
Win-Win Equity

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I. EQUITY VERSUS EFFICIENCY

A. IN RACE AND GENDER RELATIONS (See Table 1)

Contemporary conservatives advocate merit hiring in dealing with equal employment opportunity, although in the past they have generally been more tolerant of discrimination than liberals.

TABLE 1. EQUITY VERSUS EFFICIENCY IN RACE AND GENDER RELATIONS

GOALS	C	L
ALTERNATIVES	MERIT PRODUCTIVITY (efficiency, effectiveness, or high GNP)	EQUITY OR FAIRNESS (to those who have been discriminated)
C COLOR-BLIND AND GENDER-BLIND (in hiring and admissions)	+ May be illegal where recent overt discrimination present	-
L TEMPORARY PREFERENCES (to promote diversity)	-	+ But may not be constitutional

<p>N</p> <p>REAGAN AFFIRMATIVE ACTION:</p> <ol style="list-style-type: none"> 1. No overt discrimination 2. No discriminatory test that does not predict job performance 3. Seek out minorities by advertising in appropriate places 4. Announce equal opportunity employment 5. Locate closer to unemployed, i.e., enterprise zones 	<p>0</p>	<p>0</p>
<p>SOS OR WIN-WIN</p> <ol style="list-style-type: none"> 1. Outreach training <ol style="list-style-type: none"> a. increases merit b. increases qualified diversity 2. Based on economic disadvantage 3. No preferences, i.e., color blind and gender blind 	<p>++</p>	<p>++</p>

C= conservative, L= liberal, N= neutral, SOS= super-optimum or win-win solution

Contemporary liberals often advocate at least temporary preferential hiring in order to redress past discrimination, especially where candidates are nearly tied, tests are subjective, the preferences are temporary, and private enterprise rather than government employment is involved.

The compromise position is merit hiring, but affirmatively seeking qualified minority candidates through (1) advertising in minority newspapers, (2) locating one's physical plant in minority neighborhoods

and possibly with subsidies in enterprise zones, (3) removing requirements that are racially correlated, but not correlated with job performance, and (4) designating the firm as an equal opportunity employer.

A win-win or super-optimizing alternative could emphasize upgrading skills so that minorities can qualify for merit hiring without needing any preferences or even affirmative recruiting. The upgrading might refer to formal education, adult education, and especially on-the-job training. Upgrading skills can include outreach training based on economic deprivation or disadvantage, rather than race.

That kind of win-win or super-optimum solution (SOS) does well on a conservative goal of having a productive workforce and well on a liberal goal of equity or fairness in distributing benefits in employment or education.

B. IN ENVIRONMENTAL POLICY (See Table 2)

The field of environmental policy involves conservative and liberal approaches. Conservatives emphasize the role of consumers and the marketplace in restraining business from engaging in socially undesirable activities, like pollution. The liberals emphasize the role of the government in restraining pollution. Conservatives are especially interested in the goal of economic development, which may be interfered with by government restraints. Liberals are especially interested in the goal of a clean environment, which may not be so effectively achieved by relying on selective consumer buying.

TABLE 2. EQUITY VERSUS EFFICIENCY IN ENVIRONMENTAL POLICY

GOALS	C	L
ALTERNATIVES	ECONOMIC EFFICIENCY (productivity, effectiveness, or high GNP)	ENVIRONMENTAL EQUITY (clean air, clean water, no radiation, excess noise, or other pollution)

C	+	-
MARKETPLACE (i.e. consumers will boycott polluters)		Consumers do not boycott, e.g., power or steel
L		+
PROHIBIT POLLUTION (or regulate degree, with penalties or taxes on pollution)	-	If enforced and if politically feasible
N	0	0
MARKETABLE RIGHTS TO POLLUTE	Still involves an expense to manufacturers, etc., but not so much	Some Incentive to reduce
SOS OR WIN-WIN		
1. New technologies in a. Manufacturing, e.g., gold panning on Amazon b. Transportation, e.g., 80 mpg car c. Energy, e.g., fusion energy d. Agriculture, e.g., tree farms 2. That are both cheaper and cleaner	++	++

A neutral compromise approach might involve giving business firms partial subsidies to adopt anti-pollution devices. Doing so would involve some requirements for receiving the subsidies, but less interference than regulations and fines. Doing so would help promote a cleaner environment,

but there might still be evasions by business in view of the extra expense and trouble in complying.

