

# POLICY PARADOX



**The Art of  
Political  
Decision  
Making**

**THIRD  
EDITION**

**DEBORAH STONE**

**POLICY PARADOX:**  
**THE ART OF POLITICAL**  
**DECISION MAKING** 

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*Third Edition*

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*For Jim*  
*somewhere always,*  
*alone among the noise and policies of summer*

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## Equity

The most famous definition of political science says it's the study of "who gets what, when, and how."<sup>1</sup> Distributions—whether of goods and services, wealth and income, health and illness, or opportunity and disadvantage—are at the heart of policy controversies. In this chapter, we will describe issues as distributive conflicts in which equality is the goal. Keep in mind that in a distributive conflict, *all* sides seek equality; the conflict comes over how the sides envision a fair distribution of whatever is at stake.

To see how it is possible to have competing visions of equality, let's imagine we have a mouthwatering, bittersweet chocolate cake to distribute in a public policy class.<sup>2</sup> We all agree that the cake should be divided equally. The intuitively obvious solution is to count the number of people in the classroom, cut the cake into that number of equal-sized slices, and pass them out. I've tried this solution in my classes, and, believe me, my students always challenge my equitable solution. Here are some of the challenges:

1. Some say my solution is unfair to the people left out of the class in the first place. "I wouldn't have skipped class last week if I had known you would be serving chocolate cake," says one. Students not even taking the course come up to me in the halls: "Unfair!" they protest. "The catalog description sounded dull. If it had mentioned cake, we would have enrolled in your course." My cake is featured on *gourmet.com* and students from around the world e-mail me: "We would have applied to your university if we had known you were a gourmet chef." All these people describe my solution as *equal slices but unequal invitations*.

<sup>1</sup>Harold Lasswell, *Politics: Who Gets What, When, How* (New York: McGraw-Hill, 1936; 2nd ed. with postscript, Cleveland: World Publishing, 1958).

<sup>2</sup>My inspiration for this analysis of equity came from Douglas Rae, "The Egalitarian State: Notes on a Contradictory System of Ideals," *Daedalus* 108, no. 4 (Fall 1979), pp. 37–54; and Douglas Rae et al., *Equalities* (Cambridge, Mass.: Harvard University Press, 1981).

2. Some say my solution is unfair to the high achievers. These students think I should give a pop quiz, then divide the cake according to performance on the quiz. 'A' students get big pieces, 'B' students get small pieces, and 'C' students get a taste so they know what rewards await them if only they work harder. Of course, there aren't any 'D' and 'F' students in my class, but if there were, they would get nothing because they haven't earned cake. The proponents of this solution describe it as *unequal slices for unequal merit but equal slices for equal merit*.
3. Some of my colleagues buttonhole me the next day. This is a Political Science Department course, they say, and your cake should have been shared in accordance with the department's hierarchy. The chairperson sends me a memo proposing the following division of any future cakes:

Your undergraduates: crumbs

Your graduate teaching assistant: mouthful

All other grad students: work on our research while we eat cake

Assistant professors: slivers

Associate professors: wedges

Full professors: wedges with extra frosting

Chair: wedge with extra frosting, and a linen napkin

This solution might be described as *unequal slices for unequal ranks but equal slices for equal ranks*.

4. A group of men's liberationists stages a protest. Women have always had greater access to chocolate cake, they claim, because girls are taught to bake while boys have to go outdoors to play football. Moreover, chocolate cake is more likely to be served in courses taught by women than men, and those courses draw proportionately more female students. In short, gender roles and gender divisions in society combine to make gender the de facto determinant of cake distribution. The men, who comprise only one-third of the class, propose that men as a group should get half the cake, and women as a group should get the other half; *unequal slices but equal social blocs*.
5. One semester, all the students in my public policy class had just attended a three-course luncheon, which, mysteriously enough, did not include dessert. Several of them thought my chocolate cake should be treated as the last course of the luncheon. They pointed out that some students had managed to commandeer two shrimp cocktails, pick all the artichoke hearts from the salad, and grab the rarest slices of roast beef from the platter. Shouldn't the

other students—the ones who had only one shrimp cocktail and overcooked roast beef, not to mention the vegetarians—get bigger slices of my chocolate cake? This solution, which I had to agree seemed fair, might be called *unequal slices but equal meals*.

6. Every year, a few students come forth saying they hate chocolate. There's always someone who is allergic to chocolate. And another who says he was born without the crucial gene for chocolate digestion, and though it would do him no harm to eat my cake, he wouldn't derive any nutritional benefit from it either. These students think I might as well reallocate their portions to those who can truly appreciate the cake. Their solution might be called *unequal slices but equal value to recipients*.
7. The business majors in the class want no part of these complicated solutions. Give everyone a fork, they yell, and let us go at it: *unequal slices* (or perhaps I should say "hunks") *but fair competition with equal starting resources*.
8. One semester, I was caught with only enough chocolate to make a cupcake. It couldn't really be divided among the large number of people in my class. The math whizzes proposed an elegant solution: put everyone's name in a hat, draw one ticket, and give the whole cupcake to the winner. They had a point: *unequal slices but equal statistical chances of winning cake*.
9. Just when I thought I finally had an equitable solution, the student government activists jumped up. In a democracy, they said, the only fair way to decide who gets the cupcake is to give each person a vote and hold an election for the office of Cupcake Eater. Democracy, they claimed, means *unequal slices but equal votes*.

Now look back at what happened in the chocolate cake saga. We started with the simple idea that equality means the same-size slice for everyone. Then there were nine challenges to that idea, nine different visions of equality that would result in unequal slices but equality of something else.

Here is the paradox in distributive problems: equality often means inequality, and equal treatment often means unequal treatment. The same distribution may look equal or unequal, depending on where you focus. I use the word "equality" to denote sameness and to signify the part of a distribution that contains uniformity—uniformity of slices, or of meals, or of voting power, for example. I use "equity" to denote distributions regarded as fair, even though they contain both equalities and inequalities.

