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Blame-Free Justice

If we had a society of people who actually believed in the free market axioms listed in chapter 1—individualism, property rights, rationality, selfishness, economic competition, etc.—what notions of economic justice would they subscribe to? Individualists would advocate what I shall call endogenous justice theories. These are theories that use only the preferences or personal ethical codes of the individuals in the society under consideration in judging whether a given social state is fair and that require a unanimous agreement among those individuals before justifying a particular state. In short, a social outcome is fair if all people think it is, and no external authority has the right to make that decision for them. Justice is then a totally operational concept. No philosophers or economists need be consulted, because the opinion of such external “experts” is irrelevant.

Endogenous justice theories are to be distinguished from exogenous justice theories, which define concepts of justice by relying on principles formulated without taking into account the individual ethical preferences of the population under discussion. These theories impose those principles from above upon the population. Exogenous concepts of justice would not be accepted by a society of individualists, because they would
reject the right of any external authority to impose its view of justice on their society. For instance, a socialist's egalitarian views on just income distributions are bound to be rejected by a society of nineteenth-century classical liberals, just as a priest's notions of justice might be rejected by a society of atheists. Endogenous theories of justice change with the population of people under investigation. What is just for one society is not for another. Individualists would argue that only the agents of a society have the right to define the concept of justice they use and that concept must be unanimously agreed to.

If people believe in rationality and the right of others to be selfish in the pursuit of their own self-interest, as proponents of the free market do, then outcomes that are defined by rational selfish action cannot be rejected as unfair. They may be undesirable (as the prisoner's dilemma game of chapter 4 indicates) but not unjust.

If people believe in property rights and have faith in the invisible hand (when coupled with the rationality and selfishness that support it) then it would appear that social agents have a right to whatever outcomes the free market defines for them. This fact generates the free market advocate’s belief in a process-oriented view of justice as proposed by Nozick. Such theories of justice, as we discussed in chapter 4, judge all social outcomes or income distributions in terms of the process that defines them and not in terms of the properties of the actual income distributions or other outcomes that result.

For any theory of justice to be acceptable to a group of people who believe in the axioms listed in chapter 1, it must not be exogenous and outcome-oriented. As individualists they would reject the imposition of outcomes or of external standards of fairness. Only the individuals involved have the right to do that. They would also reject either an endogenous or exogenous predetermination of outcomes, because doing so (by, say, redistributing income) is bound to violate “end-state-oriented” property rights. Hence, a group of individualists believing in the axioms listed in chapter 1 would only accept a theory of justice that is endogenous and process-oriented.

Few of the justice theories available today actually fit these characteristics very well. For instance, egalitarianism is obviously an outcome-oriented, exogenous theory of justice, as are Rawlsian justice, utilitarianism, and the notions of Shapley and Nash relating to game theory. Nozick’s theory, on the other hand, is obviously process-oriented, but exogenous, since it starts with the presumption that a “fair” outcome is one generated by a “fair” process and then imposes this belief on the economies or societies studied. Clearly, however, such a belief is not shared by all societies and hence is not endogenous.

Finally, Duncan Foley and Hal Varian espouse a notion of justice in which an allocation of goods is fair if it is “envy-free” in the sense that no individual in society envies the bundles of any other agent. Here, each individual evaluates all other individual’s bundles in terms of his or her own preferences. If all individuals prefer their own bundles to those of all others, the allocation is deemed envy-free and fair. Clearly Foley’s and Varian’s notion is endogenous (only individual preferences are consulted and the criterion is unanimity) and outcome-oriented. All of these theories are summarized in Figure 7–1.

<table>
<thead>
<tr>
<th>process-oriented theories</th>
<th>end-state-oriented theories</th>
</tr>
</thead>
<tbody>
<tr>
<td>exogenous theories</td>
<td>egalitarianism, utilitarianism, Rawlsian justice (Shapley, Nash)</td>
</tr>
<tr>
<td>Nozick</td>
<td>envy-freeness</td>
</tr>
</tbody>
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Figure 7–1. Classification of theories of justice
Notice that I have not listed any theories as endogenous and process-oriented. I will now present one such theory, which I shall call blame-free justice. I demonstrate that although this theory should be acceptable to proponents of the free market, it can define outcomes that any free market advocate should reject. Hence, this concept of justice demonstrates, by example, that the free market axioms may determine inconsistent results.

**BLAME-FREE JUSTICE**

I shall define blame-freeness as a notion of justice that looks at the process defining a particular social outcome, evaluates the behavior that each person displayed during this process, and then declares the outcome just or not depending on whether the behavior defining it was reasonable. However, since blame-freeness is an endogenous theory, when we judge any individual's behavior we must do so strictly in terms of the preferences and ethical codes of the individual in the society we are investigating and they must all agree that their behavior was reasonable. The most straightforward way to evaluate a person's behavior is to put oneself in his position and ask if you would have acted as he did under the circumstances. If the answer is yes, then you cannot blame him for his actions and in that sense his actions are justifiable. Furthermore, if no one can blame anyone for his actions in determining a particular social outcome, then that outcome will be called "blame-free" and is just in that sense. Blame- free outcomes can thus be defined as follows: An outcome \( v \) in society \( Z \) with institutional structure \( I \) is justifiable if no social agent in \( Z \) can blame any other agent for the actions he took in defining outcome \( v \).

