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POLICY PARADOX: THE ART OF POLITICAL DECISION MAKING

Revised Edition

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W · W · NORTON & COMPANY · NEW YORK · LONDON

convince others that their interpretation best fulfills the spirit of the larger concept to which everyone is presumed to subscribe.

Most important, these chapters are meant to demonstrate that there is an enormous range of choice in the interpretation of the criteria of policy analysis. Reigning interpretations vary from policy to policy, from time to time, and from place to place. Policy politics is the process of making these choices in interpretation.

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Equity

THE DIMENSIONS OF EQUALITY

The most famous definition of political science says it is the study of "who gets what, when, and how."[1] Distributions—whether of goods and services, wealth and income, health and illness, or opportunity and disadvantage—are at the heart of public policy controversies. In this chapter we will describe issues as distributive conflicts in which equity is the goal. It is important to keep in mind from the outset that equity is the goal for all sides in a distributive conflict; the conflict comes over how the sides envision the distribution of whatever is at issue.

To see how it is possible to have competing visions of an equitable distribution, let's imagine we have a mouthwatering bittersweet chocolate cake to distribute in a public policy class.[2] We 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

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

[2] This analysis of equity is largely based on, and extends, the work of Douglas Rae and his coauthors. See Douglas Rae, "The Egalitarian State: Notes on a Contradictory System of Ideals," *Daedalus* 108, no. 4, (Fall 1979): 37–54; and Douglas Rae et al., *Equalities* (Cambridge, Mass.: Harvard University Press, 1981).

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. "We would have enrolled in your course if we had known about the cake." My cake is written up in *Gourmet Magazine* and students who applied to the university but did not get in write letters of protest. All these people describe my solution as *equal slices but unequal invitations.*
2. Some of my colleagues buttonhole me when I get back to my office. This is a Political Science Department course, they say, and your cake should have been shared in accordance with the structure of the department. 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
   Chairperson: 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.*
3. 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 and play football. Moreover, chocolate cake is more likely to be served in courses taught by females than males, and those courses draw proportionately more female students. In short, gender roles and gender divisions in social institutions combine to make gender the *de facto* determinant of cake distribution. The men insist that men as a group should get an equal share of the cake, and they propose that the cake be divided in two equal parts, with half going to the men (who comprise one-third of the students in the class) and half going to the women. *Unequal slices but equal blocs.*
4. 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 as it was passed around, and grab the rarest slices of roast beef from the platter. Shouldn't the other students—the ones who had only one shrimp cocktail, no artichoke hearts, and overcooked roast beef—get bigger slices of my chocolate cake? This solution, which I had to agree seemed fair, might be called *unequal slices but equal meals.*
5. Every year, a few students come forth, believe it or not, saying they hate the taste of 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 give them very, very small pieces (they want to be polite and sample my cake) and give bigger pieces to those who can truly appreciate the cake. Their solution might be called *unequal slices but equal value to recipients.*
6. The economics 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 equal starting resources.*
7. 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.*
8. 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 implied, means *unequal slices but equal votes.*

Look carefully 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 eight challenges to that idea, eight

different visions of equality that would result in unequal slices but equality of something else. Here is the paradox in distributive problems: Equality may in fact mean inequality; equal treatment may require unequal treatment; and the same distribution may be seen as equal or unequal, depending on one's point of view. I have used 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 have used "equity" to denote distributions regarded as fair, even though they contain both equalities and inequalities.

If we can get a systematic description of the challenges in the chocolate cake problem, we will have some tools we can apply in policy analysis. In any distribution, there are three important dimensions: the recipients (who gets something?), the item (what is being distributed?), and the process (how is the distribution to be decided upon and carried out?). Challenges 1, 2, and 3 are all based on a redefinition of the recipients. Challenges 4 and 5 redefine the item being distributed. And challenges 6, 7, and 8 focus on the process of distribution. The box below summarizes these concepts and the discussion to follow.

