

Fairness: Results Versus Process



Those of us who support liberty, limited government, and rule of law will never prevail in the public arena until we can compellingly make the case that free markets and voluntary exchange are inherently fairer than alternative forms of social organization. Proving that economic freedom leads to higher living standards and greater personal liberty is not nearly so persuasive as proving that it is morally superior.

Interventionists make their case for social controls and income redistribution based on the unfairness of outcomes such as differences in income, education, and wealth. Most people find that argument persuasive. After all, how can the game of life possibly be fair when some people's yearly income totals hundreds of thousands, even millions, of dollars, while many others scarcely earn ten or twenty thousand dollars? Our response to the interventionist's claim of unfairness should be that results cannot possibly determine fairness.

Here's one way to think about it. The Chicago Bulls have won the NBA championship six times in the last eight years. There are 20 teams in the league. Is it fair that one team wins so often? By simply knowing the results, can anyone give an unambiguous answer as to whether there's been basketball justice? The answer is no. Chicago's victories might be a result of a collusion between the Bulls play-

ers, referees, and timekeepers, or the result of superior ability.

Look to the Process

The justice, or fairness, of any outcome can only be meaningfully determined by examining the process that produced it. To determine whether the Bulls' domination of the league is fair or not, one must ask process questions such as: (1) Did the players play according to the rules of the game; that is, did they obey basketball "law"? (2) Did referees apply those rules in an unbiased fashion and were penalties evenly exacted for infractions? (3) Was participation voluntary? If the answers are yes, then any outcome is consistent with basketball fairness and justice.

Suppose we forsake the process approach and take a results-oriented approach. Based on the outcome—the Bulls' disproportionate wins—something should be done to create basketball justice. A Board of Game Deciders could be created to control the distribution of championships. Team owners and coaches might present their cases to the Board. Washington Wizards coach Bernie Bickerstaff might argue that his team has not won the NBA championship in 20 years and is truly deserving of a win in 1999. He might strengthen his argument by pointing out how hard his players worked both during the season and in the off-season. Moreover, Bickerstaff might ask the Board to consider the great psychological damage his players face being seen as perennial losers.

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One can well imagine the resulting conflict and rancor that would develop over which team is most deserving of the NBA championship. Decent people would become bitter enemies over who had the more just and persuasive case.

In fact, NBA and other championship games are played every year with little or no bitterness. How is it that people with such conflicting interests play a game, agree with the outcome, and walk away good sports? It is a minor miracle of sorts.

The miracle is that it is far easier to reach agreement about the rules of a game than its outcomes. Even basketball teams in the cellar will conclude that their long-run interests lie in rules that are durable and evenhanded. If a coach yearns for an NBA championship, he can recruit and train superior talent and hire assistant coaches to get the best out of players. On the other hand, if the outcome is to be predetermined, a team owner, instead of trying to raise productivity, will lobby the Board of Game Deciders and bring lawsuits against biased Board decisions. There would be at least two predictable negative results. Predetermined outcomes would lower the skills and fitness of all players and lower the overall quality of the sport. What would team productivity have to do with winning? And, predetermined outcomes would heighten the potential for conflict.

On Rules

We should not evaluate rules in terms of the likely outcomes they will produce for certain people-specific circumstances. As Nobel Laureate F.A. Hayek argued, "It is the ignorance of the future outcome which makes possible agreement on rules which serve as common means for a variety of purposes."

Many people may deem it undesirable for the Chicago Bulls to dominate the league. However, despite that consensus, we cannot call the outcome unfair. If we deem disappointing outcomes unfair, then the term "fair" has no meaning whatsoever, because virtually all human actions and outcomes produce a disappointing outcome for someone else.

Mass production of automobiles disappointed the buggy manufacturers and their employees. Hand-held calculators disappoint-

ed the producers of slide rules. My marriage to Mrs. Williams produced a disappointing outcome for other women. In each instance, and millions more, the actions taken by one person or group produced undesirable outcomes for others.

Therefore, to begin to say anything meaningful about fairness and just conduct, we have to ask: did the participants play according to commonly agreed-on rules? But questions about justice cannot be fully settled simply by asking whether people conducted themselves according to rules. All societies have rules. In the United States before the Civil War, the rules held that blacks could be owned as slaves. In Nazi Germany, the rules held that Jews could be relocated to concentration camps. In the former Soviet Union, the rules held that a citizen could not emigrate freely. Conduct in accordance with rules or laws alone can never be the sole criterion for establishing fairness. We must think about the nature of just rules and laws.

When we discuss just rules for our market relationships, we find that they are not substantively different from the rules in basketball and other sorts of rules. In the marketplace, just rules surely include the right to property and its transference by consent, and the right to engage in peaceable, voluntary exchange. If these rights are protected, any result is just and fair, including the outcome that some people are very rich and others are very poor.

Thus, we who cherish liberty must focus our arguments on the rules of the game. In doing so, we should make the case that today there is unfairness in the rules governing our market relationships. That unfairness masks itself as social compassion in the form of laws that restrict the right to property and voluntary exchange such as: occupational and business licensing, regulation of economic activity, and legalized theft.

Even though we libertarians share some goals of the interventionists, such as greater wealth for our fellow man, we differ on the means. We look to process and they look to results as a criterion for justice. If we could argue our case more effectively and eliminate unfair rules, both libertarians and interventionists would be pleased with the results: greater prosperity for all. □

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