

JUSTICE AND HAZARDOUS WASTE

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This paper examines some of the philosophical issues underlying disputes about the siting of hazardous industrial facilities. The case the paper focuses on involves the siting of a hazardous waste treatment plant, but many of the same issues and arguments arise in the siting of other potentially dangerous and controversial facilities, such as nuclear power plants. Because the siting of such facilities always poses risks to residents nearby, questions of justice immediately arise in such siting proposals. In the case I examine here, residents of a community proposed as the site of a hazardous waste treatment plant raise the question of decision making structure and community control as a primary question of justice.

Dominant philosophical conceptions of justice, I argue, cannot deal with such questions of justice, because they limit questions of justice to the distribution of benefits and burdens. This distributive orientation excludes questions about what the just structures are for deciding such questions of distribution. A philosophical ground for the distributive orientation of modern theories of justice lies in the assumption that reasoning about justice takes place from the point of view of an "ideal observer" neutral among conflicting parties. This ideal observer assumption, moreover, has a political counterpart in the assumption that the liberal democratic state functions as such a neutral arbiter among conflicting claims to right and justice. I argue that decision making procedures and principles should be central questions of justice. Within such a set of questions, a principle of self-determination should function as a *prima facie* principle of justice.

I

In December 1981 the State of Massachusetts Hazardous Waste Facility Siting Committee declared a site in the town of West Warren as "feasible and deserving" for building of a waste treatment plant by the Industrial Tank Corporation (IT). The plant proposed by IT would be the first of its kind in the world, treating an estimated 350,000 to 500,000 tons of non-radioactive waste per year through methods of resource recovery, neutralization, incineration, solidification and burial. The proposed facility would incinerate an estimated 15 tons of waste per hour, 24 hours a day, giving off an estimated 124 tons of carbon monoxide gas per year. 20,000 tons of solid waste per year--the total amount of waste found at Love Canal--would be buried directly above the Quabog River, the source of drinking water for the town of Palmer.

Even before the site was approved by the state, local residents began organizing against it. By early 1982 residents of more than 20 communities in the area supported the organization, known as STOP IT. They raised numerous questions about the risks and disruptions the plant would produce. They worried about the risks of one of the dozens of trucks per week spilling on the Massachusetts Turnpike, or on their way through densely populated cities. They feared the gases emitted by incineration, and the danger of explosion caused by the accidental mixing of the hundreds of potentially incompatible substances the plant would treat. They pointed out that no means of solid waste burial has yet been guaranteed secure from seepage into the ground water supply, and that the huge amount of waste to be buried at the Warren site might seep downhill into the nearby Quabbin Reservoir, which supplies drinking water for nearly two million Massachusetts residents.¹

The residents persistently raised the issue of justice. They claimed that such a large and multifaceted

plant would place them at considerable risk. Installation of the plant, they further argued, would cause changes in their community which they find undesirable. In addition to bringing in hundreds of new residents, and thus increased commerce and development, changing property values, and so on, the facility itself would require specific municipal services far beyond the capacity of current resources and personnel. Why should we be involuntarily subject to this risk and inconvenience, local residents asked, while the rest of the state suffers nearly nothing, and in many cases benefits from the removal of waste from their areas?

In this case, as in many other cases of social decision making involving pollution, utilitarian reasoning appears most obviously applicable. A utilitarian argument for the state's siting decision would argue that the decision brings the greatest benefit to the greatest number. Hazardous substances produced as the by-products of industrial processes in the U.S. pose an immediate and serious danger to everyone who lives in the vicinity of the industrial facilities. Many thousands of acres of land have already been contaminated through improper disposal, and the amount of waste that must be dealt with grows constantly. Large waste treatment facilities are the most practical way to deal with the problem. They remove the risk of contamination from most areas, they can be more easily monitored than decentralized methods, and the scale of their operations allows the company involved to utilize expensive techniques and still operate at a profit. Placing such a large multi-process facility in a relatively sparsely populated rural area minimizes the risks for the majority of the people. The State of Massachusetts therefore chose the solution which would produce the greatest good for the greatest number of people when it chose to site the proposed IT plant in Warren, a town of little more than 3000 residents.

It has become commonplace among philosophers to consider such straightforward utilitarian arguments as inadequate to deal with the complexity of the ques-

tions of justice involved in a case such as this, because utilitarianism does not address the question of fairness in the distribution of benefits and burdens. Placing a plant such as that proposed by IT in a small rural community surely minimizes the evil for the greatest number of people in the State of Massachusetts, as well as many in other states, since the projected plant would treat wastes from the entire northeast. But what justifies making the residents of Warren and nearby towns suffer for the sake of all these other people? Can this be said to be a fair situation?