Challenge 1 is based on the definition of membership. 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 class of recipients? Sometimes this question seems straightforward, as when the state of New Hampshire says that all people who have purchased tickets to its lottery are eligible to win. But more often, defining the class of members entitled to "equal treatment," whatever that is, is the core of a political controversy.

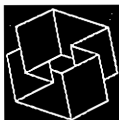
Take the seemingly simple concept of citizenship. Who is to count as a citizen of the United States? On first thought, one might think a citizen is anyone born on American soil or born of American parents or legally naturalized. But once we think about the different purposes and policies for which we need a concept of citizenship, the definition becomes less obvious. When the right to vote is at issue, it is often believed that people should meet certain qualifications to be considered voting citizens. They should know how to read so that they can follow policy debates (literacy tests); they should own property so that they "have a stake in the system" (property qualification); or they should reside in the jurisdiction a certain length of time so that they "understand the issues" (residency requirements). In nineteenth-century England, citizens receiving public welfare were not allowed to vote, presumably because their need for assistance demonstrated their lack of civic responsibility. Or, to take some examples from our not-so-distant past, citizens, in order to vote, had to be white and male (for reasons I won't even try to justify).

Until recently, we took it for granted in the United States that voting citizens should be "adults"—that is, over the age of 21. Many people challenged that criterion, saying that if 18-year-olds are mature enough to defend their country, they are mature enough to vote. Then, too, if our foreign policy puts people at risk of losing their lives at the age of 18, they should have some say in making our foreign policy. The extension of voting rights to people between ages 18 and 21 (in 1971) exemplifies the redefinition of equality through the redefinition of membership.

Suppose now the question is not simply who should vote but who should vote in school board elections. One view is that all adult citizens should be entitled to vote because education of the next generation is a universal concern. Another is that only those affected by school board decisions should be able to vote. But then the tricky question is what we mean by "affected." Perhaps only adult citizens with school-age children, or better yet, only adult citizens with school-age children who actually attend public schools. Perhaps the children should be entitled to vote; they are, after all, the most affected by school board policy. Or, if we interpret "affected" in financial terms, perhaps only people who pay local property taxes should be entitled to vote, regardless of whether they have children. The point is not that any of these views is necessarily right, but that any of these groups could make an intellectually respectable claim that school board policy is inequitable on grounds that the "invitations" or rights to participate in elections were inequitably distributed.

Challenges 2 and 3 are both about how society is internally divided. Challenge 2 is a claim for distribution based on rank. It holds that there are relevant internal divisions for distributing something and that these divisions have been ignored. In economics, the conception of equity based on relevant internal subdivisions 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.

If there is one central principle that legitimizes the idea of rank-based distribution, it is probably merit. Our fundamental belief that rewards such as jobs, places in universities, and pay should be distributed according to achievement, competence, and other measures of



CONCEPTS OF EQUALITY

Simple Definition Same size share for everybody

Complications in the Polis:

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

past performance goes hand in hand with a belief in the legitimacy of rank-based distribution. Military organizations and universities, factories and corporations, indeed government itself—all pay their employees according to rank, and rank is understood to be awarded according to some notion of individual merit.

Rank-based distribution is at the heart of the debate about pay

equity for women. Advocates of "comparable worth" as a mode of determining wages and salaries do not want to eliminate rank-based pay, but seek instead to equalize pay for occupations requiring the same level of training, skill, and responsibility. They suggest, for example, that the jobs of food service workers, who are predominantly female, and truck drivers, who are predominantly male, entail equivalent levels of education, skill, and difficulty. Yet truck drivers receive about $970 per month compared with $640 for food service workers. Similarly, library work (primarily a female occupation) and carpentry (primarily a male occupation) are equivalent in skill and difficulty, but librarians receive $946 per month compared with carpenters' $1246 per month.[3] The comparable worth approach to equity would not pay library workers at the same rate as food service workers, but would pay them at the same rate as carpenters.

