



OXFORD JOURNALS
OXFORD UNIVERSITY PRESS

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Source: *American Journal of Agricultural Economics*, Dec., 1984, Vol. 66, No. 5, Proceedings Issue (Dec., 1984), pp. 802-806

Published by: Oxford University Press on behalf of the Agricultural & Applied Economics Association

Stable URL: <https://www.jstor.org/stable/1241002>

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Fairness in Landownership

Gene Wunderlich

Fairness in landownership is in most respects an extension of justice in the distribution of all forms of wealth. Some of the attention that philosophers and economists have focused on distributive justice generally, therefore, can be applied to landownership.¹ With a better understanding of ethical premises of distributive justice, landownership policies and the analyses that support them will be better served.

Tweeten recently stated his widely shared view of ethics in agricultural economic policy: "To judge morality, a norm is essential. I contend the appropriate norm is the dominant moral philosophy in America, *utilitarianism* . . . based on what is variously termed well-being, satisfaction, quality of life, welfare, avoidance of pain, pursuit of happiness, or the greatest good for the greatest number of people" (p. 1).

Tweeten seems to describe accurately the working premises of most agricultural economics research. That utilitarianism is the norm is correct; that utilitarianism is adequate as an ethical foundation for all or even most, policy-oriented research is doubtful. Utilitarianism is only one ethical perspective, and exclusive adherence to it for research or policy may not be desirable. Alternatives or modifications are worth exploring. Rawls and Rescher provide useful starting points. Their notions of fairness and distributive justice seem to remain, after substantial examination and time, at the core of what economists have labeled equity or equitability issues (Thurow, Vickrey). As a minimum, they provide an alternative to unquestioning acceptance of traditional utilitarianism in economic policy.

Mill refined and extended Bentham's utilitarianism to form the foundations of modern economics (Warnock, p. 256-78). Mill's utilitarianism suggested a substance, utility, toward which economic analysis could be directed. Mill emphasized that ends are what are conceived as desirable but "that questions of ultimate ends do not admit of proof. . . . Questions about ends are, in other words, questions about what things are desirable. The utilitarian doctrine is, that happiness is desirable, and the only thing desirable . . ." (Warnock, p. 288).

Utilitarianism is significant in economics for (a) its dependence on happiness and (b) its consequentialist emphasis on ends.

A concept of utility based on happiness has a certain quality of intuitive appeal, but a moment's reflection shows that either happiness must be defined so broadly as to be meaningless or other bases for utility such as truth, charity, or discipline must be recognized. Furthermore, utilitarianism does not explain why a good is or should be desired. Another difficulty inherent in utilitarianism as a philosophy is its inability to deal with competitive happiness, the valuation of relative happinesses between or among individuals. This difficulty accounts for a large portion of welfare economics literature. Even the rigorous, almost unattainable Pareto optimum does not address the essential question of the original distribution of resources (means):

There may be many Pareto optimal situations: if the original endowments of commodities and talents were different, different competitive prices might be established and some different Pareto optimal production and distribution would occur. . . . The economist assumes that the distribution of endowments of commodities and talents is given, and this determines which particular competitive equilibrium will prevail, and which particular Pareto optimum. (Foley, p. 47, 48)

The consequentialist aspect of utilitarianism bears on both analysis and policy. Whether in the form of a structured set of individual preferences or a system of social goals, utilitarianism focuses on ends. By declaring ends beyond proof, ends are then conceptually sepa-

Session held jointly with the Association of Environmental and Resource Economists.

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He gratefully acknowledges comments by Bob Boxley, James Hite, George Johnson, Linda Lee, and Marcia Tilley.

¹ An introduction to the literature on fairness can be gained from two directions: (a) welfare economics starting with Baumol (1969, 1982, 1983), Philpotts, Holcombe, Foley, Varian and (b) ethics and justice with Rawls, Nozick, Blocker, Beauchamp, Bowie, Phelps. For ethics in agriculture, see Haynes and Lanier.

rated from means. In utilitarianism, means are measured in terms of their relation to ends. Ends are determined not as a function of means but rather by some external process outside of analysis and presumably outside of economics. Such separation could provide economic policies that are harmful even though directed toward desired ends.

Thus, for ends and beginnings, and for much of what lies between, utilitarianism contains weaknesses agricultural economists might acknowledge. Other perspectives may be useful. (Sen and Williams) Let us return to Rawls and Rescher.

Fairness in landownership is represented here as only one aspect of more general issues of justice in the holding of wealth. From the two distinguished interpretations of distributive justice by Rawls and Rescher, it is a small step to the distribution of wealth in land.

