

## Lesson 32

# THE ARGUMENTS FOR EQUITY/EQUALITY

From *Policy Paradox & Political Reason* by Deborah Stone (1988)

This article presents different ways to judge what is "fair" in terms of the distribution of the wealth of a society. In end, the article suggests that fairness or equity is a social fiction.

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Outside the ivory tower, and even inside, people usually have a general stance toward questions of distribution. Either they generally favor redistribution—moving from the current arrangements toward something they see as more equitable—or they favor the status quo, believing that the current distribution is more equitable than anything that might be achieved by conscious government policy.

Most policy issues can be seen as a question of whether and how the "haves" should give to the "have nots." Even if it is not the primary conflict in a policy issue, this distributive component is always there. Should polluters pay river users for damage to water quality? Should long-distance telephone users subsidize local users? Should people without children subsidize people with children (through their taxes used for public schools)? Should the young pay for the old (through social security)?

Where one stands on issues of distribution is determined not so much by the specifics of any particular issue (say, tax policy or student financial aid) as by a more general world view. This world view includes one's assumptions about the meaning of community and the nature of property. Such assumptions transcend particular issues.

One major divide in the great debate about equity is whether distributions should be judged by criteria of process or by criteria of recipients and items. Robert Nozick has written the most extensive defense of process criteria in his book, *Anarchy, State and Utopia*.<sup>6</sup> He argues that a distribution is just if it came about by a voluntary and fair process. It is just if all the holdings in it—what people have—were acquired fairly.

How do we know whether things are "acquired fairly"? Nozick distinguishes two types of holdings and says we have to examine each to determine whether it was fairly acquired. First, anything newly created (such as an invention) or not formerly held as property (such as rights to own a taxicab in a city that just created a medallion system) must be acquired fairly. And second, anything acquired by transfer—say by sale, gift, or inheritance—must be acquired fairly. Thus, in order to judge whether a distribution is just, one needs historical evidence—perhaps records of how acquisitions took place, such as patent applications and property title histories.

Nozick contrasts his process or historical concept of justice with what he calls the *end-result* concept. In the end-result concept, one looks at characteristics of recipients or owners and characteristics of items, and asks whether there is an appropriate match. Nozick calls this *end-result justice* because in order to judge whether a distribution is fair, we look only at the end result and do not need any historical information as to how the distribution came about.

The other side of this theoretical divide is best represented by John Rawls in his book, *A Theory of Justice*.<sup>7</sup> Rawls defines the relevant class of recipients as all citizens, and he defines the relevant items as *social primary goods*. Social primary goods are things that are very important to people (hence "primary") but are created, shaped, and affected by social structure and political institutions (hence "social"). Power, opportunity, wealth, income, civil rights, and liberties are things Rawls includes. He distinguishes them from *natural primary goods*—things very important to people but which, while affected by society, are less directly under its control. Here, Rawls includes intelligence, strength, imagination, talent, and good health.<sup>8</sup>

### GOLDEN RULE...

Rawls asks us to imagine ourselves designing rules for a society we are about to join. We are to put ourselves behind a "veil of ignorance": we know that the natural primary goods will be unequally distributed, but we do not know how much of each we individually will have. In those circumstances, what kind of rules would we want? Rawls says that most rational people would want social primary goods to be distributed equally, but we would allow social and economic inequalities if they worked to everyone's advantage and were attached to positions or offices open to everyone. For example, we might allow doctors to receive much higher pay than others if we thought high pay was

necessary to motivate people to endure medical training, but we would insist that the opportunity to go to medical school be open to everyone.

Although Nozick calls Rawls's theory "end-result," Rawls' concept of justice is a process view in two important senses. First, he sees justice primarily as an attribute of the rules and institutions that govern society, and only secondarily as an attribute of the distributions which result from the rules. Rawls calls his view "*justice as fairness*." Second, he develops his principles of justice through a process that is absolutely central to his theory: the formation of a hypothetical social contract between free and equal people. Rawls's process is deliberation or "thought experiment." Though it is hypothetical rather than actual, such as Nozick's idea that we judge equity through the history of actual exchanges, it is a process nonetheless.

Each approach to distributive justice has its conceptual problems. The tricky problem for Nozick's process concept of justice is defining what constitutes fair original acquisitions and transfers. One could, of course, say that acquisitions and transfers are fair if they do not violate any legal rules of society—no fraudulent representations of merchandise, no stealing of other people's ideas in patent and copyright applications, no coercion in contract negotiations, and so forth. But that would be taking for granted the very thing we are trying to judge—the distributive rules of our society. So proponents of process concepts are left with the problem of where to find independent standards for judging distributive processes.