Let's examine the challenges more carefully to see how they give us some tools for thinking about what equality means. Every distribution



*"My body, being a bigger machine, requires more fuel."*

has three important dimensions: the recipients (*who* gets something?), the item (*what* is being distributed?), and the process (*how* is the distribution carried out?). Challenges 1, 2, 3, and 4 redefine the recipients. Challenges 5 and 6 redefine the item being distributed. Challenges 7, 8, and 9 focus on the process of distribution.

## THE DIMENSIONS OF EQUALITY

### 1. Membership

Challenge 1 questions the definition of membership in a community. It is all well and good to say that something should be divided equally, but the sticky question is, "Among whom?" Who should count as a member of the group

of recipients? Often, defining the class of members entitled to "equal treatment," whatever that is, is the core of a political controversy.

The American political system was designed to reconcile a severe conflict over membership: who, among all the people living in the territories, should receive representation in the new political system that was theoretically to be based on consent of the governed? "All men are created equal," the Declaration of Independence had asserted, but when the founders set about drafting a constitution, slavery crashed headlong into philosophy. The Constitution embodied one of the most notorious paradoxes of all time. Slaves were defined simultaneously as human beings and material property. They were counted *as people* in censuses to determine how many representatives to Congress each district would get. But each slave counted as only three-fifths of a person—not a person who merited representation him- or herself but *a piece of human property* that would amplify the representation of slaveholders.

Even after the Fourteenth Amendment gave blacks the right to vote, under Jim Crow laws they couldn't partake of all the "cake" the country had to offer. They couldn't live in certain neighborhoods, use certain public facilities, attend whites-only schools, and, in many places, they still couldn't exercise their right to vote until the 1960s. The civil rights movement and the end of legal segregation were (and still are) efforts to redefine equality by changing the rules of membership.

Some potent residues of racism still "disinvite" black citizens. In 2007, the Cherokee Nation held a special election in which its members voted that people of mixed Cherokee-black heritage and Freedmen (descendants of freed black slaves who had been held by Cherokees) were no longer citizens of Cherokee Nation. Not only can't these black and part-black people vote in tribal elections, they are ineligible to receive various kinds of federal and tribal bounty—medical, educational, and housing aid. Even if the courts eventually overturn the decision, the episode makes black Cherokees *feel* uninvited. As one of them said, "Even having the debate is a problem. You then become a lesser person because people get to decide whether you're in or not."<sup>3</sup>

Political communities often differentiate among their residents for the purpose of distributing both property and political rights. In some nations where Islam is the dominant religion (Iran and Afghanistan, for example), women may inherit only half as much from their parents as men, and

<sup>3</sup>Evelyn Nieves, "Putting to a Vote the Question 'Who is a Cherokee?'" *New York Times*, Mar. 3, 2007; Brian Daffron, "Freedmen Descendants Struggle to Maintain their Cherokee Identity," *Indian Country Today*, Mar. 30, 2007, [indiacitytodaymedianetwork.com](http://indiacitytodaymedianetwork.com), accessed Feb. 17, 2009.

where fundamentalist Muslim leaders rule, girls are banned from education and women are forbidden to work outside the home, even if they are widowed and have children to support. In European Union (EU) member states, social and political rights differ according to whether a resident is a citizen of the state in which he or she lives, a citizen of another EU member state, or a citizen of a country outside the union. These latter so-called “third-country nationals” have distinctly lesser political rights and social benefits. Within the United States, people who have been convicted of a felony may never vote again in Kentucky or Virginia, even once they have served their sentence and completed parole, while in Maine and Vermont, felons never lose their right to vote and may vote by absentee ballot from jail.<sup>4</sup>

Immigration and citizenship policies turn on defining membership. They set the criteria for admitting new members and making them eligible to receive whatever political, economic, and social resources a country has to distribute. Membership criteria are rarely all or nothing; the terms of citizenship can be distinctly double-edged, especially when nations are struggling to incorporate people whose religious traditions vary sharply from the dominant one. In Germany, a predominantly Christian society, the federal government has relaxed its requirement that immigrants have German blood in order to become naturalized citizens, but some German states make Muslims unwelcome by prohibiting head scarves or requiring public schools to display crucifixes. In Israel, the government has debated whether to require non-Jews who want to become citizens to pledge their loyalty to Israel as a “Jewish state.” Would-be Danish residents and citizens must declare their acceptance of Danish values and norms, including gender equality, equal parental responsibilities of fathers and mothers, secularism, and the duty to be self-supporting. “Invitations” to citizenship can be more or less equal.<sup>5</sup>

Beyond formal rules that exclude people outright, informal practices can covertly exclude. The U.S. welfare reform of 1996 made legal immigrants ineligible for Medicaid until they had lived here for five years. Although the rule was later softened, many immigrants who were eligible for Medicaid did not apply out of fear that they would jeopardize

<sup>4</sup>Project Vote, “Restoring Votes to Former Felons,” Apr. 2010, available at [projectvote.org/felon-voting.html](http://projectvote.org/felon-voting.html).

<sup>5</sup>Jytte Klausen, *The Islamic Challenge: Politics and Religion in Western Europe* (Oxford: Oxford University Press, 2005), p. 2; Isabel Kershner, “Israeli Cabinet Approves Citizenship Amendment,” *New York Times*, Oct. 11, 2010; Per Mouritson and Tore Vincents Olsen, “Denmark Between Liberalism and Nationalism,” *Ethnic and Racial Studies*, forthcoming, 2012.

their immigration status. In the day-to-day administration of welfare (now called Temporary Assistance for Needy Families), sometimes harsh and domineering welfare caseworkers convey to clients that they have no right to express their needs or complain about their caseworkers’ requirements and decisions. Thus, at the same time government includes these citizens in the social safety net by giving them benefits, it implicitly teaches them that they are not entitled to participate in government decisions that affect them.<sup>6</sup>

## 2. Merit

Challenge 2 represents the ideal of reward for individual accomplishment. You can’t get past kindergarten without learning that life is all about rewards for your personal achievement. As President Bill Clinton once put it, “If you work hard and play by the rules, you should be given a chance to go as far as your God-given ability will take you.”<sup>7</sup> That’s the American creed. Indeed, all modern liberal societies prize individual achievement as the standard of reward, and aspire to minimize the role of race, gender, ethnicity, and other immutable personal characteristics in determining citizens’ fortunes.