The Hazardous Waste Siting Law passed by the Massachusetts legislature in 1980 appears designed to produce a situation of fairness not addressed by simple utilitarian considerations. In a provision unique in this country, the law establishes forms of compensation to the community which hosts a waste disposal facility. Under the law, a community selected as the site of a plant has the right to negotiate with the company to demand direct payments to its treasury in addition to taxes. It can negotiate the construction of new roads, firehouses and schools, to be financed by the company, and it can negotiate stringent monitoring procedures. If an agreement between the company and the town cannot be reached, the dispute goes before a three-person arbitration board, with the company, the town and the state each having one representative.

Rawls' theory of justice is the most well known and frequently applied approach to questions of justice that focuses on fairness. The famous difference principle is that aspect of Rawls' theory that addresses the issue of fairness of distribution. That principle states that an inequality is justified only if we can show that the unequal arrangement is to the benefit of the least advantaged. It is not clear whether application of Rawlsian theory to this case would yield the judgment that the siting of the waste treatment facility in Warren under the compensatory provisions of the

law is fair. Presumably the local residents would count in this case as the least advantaged, though this would have to be argued. Assuming they are, it could be argued that the provisions of the siting law function precisely to benefit that least advantaged group, thus rendering the siting decision fair. Arguments could be brought forward, however, that even with these provisions, the siting decision does not operate to the benefit of the residents. Whether one argued that the siting decision under this law does or does not satisfy the Rawlsian difference principle, it is clear that this theory of justice can address this question of the fairness of the distribution of burdens resulting from the decision.

The primary question of justice raised by local residents in this case, however, concerns not the fairness of the distribution of burdens, but rather the justice of the decision making structure for such siting policy. In the next section I will argue that prevailing approaches to reasoning about justice cannot adequately treat a question of justice of this sort.

II.

Residents of Warren and nearby towns question the justice of the decision making structure embedded in the state's siting law. The residents consider themselves the victims of injustice from the state, despite the compensation provisions of the siting law, because that law denies them participation in the siting decision. The law specifies that the state shall approve a site, without requiring it to consult the host community. The state's siting board itself performs the risk assessment and other calculations necessary to determine an acceptable site, and the law compels the community to accept the state's decision. This entails that the state may override municipal laws regulating waste treatment or disposal. If its negotiations with the company proposing a plant fail to produce an acceptable agreement, moreover, the com-

munity must accept the arbitration of a three person committee composed of a representative from the community, the company and the state.

Questions of who has and ought to have the right to make decisions, and according to what procedures, are surely questions of justice. For the most part, however, theorizing about justice in contemporary philosophical and political discourse does not raise questions pertaining to decision making power and authority.² Nearly all theories of justice in contemporary philosophical and political discourse, including utilitarian theories, contract theories like Rawls and Nozick, and even critics of liberal theory like Neilsen,³ are distributively oriented theories. They conceptualize all questions of justice in terms of the allocation of goods among individuals, whether the goods are material or some variant of subjectively determined utility. Distributive theories focus on admittedly important questions of social welfare, upon how social benefits and costs should be allocated among the members of society, what kind of responsibility a society has to redistribute goods in a situation of large inequality, and so on.⁴ The distributive orientation precludes considering questions of the justice of decision making structures.

It might be argued against this claim that distributively oriented theories are capable of considering questions of the justice of decision making power and procedures. To consider each question, however, the theory must conceive power and authority as themselves goods which can be distributed in greater or lesser amounts to various agents. Distributively oriented theorizing presupposes a structure of institutional relations, a set of positions among which risks and benefits, rights and responsibilities, are distributed. It does not bring the justice of given institutional structures themselves into question. The moral value of particular relations of power, institutional positions and organization, however, comprise just those concerns at issue when we raise questions about

just decision making procedures. So distributively oriented reasoning cannot treat such questions directly and explicitly, because it must presuppose agents and institutionalized positions among which goods are distributed.⁵

In the waste treatment plant siting case, for example, a distributively oriented mode of reasoning considers what risks, benefits and responsibilities should be distributed among various agents--corporations, the state legislature, state environmental agencies, municipal governments, private citizens. Taking these agents as given, however, presupposes certain historically specific relations which confine us to a relatively narrow range of authority and decision making possibilities. If one assumes that a state agency has the authority to decide the location of waste treatment facilities and then asks about the distribution of responsibility between it and municipal government, for example, then some possibilities are excluded before reasoning begins. The issue of justice raised by community residents in the siting case, however, calls into question just those institutional structures that justify some decision making procedures. They claim that communities should have the right to participate in such siting decisions, either in having the power to approve, disapprove or be party to approval.

