



What are the Different Kinds of Issues of Justice? How Can We Examine Issues of Distributive Justice?

Overview

In this lesson, you will first explore the concept of justice by identifying and then analyzing three types of problems that raise issues of distributive, corrective, and procedural justice. Students are then presented with excerpts from the Declaration of Independence, the U.S. Constitution and Bill of Rights, and subsequent amendments that have been designed to establish principles or policies of law related to the three types of issues of justice. Finally, students focus attention on distributive justice, by using the intellectual tools designed to examine its issues.

Examining Issues of Justice

We think of the essence of justice as fairness, and the essence of fairness as treating people equally. However, issues of justice can arise even if everyone is subjected to the same rules, and even if everyone who breaks the rules receives the same punishment. Issues of justice are often complex and multifaceted, and they require careful analysis. At the outset, it is important to recognize and to be able to distinguish different types of issues of justice. As you read the following situations, ask yourself what is fair or unfair about them. Then answer the “What do you think?” questions. Be prepared to share your answers with the class.

- At the end of the week, Jane received her paycheck. It was for \$275. She was upset and angry when she learned that Paul had received \$410 for doing the same type and amount of work.
- During the riot, the secret police arrested Hans, dragged him off the street, and threw him into a small cell. That night he was taken to a room where three angry men questioned him for ten minutes. Just as he began to realize that they were trying him, the man in the center banged a gavel on the table and declared, “Guilty of rebellion against the government. Sentenced to death by firing squad at once!” They took Hans outside, stood him against a wall, and shot him.
- Jean Valjean, the principal character in Victor Hugo’s novel, *Les Misérables*, was sentenced to prison for stealing a loaf of bread to feed his starving sister and her children.

What do you think?

1. What is fair or unfair about each of the situations above?
2. What similar experiences have you had or observed?
3. How are each of the situations described similar to things that happen in your community?
4. What customs, rules, or laws do you know that are designed to promote justice or fairness in the kinds of situations described?
5. In these situations, are the issues of justice similar in any way? Are they different in any way? Explain.

Why do we divide issues of justice into different categories?

For more than two thousand years, scholars dealing with the subject of justice have divided issues of justice into three categories. These categories are the following:

DISTRIBUTIVE JUSTICE. Issues of distributive justice concern the fairness of the distribution of something among several people or groups. Whatever is distributed or divided can be a benefit—such as pay for work or the right to speak or vote—or it can be a burden, such as taxes, household chores, or homework.

CORRECTIVE JUSTICE. Issues of corrective justice concern the fairness of the response to a wrong or injury to a person or group. Common responses include making a person who has wronged or injured another suffer some form of punishment, give back something that was stolen, or pay for damages.

PROCEDURAL JUSTICE. Issues of procedural justice concern the fairness of how information is gathered or how a decision is made. For example, a person suspected of a crime might give information through careful, unbiased investigation or by torture. People making a decision might hear from all people interested in an issue, or make their decision without such a procedure. It is important to emphasize that procedural justice deals with the fairness of how we gather information or make decisions, not with what information we gathered or the decision we make.

This division of issues of justice into different categories is helpful because each category requires the use of a different set of ideas or intellectual tools. In other words, to determine whether a situation is fair from the standpoint of distributive justice, you need to ask a different set of questions than the questions you would ask to determine whether the situation is fair from the standpoint of corrective justice. This explanation might best be illustrated with an analogy. Suppose you wanted to repair an automobile engine, paint a picture, or mend some clothing. Obviously, you would not use a paintbrush to mend the clothing or a sewing machine to repair the automobile engine. Each task would require the use of

different tools.

It is the same with issues of justice. Dealing with issues in each of the three categories requires the use of a different set of ideas or intellectual tools. Fortunately, you do not have to reinvent all the tools because they have been developed during the past several thousand years by such people as philosophers, judges, political scientists, and statesmen.

Before trying to use the intellectual tools to analyze issues of justice, however, it is important to identify those issues as being distributive, corrective, or procedural so you will not try to use a sewing machine to repair an automobile engine.

Identifying Issues of Distributive, Corrective and Procedural Justice

As you read the following situations, you may have a common reaction: “That’s not fair!” or “That’s not just!” Each example illustrates a type of justice. The intensity of our feelings about justice and our desire to achieve it have helped to shape history and have led to numerous controversies in both private and public life in our communities, our nation, and the world.

Work with a study partner or in small groups to complete this exercise. As you read each of the following examples, identify whether it raises an issue of distributive, corrective, or procedural justice. Then answer the “What do you think?” questions.