A win-win policy alternative might instead emphasize subsidies to universities and research firms to develop new processes (that relate to manufacturing, transportation, energy, and agriculture) which are both less expensive and cleaner than the old processes. Those new processes would then be adopted by business firms because they are more profitable, not because the firms are being forced or subsidized to do so.

The new processes would thus achieve the conservative goals of profits and economic development, even better than retaining the present marketplace. Such a win-win policy would also promote the liberal goal of a cleaner environment, even better than a system of regulation, and without the expense of a continuing subsidy for adopting and renewing anti-pollution devices.

A specific example of such an environmental win-win policy has been finding a substitute for aerosol propellants and air-conditioning freon that is more profitable to manufacturers and simultaneously less harmful to the ozone layer, which protects against skin cancer. Another specific example is developing an electric car, which saves money on gasoline and maintenance, while at the same time not generating the exhaust pollution of internal-combustion cars. Developing hydrogen fusion or solar energy may also be an example of a less expensive and cleaner fuel for manufacturing processes.

C. DISPLACED WORKERS (See Table 3)

Displacement of labor means displaced because of (1) productivity downsizing, (2) free trade, (3) immigration, (4) civilian conversion, (5) jobs for public aid recipients, the disabled or the aged, who might otherwise be on welfare, and (6) jobs for minorities and women, who might otherwise be discriminated against.

TABLE 3. EQUITY VERSUS EFFICIENCY IN DISPLACEMENT OF LABOR

GOALS ALTERNATIVES	C EFFICIENCY (merit or survival of the fittest)	L EQUITY (i.e., fairness to those unemployed to no fault)
C MARKETPLACE (leave to the labor marketplace)	+	-
L WELFARE HANDOUTS with few conditions	-	+
N WELFARE WITH CONDITIONS: 1. No able bodied eligibles, especially males 2. Bare minimum benefits 3. Residence requirements 4. Provide no due process	0	0
SOS OR WIN-WIN JOB FACILITATORS:	++	++

<ol style="list-style-type: none"> 1. Training 2. Wage subsidy 3. Employment agency commissions 4. Rising GNP 5. Relocation 6. Welfare conditional on training and job cooperation 		
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Displacement of labor means displaced because of (1) productivity downsizing, (2) free trade, (3) immigration, (4) jobs for public aid recipients, disabled or aged, (5) minorities and women.

The issue here is how to find jobs for displaced workers. The conservative emphasis is to leave it up to the individual to find a job on his own and not make it a responsibility of other people.

The liberal emphasis is on a welfare agency or another government agency doing most of the job finding work. The neutral position might involve delegating the activity to a non-profit organization.

A key conservative goal is to save tax money. That means encouraging job finding to reduce welfare payments, but not incurring high fees for job finding. A key liberal goal is to find jobs for displaced workers or welfare recipients not just to save welfare payments, but also because jobs can increase the income, quality of life, and dignity of welfare recipients. Doing so also has effects that relate to multipliers, compounding, role models, and reducing illegal activities.

An SOS alternative is to contract out to a private profit-making firm at a commission of about \$X per welfare recipient who receives long-term employment. Half of the commission is paid after four months on the job and the other half after eight months. The firm is responsible for providing training, day care, employment leads, advice, and dispute resolution, which the government agency might otherwise provide.

This is a good example of contracting out. The profit motive stimulates more success in finding jobs than the rate of success by a

government agency or a non-profit organization. The firm also has more capability than the recipient. Tax money is saved in the long-run as a result of replacing welfare with work. It may also be saved in the short run by costing less money per long-term job found than the cost with a government agency or non-profit organization.

Related activities can also help displaced business people find new jobs or new businesses.

D. IN MINORITY REDISTRICTING (See Table 4)

Assume for the sake of this discussion that we have a city like Chicago or a state like Mississippi that is about 40% black (or minority) and about 60% white.

