



Encyclopedic Dictionary of Public Administration

The reference for understanding government action

EQUITY

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Defining the notion of equity can be a perilous enterprise. A certain degree of confusion derives from the fact that while legal and economic conceptions of equity share the same basic postulates, they also tend to reflect distinct objectives. This discussion begins with the presentation of a few legal aspects that make it easier to understand how a consideration of equity can help to improve the implementation of the rules in force. This will be followed by a presentation of equity from a socioeconomic perspective that offers a more comprehensive view of the concept. This should lead to individual reflection, of a moral nature, on what a more just society ought to resemble. Finally, a brief account will be given of two examples of proactive policies with respect to equity in the labour market: employment equity and pay equity.

A legal concept

It cannot really be repeated too often that equity should not be taken as a synonym of equality. At the same time, it would be counterproductive to emphasize the differences between the two concepts, given their necessary complementarity. In *The Nicomachean Ethics*, Aristotle (2009) argues that "... this is the nature of the equitable, a correction of law where it is defective owing to its universality." The most far-seeing of legislators cannot anticipate every potential situation, since situations are by nature heterogeneous. It would thus appear that more than formal equality is required to bring about a society in which the ideal of justice could be accomplished.

Indeed, while equality means that what is identical must be judged and treated in an equal manner, as is required by one of the fundamentals of the rule of law (Carré de Malberg, 2004), various situations and circumstances can justify the consideration of cases representing exceptions to the general rule, and this necessarily leads to a consideration of equity. The Quebec Protecteur du citoyen (Ombudsman) sums up the idea in these words: "...in a democratic society, the principle of equity is not synonymous with uniformity. It is inevitably tempered to take into account the needs of all citizens, including those who, due to their condition or situation, fall outside of the established rules" (Protecteur du citoyen, 2004, p. 18).

The Protecteur du citoyen goes on to say, "Rather than weaken the rules, [equity] reinforces them by adapting them to situations where substantive law does not provide a satisfactory solution. ...it seeks to improve how legal standards are applied." (Protecteur du citoyen, 2004, p. 20) For Jobin, taking equity into account in law can mean that:

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- a general rule is modified to adapt it to a particular situation,
- lacunas in the general rule are addressed through the adoption of specific rules or
- the general rule is set aside and replaced by another rule in a particular case (Jobin, 2003).

Accordingly, when it comes to equity intervention (or “equitable intervention”), the *Protecteur du citoyen*, may take the following actions:

- correcting the law by furnishing it with the modifications that have become necessary,
- remedying lacunas in the law through the application of discretionary powers on the part of the appropriate actors in the system¹ and
- interpreting the law on the basis of an argument based on its ultimate goal (that is, returning to the spirit of the law or attempting to understand the legislator's intent). (*Protecteur du citoyen*, 2004)

From a legal point of view, equity requires that rules be adapted. In contrast, from a socioeconomic perspective, equity is principally concerned with defining what a just society should be and the means that need to be put in place to achieve this vision.

A socioeconomic concept

The question of equity is a central preoccupation for many researchers, since it leads them to ponder the way in which a society's resources should be apportioned among its members, and this in turn means that they must at some point take a moral and political position. The principal authors who have concerned themselves with the question of equity, in particular, Rawls, Sen, Dworkin and Roemer, appear to agree on a certain number of points, two of which seem especially important:

- final well-being is not the ultimate criterion for judging the degree of equity in an existing social system,
- the individual has responsibility for his or her well-being (World Bank, 2005).

These points will be further discussed in a brief presentation of Rawls' model.

Equity is at the heart of work by political philosopher John Rawls (2001), who argued that the concept should be understood in relation to three closely related principles:

- a guarantee of basic liberties for all, meaning that everyone should have the same basic rights and duties,
- equality of opportunity, signifying that merit alone should determine an individual's chance to enjoy the possibilities offered by a society,
- social and economic inequalities should be arranged to benefit the least advantaged members of society.²

The first principle is related to the concept of formal equality, while the third is intended to improve the fate of those most in need by taking all the means deemed necessary, while at the same

¹ With respect to this point, a public administration must not shirk its responsibility to consider equity in providing services to citizens; the discretionary powers of civil servants should serve to respect the requirements of equity, among other things. On this topic, see Frederickson, 2010.

² Rawls (2001) says that optimal social justice is achieved in a society when the situation of the least advantaged is as good as it can be.

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time ensuring that no excessive harm is caused to other members of a society. On the basis of the third principle, a society might establish particular provisions meant only for the members of certain groups, resulting in a difference in the way these citizens are treated.

Rawls' second principle, equality of opportunity, leads to an examination of what differentiating factors, other than merit, affect not only individuals but also groups of individuals in a given society. In every society, whether explicitly or implicitly, certain characteristics having no direct relation to individual merit are valued more highly than others, and this creates differences in the chances that an individual will be able to enjoy the benefits offered by this society (notably when it comes to education). Above and beyond legal norms, a society's actors must take positions on the fairness or unfairness of such differentiating factors,³ which may be more or less numerous, can vary from one society to another and evolve over time. Examples include gender, ethnic or national origins, sexual orientation or being born in a socially and an economically disadvantaged environment.^{4,5} The feeling that these differentiating factors represent an injustice, combined with an awareness of their concrete effects on certain members of society, disturbs those who believe in the fundamental equal dignity of all and often fosters a desire to militate against both material and human hardship. (Duclos, J. Y., 2006) As a result of such efforts, a society may change the system that controls the availability of opportunities and resources; when this happens, the dynamic aspect of Rawls' model comes to the fore.