Similarly for end-result proponents. They must define what characteristics of recipients and items are *relevant* for justice. One approach is to look at society as it is and say that those characteristics people consider relevant are by definition relevant.<sup>9</sup> If people believe level of education is relevant in the distribution of wages and salaries, then education is important. If they think gender is not relevant, then a just distribution is one that is neutral toward gender.

The problem with this approach is that distributive conflicts arise precisely because people do not agree on the relevant characteristics of recipients and items. If people do not agree, then where should standards come from? Do we look to the majority? And if so, how do we find the majority—through referenda, or public opinion polls, or in depth surveys? And how do we account for the fact that people seem to change their minds—that in one time and place, race is considered a relevant criterion for citizenship, but in another time and place it isn't? That in one era, education is thought to consist in the curriculum only, so that racially separate education could be equal education, but in another, education is thought to consist in the social and psychological experience as well as the curriculum, so that separate cannot be equal.<sup>10</sup> If we look to existing practices to find the correct definition of recipients and items, then we have no standards by which to criticize an existing distribution.

The other approach to defining recipients and items is to seek some universal standards not dependent on the norms of particular societies. This is John Rawls's approach. He looks to our innate sense of justice as well as our fundamental rationality and then derives principles of equity by asking us to deliberate about rules for a just society without being biased by knowing our own situation. But this solution works only if we believe that there is universal logic about distributive justice to which all people would subscribe if stripped of their culture and their particular history.

— FIX PROCESS, not tax + give...

In general, people who hold Nozick's process view of equality do not favor policies to effect redistribution directly, even when they think a current distribution is inequitable. If you believe that ultimately a distribution is to be judged by the process that created it, your prescription for injustice will be to correct any deficiencies in the process. Thus, if the rules of the game in marketplace competition give an unfair advantage to very large firms, the answer is to limit the behavior of large firms (say, through antitrust laws) rather than to take some of the resources of large firms and give them to small firms.

People who hold an end-result view of equity are more likely to favor direct redistribution. If you believe distribution is to be judged by the standard of equal treatment of correctly defined recipients and items, your prescription for remedying injustice will be to correct incorrect definitions and redistribute the relevant items accordingly. Thus, in the school segregation issue, if blacks are receiving less than their share of education because

education has been too narrowly defined as "curriculum only," the answer is to redefine education as "curriculum plus social integration" and redistribute the new item accordingly. In practice, however, the division between process and end-result solutions is not so clear. It is hard to redefine education without altering the whole institution and changing the process by which education is distributed.

second major divide in the great debate is what kind of interference with liberty one finds acceptable as a price of distributive justice. Here, the difference between the two sides is in their conception of liberty. On the one side, liberty is *freedom from constraints*; on the other side, liberty is *freedom to do what one wants to do*.<sup>11</sup> People who hold a process view of equity usually also see liberty, as freedom to use and dispose of one's resources as one wishes, without interference. If you hold that view, you will be very reluctant to sanction government redistribution, because any taxation or taking of property restricts people's freedom to use their resources as they wish. People who hold an end-result view are usually more wont to see liberty as having enough basic resources to choose out of desire rather than necessity. If you hold that view, you will spend a lot of time thinking about what resources are "basic" for human welfare and you will insist that government redistribute to ensure that everyone has the basic resources.

Nozick argues that in fact property and the constraint view of liberty are inextricably tied. What can a property right possibly mean, he asks, if not the right to do with something as one wishes? Any policy based on end-result distribution is self-contradictory, he believes, because what it gives with one hand it takes away with the other. In redistributing, it gives people entitlements to things—entitlements that can only mean the right to use the things as one wishes. Yet an end-result distribution can be maintained only by continuously interfering with people's rights' to dispose of their property—by taxing and redistributing periodically to redress the unequal 'results of people's free choices'.<sup>12</sup>

How do those who hold the other view of liberty get out of this box? One way is to distinguish between specific liberties and some abstract total liberty. It is possible to arrange for specific liberties, such as freedom from hunger; freedom of speech, or freedom to choose one's own doctor, without unduly constraining how people use their property. Another answer is that the amount of distribution necessary to provide the basic resources for liberty is very limited, and need not interfere substantially with anyone's right to dispose of his or her resources. Equity, in this view, does not require uniform shares of something for everyone, but only adequate shares. End-result justice does not require the same amount of money for everyone, or the same size winter coat, but it does require a certain minimum income and wardrobe. Redistributive policy should ensure that everyone receives the basic minimum, and it should tax people only enough to give everyone the necessary minimum; it will not tax anyone so as to bring him or her below the minimum. This view of equity, sometimes called fair shares,<sup>13</sup> holds that property rights can still retain their essential meaning—the right to use one's property as one wishes—without these rights being absolutely unlimited.