Advocates of comparable worth accept the idea of rank-based differentiation according to job characteristics, but believe that pay in the current system is in fact largely determined by gender rather than by skill, responsibility, difficulty, and other relevant criteria. Comparable worth would preserve unequal payment, but it would switch the basis of differentiation from a criterion seen as invalid (gender) to one seen as valid (difficulty and skill levels of work).

Even within a framework of a rank- or merit-based distribution, there are many possible challenges to equity. 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 factors relevant to merit. Are the rewards given to each rank proportional to the differences 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?"

Challenge 3 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

[3]These figures are from a 1978 study of jobs in the state of Washington, Helen Remick's "Beyond Equal Pay for Equal Work: Comparable Worth in the State of Washington," in Ronnie Steinberg-Rattner, ed., *Equal Employment Policy Strategies for Implementation in the United States, Canada, and Europe* (Philadelphia: Temple University Press, 1980).

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 analogue in contemporary politics is affirmative action, a policy of distributive preference to members of groups that have been the victims of historical discrimination. Discussions of affirmative action usually conflate it with quotas, but affirmative action as it has been practiced in the United States has not always, or even mostly, involved quotas. Affirmative action is a loose term for various policies to give some group, primarily African Americans and women, an extra boost in distributive decisions. These policies include extra efforts to advertise job openings in outlets targeted to minority groups; extra steps in hiring to ensure that untraditional 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); altering the criteria for selection to give more weight to the special experiences (including discrimination) of members of minority groups. Affirmative action has been used primarily in education (distributing places in higher education), employment (distributing jobs and promotions), and business opportunities (distributing government contracts and financial credit).

Quotas are a means of reserving a certain portion of an item to be distributed for members of a group. Whether the items are places in a medical school class, positions in a firm, promotions to higher job categories, or government contracts for goods and services, quotas give weight to membership in a subgroup within the larger pool of potential recipients.

Quota systems can be designed so that members of a disadvantaged group receive a fixed number of places (or items), or so that they receive a share of the item proportional to their share in the applicant pool or in the entire population. Thus, for example, an affirmative action plan might call for an employer to hire blacks in 5 percent of all new positions if blacks constitute 5 percent of the applicant pool. Occasionally, however, affirmative action plans call for giving a group more than their proportionate share in the population (as the men's liberationists in my hypothetical class demanded). Federal court orders in 1983 and 1984, for example, required Alabama to promote one black state trooper for each white trooper promoted, even though blacks constituted only about one-quarter of the state's population and an

even smaller proportion of state troopers. The U.S. Supreme Court, upholding these orders in a 1987 decision, recognized that racial classifications and preferences might sometimes be necessary to overcome pervasive and obstinate discrimination.[4] Typically U.S. courts have ordered the use of bloc-based distributive systems only when they have seen evidence of egregious discrimination and flagrant violations of previous settlements or court orders.

How are group-based and rank-based distributions different? While rank-based distributions also divide people into groups, they assign people to those groups according to fairly fine-tuned individual measurements. The justification for assignment to ranks usually has something to do with individual history, performance, or achievement, even if actual assignment is influenced by other factors. Group-based distributions assign people to groups on the basis of simple demographic criteria, having more to do with ascriptive characteristics of identity rather than individual experience or performance. They tend to follow major social cleavages in society—divisions such as ethnicity, race, gender, or religion—that split a society into two or three large blocs and that have historically served as a basis for awarding privileges and disadvantages. In the United States, we have based affirmative action primarily on race and gender, but other societies have recognized other social cleavages as critical in distributive equity. West Germany and Japan require employers to hire handicapped people in a certain percentage of jobs, and India has preferences for Untouchables, the lowest group in its historical caste system.

Just as there are challenges to the definition of equity from within the framework of rank-based distribution, there are similar challenges from within the framework of group-based distribution. One question is whether the definition of relevant groups makes sense and reflects some meaningful social reality. There are many questions about whether race and ethnicity are even 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 very dubious assumption.[5]) Are race and national origin the same thing? Does it make sense to lump people from different Spanish-speaking cultures and nations together?