Like every abstract ideal, merit becomes problematic when we try to figure out how to identify and quantify in order to build it into policy. Academic aptitude testing purports to measure past learning, ability to do academic work, and potential to succeed in college. On finishing one of these exams, students typically complain about the irrelevance or triviality of some of the questions. “How, pray tell, does my knowledge of this or that obscure fact show a clear picture of my abilities?” These complaints aren’t mere whining. They go to the question of how we identify achievement and aptitude.

Indeed, the tests used for admission to elite colleges and universities in the U.S. have come under fire. Some critics say the tests’ vocabulary and cultural references are biased and don’t measure the knowledge that working-class and minority students gain from their life experiences; that they reward students whose parents have the means to pay for expensive test-prep courses; and that they fail to register any information about a person’s capacity for leadership or commitment to making social

<sup>6</sup>Joe Soss, *Unwanted Claims: The Politics of Participation in the U.S. Welfare System* (Ann Arbor: University of Michigan Press, 2000).

<sup>7</sup>Bill Clinton, Remarks to the Democratic Leadership Council, Dec. 3, 1993, available at [findarticles.com/p/articles/mi\\_m2889/is\\_n48\\_v29/ai\\_14891633/](http://findarticles.com/p/articles/mi_m2889/is_n48_v29/ai_14891633/).

contributions, qualities that we might think especially desirable in our budding elites.<sup>8</sup>

Apart from thorny issues of how to measure individual merit, many social scientists question just how much credit an individual ought to get for his or her accomplishments. As social creatures, we are shaped and nurtured by the opportunities given us, by our cultural heritages, and by the resources of our communities, not only those of our parents. To be sure, every successful entrepreneur, inventor, scientist, and artist must master voluminous information and develop excellent technique, but for all their individual knowledge and hard work, each person builds on a "huge collective investment" in research, publication, education, and training. "All of this comes . . . free of charge, a gift of the past."<sup>9</sup>

Even long and steady practice honing skills isn't purely a matter of individual grit. Practicing depends on having access to the time and facilities for practice, and on not having to devote every spare hour to supporting one's family. As Malcolm Gladwell discovered in his book about success, Bill Gates lucked out by having a donated computer in his high school at a time when almost no adults, let alone teenagers, had access to computers. The Beatles lucked out early in their band life by getting a grueling nightly gig in Hamburg that gave them a steady supply of practice opportunities.<sup>10</sup>

Nevertheless, the idea of reward for individual achievement provides the major justification for income inequality. Think of the total national income in any year as a giant cake. Those who achieve more deserve bigger slices—but how much bigger? In the U.S. in 2005, the top 1 percent of taxpayers received almost 22 percent—over one-fifth—of the total income in the nation. The top 5 percent of taxpayers received 37 percent of the total income—almost two-fifths. Since the mid-1970s, as productivity and income have grown, the richest few—the top 1 percent—have reaped more of that growth, leading to even greater differences in the shares of income going to the people at the top and the bottom.<sup>11</sup>

<sup>8</sup>Nicholas Lemann, *The Big Test: The Secret History of the American Meritocracy* (New York: Farrar, Straus and Giroux, 1999); and Jerome Karabel, *The Chosen: The Hidden History of Admission and Exclusion at Harvard, Yale, and Princeton* (New York: Houghton Mifflin, 2005).

<sup>9</sup>Gar Alperowitz and Lew Daly, *Unjust Deserts* (New York: New Press, 2008), p. 55.

<sup>10</sup>Malcolm Gladwell, *Outliers: The Story of Success* (New York: Little, Brown, 2008).

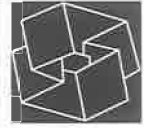
<sup>11</sup>Larry M. Bartels, *Unequal Democracy: The Political Economy of the New Gilded Age* (Princeton: Princeton University Press, 2008), pp. 11–12, based on a now famous paper by Thomas Piketty and Emmanuel Saez, "Income Inequality in the United States 1913–1998," *Quarterly Journal of Economics* 2003, vol. 118, pp. 1–39.

## CONCEPTS OF EQUALITY

*Simple Definition* Same size share for everybody

### *Complications in the Polis*

| <i>Dimension</i> | <i>Issue</i>  | <i>Dilemma</i>   |
|------------------|---|--|
| Recipients       | 1. Membership (the boundaries of community)                       | unequal invitations/<br>equal slices                   |
|                  | 2. Merit-based distribution                                       | equal merit/equal slices; unequal merit/unequal slices |
|                  | 3. Rank-based distribution (internal subdivisions of society)     | equal ranks/equal slices; unequal ranks/unequal slices |
|                  | 4. Group-based distribution (major internal cleavages of society) | equal blocs/<br>unequal slices                         |
| Items            | 5. Boundaries of the item   | equal meals/<br>unequal slices                         |
|                  | 6. Value of the item  | equal value/<br>unequal slices                         |
| Process          | 7. Competition (opportunity as starting resources)                | equal forks/unequal slices                             |
|                  | 8. Lottery (opportunity as statistical chance)                    | equal chances/<br>unequal slices                       |
|                  | 9. Voting (opportunity as political participation)                | equal votes/unequal slices                             |



Is this lopsided distribution of income in the U.S. fair? Those who think it is believe that the market, quite like a teacher, rewards the most accomplished and productive people. According to the *New York Times* columnist David Brooks, growing inequality doesn't signal anything wrong: "The market isn't broken; the meritocracy is working almost too well. It's rewarding people based on individual talents." Former Treasury secretary Henry Paulson justified inequality in the same way. If some people receive no benefits from periods of strong economic expansion, that's because "as our economy grows, market forces work to provide the greatest rewards to those with the needed skills in the growth areas."<sup>12</sup>

Those who find this marked income inequality unfair point to deliberate government policies that direct generous portions of the national income to the very rich and meager portions to the rest. The market, they note, is not like a teacher—it has no mind of its own. Presidents, their economic teams, and legislators set policies that can help or harm people, regardless of their education, skills, talents, and hard work. Lower tax rates on capital gains than on wages help the rich whether or not they displayed any merit in acquiring their wealth. So do high interest rates set by the Federal Reserve Bank. Allowing unemployment to rise and the minimum wage to stagnate ensures that the people at the bottom will receive ever-smaller shares of national income, no matter how hard they work. True, individual talent and achievement account for part of people's income, but government policies exert much more influence on how income gets distributed than individual effort and skill.<sup>13</sup>

Merit, then, is a powerful idea and a good one, but it is not as simple as it first seems. Hard work and innate talent play important roles in individual achievement, but no one graduates from Hogwarts, whips out a wand, and creates something out of nothing. Public and private investments, policies at all levels of government, and cultural, social, and economic opportunities all contribute to an individual's capacity to do great things.