TABLE 4. EQUITY VERSUS EFFICIENCY IN MINORITY REDISTRICTING

GOALS ALTERNATIVES	C EFFICIENCY (color-blind and not divisive)	L EQUITY (minority proportionality)
C RANDOM Single member districts, randomly drawn (0%)	+	-
L PROPORTIONAL Districts deliberately drawn to obtain proportionality (40%)	-	+
N BLACK DISTRICTS Safe Black majority districts, deliberately	0	0

drawn (20%)		
SOS OR WIN-WIN		
CUMULATIVE VOTING Multi-member districts with cumulative voting per candidate (40% with color-blind districts)	++	++

Conservatives tend to endorse color-blind districting, in which lines are drawn by a computer with no regard for where blacks or whites live, just so long as each district has equal population. The result might be that no district will be a safe black district that can guarantee a black legislator. The percentage of blacks in the districts may range from about 10% to 65%. Above 65% black is generally considered a safe black district for an average black candidate running against an average white candidate.

Liberals tend to advocate proportional districting, which means that the computer is affirmatively programmed to provide that 40% of the districts will have black majorities if blacks are 40% of the population of the city (e.g., Chicago) or of the state (e.g., Mississippi).

A neutral or middling position is to provide as many safe black districts as possible. Such a district has more than 65% black voters. Such districts are endorsed by conservatives who want to pack black voters and thereby decrease the number of black legislators. Such districts are also endorsed by black incumbents who want to avoid white competition. By wasting or packing black voters, only 20% of the legislature may be black. A victory beyond 51% involves wasted votes although they may be good insurance.

A key conservative goal is to reduce racial divisiveness. Color-blind districting may or may not do that. It is not discriminatory or segregationist and thus not divisive for those reasons. It may antagonize blacks by providing no black legislators, although blacks may become the swing vote or pivotal group in many districts. Proportional districting deliberately creates black districts and white districts, and may be divisive for that reason. Proportionality though sounds equitable and thus not divisive, but

may be when proportionality is contrived. In between is the approach of safe black districts, which may be less antagonistic to many whites than proportional districting because it results in fewer black legislators. It may be antagonistic to many blacks, however, because it is less than proportional. Thus all three systems are questionable in reducing divisiveness.

A key liberal goal is to increase black influence. Proportional districting may get the highest score on that goal in terms of quantity of black legislators. Color-blind districting may get the lowest. Safe black districts are in between. Color-blind districting may, however, actually increase black influence by way of becoming a pivotal group in almost all districts. Thus all three systems are questionable relative to each other on increasing black influence. It all depends on how one defines “increasing black influence” and “increasing racial divisiveness.”

A way to simultaneously reduce racial divisiveness and increase black influence is to provide for at-large cumulative voting. If there are 5 seats in the legislature, then all candidates run at-large. Any voter can cast 5 votes for just one candidate, or divide the 5 among 4, 3, or 2 candidates. Where the legislature is bigger, one can provide for multi-member districts with about 5 seats per district. This system reduces racial divisiveness if the voting is at large or if the multi-member districts are drawn in a color-blind way. It also allows for a lot of black influence if blacks want to cast all 5 of their votes just for pro-black candidates.

Racial balance means that every district has the same percentage of blacks. That is the equivalent of 100% safe-black districts, if the state or city is more than 65% black. It is the equivalent of maximizing the swing vote if the city is about 40-50% black. It is the equivalent of color-blind districting if the city is less than about 20% or 10% black. Thus racial balance across every district is neither pro-black nor anti-black in itself, until one knows what the racial-balance percent is.

Another alleged way to achieve both goals simultaneously is draw the single-member district lines so as to maximize the influence of blacks as swing or pivotal voters. That means have as many districts as possible in which blacks are between about 40% and 50%. They can then guarantee that pro-black candidates will win in each such district. Racial divisiveness is reduced by not having any segregated or separationist black districts.

Black influence is increased by determining who many or most of the white winners will be. That pivotal black system, however, produces about the same results as color-blind districting in terms of a low percentage of black legislators. Actually, substantially less than 40% is needed to be a pivotal group in a two-party district or a two-candidate primary.

The super-optimum solution of at-large cumulative voting may have political opposition because it gives the minority political party some representation, as well as minority ethnic groups. The swing-vote approach may have political opposition because blacks and minorities tend to measure their influence by how many black legislators there are, rather than by how much influence they have over the white legislators.

