

# Distributive Justice

by Robert Nozick

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The subject of justice in holdings consists of three major topics. The first is the original acquisition of holdings, the appropriation of unheld things. This includes the issues of how unheld things may come to be held, the process(es) by which unheld things may come to be held, the things that may come to be held by these processes, the extent of what comes to be held by a particular process, and so on. We shall refer to the complicated truth about this topic, which we shall not formulate here, as the principle of justice in acquisition. The second topic concerns the transfer of holdings from one person to another. By what processes may a person transfer holdings to another? How may a person acquire a holding from another who holds it? Under this topic come general descriptions of voluntary exchange, and gift, and (on the other hand) fraud, as well as reference to particular conventional details fixed upon a given society. The complicated truth about this subject (with placeholders for conventional details) we shall call the principle of justice in transfer. (And we shall suppose it also includes principles governing how a person may divest himself of a holding, passing it into an unheld state.)

If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings.

- (1) A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
- (2) A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
- (3) No one is entitled to a holding except by (repeated) applications of (1) and (2).

The complete principle of distributive justice would say simply that a distribution is just if everyone is entitled to the holdings they possess under the distribution.

A distribution is just if it arises from another (just) distribution by legitimate means. The legitimate means of moving from one distribution to another are specified by the principle of justice in transfer. The legitimate first "moves" are specified by the principle of justice in acquisition. Whatever arises from a just situation by just steps is itself just. The means of change specified by the principle of justice in transfer, preserve justice. As correct rules of inference are truth preserving, and any conclusion deduced via repeated application of such rules from only true premises is itself true, so the means of transition from one situation to another specified by the principle of justice in transfer are justice preserving, and any situation

actually arising from repeated transitions in accordance with the principle from a just situation is itself just. The parallel between justice-preserving transformations and truth-preserving transformations illuminates where it fails as well as where it holds. That a conclusion could have been deduced by truth-preserving means from premises that are true suffices to show its truth. That a situation could have arisen via justice-preserving means from a just situation does not suffice to show its justice. The fact that a thief's victims voluntarily could have presented him with gifts, does not entitle the thief to his ill-gotten gains. Justice in holdings is historical; it depends upon what actually has happened. We shall return to this point below.

Not all actual situations are generated in accordance with the two principles of justice in holdings: the principle of justice in acquisition and the principle of justice in transfer. Some people steal from others, or defraud them, or enslave them seizing their product and preventing them from living as they choose, or forcibly exclude others from competing in exchanges. None of these are permissible modes of transition from one situation to another. And some persons acquire holdings by means not sanctioned by the principle of justice in acquisition. The existence of past injustice (previous violations of the first two principles of justice in holdings) raises the third major topic under justice in holdings: the rectification of injustice in holdings. If past injustice has shaped present holdings in various ways, some identifiable and some not, what now, if anything, ought to be done to rectify these injustices? What obligations are the performers of injustice under to their victims? What obligations do the beneficiaries of injustice have to those whose position is worse than it would have been had the injustice not been done? Or, than it would have been had compensation been paid promptly? How, if at all, do things change if the beneficiaries and those made worse off are not the direct parties in the act of injustice, but, for example, their descendants? Is an injustice done to someone whose holding was itself based upon an unrectified injustice? How far back must one go in wiping clean the historical slate of injustices? What may victims of injustice permissibly do in order to rectify the injustices being done to them, including the many injustices done by persons acting through their government? I do not know of a thorough or theoretically sophisticated treatment of such issues. ...

The general outlines of the theory of justice in holdings are that the holdings of a person are just if he is entitled to them by the principles of justice in acquisition and transfer, or by the principle of rectification of injustice (as specified by the first two principles). If each person's holdings are just then the total set (distribution) of holdings is just. To turn these general outlines into a specific theory we would have to specify the details of each of the three principles of justice in holdings: the principle of acquisition of holdings, the principle of transfer of holdings, and the principle of rectification of violations of the first two principles. I shall not attempt that task here. ...