### 3. Rank

Challenge 3 is a claim for redistribution based on rank. It holds that for purposes of distributing resources, there are relevant differences between *segments* of a larger group (faculty and student ranks within the university,

<sup>12</sup>Both quoted in Bartels, *Unequal Democracy*, *ibid.*, pp. 16 and 18.

<sup>13</sup>For more on how government policy—and especially differences between Republican and Democratic administrations—shapes the distribution of income, see Bartels, *Unequal Democracy*, *op. cit.*, note 11.

in my example), and that resources should be allocated on the basis of these subgroups rather than individual differences. In economics, the concept of equity based on internal ranks is called *horizontal and vertical equity*, with *horizontal equity* meaning equal treatment of people in the same rank and *vertical equity* meaning unequal treatment of people in different ranks. The two are obviously flip sides of the same coin.

Rank-based distribution is widespread. Military organizations, universities, factories, corporations, and, indeed, government itself all pay their employees according to rank. Many also distribute privileges by rank, such as use of the executive dining suite versus the cafeteria, or in universities, longer book-borrowing privileges for faculty than students. Hierarchical organizations justify their rank-based differences in power, money, and prestige by merit. They assume that rank correlates with merit. The higher someone has risen, the greater his or her competence and contributions—or else the person wouldn't have been promoted.

Rank-based distribution is at the heart of the debate about gender pay equity. In the current system, some women's advocates claim, pay is largely determined by gender rather than by skill, responsibility, difficulty, and experience. At the U.S. Capitol, of all places, women who clean are called "custodians" and receive on average \$10.00 per hour. Men who clean are called "laborers" and get \$11.00 per hour, yet "they're both lifting the same fifty pounds of trash and swabbing, mopping, and scrubbing the very same tables, floors, and toilets." Gender differences are just as pronounced, if not more so, in professional occupations—doctors, lawyers, scientists, professors, engineers, computer systems analysts. Professional women with the same educational credentials and experience doing the same specialty work make significantly less than their male counterparts. Pay equity advocates don't aim to eliminate pay differences between custodians and chemists, but instead to equalize women's and men's pay for jobs requiring the same level of training, skill, and responsibility. They would switch the basis of differentiation from a criterion seen as invalid (gender) to one seen as valid (rank based on difficulty and skill levels of work).<sup>14</sup>

Even within a framework of rank-based distribution, there are many possible ways to challenge a distribution as inequitable. One can ask whether the lines between ranks are correctly drawn or, put another way, whether the different ranks indeed represent different skills, knowledge, or other relevant factors. Are the rewards given to each rank proportional to the differences

<sup>14</sup>Evelyn Murphy and E. J. Graff, *Getting Even: Why Women Don't Get Paid Like Men and What to Do About It* (New York: Touchstone, 2005), quote on p. 78.

between them? Are individuals correctly assigned to ranks? Does the system evaluate people fully and fairly? Are the criteria for differentiation the right ones at all? For example, do compensation systems based on seniority really reward the “right thing”?

#### 4. *Group-Based Distribution*

Challenge 4 is a claim for group-based distribution. It holds that some major divisions in society are relevant to distributive equity, and that membership in a group based on these divisions should sometimes outweigh individual characteristics in determining distribution. In the U.S., for example, military veterans have received special access to various goods (such as land grants, education, and health care) on the basis of military service, without any inquiry into their individual contributions to national security.<sup>15</sup>

In societies with liberal individualist ideologies, group-based distribution is usually proposed as a remedy for previous violations of merit- or rank-based distribution. In the chocolate cake example, men proposed group-based distribution to compensate them for historical deprivations based on their gender. The obvious analogy in contemporary politics is affirmative action, a policy of giving preference to members of groups that have been the victims of historical discrimination. Affirmative action is a loose term for various policies to give minority groups, primarily African Americans and women, an extra boost in distributive decisions. These policies include advertising job openings in outlets targeted to minority groups; extra steps in hiring to ensure that nontraditional qualifications and career paths are not overlooked; special programs to enlarge the pool of qualified minority applicants (for example, summer enrichment programs at universities, or mentoring programs in businesses); and altering the selection criteria to give more weight to the special experiences of living and working in diverse communities. Affirmative action has been used primarily to distribute places in higher education, to distribute jobs and promotions in public and private employment, and to distribute government contracts to businesses.

Discussions of affirmative action usually conflate it with quotas, but affirmative action as it has been practiced in the U.S. has rarely involved quotas. Quotas are a means of reserving a certain portion of an item (such as places in a medical school class, positions in a firm, or promotions to higher job categories) for members of a particular group.

How are group-based and rank-based distributions different? Both types divide people into groups, but rank-based distributions assign people to groups according to more or less fine-tuned individual measurements. The justification for assignment to a rank usually has something to do with the individual's past performance or achievement. Group-based distributions assign people to groups on the basis of traits having nothing to do with individual qualifications or performance. The traits, like gender or race, are usually immutable, things a person can't change.

Group-based distribution tends to follow major social divisions, such as ethnicity, race, gender, or religion—divisions that split a society into two or three large blocs and that historically served as a basis for privileges and disadvantages. In the U.S., we have based affirmative action primarily on race and gender, but other societies have recognized other social cleavages as important to distributive justice. Germany and Japan require employers to hire handicapped people in a certain percentage of jobs, and India has preferences for Dalits, the lowest group in its historical caste system.