From about 1880 to 1980, Illinois provided for cumulative voting of state legislators in the lower house. The system involved three seats for each district. The system was abolished for two reasons. First, in downstate areas, the Republicans would run one candidate and the Democrats would run two. Thus, the voters had no choice since there were only three seats per district. That could have been prevented by requiring in the law that each major political party must run at least two candidates per district. The second reason was that the Republicans objected to Democrats having proportional representation downstate, and the Democrats objected to the Republicans having proportional representation in the Chicago area. The party leaders were thus in effect conspiring to deprive the voters of both competitive choice and proportional representation. If competitive choice and proportional representation were federal constitutional requirements, then the cumulative voting could not be so easily manipulated at the state level.

II. EQUITY VERSUS EQUITY

A. IN CRIMINAL JUSTICE: VICTIMS AND DEFENDANTS (See Table 5)

1. THE CONTROVERSY

A concrete example is the controversy over the size of juries in criminal cases, as shown in Table 5. Liberals argue in favor of preserving the traditional 12-person jury, as contrasted to allowing juries as small as only 6 people. Liberals view the larger jury as being important for

protecting the innocent, since it is more difficult for a prosecutor to convince 12 jurors. Liberals may also argue that 12-person juries allow for more public participation, but this seems less important than decreasing convictions, although public participation may sound more acceptable.

TABLE 5. EQUITY VERSUS EQUITY IN CRIMINAL JUSTICE

GOALS ALTERNATIVES	C EQUITY #1 (convict the guilty, fairness to exclusionary victims)	L EQUITY #2 (acquit the innocent, fairness to defendants)
C 6-PERSON AND MAJORITY Smaller than 11- person juries (about 6); less than unanimity (about 51%), also less appeals, right to counsel, or rule	+ Reduce crime through deterrence	- Reduce crime through respect for legal system and alternative opportunities.
L 12-PERSON AND UNANIMITY (retain 12-person juries, retain unanimity)	-	+
N COMPROMISE 8-person jury. 3/4 vote (9 of 12, or 6 of 8)	0	0

SOS OR WIN-WIN	++	++
1. Videotape all trials		
2. Encourage note taking		
3. Asking questions of lawyers and judge		
4. Written instructions.		
5. Pre-trial training		

Conservatives argue in favor of allowing 6-person juries. They view smaller juries as being important for convicting the guilty, since it is easier for a prosecutor to convince 6 jurors unanimously of the defendant's guilt than it is to convince 12 jurors. Conservatives may also argue that 6-person juries reduce delay, but that seems less important than increasing convictions, although delay reduction may sound more acceptable.

Liberals in this context are thus especially sensitive to avoiding errors of convicting the innocent, although they also want to avoid errors of not convicting the guilty. Conservatives are especially sensitive to avoiding errors of not convicting the guilty although they also want to avoid the errors of convicting the innocent. So long as the problem is defined in terms of optimum jury size, there is an inherent trade-off between those two goals. Liberals see any reduction in jury size as sacrificing protection of the innocent, in favor of convicting the guilty. Conservatives see a retention of the 12-person jury as sacrificing the need to convict the guilty, in favor of an undue sensitivity to protecting the innocent, whom they tend to see as not being a significant percentage of the defendants who are tried.

2. THE RESOLUTION

What may be needed in this policy controversy is to redefine the problem away from "How many people should be present on a jury in criminal cases?" A more appropriate definition of the problem in light of what the liberals and conservatives are actually arguing over is "How can we simultaneously increase the probability of convicting guilty defendants and increase the probability of acquitting innocent defendants?" There is no

inherent trade-off between those two goals. In fact, there may be no inherent trade-off between any two goals. By so restating the problem, one's attention is directed toward thinking about which procedural changes could achieve increases on both goals simultaneously, rather than thinking what is the ideal compromise, middling position, or equilibrium between 12-person and 6-person juries.

There are some procedural changes that could simultaneously increase goal achievement on both the liberal and conservative goals. They all involve increasing the general accuracy of juries and decreasing the general inaccuracy. One such procedural change would be allowing jurors to take notes. In most states, they are prohibited from doing so. It is unclear as to why that prohibition began. One plausible explanation is that when the jury system was started in about the 1500s in England, few people could read or write. It may have been felt that if those few jurors who could take notes were allowed to do so, then they would dominate jury decision making. A 12-person jury could then in effect become a jury of one or two people who have been making a written record of what those jurors received as having occurred. As of 1990, virtually all jurors are capable of taking notes and should be allowed to do so. It would improve their accuracy in both convicting the guilty and acquitting the innocent.