## Historical Principles and End-Result Principles

The general outlines of the entitlement theory illuminate the nature and defects of other conceptions of distributive justice. The entitlement theory of justice in distribution is historical; whether a distribution is just depends upon how it came about. In contrast, current time-slice principles of justice hold that the justice of a distribution is determined by how things are distributed (who has what) as judged by some structural principle(s) of just distribution. A utilitarian who judges between any two distributions by seeing which has the greater sum of utility and, if these tie, who applies some fixed equality criterion to choose the more equal distribution, would hold a current time-slice principle of justice. As would someone who had a fixed schedule of trade-offs between the sum of happiness and equality. All that needs to be looked at, in judging the justice of a distribution, according to a current time-slice principle, is who ends up with what; in comparing any two distributions one need look only at the matrix presenting the distributions. No further information need be fed into a principle of justice. It is a consequence of such principles of justice that any two structurally identical distributions are equally just. (Two distributions are structurally identical if they present the same profile, but [perhaps] have different persons occupying the particular slots. My having ten and your having five, and my having five and your having ten are structurally identical distributions.) Welfare economics is the theory of current time-slice principles of justice. The subject is conceived as operating on matrices representing only current information about distribution. This, as well as some of the usual conditions (e.g., the choice of distribution is invariant under relabeling of columns), guarantees that welfare economics will be a current time-slice theory, with all of its inadequacies.

Most persons do not accept current time-slice principles as constituting the whole story about distributive shares. They think it relevant in assessing the justice of a situation to consider not only the distribution it embodies, but also how that distribution came about. If some persons are in prison for murder or war crimes, we do not say that to assess the justice of the distribution in the society we must look only at what this person has, and that person has, and that person has . . . , at the current time. We think it relevant to Distributive Justice to ask whether someone did something so that he deserved to be punished, deserved to have a lower share. Most will agree to the relevance of further information with regard to punishments and penalties. Consider also desired things. One traditional socialist view is that workers are entitled to the product and full fruits of their labor; they have earned it; a distribution is unjust if it does not give the workers what they are entitled to. Such entitlements are based upon some past history. No socialist holding this view would find it comforting to be told that because the actual distribution A happens to coincide structurally with the one he desires, D, A therefore is no less just than D; it differs only in that the "parasitic" owners of capital receive under A what

the workers are entitled to under D, and the workers receive under A what the owners are entitled to (under D), namely very little. Rightly in my view, this socialist holds onto the notions of earning, producing, entitlement, desert, etc. and he rejects (current time-slice) principles that look only to the structure of the resulting set of holdings. (The set of holdings resulting from what? Isn't it implausible that how holdings are produced and come to exist has no effect at all on who should hold what?) His mistake lies in his view of what entitlements arise out of what sorts of productive processes.

We construe the position we discuss too narrowly by speaking of current time-slice principles. Nothing is changed if structural principles operate upon a time sequence of current time-slice profiles and, for example, give someone more now to counterbalance the less he has had earlier. A utilitarian or an egalitarian or any mixture of the two over time will inherit the difficulties of his more myopic comrades. He is not helped by the fact that some of the information others consider relevant in assessing a distribution is reflected, unrecoverably, in past matrices. Henceforth, we shall refer to such unhistorical principles of distributive justice, including the current time-slice principles, as end-result principles or end-state principles.

In contrast to end-result principles of justice, historical principles of justice hold that past circumstances or actions of people can create differential entitlements or differential deserts to things. An injustice can be worked by moving from one distribution to another structurally identical one, for the second, in profile the same, may violate people's entitlements or deserts; it may not fit the actual history.