There are many ways to challenge the equity of a group-based distribution. One question is whether the definition of relevant groups reflects some meaningful social reality. For example, are race and ethnicity coherent categories? How should we classify people who are of mixed-race parentage? (The very question presumes there is something like “pure” racial identity, a dubious assumption.<sup>16</sup>) Is President Obama black because of his father and his skin color, or white because he was raised by his white mother and grandparents? Are ethnicity and national origin the same thing? Does it make sense to lump people from different Spanish-speaking cultures and nations together?

Another important challenge asserts that ascriptive identity characteristics such as race, gender, and nationality do not really correspond to the actual experience of disadvantage or discrimination, yet the primary rationale for group-based distribution is to compensate people for past disadvantage. Why should a wealthy, upper-class, highly educated, dark-skinned immigrant from the West Indies be given the same preferences as a poor, unskilled, dark-skinned American-born citizen raised in a southern town with distinctly inferior schools in its black neighborhoods? In this view, demographic groupings are too “rough.” They make unwarranted presumptions about individual cases and give preferences to people who never suffered any disadvantage. Group-based distribution should be used only as a tool to correct deviations from merit-based selection.

<sup>15</sup>Laura Jensen, *Patriots and Settlers* (Cambridge: Cambridge University Press, 2003).

<sup>16</sup>See James F. Davis, *Who is Black? One Nation's Definition* (Harrisburg: Pennsylvania State University Press, 1991).

Another challenge holds that race and gender are *always* illegitimate criteria for distribution of anything, even when used in a compensatory fashion. Any use of race or gender for the benefit of previously disadvantaged groups discriminates *against* whites or men. As Supreme Court Chief Justice John Roberts put it, “The way to stop discrimination is to stop discriminating.”<sup>17</sup> Accordingly, private and public institutions should use strictly merit-based distribution, even if it would likely result in smaller shares (of jobs, school places, construction contracts) for women and blacks.

The main argument *for* affirmative action starts from the main feature of the polis: community. In this view, when an organization makes admission or hiring decisions, it is not merely allocating prizes to individuals. It is composing itself by creating its membership. Instead of focusing on whether diverse individuals receive a share of the prizes, this view sees diversity as a characteristic of cohesive, strong, and vibrant communities. Admitting a diverse membership gives individuals the opportunity to interact with people from other social groups and to learn about and value different experiences and outlooks. Training and promoting women and minorities provides role models and leaders for the next cohort of women and minorities, setting up a self-generating process of more equal distribution and a less divided society.<sup>18</sup>

### 5. Need

Challenges 5 and 6 are based on redefining the item to be distributed. Challenge 5 redefines the boundaries of the item. Instead of seeing a cake as a thing in itself, it is viewed as part of a larger whole, a meal. To take something and make it part of a larger entity is to expand the boundaries of what is being distributed, to present a more global vision. Expansion might be across types of goods (from cake to meal), or across time (from who gets what in the next hour to who has gotten what in the previous three hours).

Expanding the definitional boundaries of the item is always a redistributive strategy, because it calls for using the more narrowly defined item (in this case, the cake) to compensate for inequalities in a larger sphere (in this case, lunch). Challenges to the definition of an item are generally not either/or choices, but choices about how expansively to define the item along a continuum. The cake, for example, could be seen as part of today’s lunch, part of today’s meals, or part of this week’s diet.

<sup>17</sup>Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007).

<sup>18</sup>William G. Bowen and Derek Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* (Princeton: Princeton University Press, 1998).

Student financial aid involves boundary challenges to the definition of an item. Some schools give aid strictly on the basis of students’ academic merit, but most distribute aid at least in part on the basis of students’ financial need. When a school considers financial need, it treats financial aid not as money in itself but as part of each student’s total assets. The school then has to decide what to count as a student’s assets. Some schools look only at students’ current earnings and savings. Others take a more global view and include parents’ earnings and savings. Law, medical, and business schools typically consider their students’ potential future earnings as part of their assets, and tend to offer loans rather than outright scholarships, on the theory that graduates can easily pay back loans out of their future earnings. Thus, within student financial aid, we have at least four possible definitions of what is being distributed: aid as money in itself, aid as part of a student’s assets, aid as part of a family’s assets, and aid as part of a student’s lifetime earnings.

Welfare and tax policy both involve these questions of how to define assets. In setting levels of welfare grants, do we take into account people’s cars and homes as part of their assets? Do we take into account their relatives’ assets? Tax policy uses the concept of deductions to take into account that different people have different required expenses that aren’t really part of their disposable income. Thus, the tax code allows deductions for support of dependents, for inescapable business expenses, and for some large medical expenses.

### 6. Value

Challenge 6 redefines the item in terms of its value to the individual. For lack of better terms, we might call this a switch from a *standardized value* of the item (say, the weight of a cake slice) to a *customized value* (say, how much nutrition someone derives from cake). When the economist Mollie Orshansky devised the first government poverty measures in 1963, she based her calculations on the cost of food. She knew that people of different ages require different amounts of food to be healthy—teenagers need more calories than infants. So instead of positing a single-income figure as the minimum income or “poverty line” for everyone in the country, or even for all four-person households, she calculated different poverty levels for households of differing sizes and composition.<sup>19</sup>

The value of some goods derives largely from the quality of relationships rather than tangible or material properties. Before 1954, racial segregation

<sup>19</sup>Deborah Stone, “Making the Poor Count,” *American Prospect* no. 17 (Spring 1994), pp. 84–88.

in schools was still legally permissible as long as a state provided “equal” education to blacks and whites. In 1950, the Supreme Court had to decide whether the state of Texas was providing equal education to black law students by educating them in a separate, all-black law school while excluding them from its public, and prestigious, University of Texas Law School. The Court said “no.” According to the Court, the value of a law school education derives in large part from the reputation of its faculty, “the position and influence of the alumni,” and the school’s “standing in the community, traditions, and prestige.” These relational factors would help a law school graduate to network, attract clients, and secure good jobs, and these factors are at least as important to legal education as the size of the faculty, the number of books in the library, or the curriculum offerings.<sup>20</sup>

Conflicts over the value dimension of equality are especially intense in social policy. Education and medical care are “delivered” through relationships and derive much of their value from the quality of the relationships and the ability of the provider to tailor the service to the needs of the individual. Does equality in a multiethnic school district mean that every child should have the right to study in English and to study the same topics? Or does it mean the right to study in one’s native language and one’s cultural history? The answer depends on whether you think the value of education consists partly in enhancing students’ ability to participate in two cultures. Does equality in medical care mean that every person should have access to a physician, or to a physician of his or her own choosing, or perhaps to a physician of similar ethnic and cultural background? The answer depends on whether you think the value of medical care consists partly in the understanding and reassurance that come from personal chemistry and shared language and culture. These are all issues where judgment about the equity of a distribution turns on one’s assessment of the importance of customized or individualized value.

