

Justice and Fairness

Manuel Velasquez, Claire Andre, Thomas Shanks, S.J., and Michael J. Meyer

This article appeared originally in Issues in Ethics V3 N2 (Spring 1990).

Many public policy arguments focus on fairness. Is affirmative action fair? Are congressional districts drawn to be fair? Is our tax policy fair? Is our method for funding schools fair?

Arguments about justice or fairness have a long tradition in Western civilization. In fact, no idea in Western civilization has been more consistently linked to ethics and morality than the idea of justice. From the Republic, written by the ancient Greek philosopher Plato, to A Theory of Justice, written by the late Harvard philosopher John Rawls, every major work on ethics has held that justice is part of the central core of morality.

Justice means giving each person what he or she deserves or, in more traditional terms, giving each person his or her due. Justice and fairness are closely related terms that are often today used interchangeably. There have, however, also been more distinct understandings of the two terms. While justice usually has been used with reference to a standard of rightness, fairness often has been used with regard to an ability to judge without reference to one's feelings or interests; fairness has also been used to refer to the ability to make judgments that are not overly general but that are concrete and specific to a particular case. In any case, a notion of desert is crucial to both justice and fairness. The Nortons and Ellisons of this world, for example, are asking for what they think they deserve when they are demanding that they be treated with justice and fairness. When people differ over what they believe should be given, or when decisions have to be made about how benefits and burdens should be distributed among a group of people, questions of justice or fairness inevitably arise. In fact, most ethicists today hold the

view that there would be no point of talking about justice or fairness if it were not for the conflicts of interest that are created when goods and services are scarce and people differ over who should get what. When such conflicts arise in our society, we need principles of justice that we can all accept as reasonable and fair standards for determining what people deserve.

But saying that justice is giving each person what he or she deserves does not take us very far. How do we determine what people deserve? What criteria and what principles should we use to determine what is due to this or that person?

Principles of Justice

The most fundamental principle of justice—one that has been widely accepted since it was first defined by Aristotle more than two thousand years ago—is the principle that "equals should be treated equally and unequals unequally." In its contemporary form, this principle is sometimes expressed as follows: "Individuals should be treated the same, unless they differ in ways that are relevant to the situation in which they are involved." For example, if Jack and Jill both do the same work, and there are no relevant differences between them or the work they are doing, then in justice they should be paid the same wages. And if Jack is paid more than Jill simply because he is a man, or because he is white, then we have an injustice—a form of discrimination—because race and sex are not relevant to normal work situations.

There are, however, many differences that we deem as justifiable criteria for treating people differently. For example, we think it is fair and just when a parent gives his own children more attention and care in his private affairs than he gives the children of others; we think it is fair when the person who is first in a line at a theater is given first choice of theater tickets; we think it is just when the government gives benefits to the needy that it does not provide to more affluent citizens; we think it is just when some who have done wrong are given punishments that are not meted out to others who have done nothing wrong; and we think it is fair when those who exert more efforts or who make a greater contribution to a project receive more benefits from the project than others. These criteria—need, desert, contribution, and effort—we acknowledge as justifying differential treatment, then, are numerous.

On the other hand, there are also criteria that we believe are not justifiable grounds for giving people different treatment. In the world of work, for example, we generally hold that it is unjust to give individuals special treatment on the basis of age, sex, race, or their religious preferences. If the judge's nephew receives a suspended sentence for armed robbery when another offender unrelated to the judge goes to jail for the same crime, or the brother of the Director of Public Works gets the million dollar contract to install sprinklers on the municipal golf course despite lower bids from other contractors, we say that it's unfair. We also believe it isn't fair when a person is punished for something over which he or she had no control, or isn't compensated for a harm he or she suffered. And the people involved in the "brown lung hearings" felt that it wasn't fair that some diseases were provided with disability compensation, while other similar diseases

weren't.

Different Kinds of Justice

There are different kinds of justice. Distributive justice refers to the extent to which society's institutions ensure that benefits and burdens are distributed among society's members in ways that are fair and just. When the institutions of a society distribute benefits or burdens in unjust ways, there is a strong presumption that those institutions should be changed. For example, the American institution of slavery in the pre-civil war South was condemned as unjust because it was a glaring case of treating people differently on the basis of race.

A second important kind of justice is retributive or corrective justice. Retributive justice refers to the extent to which punishments are fair and just. In general, punishments are held to be just to the extent that they take into account relevant criteria such as the seriousness of the crime and the intent of the criminal, and discount irrelevant criteria such as race. It would be barbarously unjust, for example, to chop off a person's hand for stealing a dime, or to impose the death penalty on a person who by accident and without negligence injured another party. Studies have frequently shown that when blacks murder whites, they are much more likely to receive death sentences than when whites murder whites or blacks murder blacks. These studies suggest that injustice still exists in the criminal justice system in the United States.

Yet a third important kind of justice is compensatory justice. Compensatory justice refers to the extent to which people are fairly compensated for their injuries by those who have injured them; just compensation is proportional to the loss inflicted on a person. This is precisely the kind of justice that was at stake in the brown lung hearings. Those who testified at the hearings claimed that the owners of the cotton mills where workers had been injured should compensate the workers whose health had been ruined by conditions at the mills.