1. In a recent court case, a man sued the driver who ran into his car for \$5,000 in damages to his automobile; \$4,300 in medical bills; and \$1,000 for inconveniences caused by the accident.
2. Police departments usually hire only those people who are physically able and who have had adequate education and experience for the police force.
3. Five boys were accused of vandalizing a school on a weekend. On the following Monday, they were brought to the principal’s office and asked if they were guilty. Two boys said they were not and had been at the homes of friends at the time of the incident. The principal questioned their friends to check on the boys’ stories. He then called the parents of the boys to his office to further verify their stories.
4. Before hiring a person to fill a vacancy in a governmental agency, the agency must advertise the availability of the position and provide all applicants the opportunity to take a written examination and to have an interview.

5. Each year the federal government gives fellowships to outstanding students under the Fulbright Act. These fellowships pay for American students to study, conduct research, or teach in foreign countries.
6. In the 1880s, thousands of Irish immigrants came to the United States. Often they were denied employment opportunities because of their Irish ancestry.
7. During the Middle Ages, people were sometimes forced to confess to crimes by the use of torture.
8. Tom borrowed his friend's car and dented a fender. He agreed to pay for the repair.
9. If you are accused of a crime, the government has the obligation to provide a lawyer to assist you at public expense if you cannot afford one.
10. Before making a decision on which textbooks to adopt, a state curriculum commission must hold public hearings to enable interested persons or groups to present their views on the textbooks being considered.
11. In some cities, unauthorized parking in a handicap zone is punishable by a fine of \$330.
12. To qualify for a driver's license you must have an adequate knowledge of traffic laws, adequate driving skills, and be at least a certain age.

What do you think?

1. Which examples raise issues of the following types of justice?
 - distributive justice
 - corrective justice
 - procedural justice
2. What do you think is fair or unfair about each of the above situations? Explain your reasoning.
3. Think about your reasoning in the twelve examples involving issues of justice. How did you evaluate whether the situation was fair or just?
 - What questions did you ask or what things did you consider in the situations involving issues of distributive justice?
 - What questions did you ask or what things did you consider in the

situations involving issues of corrective justice?

- What questions did you ask or what things did you consider in the situations involving issues of procedural justice?

4. What situations have you experienced or observed that raised issues of justice similar to those in the examples?

Examining Justice—A National Ideal

Each of the following excerpts from the Declaration of Independence and the U.S. Constitution has been designed to protect and promote one or more of the kinds of justice you have been studying. Your teacher will divide your class into groups to complete this exercise. Each group should examine the excerpts they have been assigned and do the following:

- Decide whether the excerpts are designed to deal with issues of distributive, corrective, or procedural justice. Some may deal with more than one type of issue.
- Develop answers to the “What do you think?” questions that follow the list of excerpts and be prepared to report your group’s answers to the class.

Group 1

Excerpt from the Declaration of Independence

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.

Excerpts from the U.S. Constitution

AMENDMENT I (Bill of Rights, 1791)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT VIII (Bill of Rights, 1791)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Group 2

Excerpts from the Constitution of the United States

AMENDMENT XIV, Section 1 (1868)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE I, Section 9, Clause 3

No bill of attainder or ex post facto law shall be passed.

AMENDMENT VII (Bill of Rights, 1791)

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Group 3

Excerpts from the Constitution of the United States

ARTICLE I, Section 9, Clause 2

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

ARTICLE II, Section 2

The President...shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

AMENDMENT V (Bill of Rights, 1791)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XXVI, Section 1 (1971)

The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Group 4

Excerpts from the Constitution of the United States

ARTICLE III, Section 3, Clause 2

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

AMENDMENT VI (Bill of Rights, 1791)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

AMENDMENT XIII, Section 1 (1865)

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

AMENDMENT XXIV, Section 1 (1964)

The right of citizens of the United States to vote in any primary or other election for president or vice president, for electors for president or vice president, or for senator or representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

Group 5

Excerpts from the Constitution of the United States

ARTICLE III, Section 2, Clause 3

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

ARTICLE IV, Section 2

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

AMENDMENT IV (Bill of Rights, 1791)

The right of the people to be secure in their persons, houses, papers, and

effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT XIX, Section 1 (1920)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

What do you think?

1. Which of the excerpts deal with the following:

Distributive Justice—For the excerpts focusing on distributive justice, what benefits or burdens do they deal with? What values or interests does each excerpt seem to protect or promote?