### 7, 8, and 9. Competition, Lotteries, and Elections

Challenges 7, 8, and 9 all focus on the *process* of distribution. They are, respectively, calls for market competition, lotteries, and democratic elections. Process is a key dimension of equity because in the polis, distributions don’t happen by magic. They are policy decisions carried out by real people, not by invisible hands.

<sup>20</sup>*Sweatt v. Painter*, 339 U.S. 629 (1950).

Distribution processes can be divisive and socially disruptive, as market competition can sometimes be, or orderly and socially cohesive, as elections in a stable democracy are thought to be (but aren’t always). Distributive systems may provide employment—witness our tax system that employs untold thousands in accounting firms, seasonal tax preparation firms, tax software companies, and the Internal Revenue Service. A flat-rate tax scheme would put a lot of people out of business. Distributive systems may cement relationships, as patronage does, and forge social solidarity, as social insurance does. In short, the processes of distribution can create or destroy things of value such as loyalty, community spirit, or jobs, apart from the things they explicitly distribute. When people fight about equity, they are also fighting about these less tangible social and political aspects of distribution.

Process is important, too, because our notion of fairness includes not only a fair end result but also a fair decision-making process. If a jury in a criminal case listened carefully to testimony, then flipped a coin to decide whether to convict, we would think the trial unfair, even if it resulted in a decision we believed was in accord with the evidence.<sup>21</sup> For many things in life—such as an athletic competition, an election, or even a military draft—we are quite willing to accept unequal results so long as we know the process is fair. Many political fights and scandals arise from concerns that a distributive process was not conducted fairly.

In some ways, the field of public policy has been one long debate about the virtues of market competition versus representative government as ways of deciding who gets what. We’ll have lots more to say about markets and democracy as processes for collective choice, but, for now, simply note that one major way to challenge a distribution is to argue about whether the *process* of distribution is fair—the *how*—rather than about *who* the recipients are or *what* is being distributed. Arguments for making decisions through competition, lotteries, elections, negotiations, arbitrations, and adjudications are all ultimately about fair process.

### CHOOSING A DISTRIBUTIVE METHOD

With so many competing definitions of equity, you’re probably wondering what’s the “right” one and how you, as a policy analyst, advocate, or leader, ought to decide. Of course, the point is that there is no right

<sup>21</sup>Robert Lane, “Procedural Justice in a Democracy: How One Is Treated Versus What One Gets,” *Social Justice Research* 2 (1988), pp. 177–92.

way. These decisions are hard, and it's no wonder that people sometimes resort to the two solutions that free them from making tough decisions—equal slices and lotteries.

Equal slices is an intuitively powerful solution, precisely because the outcome “looks and feels” equal. In Nepal, villagers sometimes resort to equal slices to divide resources for development projects. In one project, the district government provided villages with money to plan and construct water systems. One village bought PVC pipes with its money and cut the pipes into pieces of equal lengths for each household so that each house would be able to connect to the future water system. But a village water system could never happen, because there weren't any long pipes left to construct one. In another project, the national government gave a district development committee 300 quintals of wheat to distribute among poor people in exchange for their labor on a development project. The members of the district committee couldn't decide on a project to support, so they divvied up the wheat equally among all fifty villages. The village development committees couldn't agree on projects either, so they divided their wheat equally among the wards in the village, each of which got sixty-five grams of wheat—not enough to support enough labor to build anything.<sup>22</sup>

Like the equal-slices solution, lotteries give the appearance of being absolutely fair, and policy makers sometimes resort to them when they can't find principled reasons to justify their decisions. Several countries, including the U.S. at one time, have used lotteries to draft soldiers into the armed forces. The state of Oregon ran a lottery for access to its Medicaid program because it didn't have enough money to cover everyone who met the eligibility criteria. The state Medicaid director explained, “We thought about other options, such as should we try to pick all of the sickest people or the kids or the people with cancer or heart disease. But . . . there's just no way to guarantee the fairness of that.” Another official added, “The random selection process provides the most equitable method.”<sup>23</sup> Lotteries violate the notion of distribution according to principled reasons, but as the Oregon officials hint, lotteries have the tremendous political virtue of *symbolizing* absolute fairness—they don't (usually) allow bias, favoritism, or pull. Also, lotteries probably dampen citizens' anger at being chosen for a burden or excluded from a benefit.

<sup>22</sup>Bihari K. Shrestha, “Water and Sanitation Accelerated and Sustainable Universal Coverage: An Account of the Piloting of User-Based Approach in Gujari VDC, Dhading” (Kathmandu: Nepal Water for Health, 2010), and Bihari K. Shrestha, personal correspondence, Feb. 27, 2011.

<sup>23</sup>William Yardley, “Bend Journal: Drawing Lots for Health Care,” *New York Times* Online, Mar. 13, 2008, available at [nytimes.com/2008/02/13/us/13bend.html](http://nytimes.com/2008/02/13/us/13bend.html); Commonwealth Fund, “States in Action Newsletter,” Feb./Mar. 2008, p. 5.

Having participated in what seems like a fair game, losers are more likely to blame fate than politicians for their predicament.