Even assuming that certain actions can control the effects of factors considered unfair and modify individuals' characteristics or circumstances,⁶ differences between people will still continue to exist; however, these differences will be attributable to the individuals' merit, motivation, talents, efforts, personal preferences and initiatives (Mason, 2006). According to Rawls (2001, p. 44):

To specify the idea of a fair chance we say: supposing that there is a distribution of native endowments, those who have the same level of talent and ability and the same willingness to use these gifts should have the same prospects of success regardless of their social class of origin, the class into which they are born and develop until the age of reason. In all parts of society there are to be roughly the same prospects of culture and achievement for some similarly motivated and endowed.

Equity thus cannot be said to obviate the principle of individual responsibility or to imply that individuals' ultimate relative degree of well-being can constitute a measure of how equitable a society is. Differences in the rewards reaped by individuals with equivalent talents will continue to exist, but these differences will be the result of the individuals' choices and errors (Greffe, 1997). To use the illustration given by Scharr, a society may, for example, continue to attribute relative values (in terms of prestige or remuneration) to the various types of education and training pursued by individuals, but as long as these individuals have an equal opportunity to take part in such training, in accordance with Rawls' model, they are entirely responsible for the results of their individual choices (Scharr, 1964).

³ This social judgement on the fairness or unfairness of such factors can complicate equity intervention. It is possible that a factor is seen as manifestly unfair by some, but tolerable or even acceptable by others. The simple statistical observation of factors underlying inequalities is in many cases inadequate for decreeing that a differentiating factor is unfair.

⁴ These differentiating factors that are considered unfair correspond in part to the unlawful discriminatory motifs enumerated in section 10 of the Quebec *Charter of Human Rights and Freedoms*. Other factors that might be considered include geographical area of residence, job insecurity and limited access to the justice system or good schools. On this topic, see World Bank (2005).

⁵ It should be kept in mind that drawing up a list of unfair differentiating factors is political in nature. The way in which a community defines social justice becomes the result of a series of choices at a given moment in history (Duclos, 2006).

⁶ It is probably too ambitious to hope that most of these factors can be completely controlled or neutralized. Mason thus concludes that societies must remain active in attempts to mitigate their effects. (Mason, 2006).

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Proactive equity policies: two examples

Proactive equity intervention is consistent with the socioeconomic concept of equity, inasmuch as it means that the government, after formally noting that individuals in a society show marked differences that cannot be explained on the basis of fair differentiating factors, decides to intervene with proactive policies intended to produce more equality among these individuals. Proactive intervention obliges employers, regardless of whether they have received complaints or not, to use specific methods with a view to establishing greater equality in the workplace and thus ensure that certain differentiating factors deemed unfair do not hinder individuals seeking employment or equitable remuneration (Chicha, 2000). The two main equity policies in the labour market are employment equity⁷ and pay equity.

The *Canada Employment Equity Act* seeks to:

...achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.⁸

This policy is based on the postulate that some individuals, because they belong to certain groups, have experienced a fairly generalized situation of discrimination in the labour market and that the effects of this situation continue to be felt and seem unlikely to lessen simply with the passage of time. Such situations provide legitimate reasons for proactive intervention on the part of the state in order to achieve greater equality between individuals (Dowd, 2009). The specific objective of the resulting programs is to attain equal results for both the groups targeted by the intervention (for example, women or members of visible minorities) and the reference group (Chicha, 2000). Reaching this objective requires a close look at procedures, leading to an analysis of an organization's employment system in order to, for instance, eliminate barriers for the members of the intervention target group. It is also essential that the concrete results of the program be studied through a quantitative follow-up that demonstrates whether there has been an increase in the representation of target group members in those occupations where they were previously under-represented (Carter, 2003).

In Quebec, the *Pay Equity Act* was passed in order to redress any wage inequality between men and women that could not be explained by questions of productivity, but rather by factors related to field of study, type of industry and part-time or full-time employment (Quebec Commission de l'équité salariale, 2006) and seeming to stem from a systemic undervaluing of what is known as women's jobs (Commission de l'équité salariale, 2006).⁹ According to the law, employment categories in an organization must undergo rigorous, non-gender biased evaluation to determine

⁷ While the Canadian legislature chose to use the term "employment equity," the equivalent law in Quebec refers to "equal access to employment," despite close similarity between the two policies. Although the Quebec law does not include the word "equity" in its title, its ultimate goal is equity – that is, to ensure the greatest possible degree of true equality for the members of a society.

⁸ *An Act respecting employment equity*, section 2.

⁹ According to the Commission de l'équité salariale, systemic wage discrimination consists in unfair salary treatment for women as a social group whose work is considered less valuable because of prejudices that have become part of a society's collective values, general customs and, more specifically, job evaluation and remuneration systems, in the absence of bad faith, intent or awareness of unjust behaviour towards this group. Québec, Commission de l'équité salariale (2006), *op. cit.*, p. 16.

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their value and guarantee that so-called women's jobs provide the same wages as men's jobs of equivalent value. If this is not already the case, the employer is obliged to make the necessary salary adjustments. Combating gender-based salary discrimination leads to greater equality between workers, since they are assured that their remuneration is actually established on the basis of the relative value of the work accomplished, rather than on differentiation factors considered unfair.

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