Along related lines, an especially useful innovation would be to provide for automatic videotaping of jury trials and bench trials. This is a possible double SOS. It is super-optimum in the sense that it increases the accuracy of convicting the guilty and acquitting the innocent simultaneously. Quite often in jury deliberations, there is disagreement among the jurors as to what was said by a certain witness, lawyer, or the judge. One juror who is especially domineering may say that the witness said the defendant was seen at the scene of the crime at 8:00 a.m. Other jurors may think it was 8:00 p.m. The disagreement can be quickly and accurately resolved with a videotape made by a camcorder that can be played back on any TV set with a video playback capability. Otherwise the winning perception is the one held by whichever jurors may have the most aggressive personalities. This could result in either an error of acquitting a guilty person, or an error of convicting an innocent person.

The second sense in which the camcorder videotaping is super-optimum is that it decreases costs and increases benefits simultaneously. It is substantially less expensive to videotape a jury trial than it is to pay a

stenotypist to try to record verbatim what was said at the trial. The camcorder can be operated by someone who can easily be taught what little is involved. The cost of each tape is nominal and can be reused. The benefits are substantially increased because (1) one gets instant replay as contrasted to transcribing stenotyping months later, (2) one gets accurate replay as contrasted to the extensively ad-libbed record that is made by court reporters, (3) one can see facial expressions, (4) one can hear voice connotations, and (5) one can hear two or more people talking at the same time, which tends to become gibberish or missing information in stenotyping notes.

In addition to note-taking and videotaping, there are a number of other ways of increasing general jury accuracy. They include allowing jurors to have access to a written copy of the judge's instructions. This helps improve the interpretation of the law by juries just as note-taking and videotaping improve their understanding of the facts. Most states do not provide for written judicial instructions. This also goes back to medieval times when relatively few people could read. It was felt that those few who could read the judge's instructions would dominate jury decision making, just as those few who could write notes would also dominate. The contemporary reason for the inertia in allowing juries to have written instructions may relate to the fact that the instructions tend to favor safeguards for the innocent. Legal decision making may be reluctant to do anything that will further increase acquittals and decrease convictions.

Other approaches to improving general juror accuracy that have been adopted in only a minority of states, if any, include: Jurors should be allowed to submit questions to the judge, the lawyers, or even the witnesses indirectly through the lawyers. This could clarify factual and legal ambiguities that lead to wrong decisions.

A training course should be provided for each juror that would last a full day before being eligible to decide cases. The course could clarify what is involved in conducting a trial, jury deliberation, judicial instructions, various kinds of evidence, and other matters. The course could allow jurors to ask questions during the course. The course could also have a test at the end to determine whether each juror has a minimum level of understanding of what is involved.

The ability to read and write or other educational qualifications could improve the general accuracy of jurors. Such requirements, though, can be subject to abuse, like southern literacy tests for voting. Even if the tests are objective, they could bias the composition of juries in favor of middle-class attitudes that favor the prosecution in criminal cases and the defendant in civil cases. Any measure designed to improve accuracy should not unthinkingly change the direction or bias of jury outcomes.

Jury accuracy can be improved by having counsel on both sides. We now tend to guarantee counsel to indigent defendants in criminal cases, but we do not adequately guarantee counsel to indigent litigants in civil cases where there is no contingency fee involved. The Legal Services corporation is not sufficiently funded to guarantee counsel to indigent civil litigants, although the result is they do not litigate or go to trial, rather than go to trial without a lawyer.

Those matters are likely to do more for convicting the truly guilty than switching from 12-person to 6-person juries. They are also likely to do more for acquitting the truly innocent than retaining the 12-person jury. This is an example of redefining the problem in terms of the goals, rather than the alternatives.

B. IN UNEMPLOYMENT POLICY: MINORITIES AND THE ELDERLY (See Table 6)

The conservative position is to follow the usual rule in layoffs that the last people hired should be the first people laid off or fired. That means no extra consideration is given to minorities who may be disproportionately among those most recently hired.