Short of equal slices and lotteries, how can you analyze a distributive problem and arrive at a good solution? When you confront a political issue or policy problem, begin by reading different positions on the issue and identifying how they define the three dimensions of recipients, items, and process. For each of the major actors or intellectual heavies (philosophers and professors count here), figure out their answers to three questions: First, who are the eligible recipients, and what criteria make them eligible? Second, what is being distributed, and how does each player define or envision it? And third, what social processes are used to carry out the distribution, and what kind of process does each player recommend as best? As you read speeches, articles, and position papers, you probably won't find explicit answers to these questions. Your job is to read between the lines and to interpret. Gather all the players together in an imaginary room for a debate. You are the moderator. Force the players to answer the same questions. Of course, you'll be speaking for all of them in your own head, but as you do this mental exercise, the different interpretations will become clear.

Once you have mapped out the arguments, ask yourself whether they seem accurate, reasonable, persuasive, and, ultimately, fair. You may already hold some strong beliefs, but now's the time to stop and question *yourself*. What beliefs and assumptions do you take for granted? Where one stands on issues of distributive justice is often determined not so much by the specifics of any issue as by a more general worldview. Worldviews include unspoken assumptions about individualism and community, freedom and moral obligation, and the nature of democracy. We'll explore these assumptions throughout the book.

## INEQUALITY

Another avenue into the meaning of equality is to explore the nature and impacts of *inequality*. Just who eats how much of the global cake?<sup>24</sup> The 500 richest people in the world together have more income than the poorest 416 million. Think about that another way: one-fifth of the world's people (that's one billion people) live on less than one dollar a

<sup>24</sup>Unless noted, the figures in this section are from United Nations, Human Development Report 2005, *International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World*, available at [hdr.undp.org/en/reports/global/hdr2005](http://hdr.undp.org/en/reports/global/hdr2005).

day; meanwhile, another billion live in countries where the average person drops a few dollars a day on cola and cake.

Whether we consider income, education, sickness and death, or health care, the gaps between rich and poor countries are large and mostly growing. In 1980, child death rates in sub-Saharan Africa, for example, were "only" thirteen times higher than those in rich countries, but by 2005, they were twenty-nine times higher. The average difference in life expectancy between low-income countries and high-income countries is nineteen years. A child born in Burkina Faso can expect to live thirty-five fewer years than one born in Japan. A child born in Mozambique can expect to receive four years of schooling, while her lucky French counterpart can expect fifteen years of much better education.

Inequality *within* countries is large and growing, too. In Brazil, one of the most unequal countries, the poorest 10 percent of the population hold only 0.7 percent of the income, while the richest 10 percent hold nearly half the nation's income (47 percent). In the U.S., the most unequal of the developed countries, the richest 20 percent have just over 50 percent of the income, while the poorest 20 percent have 3.4 percent of the income.<sup>25</sup> And for most people, inequality is getting worse: over the past two decades, inequality grew in countries that hold more than 80 percent of the world's population but narrowed in countries with only 4 percent of the population. In almost three-quarters of countries, the share of Gross Domestic Product going to wages (that's workers) has declined, while the share going to profits (investors, shareholders, and management) has risen.<sup>26</sup>

Money isn't the only important thing in life. Losing a child is arguably the worst thing that can happen to an adult, and that terrible experience is also distributed unequally. Whites in the U.S. have an infant mortality rate of around six deaths per 1,000 live births, but blacks have a rate of about fourteen. Infant mortality is directly related to income and education—the more of those a family has, the better the health care it will receive, and the better the chances its children will survive. Within every country, the children of the poorest 20 percent are far more likely to die before reaching age five than the children of the richest 20 percent. The grief of losing children is distributed profoundly unequally.

<sup>25</sup>These figures for the U.S. are for 2006 and taken from Sara Burd-Sharps, Kristen Lewis, and Eduardo Borges Martins, *The Measure of America: American Human Development Report 2008–2009* (New York: Columbia University Press, 2008), p. 133.

<sup>26</sup>Harold Meyerson, "A Global New Deal," *American Prospect* Jan./Feb. 2009, pp. 10–12. Trends are for the period 1995–2007.

Few people would say these distributions of life chances and well-being are fair. Yet, people still disagree about whether and why these inequalities should be lessened. The two most important considerations concern the impact of inequality on community and on democracy.

### *Inequality and Community*

Because being part of a community is central to individual well-being, we need to go beyond asking which individuals deserve some item and why. We must also ask how a distribution affects communities—whether it helps make them cohesive or tears them apart. The evidence is unequivocal: inequality destroys communities.<sup>27</sup> Where inequalities of income are very large, people are less trusting and more hostile to each other. There is more violence, as judged by homicide rates (the most easily countable and comparable indicator of violence). Income inequality seems also to increase racial prejudice and discrimination against women and ethnic minorities. Where income inequality is large, fewer people participate in social associations or civic life, and fewer people vote in elections. The more unequal the income distribution, the weaker the sense of community and the fewer the individuals who engage in communal life. These relationships hold for developed countries as well as developing, and they hold for states and localities as well as nations. If we care about the health of communities, redistributing income to lessen glaring inequality is the most important thing public policy can do.

We also need to think about how a distribution affects the things that we hold in common, or "the commons." Social scientists have traditionally defined commons as resources that everyone is entitled to use, but many who have been influenced by environmentalism now define commons as assets that are communally created and maintained, as well as used. In this view, the commons includes nature, culture, and community, but let's make these abstractions more concrete: clean air and safe drinking water; awe-inspiring landscapes and rich ecological habitats; jazz and opera; sign language, and dictionaries that fit on an iPod; Wikipedia and Facebook; early cancer detection and antiretroviral medicines; and last but not least, the sheer idea of equal human worth that inspires democracy and catapulted the son of a Kenyan student to the American White House. We will think differently about fairness and equity if we imagine these commons items as collectively created, maintained, and passed on, rather

<sup>27</sup>For a vivid and powerful summary of the evidence, see Richard G. Wilkinson, *The Impact of Inequality: How to Make Sick Societies Healthier* (New York: New Press, 2005), chap. 2.

than as the results of individual effort and achievement, and thus things that can be earned and parceled out as private property.

As you think about a policy problem, ask yourself whether the resources at issue are individually created or part of a common heritage, and push yourself to defend your conclusions. If you lean more toward individual creation, you will tend to favor distributive solutions where the slices are sized according to merit and rank, and where competition is the main mode of distribution. If you lean more toward common heritage, you will tend to favor solutions where the slices are more uniform but sized according to individual need and group disadvantages, and where some kind of democratic decision making is the main mode of determining distributions.