[4] *U.S. v. Paradise* 480 U.S. 149; see also Stuart Taylor, Jr., "High Court Backs Basing Promotion on a Racial Quota," *New York Times*, February 26, 1987, p. 1.

[5] See James F. Davis, *Who is Black?: One Nation's Definition* (Harrisburg: Pennsylvania State University Press, 1991).

Another important challenge asserts that ascriptive identity characteristics such as race, gender, and nationality do not really capture or correspond to the actual experience of disadvantage or discrimination, yet the justification 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, lower-class, unskilled, dark-skinned American-born citizen? In this view, individual, merit-based distribution should be the norm, and group-based distribution should be only a tool to correct deficiencies and restore distributive systems to a merit-based foundation. Demographic groupings are too "rough." They make unwarranted presumptions about individual cases, give compensatory preferences to people who never suffered any disadvantage, and thus continue to violate the norm of distribution according to personal merit instead of strengthening it.

These are precisely the kinds of challenges that inform the backlash against affirmative action in contemporary politics. One argument against affirmative action is essentially a call to replace group-based distribution with rank-based distribution. This view holds that race and gender are illegitimate criteria for distribution of anything, even if they are used in a compensatory fashion. It is impossible to use race or gender for the benefit of previously disadvantaged groups without also discriminating on the basis of race or gender *against* whites or men. Accordingly, private and public institutions should return to the use of individual merit, recognizing that a merit or competence criterion would likely result in smaller shares (of jobs, school places, construction contracts) for women and blacks. Note that this argument presumes a halcyon period in which individual merit was the sole distributive criterion for important opportunities. In practice, group-based distribution has often been used quietly while individual merit-based distribution was professed to be the norm. Colleges and universities, for example, commonly reserve places and/or bend the admissions criteria for students who fit particular categories they wish to represent—children of alumni, athletes, residents of states and countries that don't send many students to that school.

Another argument against affirmative action accepts the legitimacy of group-based distribution for compensatory purposes, but holds that we are using the wrong criteria to determine which groups deserve compensation. According to this view, public policy should try to compensate people when they personally have suffered social and economic disadvantage. Thus, some measure of need or of "disadvantaged background" should be the criterion on which special preferences are awarded, rather than simple membership in a race or gender category. Supporters of race- and gender-based affirmative action counter that, apart from the extraordinary difficulty of measuring need and disadvantage, such a shift in the bases of affirmative action would destroy its utility in eliminating race and gender discrimination per se, the very thing affirmative action was meant to undo. Moreover, discrimination against women and especially against blacks is so pervasive that even the most privileged among them cannot escape it or its hobbling effects.

Challenges 4 and 5 are based on redefining the item to be distributed. Challenge 4 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 what happens in the next hour to what has happened in the previous three hours as well).

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.

Student financial aid is an issue involving boundary challenges to the definition of an item. A few 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 is looking at its financial aid—what it distributes—not as money in itself but as part of each student's total assets. It then has to decide what to count as a student's assets. Some schools look only at the student's 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' high potential future earnings as part of their assets, and tend to offer loans rather than outright scholarships, on the theory that their students can easily pay back loans out of their future earnings. Thus, within the issue of 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.

All explicitly redistributive policy, but especially welfare and tax policy, involves these questions of definition of 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? In tax policy, the concept of deductions is used to take into account the fact that different people have different required expenses that should not be counted as part of their taxable income. The tax code in effect tries to tax people's disposable income more than their essential expenses. Thus, we allow deductions for support of dependents, for inescapable business expenses, and for medical expenses. Much of the controversy over tax reform has been about whether the existing deductions truly represent necessary and uncontrollable expenses, and therefore a diminution of disposable income, or whether they represent luxury items.

