HRMs argued it is vital to accept that employees come from a variety of ethnic and religious backgrounds and have
different values and beliefs. It is therefore wrong to discriminate in employment by virtue of ethnicity or religion – employers must provide employees equal life-chances regardless of background. Thus for many of the HRMs interviewed life-chances is an ultimate value that can be used to challenge norms and rules in organisations.

Therefore, the interviews revealed that freedom and life-chances defined in particular ways are ultimate values for the HRMs. Life-chances if defined as equal opportunity is clearly a substantive value and while none of the HRMs identified democratic and liberal freedom as ultimate values in organisations freedom is given this status when defined as the freedom to hold a diversity of values and beliefs and freedom from violation, manipulation and deceit.

However, in addition to freedom and life-chances the HRMs put an emphasis on economic performance as a goal and even an important value they must pursue. It was suggested that the imperative to improve economic performance is, in large part, driving recent developments in human resource management. Old norms and rules are replaced because they are seen as inimicable to performance. Given this and given that for Heller all principles and maxims are ultimately rooted in freedom and life-chances, is there dissonance between the views of the HRMs and Heller?
If we define freedom as solely about democracy or participation and autonomy in organisational decision-making and tasks, there is clearly a dissonance. Democracy and liberty in the workplace according to the HRMs interviewed do not ‘out trump’ performance.

However, the HRMs clearly saw freedom and life chances as ultimate values if freedom is defined as a right to autonomy and to one’s own beliefs, values and ways of being, and if life-chances if defined as about equal opportunity. Nevertheless, it might be argued, economic performance is also an ultimate value. The HRMs portrayed performance as fundamental and the goals of HRMs as ultimately for the sake of commercial or operational goals. Several spoke about the need to focus on performance simply because any organisation’s ongoing existence depends upon it. Thus, the HRMs interviewed are in accord with Heller in terms of freedom and life-chances when defined in particular ways, but they would add economic performance to the list of ultimate concerns.

One way around this could be to argue that economic performance is not an ultimate value in itself but is necessary for organisational viability and is thus ultimately about life-chances. In this respect, one line of argument put by the HRMs was that if an organisation’s existence is not primary, everyone could be out of a job with curtailed life-chances. Thus, freedom and life-chances remain ultimate values, but only if defined in particular ways. Alternatively, another line of argument was that an emphasis on performance need not be enthusiastically
embraced, but neither can it be ignored. Performance is not as an ultimate value but it is an imperative that HRMs cannot avoid. In this sense, therefore, life-chances and freedom are the supreme values for HRMs. Economic performance is an imperative and on occasions it maybe overwhelming, but obedience to it is a matter of compromise not commitment. Finally, another argument was that there need not be a contradiction between moral values and economic performance. HRMs might argue that at least over the long run decisions ensuring freedom and life-chances will lead to higher performance. None of this however excludes the possibility that some HRMs will see performance as an equally supreme value to freedom and life chances.

**Conclusion**

From the interviews, it is not possible to draw an unequivocal conclusion about the relationship between freedom, life-chances and performance. It is impossible to say conclusively that, in line with Heller’s moral philosophy, for all HRMs freedom and life-chances are supreme values in which all principles and norms, including efficiency or performance, have their roots. Neither, however, does the discussion absolutely exclude this possibility. What is clear is that the HRMs can use life-chances and freedom, if defined in particular ways, to validate or devalidate established norms and rules. Nevertheless, economic performance is also a fundamentally important issue and cannot be easily dismissed by HRMs in the organisational context. In this respect, it would appear the relationship between economic performance and morality including freedom and life-chances can potentially cause deep moral conflicts for HRMs.
However, regardless of the relationship between freedom, life-chances and economic performance, the distinction between static and dynamic justice is a useful one. It enables the claim that something is unjust to be classified in one of two ways and reveals that there are practical implications associated with this categorisation. A claim of ‘static’ injustice means the claimant believes someone has breached existing norms. A claim of ‘dynamic’ injustice means the claimant wishes to change existing norms and rules. HRMs should be clear about this distinction because the former is an appeal for the status quo to remain, while the latter is about rejecting existing arrangements at some level. The two situations imply different roles, one more radical than the other is, and they require, therefore, different sets of skills. Moreover, in seeking to devalidate existing norms and rules, HRMs must realise they are agents for change and will face resistance from a variety of stakeholders. In the case of static justice, however, HRMs are playing the role of guardian over current arrangements. They will face resistance from people who have breached existing norms but will have the weight of these norms behind them.
References


End notes

i By ‘social cluster’, Heller means people who can be identified as a group because their behaviour and relations are governed by the same norms and rules.

ii One person can devalidate a norm or rule in terms of one set of criteria, another person may simultaneously validate the norm in terms of criteria they select.

iii Heller argues that one can reject a norm or rule as bad, wicked or inhuman without suggesting alternative norms and rules but to devalidate them as unjust requires alternatives.

iv For Heller, in modernity life-chances is becoming a universal while freedom already is one.

v All people who applied for the job in the appropriate way being the cluster to which the merit principle should apply.

vi In drawing on the interviews, I make no claim to the statistical generalisability of the issues I raise here to the broader population of HR managers. Moreover, in reporting the results of my analysis I have not written in terms of percentage frequencies or even raw numbers. I do not wish to give any impression that I am making any hard claims about the generalisability of my particular set of findings. My fundamental task was to look for a resonance between moral concepts such as static and dynamic justice and the views of the HRMs I interviewed. In-line with much qualitative research methods literature (eg Patton, 1990, Holstein and Gubrium, 1995, Taylor and Bogden, 1998, Schwandt, 1994, Denzin and Lincoln, 1994, Madison, 1988, Seidman, 1998, Maykut and Morehouse, 1994, Guba and Lincoln, 1989, Higgs and Adams 1997, Ellis, Keisinger and Tillman-Healy, 1997, Janesick, 1994, Minichiello, Aroni, Timewell and Alexander 1995, Douglas 1985, Mishler, 1986, Morton-Williams 1985, Jones 1985) the topics and issues discussed in the interviews varied somewhat between interviews and interviewees as I learnt more and became confident that I was developing a understanding of the issues. Given this, to articulate numerically how many HRMs said what would be to build a false image of the research methodology and what can be said about its findings. My broad goal was to build a picture of aspects of the moral dimension of the role of the HRMs I interviewed in-depth so as to provide a base for the analysis of the resonance and efficacy of concepts such as static and dynamic justice. In other words, my task was to test theory and provide insights into concepts that may be of use to HRMs who seek ways to clarify moral issues in their workplace contexts.