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cross references to and from this article, or to similar articles:
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PROCEDURAL JUSTICE

The doctrine that justice is not fairness of outcome but fairness of procedure in arriving at the outcome.

A procedural definition of the just goes back to John Locke (1632-1704), and behind him to ancient Roman law. "Procedural" justice stands against "substantive" justice, Roman law against Greek philosophy. In the vocabulary of the philosopher Robert Nozick, who in 1974 revived procedural justice, substantive justice is an "end-state" principle. According to end-state or substantive definitions of justice, if someone is now a millionaire, and you regard great wealth as obscene in a world of poverty, you will regard the outcome as unjust. By contrast, Locke and Nozick start and end with private property, to which someone is entitled. "A distribution is just," writes Nozick, "if it arises from another just distribution by legitimate means" (1974, p. 151), such as a market or a

court in a republic. The theory is is historical, looking back to the origins of wealth.

Thus, Andrew Carnegie the steelmaker was entitled to his wealth if he acquired it by legitimate means from people who had in turn acquired by legitmiate means, back to the Flood. Procedural justice would not, for example, acknowledge the justice of a gospel of wealth (q.v.), commonly defended on the grounds that the millionaire should "give back to the community some of what he has taken" (the gospel of wealth could be defended perhaps on other grounds, such as magnanimity). The free exchanges in which Carnegie partook to acquire his wealth were legitimate, not takings.

Nozick makes the point in his famous Wilt Chamberlain example. Four million people pay voluntarily a quarter each to see exhibitions of Chamerlain's prowess as a basketball player. Chamberlain becomes therefore a millionaire. According to an end-state theory such as that of Nozick's colleague at Harvard, John Rawls (q.v.), Chamberlain's wealth is just only if allowing it to accumulate will improve the welfare of the least-advantaged person in the community. On the contrary, Nozick replies, Chamberlain has a natural right (q.v.) to the fruits of his labor. He is entitled to his wealth if he acquired it without force or fraud. Procedural justice therefore fits smoothly with libertarianism, anarchism, classical liberalism. It is hostile to utilitarianism (q.v) and other theories of the just that urge the government to adjust end states.

"Commutative justice" (the term is from St. Aquinas) is justice in market exchanges, with the proviṣo that the exchanges take place at the just price (q.v.). For modern economics and for libertarian philosophers

like Nozick, the just price is any price voluntarily contracted. In the words of H. B. Acton, "Commutative justice is found when freely made agreements are kept, and it is maintained when there are laws for punishing fraud and for enforcing the fulfilment of contracts" (p. 125). In English legal terms, procedural justice is that of common-law courts, as against equity. In economic terms, it is that of markets as against governments.

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