Corrective Justice—For the excerpts focusing on corrective justice, what responses do they deal with? What values or interests does each excerpt seem to protect or promote?

Procedural Justice—For the excerpts focusing on procedural justice, what procedures do they deal with? What values or interests does each excerpt seem to protect or promote?

2. Which excerpts deal with more than one type of issue of justice?

What are some issues of distributive justice?

As you have learned, distributive justice deals with the fairness of the distribution of benefits or burdens among two or more people or groups in society.

Benefits may be such things as pay for work or the right to speak or to vote. They may include almost anything that can be distributed among a group of people that would be considered useful or desirable, such as praise, awards, opportunities for education, jobs, membership in organizations, or money.

Burdens may include obligations, such as homework or chores, working to earn money, paying taxes, or caring for another person. They may include almost anything that can be distributed among a group of people that would be considered undesirable, such as blame or punishment for wrongdoing.

Making decisions about what is fair may be relatively easy in some situations, for example, when a decision has to be made about which members of a team may

play in a game or which students may vote in school elections. In other situations, however, deciding what is fair is not easy and requires careful thought. In some instances, a solution that is distributively just may not be proper when considering other values and interests.

Difficult problems of distributive justice may arise over such questions as the following:

- Should all people have to pay the same amount of taxes or should the government require some to pay more than others? If so, how much more and why?
- Should all people receive the same educational opportunities at public expense, or should some people receive greater assistance and opportunities than others?
- Should part of the income of people who work go to those who are not working for one reason or another? If so, why? How? To whom? How much?
- Should the wealth of developed nations be used to assist developing nations?

These questions raise a few of the difficult issues of distributive justice that face all of us as individuals and as a society, within our nation and in other nations.

How can you decide issues of distributive justice?

Once you have identified an issue of distributive justice as different from issues of corrective or procedural justice, there are several useful intellectual tools to aid you in examining and making decisions about such issues. The first of these tools is the principle of similarity. Stated briefly, the principle means that in a particular situation, people who are the same or similar in certain important ways should be treated the same, or equally. In that situation, people who are different in certain important ways should be treated differently, or unequally. For example, suppose that out of ten people stranded on an island, three are sick and there is a limited amount of medicine. The three sick people are similar in an important way: need. They all have equal needs for the medicine and it would be fair to give each of the three persons the same amount. The seven other people are different from the sick people in an important way: need. They do not need the medicine, so it would be fair to treat them differently from the sick people and not give them the medicine.

What considerations are useful in applying the principle of similarity?

In the previous section, we looked at similarities and differences among people in terms of their needs. In other situations, we may look at similarities and differences in terms of people's capacities or abilities, and also in terms of

desert—in other words, how deserving they may be. One or more of these three considerations—need, capacity, and desert—are necessary when we use the principle of similarity.

Following are brief definitions of these terms and some simple problems that show the use of each consideration. In reality, many common problems of distributive justice are not as simple as the examples, and more than one of the following considerations should be used to develop a reasonable position on an issue of distributive justice.

NEED: To what degree are the persons or groups being considered similar or different in terms of their need for whatever is being distributed? Types of needs that might be considered include: physiological needs, such as hunger; psychological needs, such as affection or security; economic needs, such as money; or political needs, such as influence.

Example: Suppose you have food to distribute among fifty people. Seventeen have not eaten for three days and the rest have eaten regularly.

1. All other things being equal, how should you distribute the food? Why?
2. How is the consideration of need useful in applying the principle of similarity in making such a decision?

CAPACITY: To what degree are the persons or groups being considered similar or different in terms of their capacity to deal with whatever is being distributed? Types of capacities that might be considered include physical, psychological, intellectual, economic, and spiritual.

Example: Suppose ten men and six women apply for jobs with the fire department. Eight men and three women pass the department's rigorous physical strength and conditioning test that establishes their ability to satisfy the physical demands of the job.

1. All other things being equal, if there are three jobs available, who should be hired? Why?
2. How is the consideration of capacity useful in applying the principle of similarity in making such a decision?

DESERT: Consider the degree to which the persons or groups described are similar or different in terms of deserving whatever is being distributed, either because of their conduct or because of their status or position. Do similarities in the conduct or status of the persons or groups justify similar treatment? Or do differences in their conduct or status justify different treatment?

Example: Suppose that in the America's Cup sailing race, yachts from Australia and the United States qualified for the finals, a series of seven races. At various stages of the competition each day, different ships were ahead, but at the finish the ship from the United States was first over the line four times, and the ship from Australia was first over the line three times.