TABLE 6. EMPLOYMENT POLICY: MINORITIES AND THE ELDERLY

GOALS	C	L
ALTERNATIVES	Merit hiring and firing	Do something for minorities
C		
As is, no points	+	-
L		
Preferential nonlayoffs, 10 years	-	+
N		
One year	0	0
SOS OR WIN-WIN		
1. Strict merit, no seniority		
2. Upgrade skills		
3. Seniority within a range	++	++

The liberal position is to add some seniority to recently hired minority people. For example, each minority person hired could be given a few years seniority on the grounds that minority people probably should have been hired at least a few years sooner generally than when they were actually hired.

The neutral position might be to award some automatic seniority, but maybe only one year rather than a few years. Another neutral position might be to judge each case individually in terms of the age of the employee and other relevant characteristics in determining whether any additional seniority should be given.

The SOS alternative might be to handle layoffs only or mainly on the basis of merit qualifications, rather than seniority. Doing so should appeal to the conservative emphasis on merit. It would also allow some recently hired minorities to have a better chance at being retained than if only seniority is considered.

The SOS alternative might also include a program for upgrading the skills of recently hired employees and other employees so they can score higher on merit criteria.

Another modification might be to consider seniority among employees who are within the same merit range, or to consider merit within a broadly defined seniority range. Thus merit would determine who gets laid off among all employees who have less than 10 years seniority, 10-20 year seniority, and so on.

III. SOME CONCLUSIONS

Looking over the problems presented, one can generalize some conclusions. A different way of presenting this material could be to present general principles of equity and efficiency in the beginning, and then present the problems as illustrative examples. Instead general principles were presented in the beginning about win-win policy. The problems were then presented as illustrative examples of those principles without first defining equity and efficiency.

In light of its usage here and elsewhere, the concept of equity can be defined as allocating things of value to people in such a way that no one gets less than a certain minimum needed as a human being. This especially relates to allocating jobs and income which buy food, shelter, clothing, medical care, and education. The minimum varies over time and place depending on how well off the average person is.

Anything left over after allocating those minimums should generally be allocated in such a way as to reward behavior that the group or society considers socially desirable. Such behavior can include being useful to the group as an inventor, business person, government official, religious leader, teacher, or other occupation. This tends to get into concepts of relative demand and supply.

That second kind of equity tends to be the same thing as societal efficiency. Efficiency in the abstract means getting a lot of output or benefit from a small amount of input or cost. Or it simply means the output/input ratio or benefit/cost ratio. Following demand and supply tends to efficiently allocate a society's resources or income, subject to equitable restrictions designed to enable people to have at least a minimum quality of life and public safety.

Given scarce resources, sometimes equity and efficiency conflict. Or equity for one subgroup or group within a society may conflict with equity for another subgroup or group. One object of win-win analysis is to enable a society to have high equity and high efficiency without necessarily expanding its resources. There is, however, nothing wrong with trying to develop ways of expanding societal resources. Win-win analysis also seeks ways of simultaneously satisfying more than one kind of equity where they might otherwise conflict.

Equity and efficiency, however, usually do not conflict. If a society is not equitable, many people may lack adequate resources or incentives to be efficient and productive. Likewise if a society is efficiently productive, it will produce more resources for satisfying equitable minimums.

Likewise, there is also generally no conflict in having equity toward one group (like minorities) and equity toward another group (like women or the elderly). Conflicting groups tend to be lifted simultaneously or lowered simultaneously, depending on the overall efficiency of the society. Likewise members of dominant groups may be dragged down by inequitable treatment of discriminated groups to their mutual detriment.

Nevertheless there are situations where equity and efficiency do conflict or where different equities conflict, as in the problems discussed here. The traditional ways of resolving those conflicts have generally involved (1) seeking win-lose alternatives that turn out to be lose-lose, or (2) seeking compromises in which all sides will happily emphasize how much they won, but in reality they unhappily emphasize how much they lost.

In such situations, win-win thinking might be able to provide a win-win solution. Win-win thinking means (1) having a positive attitude that a

win-win solution can be obtained, (2) having an awareness of previous win-win solutions and ideas, (3) using facilitators like tabular visual aids, checklists, or decision-aiding software, and (4) applying those attitudes, knowledge, and tools to the values and facts at hand. It is hoped that this article will be a step toward more win-win solutions in difficult and important equity problems.