Notice that blame-freeness is an endogenous, process-oriented theory of justice. It is endogenous because the only information needed in order to judge a social outcome is the preferences of the agents in society and their unanimous consent. It is process-oriented because blame-freeness never looks at the outcome under investigation but rather only at the actions of people during the process defining this outcome. Hence, on this criterion, blame-freeness is more consistent with our free market axioms than are any of the other justice concepts listed. Let us investigate what blame-freeness implies by looking at two examples.

**Situation 1:** Assume that a terminally ill cancer patient is lying in his hospital bed riddled with pain. At night a nurse mistakenly leaves a lethal drug by his bedside, which he knowingly takes and kills himself. Is his action justifiable by a society of agents reared in the Judeo-Christian moral tradition?

**Situation 2:** A set of oligopolists feels that their only obligation to society is to make money. One oligopolist is offered the exclusive rights to exploit a valuable resource that all firms need in order to exist. It buys the resource, excludes all other firms from its use, and establishes itself as a monopolist. Can such an act be justified by the oligopolists under consideration?

According to blame-free justice, a person who needs to answer these questions begins by asking himself what he would have done if placed in the situation described. He must check his own personal ethical system and decide upon an action. He would then compare his action to the one chosen by the person under consideration. If the two actions are identical, then the original act is a blame-free act. If this is true for all agents in society, then the action and the resulting outcome are universally "blame-free" and justifiable according to our theory of justice.

However, notice exactly what this blame-free notion entails. First, we must locate the relevant population within which to solicit opinions. Acts that are blame-free in college dormitories may be blameworthy in banks. Blame-freeness then differs from Hare's notion of universalizability since it is a notion conditional on the population under investigation and not generalizable to all conceivable populations.

Blame-free acts and the resulting social states they define may violate external absolute ethical codes and, hence, may not be justifiable when judged by them. For instance, in situation 1, suicide violates Judeo-Christian beliefs. According to those beliefs suicide is not justifiable whether or not each
member of a certain population would have killed himself if he were a terminal cancer patient. Blame-freeness, then, is a totally endogenous ethic. Acts are justifiable in a society if all people in that society think they are, because only their opinions are relevant.

Along these lines, notice that because blame-freeness looks only at the individual ethics of the agents in society for its justification, these societies are likely to fall victim to their own personal ethical standards. For instance, if, as in situation C, society consisted of a group of selfish, profit-maximizing oligopolists, the monopoly created there would have to be justifiable despite our intuitive feeling (summarized by the Sherman Anti-Trust Act) that the act is unfair. Societies that make nasty personal ethical beds for themselves are forced to lie in them if blame-freeness is to be used as a moral criterion.

Actions that are blame-free may define social states that are not Pareto superior to the state existing before the act was taken. Clearly, in the oligopoly case, each firm is made worse off by a monopolist's actions, and society as a whole suffers as well if consumer surplus is to be used as a criterion. Yet, with respect to the oligopolists, no firm blames the monopolist for his action. They would have done the same thing if they had been in his place.

Blame-freeness has a unanimity requirement. All people in a relevant population must not blame a person before his action can be called blame-free. This is clearly a strong requirement that allows prudes to have a moral veto over all actions. The requirements can be weakened by using a representative or average person (the legal "reasonable man") performing the blame-free experiment, but that will not be necessary for our purposes here.

In our definition of blame-freeness, we required that the institutional structure (I) of the economy under consideration must be considered before one is asked to judge the blame-freeness of any agent's act. This was done because the social states that we are asked to judge do not exist in a vacuum. Rather they are the outcome of a multitude of social and economic institutions that define rules constraining our behavior and awarding us payoffs for our actions. In judging these outcomes, in essence we are being asked to judge the fairness of the institutions used to define them.

Blame-freeness is then a heavily institutional notion in that each agent's actions are judged in an institutional context and the blame-freeness of particular acts changes as this context changes. In this sense, it is similar to Rawls's notion of maxi-min justice, except for the fact that Rawls worked toward designing fair institutions, while we are concerned here with examining the fairness of the outcomes produced by pre-existing institutions.

One should not conclude that our notion of blame-freeness is a justification of lawlessness. If a person violates the law in a blame-free way, it does not follow that he should not be punished. The law is still the law and obeying it may have a rule-utilitarian justification that dominates the blame-freeness of that particular act. However, if a law or institution repeatedly leads people to violate it in a blame-free way, then a good case can be made for a change in this law or institution. This is the conclusion we will pursue later when we talk about the blame-freeness of income distributions.