1. Which team should receive the America's Cup trophy? Why?
2. How is consideration of desert useful in applying the principle of similarity to make the decision?

Example: The Twenty-Sixth Amendment to the U.S. includes the following statement: "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

1. What reasoning might underlie giving all who have the status of being eighteen years or older the right to vote? Does the amendment prohibit exceptions being made on the basis, for example, of capacity? Might it be fair in some situations to deny the right to vote to those eighteen years or older in consideration of capacity or desert?
2. How is the consideration of desert useful in applying the principle of similarity in deciding who should have the right to vote?

What difficulties may arise in applying the principle of similarity?

Two of the most common areas in which disagreements arise about issues of distributive justice are

- deciding what kinds of similarities or differences (need, capacity, or desert) should be used or considered relevant in a particular situation, and
- determining to what degree members of a group are similar or different in terms of their needs, capacities, or desert.

Identifying Relevant Considerations

The following exercise illustrates these difficulties discussed in the preceding reading. Work with a study partner to complete both parts of this exercise.

Be prepared to share your answers with the class.

1. Discuss and identify which considerations (need, capacity, or desert) are most relevant in the distribution of the following:

- welfare benefits
- fines
- driver's licenses

- political rights
- college scholarships

2. Suppose one hundred people were to apply for twenty-five openings in the freshman class of a college. What considerations (need, capacity, or desert) should you use in determining whom to admit? How could you determine to what degree applicants were similar or different in terms of the considerations you decided were relevant?

What values and interests should be considered?

Deciding what would be just or fair using the principle of similarity and the consideration of need, capacity, or desert is essential in many situations. Before taking action on a decision regarding what would be just, however, it is important to take into account values and interests other than distributive justice. A *value* is something that you think is worthwhile and important, something that is right or good that you ought to try to achieve, such as kindness, honesty, loyalty, privacy, and freedom. An *interest* is something that you want or that you are concerned about, such as free time, good health, or rewards of one kind or another.

Example: Suppose a state created a program to help local communities finance the construction of flood-control systems. Under the program, the state would pay half the cost of needed improvements, provided the local community paid the other half with property taxes. Suppose that voters in a particular town had repeatedly rejected proposals to raise taxes to construct a flood-control system that would protect the town from a nearby river. After a series of heavy rains one spring, the river overflowed its banks and flooded the town. It destroyed thousands of homes and businesses, and the people of the town appealed to the state government for help in dealing with the disaster.

A narrow, or limited, idea of distributive justice might call for the state government to reject the request for help. However, the consequences of such a decision would include vast suffering by many people. Thus, considering such other values as kindness, the state government might decide to provide some relief.

Using Intellectual Tools to Evaluate a Legal Case

The following case arose before Congress passed the Civil Rights Act of 1964. That act, and other federal laws and court decisions, now prohibit racial discrimination in employment and in public accommodations. Read the case and work in small groups to complete the chart that follows it. The chart contains the intellectual tools you have just studied. Be prepared to explain your position to the class.

Colorado Anti-Discrimination Commission v. Continental Airlines, Inc.

Marion D. Green, an African American, had served as a pilot in the U.S. Air Force for several years. In 1957, when he was about to leave the Air Force, he wrote to several airline companies, including Continental Airlines, seeking employment as a pilot.

An executive of Continental Airlines told Green to fill out an employment application. They accepted his application and he took Continental's employment tests for pilots along with other applicants.

Green was one of the six people who passed the employment tests; he had more flying experience than the other qualified applicants, all of whom were white. Yet Green was not hired. He was put on the waiting list, while the other five applicants joined the company and entered the pilots' training program immediately. In the next two months, Continental accepted seventeen more white men into the training program. Green was still on the waiting list.

At this time, Green filed a complaint with the Colorado Anti-Discrimination Commission. At the hearing held by the commission, Green argued that Continental Airlines had refused to hire him solely because of his race. He argued that the company had violated the Colorado Anti-Discrimination Act of 1957. This act provided that it was unfair for any employer to refuse to hire any qualified applicant because of that person's race, creed, color, national origin, or ancestry.

Continental Airlines officials argued that the hiring of Green would cause great problems. His presence in the cockpit of an airplane might create arguments, which could be a safety hazard. They also said they would have a problem housing and feeding a black pilot because of racial discrimination in some cities. Furthermore, the company was afraid that the pilots' union would reject Green. This rejection would cause labor problems for the company. Therefore, they argued that the airline company could legitimately refuse to hire Green.