## **Patterning**

The entitlement principles of justice in holdings that we have sketched are historical principles of justice. To better understand their precise character, we shall distinguish them from another subclass of the historical principles. Consider, as an example, the principle of distribution according to moral merit. This principle requires total distributive shares to vary directly with moral merit; no person should have a greater share than anyone whose moral merit is greater. (If moral merit could be not merely ordered but measured on an interval or ratio scale, stronger principles could be formulated.) Or consider the principle that results by substituting "usefulness to society" for "moral merit" in the previous principle. Or instead of "distribute according to moral merit," or "distribute according to usefulness to society," we might consider "distribute according to the weighted sum of moral merit, usefulness to society, and need," with the weights of the different dimensions equal. Let us call a principle of distribution patterned if it specifies that a distribution is to vary along with some natural dimension, weighted sum of natural dimensions, or

lexicographic ordering of natural dimensions. And let us say a distribution is patterned if it accords with some patterned principle. (I speak of natural dimensions, admittedly without a general criterion for them?, because for any set of holdings some artificial dimensions can be gimmicked up to vary along with the distribution of the set.) The principle of distribution in accordance with moral merit is a patterned historical principle, which specifies a patterned distribution. "Distribute according to I.Q." is a patterned principle that looks to information not contained in distributional matrices. It is not historical, however, in that it does not look to any past actions creating differential entitlements to evaluate a distribution; it requires only distributional matrices whose columns are labeled by I.Q. scores. The distribution in a society, however, may be composed of such simple patterned distributions, without itself being simply patterned. Different sectors may operate different patterns, or some combination of patterns may operate in different proportions across a society. A distribution composed in this manner, from a small number of patterned distributions, we also shall term patterned. And we extend the use of "pattern" to include the overall designs put forth by combinations of end-state principles.

Almost every suggested principle of distributive justice is patterned: to each according to his moral merit, or needs, or marginal product, or how hard he tries, or the weighted sum of the foregoing, and so on. The principle of entitlement we have sketched is *not* patterned. ... The set of holdings that results when some persons receive their marginal products, others win at gambling, others receive a share of their mate's income, others receive gifts from foundations, others receive interest on loans, others receive gifts from admirers, others receive returns on investment, others make for themselves much of what they have, others find things, and so on, will not be patterned. Heavy strands of patterns will run through it; significant portions of the variance in holdings will be accounted for by pattern variables. If most people most of the time choose to transfer some of their entitlements to others only in exchange for something from them, then a large part of what many people hold will vary with what they held that others wanted. More details are provided by the theory of marginal productivity. But gifts to relatives, charitable donations, bequests to children, and the like, are not best conceived, in the first instance, in this manner. Ignoring the strands of pattern, let us suppose for the moment that a distribution actually gotten by the operation of the principle of entitlement is random with respect to any pattern. Though the resulting set of holdings will be unpatterned, it will not be incomprehensible, for it can be seen as arising from the operation of a small number of principles. These principles specify how an initial distribution may arise (the principle of acquisition of holdings) and how distributions may be transformed into others (the principle of transfers of holdings). The process whereby the set of holdings is generated will be intelligible, though the set of holdings itself that results from this process will be unpatterned. ...

## How Liberty Upsets Patterns

It is not clear how those holding alternative conceptions of distributive justice can reject the entitlement conception of justice in holdings. For suppose a distribution favored by one of these non-entitlement conceptions is realized. Let us suppose it is your favorite one and call this distribution D1; perhaps everyone has an equal share, perhaps shares vary in accordance with some dimension you treasure. Now suppose that Wilt Chamberlain is greatly in demand by basketball teams, being a great gate-attraction. (Also suppose contracts run only for a year, with players being free agents.) He signs the following sort of contract with a team: In each home game, twenty-five cents from the price of each ticket of admission goes to him. (We ignore the question of whether he is "gouging" the owners, letting them look out for themselves.) The season starts, and people cheerfully attend his team's games; they buy their tickets, each time dropping a separate twenty-five cents of their admission price into a special box with Chamberlain's name on it. They are excited about seeing him play; it is worth the total admission price to them. Let us suppose that in one season one million persons attend his home games, and Wilt Chamberlain winds up with \$250,000, a much larger sum than the average income and larger even than anyone else has. Is he entitled to this income? Is this new distribution D2 unjust? If so, why? There is no question about whether each of the people was entitled to the control over the resources they held, in D1, because that was the distribution (your favorite) that (for the purposes of argument) we assumed was acceptable. Each of these persons chose to give twenty-five cents of their money to Chamberlain. They could have spent it on going to the movies, or on candy bars, or on copies of Dissent magazine, or of Monthly Review. But they all, at least one million of them, converged on giving it to Wilt Chamberlain in exchange for watching him play basketball. If D1 was a just distribution, and people voluntarily moved from it to D2, transferring parts of their shares they were given under D1 (what was it for if not to do something with?), isn't D2 also just? If the people were entitled to dispose of the resources to which they were entitled (under D1), didn't this include their being entitled to give it to, or exchange it with, Wilt Chamberlain? Can anyone else complain on grounds of justice? Each other person already has his legitimate share under D1. Under D1 there is nothing that anyone has that anyone else has a claim of justice against. After someone transfers something to Wilt Chamberlain, third parties still have their legitimate shares; their shares are not changed. By what process could such a transfer among two persons give rise to a legitimate claim of distributive justice on a portion of what was transferred, by a third party who had no claim of justice on any holding of the others before the transfer? ...