Many of the debates over arms control could be regarded as a conflict over the distribution of military strength between the United States and its enemies, with each side trying to achieve "at least equal strength." Here "strength" is the item being distributed, and the controversy is over how it should be defined. Is the relevant unit of comparison the sophistication of a country's best weapon, the kill potential of its total arsenal, the reliability of its weapons or of its control systems, or perhaps the level of its military expenditures?

Challenge 5 redefines the item in terms of its value to the individual. For lack of better terms, we might call this a switch from a more standardized value of the item (say, the weight of a slice of cake) to a more customized value (say, how much nutrition someone derives from cake). Clothing provides a somewhat less frivolous example than cake. No one would seriously argue that equality requires giving each person a winter coat with the same amount of fabric. Even the Stalinist collective planners, who decried personal taste in fashion as a bourgeois foible, acknowledged that the essence of a coat is its fit rather than its fabric yardage.

Conflicts over this dimension of equality are especially intense in social policy. There, the services being distributed, such as education, medical care, and housing, derive their value from being tailored 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 (with appropriate remedial courses for non-English-speakers), or the right to study in one's native language (with all the advantages that

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

confers)? 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? Does equality in housing mean every person should have a roof and indoor plumbing, or does it mean everyone should have housing in a place with enough privacy to suit his or her needs? These are all issues where one's judgment about the equity of the distribution turns on one's assessment of the importance of customized or individualized value.

Challenges 6, 7, and 8 all focus on the process of distribution. They are respectively calls for competition, lotteries, and elections. Process is important because our notion of fairness includes not only the end result but the sense of a fair process by which the results occurred. Thus, if after hearing testimony in a criminal case, the jury 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.[6] For many things in life—such as a prize lottery, an election, or an athletic competition—we are quite willing to accept unequal results so long as we know that the process is fair.

The process dimension of distribution is especially important in the polis because so many things of value, like cupcakes, are indivisible. Think of jobs, public offices, sites for "good" public facilities such as town offices or parks, and sites for necessary nuisances such as town dumps or noisy factories. Such things simply cannot be sliced up and parceled out; if they were, they would lose their value. Commons problems often require distributive solutions based on unequal slices but fair processes.

Finally, process is important because in the polis, distributions do not happen by magic. They are carried out by real people taking real actions, not by invisible hands. Systems of distribution may be divisive and socially disruptive, as competition is often thought to be, or orderly and socially cohesive, as elections in a stable democracy are thought to be. They may inspire loyalty, as distribution of jobs by patronage is said to do, and bind people to one another, as elections bind an official to his or her constituency. Distribution of government jobs by lottery or even by examinations might inspire respect for the system's fairness, but probably not loyalty. Distributive systems may themselves provide employment. Witness our complicated tax system, which employs thousands in the Internal Revenue Service, thousands more as accountants, and still thousands more in seasonal tax preparation firms such as H & R Block. Or, distributive systems may provide little employment; for example, a flat-rate tax scheme would put a lot of people out of business. In short, the processes of distribution create or destroy things of value (such as loyalty, community spirit, or jobs) apart from the things they explicitly distribute.

We will return to the issue of social processes for collective choice. For now, it is enough to point out that one major class of challenges to the definition of equality is based on the notion of an equitable process. Instead of arguing about who the recipients are or what is being distributed, one can argue about whether the process of distribution is fair. Arguments for competition, lotteries, elections, bargaining, and adjudication are all of this nature.

[6] For research showing that "people care more about how they are treated than what they get" from the criminal justice system, see Robert Lane, "Procedural Justice in a Democracy: How One Is Treated Versus What One Gets," *Social Justice Research* 2 (1988): 177–92.

In summary, then, every policy issue involves the distribution of something. There wouldn't be a policy conflict if there were not some advantage to protect or some loss to prevent. Sometimes the things being distributed are material and countable, such as money, taxes, or houses. Sometimes they are a bit less tangible, such as the chances of serving in the army, getting sick, being a victim of crime, or being selected for public office. But always, policy issues involve distribution.