BLAME-FREENESS AND RATIONALITY

Clearly there is a close relationship between blame-freeness and the rationality assumption made in the free market argument. In fact, when one person assumes another's position, he in essence says, "If I were in his place but still had my tastes and preferences, and if I were to choose the action that maximized my satisfaction (my selfish utility function) or was best for me, would I do what he did?" Hence, if one views the rationality assumption as the assumption that people maximize, then the blame-free experiment that people are asked to perform is a natural one for a set of free market advocates to perform in judging the reasonableness of people's actions and hence should be acceptable to them.
BLAME-FREENESS, INCOME DISTRIBUTIONS, AND PROPERTY RIGHTS

Although blame-freeness is a notion consistent with the axioms listed in chapter 1 and hence one that no free market advocate should have any theoretical objection to (although that does not mean he must like it), it can be used to justify social outcomes that involve violations of property rights. Hence, moral systems or theories of justice that satisfy the free market axioms listed in chapter 1 may fail to be consistent. Let us see how this can be.

Assume that we have three people living in an economy. Person 1 has great musical skills, person 2 great athletic skills, and person 3 great oratorical skills. Assume that society’s tastes and demands are such that people with athletic and oratorical skills are highly prized, but those with musical skills are not. In the open labor market for these skills the athlete earns $100,000 a year, the orator-politician earns $70,000, and the musician earns $0. A corner solution exists for the musician. This unequal distribution of income is not unfair according to Nozick because it was arrived at totally voluntarily. The musician does not feel like sitting passively and starving to death, but decides to rob both the athlete and the orator, making the final distribution $90,000 for the athlete, $65,000 for the orator, and $15,000 for himself. Is this allocation fair? According to Nozick, the answer is obviously no. The final distribution of income was arrived at by non-voluntary means and hence is not justifiable. But can anyone really blame the musician? To put it another way, if fate had worked out differently and the athlete or orator had been allocated a zero wage, might they not do exactly the same thing? If so, then he cannot be blamed for his actions by any member of society, and the resulting distribution of income is blame-free.

Notice that the justification of the musician’s action is that he is just responding rationally to the relative wages and prices that he faces. Hence if we are rational, we cannot logically blame him for his actions, assuming that our best response to a zero wage would also be to engage in theft rather than to starve.

In the same vein, it is interesting to look at how John Rawls might view this argument. Assume that our three people meet with each other before any information is known about whose talents will be demanded by society (i.e., before what Rawls calls the “veil of ignorance” is lifted). When they meet they discuss the fact that if they let the market determine their wage rates and hence their incomes, one will receive an income of $100,000, one an income of $70,000, and one an income of $0. If the market determined their income, the total GNP of the society would be $170,000, which is the largest possible GNP. Assume that these agents know that the one who receives the zero income is not going to sit idly by and accept it. In fact, they know he will rob the others.

Rawls’s argument would be that the rules that society used to generate these incomes should be changed to increase the welfare of the worst-off member of society (i.e., the one who is the corner dweller). In doing this, however, the total GNP of the economy would have to fall, since we know that the set of rules defined by the market maximized GNP. Hence, in the Rawlsian view, all people work but the market is interfered with to such an extent that the GNP produced decreases. The economic pie to be distributed as a result of the contract or set of rules agreed to by Rawls’s agents under the veil of ignorance will be smaller, but this inefficiency is accepted because it increases the income of the least-well-off member of society.

The argument for income transfers is simple. The free market, by determining an unequal distribution of income (and possibly a corner solution) leads some fraction of the population to engage in crime as a rational response to their plight. If the activities they engage in are blame-free in the sense that all other agents in society would have done the same if they had been reduced to their circumstances, then the market has created a situation where blame-free thefts exist. The population is then faced with a dilemma. Should they spend real resources trying to beef up their police forces,
build new jails, and hire more judges to prevent crimes that any of them would have committed if they had been criminals? Or should they simply transfer to each person a blame-free income and spend resources to incarcerate only those remaining individuals who commit blameworthy thefts? In other words, each individual feels he has a right to his blame-free income because no social institution (i.e., the market or the state) has the right to force a free agent to become a criminal as the rational, maximizing response to the incentive structure of the institution. By forcing the individual into a life of blame-free crime, the institution loses its right to judge his actions.

As a result, we can see that free markets are capable of determining outcomes in which people have incentives to violate the property rights of others in a blame-free way. Hence, a set of rational economic agents who believe in the market and in the endogenous, process-oriented theories of justice supporting it may very well be able to justify social outcomes that violate people's property rights. A rationality-based justice theory may not respect people's rights to keep what the market gives them.

CONCLUSION

If free market advocates are going to subscribe to the set of axioms described in chapter 1, then they may have to suffer the consequences of these beliefs and accept those actions of individual maximizing agents that they consider to be blame-free. The American economy, with its emphasis on rationality, selfishness, profit maximizing, and individual freedom, must suffer the consequences of these beliefs and it will have very little to complain about if some of these bad consequences result from acts that all people, if they are consistent advocates of free markets, would have to consider blame-free. We are all victims of the assumptions that underlie our moral lives, and if we are willing to accept the benefits of those axioms (freedom and efficiency), we must also understand their shortcomings (poverty and crime).

NOTES