A third divide is whether one sees property as an individual creation or a collective creation. In one view, things of value—the things worth having and fighting about—come into being and derive their value from individual effort. Even when something is created through cooperative efforts, such as an automobile or a space shuttle mission, it is still possible to identify individual contributions. For one thing, if cooperation is based on specialization and division of labor, then we can simply measure the value added by each person as the product passes through a sequential process of production.<sup>14</sup> Not surprisingly, this view of property usually goes with the process view of equity and the unconstrained-choice view of liberty. For without a concept of discrete, individually-created units of value, it is impossible to evaluate distributions by examining discrete historical transactions.

In the other view, at least some very important things of value come into being through cooperation that yields a result greater—and qualitatively different—than the sum of its parts. Cooperation in the first view is like a relay race; the contributions of individual efforts to the victory are discrete and measurable. Cooperation in the second view is like a chamber music performance. The thing of value—the music as the audience hears it, as well as the experience of playing it—cannot possibly be described as the sum of individual voices. The music is the result of voices in tune with each other and in balance. To be sure, the music has its moments when one instrument comes forth to carry the theme or dress up a motif with ornaments, but even the quality and excitement of virtuoso playing

depends on the quality and sensitivity of accompaniment.

Rawls's concept of social primary goods is one way of saying that important values are socially created. R. H. Tawney puts it another way:

If each of the hundred thousand men who landed in France in 1914 had been presented with the one-hundred-thousandth part of the cost of the first expeditionary force, and instructed to spend it, in the manner he thought best, in making the world safe for democracy, it is possible that the arrangement might have been welcomed by the keepers of the *estaminets*, but it is doubtful that the German advance would have stopped at the Marne.<sup>15</sup>

It should be clear by now that if one conceives of property and value as individually created, then one is likely to favor policies that respect individual freedom to acquire and use things as one wishes. If one conceives of property and value as socially created, one is more likely to favor redistributive policies that guarantee everyone some access to socially created goods.

The fourth great divide concerns human motivation. In one view, people are motivated to work, produce, and create primarily by need. They work to acquire the things they must have or would like to have. In the other view, people have a natural drive to work, produce, and create, and they are *inhibited* by need. In one view, deprivation is the chief stimulus to work; in the other, internal drive protected by security is the chief stimulus.

The connection between these views of motivation and stances on the equality debate is probably clear. If one believes that work is primarily the result of need, one will be loath to engage in distributive policies that guarantee the things people seek through work. Such policies can only *reduce* the productivity of society. This view does not preclude all social assistance; many people on this side of the divide favor redistribution of basic necessities (food, clothing, shelter) to those in dire need. If, on the other hand, one believes that people are more productive, creative, and energetic when they are secure, one will favor redistribution of a broader range of goods and services to a broader range of people.

By now it is certainly obvious that the two clusters of views described here are social conservatism and social liberalism. Conservatism includes beliefs in distributive justice as fair acquisitions, liberty as freedom to dispose of one's property, property as an individual creation, and work as motivated by financial need. Liberalism includes beliefs in distributive justice as fair shares of basic resources, liberty as freedom from dire necessity, property as a social creation, and productivity as stimulated by security.

<sup>6</sup>Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974).

<sup>7</sup>John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).

<sup>8</sup>We might quibble, as many have, with Rawls's list of natural primary goods. See, for example, Ronald Green's argument that good health should really be considered a social primary good. Ronald Green, "Health Care and Justice in Contract Theory Perspective," in Robert Veatch and Roy Branson, Eds., *Ethics and Health Policy* (Cambridge, Mass.: Ballinger, 1976), pp. 111—126.

<sup>9</sup>This is Michael Walzer's approach in *Spheres of Justice* (New York: Basic Books, 1983).

<sup>10</sup>This is the intellectual move made by the Supreme Court in *Brown v. Board of Education* (1954).

<sup>11</sup>We'll have more to say about liberty in Chapter 5.

<sup>12</sup>Nozick, *op. cit.*, (note 6) p. 171.

<sup>13</sup>For the fair-shares view, see William Ryan; *Equality* (New York: Random House, 1981), especially chaps. 1-3.

<sup>14</sup>This argument is best defended by Nozick, *op. cit.*, (note 6) pp. 186-187. He adds another defense of his notion that even cooperatively produced products have identifiable individual contributions, but I find it tautological. It runs like this: There must be an identifiable individual contribution because "people transfer their holdings and labor in free markets with prices determined in the usual manner. If marginal productivity theory is reasonably adequate, people will be receiving, in these voluntary transfers of holdings, roughly their marginal products." Essentially, this amounts to saying that since we can imagine a hypothetical discrete individual contribution (i.e., marginal product), there must be one.

<sup>15</sup>R. H. Tawney, *Equality*, 5th ed. (London: Unwin, 1964), pp. 122-123.