Simple prescriptions such as "equal opportunity for all" or "treat like cases alike" are glib slogans that mask the dilemmas of distributive justice. The task for the analyst is to sort out three questions: First, who are the recipients and what are the many ways of defining them? Second, what is being distributed and what are the many ways of defining it? And third, what are the social processes by which distribution is determined? Ultimately, a policy argument must show a principled reason why it is proper to categorize cases as alike or different. As I will show throughout this book, many of the most profound political conflicts and strategic battles hinge on this seemingly mundane problem of classification.

THE ARGUMENTS FOR EQUALITY

Even when one is able to tease apart a political issue and see the dimensions of a distribution separately, there is still the question of where one stands. How does one decide whether to accept a challenge, or which concept of equity to use? 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 assumptions about the meaning of community and the nature of property, assumptions that transcend particular issues.

One major divide in the great debate about equity is whether distributions should be judged by criteria of process or of recipients and items. Robert Nozick has written the most extensive defense of process criteria in *Anarchy, State and Utopia*.[7] 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.

[7] Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974).

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. The first five challenges in the cake saga, he would say, are based on end-result thinking. They all assume that a just distribution is one in which both the recipients and items are correctly defined and each qualified recipient receives an equal share of each correctly defined item. 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 *A Theory of Justice*.[8] 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.[9]

Rawls asks us to imagine ourselves designing rules for a society we

[8] John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).

[9] 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 because it is strongly affected by the social organization of insurance and medical care. 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. 111–26.

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's 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 trickiest problem for Nozick's process concept of justice is defining "fairness" for 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. If we were looking at the pre-Civil War United States, for example, when whites could own blacks as slaves and everything a single woman owned became her husband's property the day they married, Nozick's entitlement theory would still find the distribution of property just. Slaveholders and married men acquired their property fair and square, according to the law. 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.[10] 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 dub their views correct because they have numerical superiority? And if so, how do we find the majority—through referenda, or public opinion polls, or in-depth surveys? 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?[11] 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 a universal logic about distributive justice to which all people would subscribe if stripped of their culture and their particular history.

In general, people who hold Nozick's process view of equity 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

[10] This is Michael Walzer's approach in *Spheres of Justice* (New York: Basic Books, 1983).

[11] This is the intellectual move made by the Supreme Court in *Brown v. Board of Education*, 347 U.S. 483 (1954).

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 a 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.

A 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.[12] 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 use something without any restrictions? 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 inter-

[12] We'll have more to say about liberty in Chapter 5.

fering with people's rights to dispose of their property—by taxing and redistributing periodically to redress the unequal results of people's free choices.[13]

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 redistribution 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*,[14] 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.[15] Not surprisingly, this view

[13]Nozick, op. cit. (note 7), p. 171.

[14]For the fair-shares view, see William Ryan, *Equality* (New York: Random House, 1981), especially chaps. 1–3.

[15]This argument is best defended by Nozick, op. cit. (note 7) pp. 186–87. 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,

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 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."[16] 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

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.

[16]R. H. Tawney, *Equality*, 5th ed. (London: Unwin, 1964), pp. 122–23.

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. Each of these themes will be elaborated in the next few chapters, but I introduce them here because they all have a bearing on views of equity.

If all else fails, you can tell the players in the great debate about equity by where they put the burden of proof. On one side, differences among people—whether of income, wealth, education, or occupation—are to be considered the norm, and any deviation from these patterns must be justified. In the words of one player on this side, "To justify income redistribution, it is necessary to show that individuals somehow do not have a just title to the income they earned."[17] On the other side, equality in the distribution of certain crucial resources is considered the norm, and deviations from equality must be justified in terms of other social goals. To quote a player on this side, "All social values—liberty and opportunity, income and wealth and the bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage."[18]

[17]Mark Plattner, "The Welfare State vs. the Redistributive State," *The Public Interest* 55, (Spring 1979): 28–48; quotation is on p. 32.

[18]Rawls, op. cit. (note 8), p. 62.