Those who stress the value of the commons imagine culture, community, and environment as holistic entities that can't be divided up and parceled out; they can only be diminished or enhanced. Instead of asking how to divide a commons, they ask what kind of rules and political arrangements can best preserve and enhance it.

Consider education, for example. In a traditional goods view, education can be divided into units and transmitted to students. Equal access to education means that individuals get pieces of it, rather like pieces of cake, and they should get equal shares. Thus, we offer every child thirteen years of free public education and courses geared to assuring that all students master the same knowledge. In the commons view, education builds the prerequisites for cohesive community, in addition to transmitting knowledge to individual students. Through shared stories and histories and the common experience of learning and playing together, children of different backgrounds come to respect each other and get along. Education builds the social harmony and civic skills necessary for democracy.

In the goods view, we could provide equal access to education through public schools, through vouchers for tuition at private or public schools, or through carefully monitored home schooling. Any of these ways of distributing education could provide students with equivalent packages of lessons. In the commons view, vouchers and home schooling could undermine community if they isolate children in homogeneous economic, ethnic, or religious islands.

### *Inequality and Democracy*

As the student government leaders pointed out in the cake saga, democracy in its idealized version means "one person, one vote." Although democracy doesn't ensure that everyone will get the same size slice, it is supposed to ensure that everyone has *equal representation* in the process

of deciding on cake shares. As distributive systems, competitive markets and democratic elections differ in many ways, but the most important is the role that income plays—or is meant to play. In markets, people vote with their dollars; if some have more to spend than others, they can pay higher prices and buy a lot more goods and services—and that is perfectly legitimate, because markets distribute things according to ability and willingness to pay. That is their *raison d'être*. In democratic systems, each person's vote should count equally, no matter how much income he or she has. Democracy's *raison d'être* is to counterbalance the power of property with the power of voice.

Income inequality undermines the democratic ideal. First, in the U.S. electoral system, with its long campaigns, it costs money to run for office and win voters' support. In an electoral system with high costs of campaigning, very wealthy people have a huge advantage. Some, such as New York City's Mayor Michael Bloomberg, can even finance their campaigns out of pocket. Candidates who represent business interests can raise money through corporate contributions; candidates who represent middle- and lower-income people have a harder time securing large contributions. True, Obama successfully changed his campaign finance dynamics by using the Internet to garner small contributions from millions of people. But the bottom line is that money can, to a degree, buy political office and representation.

Income inequality undermines democracy, second, because elected political representatives are more responsive to the rich. The political scientist Larry Bartels compared voting patterns of U.S. senators with the preferences of their constituents. Senators voted consistently with the policy preferences of their high-income constituents, only sometimes with the preferences of their middle-income constituents, and rarely, if ever, with the views of their low-income constituents.<sup>28</sup> If *income inequality* has grown to historic proportions, so presumably has *democratic inequality*—the inability of voters to have their views given equal weight with views of other citizens, regardless of their wealth.

Third, wealthy investors and businesses can use their wealth to obtain legislation and regulations favorable to their interests. Corporations no longer restrict their competition to buying and selling in the marketplace; they seek to gain competitive advantage through influencing the rules of the marketplace made in public policy. They donate hefty campaign contributions to political candidates with the understanding that their contributions, while not bribes, earn them at least a serious hearing.

<sup>28</sup>Larry M. Bartels, *Unequal Democracy* (op. cit., note 11), chap. 9.

They can afford full-time lobbying staffs at state capitols and in Washington, and their largesse during elections assures them that their lobbyists will be welcomed by public officials. No matter that everyone's vote counted equally in the polling stations—one person, one ballot, one vote. In the legislative assemblies and regulatory agencies where policies are made, some people's votes count far more than others'.<sup>29</sup>

Ultimately, equality of voice is the most important equality issue of all. To the (very large) extent that government policies determine the distribution of resources, privileges, and welfare, the distribution of political power shapes all other distributions.

## Efficiency

Efficiency is a fancy name for a simple idea: getting the most for the least, or achieving an objective for the lowest cost. But, as the political scientist Aaron Wildavsky observed, efficiency doesn't tell you *where* to go, only that you should arrive there with the least possible effort.<sup>1</sup> It is a way of judging the merits of different ways of doing things. Thus, efficiency isn't a goal in itself. It isn't something we want for its own sake but rather because it helps us attain more of the things we value. Still, I include it in the section on goals because it has become such a prominent way of discussing and evaluating public policy.

Efficiency is a comparative notion. It has come to mean the ratio between input and output, effort and results, expenditure and income, or cost and benefit.<sup>2</sup> As a criterion for judging goodness, it has been applied to all manner of things. Efficient organizations are ones that get things done with a minimum of waste, duplication, and use of resources. Efficient people are ones who get a lot done in a little time. Efficient programs are ones that result in the largest benefit for a given cost. Efficient distributions, say, of farm land or oil drilling rights, are ones that yield the most value for society from existing resources.

All these definitions are variations on the theme of getting the most out of something. Like the "equal slices" solution to the problem of dividing resources, getting the most out of something is an intuitively appealing solution to the problem of how to choose between policy alternatives.

<sup>29</sup>For sobering descriptions of the political dominance of economic elites, see Robert Kuttner, *The Squandering of America* (New York: Random House, 2007); Robert Reich, *Supercapitalism: The Transformation of Business, Democracy, and Everyday Life* (New York: Knopf, 2007), chap. 4; and Sheldon S. Wolin, *Democracy Incorporated: Managed Democracy and the Specter of Inverted Capitalism* (Princeton: Princeton University Press, 2008).

<sup>1</sup>Aaron Wildavsky, *Speaking Truth to Power: The Art and Craft of Policy Analysis* (Boston: Little, Brown, 1979), p. 131.

<sup>2</sup>Sumner H. Slichter, "Efficiency," in *Encyclopedia of Social Sciences*, Edwin R. A. Seligman, ed. (New York: Macmillan, 1947), vol. 5, pp. 437–39.