The general point illustrated by the Wilt Chamberlain example is that no end-state principle or distributional pattern principle of justice can be continuously realized without continuous interference into people's lives. Any favored pattern would be transformed into one unfavored by the principle, by people choosing to act in various ways; e.g., by people exchanging goods and services with other people, or giving things to other people, things the transferrers are entitled to under the favored distributional pattern. To maintain a pattern one must either continuously interfere to stop people from transferring resources as they wish to, or continually (or periodically) interfere to take from some persons resources that others for some reason chose to transfer to them. (But if some time limit is to be set on how long people may keep resources others voluntarily transfer to them, why let them keep these resources for any period of time? Why not have immediate confiscation?) It might be objected that all persons voluntarily will choose to refrain from actions which would upset the pattern. This presupposes unrealistically (a) that all will most want to maintain the pattern (are those who don't, to be "re-educated or forced to undergo "self-criticism"?); (b) that each can gather enough information about his own actions and the ongoing activities of others to discover which of his actions will upset the pattern; and (c) that diverse and far-flung persons can coordinate their actions to dovetail into the pattern. Compare the manner in which the market is neutral among persons' desires, as it reflects and transmits widely scattered information via prices, and coordinates persons' activities. ...

## **Redistribution and Property Rights**

... Proponents of patterned principles of distributive justice focus upon criteria for determining who is to receive holdings; they consider the reasons for which someone should have something, and also the total picture of holdings. Whether or not it is better to give than to receive, proponents of patterned principles ignore giving altogether. In considering the distribution of goods, income, etc., their theories are theories of recipient-justice; they completely ignore any right a person might have to give something to someone. Even in exchanges where each party is simultaneously giver and recipient, patterned principles of justice focus only upon the recipient role and its supposed rights. Thus discussions tend to focus on whether people (should) have a right to inherit, rather than on whether people (should) have a right to bequeath or on whether persons who have a right to hold also have a right to choose that others hold in their place. I lack a good explanation of why the usual theories of distributive justice are so recipient-oriented; ignoring givers and transferrers and their rights is of a piece with ignoring producers and their entitlements. But why is it all ignored?

Patterned principles of distributive justice necessitate redistributive activities. The likelihood is small that any actual freely arrived at set of holdings fits a given pattern; and the likelihood is nil that it will continue to fit the pattern as people exchange and give. From the point of view of an entitlement theory, redistribution is a serious matter indeed, involving, as it does, the violation of people's rights. (An exception is those takings that fall under the principle of the rectification of injustices.) From other points of view, also, it is serious.