Rawlsian justice is based on the idea of "a fair procedure so that any principles agreed to will be just. The aim is to use the notion of pure procedural justice as a basis of theory" (Rawls, p. 136). The procedure assumes a veil of ignorance by all parties to the contract with respect to their standing. Fairness depends on procedure.

The distribution of income and wealth, according to Rawls, may be unequal, but the inequality must be to the advantage of all, most particularly to the least advantaged (Rawls, p. 302; Hahn and Hollis, p. 164). Social and economic "offices and positions" should be unrestricted freedom of opportunity to enter or exit any economic position. Under such conditions, the price of any economic opportunity would be the same to everyone. Rawlsian egalitarianism applied to the distribution of landownership would allow everyone the opportunity to become a landowner at the same price but would not assure an equal final distribution. The real property system as a whole should function so that even those who own no land are advantaged.

Nicholas Rescher approaches the issue of distributive justice at a somewhat more practical level, arguing that "a principle of evaluation is not adequate if it merely depicts a theoretical ideal that we cannot apply in practice . . ." (Rescher, p. 7).

Rescher's theory of distribution begins with, and depends upon, his critique of utilitarianism. For reasons already given and more, Rescher finds utilitarianism wanting as a standard for assessing distributions because:

. . . choices that arise in the *applications* of utilitarian principle, cannot be settled by the principle itself. They require an outside appeal to such concepts as equity or fairness in accommodating claims and in this way point to the fact that the utilitarian standard must be viewed as representing one factor among others. It simply will not do to regard the principle of utility as an ultimate and complete basis for a theory of distributive justice. (p. 44)

Rescher demonstrates the shortcomings of various expressions of utility, such as "the largest total," "highest average," "effective average," and "utility floor." He then arrives at the question of the legitimacy of claims or desert. Should everyone share equally in a stock of wealth although some contribute vastly more to its creation than others? Should the use to which the wealth be put affect the legitimacy of a claim? Perhaps such questions lie beyond the scope of economics.² Avoiding the questions by defining them into another province of inquiry, however, does not answer them. Rescher remarks about the basis of claims: "The question of how 'claims' come about—how *merit* and *desert* spring into existence—seems to me among the most difficult and complex issues in ethical theory" (Rescher, p. 61).

Among the bases for differences in merit or desert are effort, need, and ability. These and other similar bases are usually stated formally in terms of individuals. The question of merit or desert is further complicated when applied to groups or classes because not only must standards of merit be defined but limits and standards of membership in the classes must be prescribed.

Bases of Fairness: Desert

How might ideas of ability, needs, and effort affect the premises on which a landownership system is constructed or operated? How do ideas of efficiency or productivity color the legitimacy of a claim to ownership? Many standards of merit or desert may enter into the idea of fairness in landownership, and differences in the importance of these standards are a source of conflict in landownership policy. Rescher employs "canons of distributive jus-

² The famous Lionel Robbins position is that "economics is entirely neutral between ends. . . . Economics is not concerned with ends as such. It assumes that human beings have ends . . ." (Robbins, 24).

“*justice*” such as: equality, need, ability, effort, and productivity.

How might equality of landownership be defined so that there might be equality of holdings in terms of wealth, productivity, heritability, accessibility, and status? Needs differ, so how should differences be accommodated? Should ability be rewarded with more resources, or recognized with less? The Puritan ethic rewards effort and sacrifice (Brewster). But effort, like ability, is difficult to identify. Apparent effort is not necessarily a reflection of individual, or corporate, intent. Are results the measure of intent or circumstance?

While the various canons of desert are individually inadequate, elements of each can form a basis for legitimate claims in distribution. Rescher terms this eclecticism in standards of merit, “the canon of claims.” It shifts the question of fairness away from particular standards and toward the “treatment of people according to their legitimate claims, positive and negative” (Rescher, p. 82).

These bases of desert have been expressed largely in terms of individuals by types of claims. The types of claims were found separately wanting but were combined in the canon of claims to form a basis for individual claims. Now we turn to merit or desert by virtue of classes or groups of persons, desert by membership.

Fairness among Classes

Only rarely does a legislature or executive agency attend to fairness in the treatment of individual persons. The private bills passed in Congress, for example, affect an insignificant number of persons compared to legislation affecting groups. In the domain of what is called policy, therefore, fairness relates to classes or groups. One derives claims, positive or negative, qualifying as a member of a class. Owners of agricultural land may be farm operators or nonoperators, absentee or resident, corporate or individual, large or small, black or white, and many other groups or gradations.

The issue of fairness is compounded first by establishing the claim of a group or type and then specifying the qualifications for membership in the group or type. Assessment of the fairness of the position of an individual is further complicated by membership in more than one class. For example, it may seem fair to pay a subsidy to owners of certain kinds of

land for conservation practices. But those owners may own large acreages of the subsidized land so they would receive large subsidies, which may seem unfair.