The foundations of justice can be traced to the notions of social stability, interdependence, and equal dignity. As the ethicist John Rawls has pointed out, the stability of a society—or any group, for that matter—depends upon the extent to which the members of that society feel that they are being treated justly. When some of society's members come to feel that they are subject to unequal treatment, the foundations have been laid for social unrest, disturbances, and strife. The members of a community, Rawls holds, depend on each other, and they will retain their social unity only to the extent that their institutions are just. Moreover, as the philosopher Immanuel Kant and others have pointed out, human beings are all equal in this respect: they all have the same dignity, and in virtue of this dignity they deserve to be treated as equals. Whenever individuals are treated unequally on the basis of characteristics that are arbitrary and irrelevant, their fundamental human dignity is violated.

Justice, then, is a central part of ethics and should be given due consideration in our moral lives. In evaluating any moral decision, we must ask whether our actions treat all persons equally. If not, we must determine whether the difference in treatment is justified: are the criteria we are

using relevant to the situation at hand? But justice is not the only principle to consider in making ethical decisions. Sometimes principles of justice may need to be overridden in favor of other kinds of moral claims such as rights or society's welfare. Nevertheless, justice is an expression of our mutual recognition of each other's basic dignity, and an acknowledgement that if we are to live together in an interdependent community we must treat each other as equals.

The views expressed do not necessarily represent the position of the Markkula Center for Applied Ethics at Santa Clara University. We welcome your comments, suggestions, or alternative points of view.

Aug 1, 2014

4 Comments Markkula Center for Applied Ethics

1 Login ▾

♥ Recommend 3

🔗 Share

Sort by Best ▾



Join the discussion...

**Sarah Messi** • a month ago

In evaluating any moral decision, we must ask whether our actions treat all persons equally.

[Trichup shampoo](#)

^ | ▾ • Reply • Share ▸

**Kamal Heer** • 6 months ago

Hi Melquiadiz. It might be easier if you ask me to explain a part of what I wrote specifically, as otherwise I could elaborate on something that is not of interest to you. Let me elaborate just a bit on my views on compensation. I am a consultant surgeon; I qualified as a doctor in 1988 and on the subject of justice, I believe there is a different form that is relevant to medicine - 'clinical justice'. Having worked within the UK's NHS for many years, I can tell you as any UK surgeon worth their salt will, that distributive justice is not only counter-productive, it is against the ideals of medical care. We do not believe in taking from one to provide for another, no matter what utilitarian calculation one might use. Hence my comment on utilitarianism

I believe there are a couple of professions in the world where individuals will/can never be compensated adequately, medicine, teaching, art being just a few. i.e. just because the 'good' or 'right' in some things can only be measured subjectively, does not mean that compensation should be subjective. It is a trivial truth of modern society that we mainly measure business/trade/compensation in terms of monetary remuneration. However, the irony is, though many will say that money can't buy respect, respect-worthiness is still measured by money/titles or other forms of compensation. So, when considering justice (I take this to imply what is owed to one due to some rights - legal/human etc. i.e. what humans believe to be right or good) equal consideration must be made to fairness (as described in the article; i.e. non-emotional parity). I happen to believe the decider and determining factor is autonomy, as described by Kant - respect the autonomy in others the way you would respect your own autonomous self. The decisions of what is both just and fair then become nothing more than working out logistics, suitable to the particular context or situation under consideration.

I realise there are many who would consider that being a mere surgeon I am not in the right position to discuss bioethics; I would argue any such consideration vehemently. Best of luck in your quest!

^ | ▾ • Reply • Share ▸

**Kamal Heer** • 6 months ago

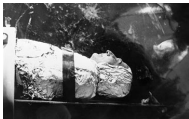
Nice, simple read, but uses fair and just interchangeably. I was looking for a clear-cut

Ethics in the News



The "Most Secure" Building in Manhattan (<https://www.scu.edu/ethics/media-mentions/the-most-secure-building-in-manhattan/>)

Is the Secret Service a Trump Tower Amenity?



Cryonics Ethics (<https://www.scu.edu/ethics/media-mentions/cryonics-ethics/>)

Is it ethical to freeze your body after you die?



Standing up for Nonviolence (<https://www.scu.edu/ethics/media-mentions/standing-up-for-nonviolence/>)

Bishop Taiji Katsuya of Japan shares his views on military force, the death penalty, and President Obama's visit to Hiroshima.



Tackling the Fake News Problem (<https://www.scu.edu/ethics/media-mentions/tackling-the-fake->

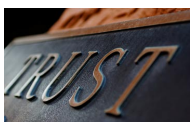
news-problem/)

The Trust Project is working to come up with tools to improve trust in the mainstream media.



Trump's Potential Conflicts of Interest (<https://www.scu.edu/ethics/media-mentions/trumps-potential-conflicts-of-interest/>)

What does the President-elect need to do to separate his political and private interests?



Trust Project Hackathon in London (<https://www.scu.edu/ethics/media-mentions/trust-project-hackathon-in-london/>)

Participants worked to develop indicators of trust at a recent Trust Project Challenge in London.