Taxation of earnings from labor is on a par with forced labor. Some persons find this claim obviously true: taking the earnings of  $N$  hours labor is like taking  $N$  hours from the person; it is like forcing the person to work  $N$  hours for another's purpose. Others find the claim absurd. But even these, if they object to forced labor, would oppose forcing unemployed hippies to work for the benefit of the needy. And they also would object to forcing each person to work five extra hours each week for the benefit of the needy. But a system that takes five hours' wages in taxes does not seem to them like one that forces someone to work five hours, since it offers the forcee a wider range of choice in activities than does taxation in kind with the particular labor specified. (But we can imagine a gradation of systems of forced labor, from one that specifies a particular activity, to one that gives a choice among two activities, to ... ; and so on up.) Furthermore, people envisage a system with something like a proportional tax on everything above the amount necessary for basic needs. Some think this does not force someone to work extra hours, since there is no fixed number of extra hours he is forced to work, and since he can avoid the tax entirely by earning only enough to cover his basic needs. This is a very uncharacteristic view of forcing for those who also think people are forced to do something whenever the alternatives they face are considerably worse. However, neither view is correct. The fact that others intentionally intervene, in violation of a side-constraint against aggression, to threaten force to limit the alternatives, in this case to paying taxes or (presumably the worse alternative) bare subsistence, makes the taxation system one of forced labor, and distinguishes it from other cases of limited choices which are not forcings.

The man who chooses to work longer to gain an income more than sufficient for his basic needs prefers some extra goods or services to the leisure and activities he could perform during the possible non-working hours; whereas the man who chooses not to work the extra time prefers the leisure activities to the extra goods or services he could acquire by working more. Given this, if it would be illegitimate for a tax system to seize some of a man's leisure (forced labor) for the purpose of serving the needy, how can it be legitimate for a tax system to seize some of a man's goods for that purpose? Why should we treat the man whose happiness requires certain material goods or services differently from the man whose preferences and desires make such goods unnecessary for his



happiness? Why should the man who prefers seeing a movie (and who has to earn money for a ticket) be open to the required call to aid the needy, while the person who prefers looking at a sunset (and hence need earn no extra money) is not? Indeed, isn't it surprising that redistributionists choose to ignore the man whose pleasures are so easily attainable without extra labor, while adding yet another burden to the poor unfortunate who must work for his pleasures? If anything, one would have expected the reverse. Why is the person with the non-material or non-consumption desire allowed to proceed unimpeded to his most favored feasible alternative, whereas the man whose pleasures or desires involve material things and who must work for extra money (thereby serving whoever considers his activities valuable enough to pay him) is constrained in what he can realize? Perhaps there is no difference in principle. And perhaps some think the answer concerns merely administrative convenience. (These questions and issues will not disturb those who think forced labor to serve the needy or realize some favored end-state pattern acceptable.) ...

What sort of right over others does a legally institutionalized end-state pattern give one? The central core of the notion of a property right in X, relative to which other parts of the notion are to be explained, is the right to determine what shall be done with X; the right to choose which of the constrained set of options concerning X shall be realized or attempted. The constraints are set by other principles or laws operating in the society; in our theory by the Lockean rights people possess (under the minimal state). My property rights in my knife allow me to leave it where I will, but not in your chest. I may choose which of the acceptable options involving the knife is to be realized. This notion of property helps us to understand why earlier theorists spoke of people as having property in themselves and their labor. They viewed each person as having a right to decide what would become of himself and what he would do, and as having a right to reap the benefits of what he did.

When end-result principles of distributive justice are built into the legal structure of a society, they (as do most patterned principles) give each citizen an enforceable claim to some portion of the total social product; that is, to some portion of the sum total of the individually and jointly made products. This total product is produced by individuals laboring, using means of production others have saved to bring into existence, by people organizing production or creating means to produce new things or things in a new way. It is on this batch of individual activities that patterned distributional principles give each individual an enforceable claim. Each person has a claim to the activities and the products of other persons, independently of whether the other persons enter into particular relationships that give rise to these claims, and independently of whether they voluntarily take these claims upon themselves, in charity or in exchange for something.

Whether it is done through taxation on wages or on wages over a certain amount, or through seizure of profits, or through there being a big social pot so that it's not clear what's coming from where and what's going where, patterned principles of distributive justice involve appropriating the actions of other persons. Seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or un-rewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a part owner of you; it gives them a property right in you. Just as having such partial control and power of decision, by right, over an animal or inanimate object would be to have a property right in it.

End-state and most patterned principles of distributive justice institute (partial) ownership by others of people and their actions and labor. These principles involve a shift from the classical liberals' notion of self-ownership to a notion of (partial) property rights in other people.