Should farm operators be super-entitled to agricultural landownership? Does farm operation enhance desert for landownership? The argument for providing landownership to farmers as an antidote for exploitive land tenures may have borne some credence in early nineteenth century America. Then virtually the entire population was engaged in, or supported by, agriculture. An even distribution among farmers was equivalent to an equal division among all. Today it is impossible to distribute land evenly among the population and restrict landownership to an occupation with less than 5% of the population. Argument for preferring farmer ownership of agricultural land scarcely can be based on need; the services of land can be made available to agriculture without ownership by cultivators.

A better argument might be an ability of farmers to hold, manage, and effectively use land. Indeed, productivity and ability of farmers (not to own but to use) are used as arguments for farmer ownership of land. The relation of ownership to use, however, is sufficiently doubtful as to suggest that it not be used as a strong rationale favoring farmer ownership of farmland. An egalitarian, widespread, ownership in the future, if not now, may be of greater significance. Farmer versus widespread ownership is an issue for which research might provide useful guidelines to policy.

Corporations versus individuals—should desert be attached to legal form? Or is corporate agriculture simply a code word for large, impersonal management; exploitive use of resources; and absentee control (Buttel)? The equality issue does bear upon corporate ownership, particularly if the corporation is regarded as a single artificial person. The average size of farmland holdings owned by family corporations is five times the size of unincorporated individual or family holdings. However, the number of persons in some corporation holders of farmland is more than ten times that of the typical individual operator owner (Daugherty and Otte, Krause). If ownership interest through a corporation can be viewed as similar to direct ownership of land the interests between corporations and individuals is less unequal.

The ethical arguments pertaining to fairness

in landownership by race have some distinguishing features. The economic opportunity expected to follow from explicit constitutional expression of civil rights provides some indications of bases for fairness. In Rawlsian terms, the social contract is such that all policies impacting the ownership of agricultural land by the least-advantaged racial group should be to the advantage of that group. The principal issue in equality is whether equal treatment is equivalent to equality. Equal opportunity does not necessarily result in equal outcomes (U.S. Commission on Civil Rights). In addition to the various arguments of desert among races of owners is the problem of measurement. Ability, productivity, effort are difficult to measure.

The contractarian approach to fairness reflected in the views of Rawls and Rescher allows the standards of desert to apply to both outcomes and processes. In practice, the standard of desert may be applied differently to an outcome or an opportunity, but the basis of a standard would be the same.

Who, Then, Deserves to Own Land?

Some examples of owner classes, dichotomized, were compared on their bases of desert. These comparisons show the pluralism in standards for justifying a claim to landownership. A small farmer might justify a claim for limited credit on the basis, say, of need, effort, and equality. However, a large farmer might justify a claim for the limited credit on ability, productivity and, also, equality. Although both large and small farmers might agree that need, effort, ability, productivity, and certainly equality, are reasonable bases for claim, they would disagree on the relative importance of each of the bases. Similarly, policy makers might agree on the several bases of desert yet find it convenient to overlook or downweight the bases of opponents and highlight or emphasize the bases of their client group.

When agricultural economists argue for productivity or efficiency they are arguing for one widely supported basis of desert—but only one. To argue that efficiency or productivity is concerned only with the size of the pie, not its division, is to sidestep, but not avoid, the distributional feature of every resource allocation.

All economic policies involving claims to own the land might begin with agreement

about the bases of desert. The five bases suggested here can be adapted or replaced with other bases. Distributional justice can be furthered by refinements in the bases of distributional claims.

Landownership Policy, Outcomes and Opportunities

The principal shortcoming of utilitarianism from the standpoint of landownership policy is its focus on consequences or results to the exclusion of means. The consequentialist orientation of classic utilitarianism places the distribution of wealth in land beyond processes and causes. The utilitarian premises of economics relegate the distribution of landownership to objectives and thus outside of analysis.

While utilitarianism focuses on results or ends, a contractarian approach incorporates a concern about the quality of means. Changes in the rules of property are subject to standards of fairness just as well as the final distribution of wealth. A translation of the utilitarian and contractarian approaches to fairness in landownership policies might be simply stated as outcomes versus opportunities.

Landownership policies that concentrate on opportunities to hold, exchange, grant, and use land are likely to rest on pluralist moral standards. While lacking the inherent consistency of utilitarianism's "neat model of maximizing one homogeneous magnitude" (Sen and Williams, p. 16), pluralist standards of desert may come closer to the experience of policymakers. Utilitarianism may be regarded as an ethical tool, but in Rescher's words: "Utility is no longer the queen bee, but becomes merely one among several workers in the ethical hive" (Rescher, p. 121).

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