III

The distributive orientation of most modern philosophical theories of justice has a major root in the assumption of most modern political philosophy that philosophizing can take place from a universal point of view that transcends the particular interests which vie in political life. From Rousseau's general will to Rawls' original position, philosophers have assumed it both necessary and possible to construct and adopt a neutral, disinterested point of view from which to perform moral reasoning. Philosophical reasoning about social and political matters, it is assumed, should

take place from a Cartesian fulcrum that at one and the same time transcends, represents and balances the particular positions and interests involved in a decision. The assumed neutrality and universality from which political reasoning takes place in such theories renders questioning the justice of alternative decision making procedures unnecessary. The issue of the justice of institutional structures and decision making structures arises only because various positions have potentially conflicting interests which can bias their decisions. Abstracting from such bias makes it possible to focus on substantive questions of what are the best social policy decisions, decisions which usually entail distributing costs and benefits.⁶

The assumption of the universal position of reasoning that dominates philosophical theories of justice has a practical counterpart in the attitude both philosophers and non-philosophers often hold about the nature of the state. Political discussion in our society often assumes that the state stands in this position of the neutral arbiter transcending all particular interests. The neutral state assumption implies that whenever a social issue involves diverse interests and potentially conflicting claims, the state should make the decision about it, because, it is assumed, only the state is disinterested, objective and can take all points of view on the issue fairly into account. The assumption of liberal democracy that the state can and should transcend all particular interests and carry the force of the general will is so strong in our society that calling into question the state's right to make policy decisions generally lacks legitimacy.

In a case like the siting case, where the primary conflict opposes the interests of a corporation to those of local residents affected by its operations, citizens rarely believe for long that the state is neutral and impartial. They find themselves having to struggle with the state, which they perceive as representing interests other than theirs. In a liberal

democracy the interests of the more powerful segments of society in fact receive greater representation, if for no other reason than that they can afford to devote full time to presenting their cases to state officials, researching and publishing their point of view, and so on.

In practical questions of social policy, moreover, state agencies usually have specific interests of their own which direct the way they make assessments and decisions. In practice state legislatures and agencies do not function solely to mediate among private interests. On the contrary, in disputes like the siting case, the state's institutions become one (or sometimes several) distinct agent(s) with its own set of interests. Among such interests are the promotion of the agency's policies and the careers of its members, attracting business to the state to increase tax revenue, and so on. In general, the state has a major interest in attracting large businesses within its borders and making the conditions of their operations favorable. Thus the state has some bias, in a case like the Warren siting case, against considering the siting question in a way that gives equal weight to the interests of the local residents.

I am not arguing that the state and its agencies ought not to have distinct interests which influence its formulation of social problems and the decisions it arrives at to solve them. Because they are distinct institutions with specific goals, methods of operation, and relations of power with other institutions in the society, our governmental institutions and agencies cannot help but have distinct interests.⁷ The idea that the state is or ought to be neutral is a myth that nevertheless has a powerful hold on political thinking. It derives at least in part from a philosophical notion that reasoning about justice and social policy can take place from a neutral point of view that transcends particular interests. Justice is served less by insisting on theorizing vis a vis a concept of the neutral state decision maker, however, than by abandoning that concept in both theory and

practice. For the assumption that policy decisions can and should be made from a disinterested point of view renders superfluous bringing up questions of who should make decisions and by what procedures.

IV

If we recognize that all social decision making involves particular interests, and that no position within society can transcend all particular interests, then the issue of who should decide policy issues becomes a paramount issue of justice. In the waste treatment facility siting case we are considering here, residents appeal to a principle of justice which they claim is being violated. I call that a principle of self-determination. Such a principle states that social decisions ought to be made by those most affected by the outcome of the decision, whether in terms of the actions they will have to take or in terms of the effects of the actions on them. A principle of self-determination such as this, I have argued elsewhere, can be derived from Rawls' original position in such a way that it makes the conception of justice derived from those premises more consistent than it is in Rawls' own account.⁸

More directly, self-determination as a principle of justice derives from the value of autonomy. Respect for the moral personhood and rationality of individuals is lacking unless they may determine the conditions of their lives and actions. While modern liberalism promotes this value of autonomy on an individual level, that tradition fails to promote the democracy in social decision making which ought to follow from the value of autonomy when applied to collective action. I have suggested above that dominant theories of justice lack principles which refer to the justice of decision making procedures at least partly because they focus on distributive questions.

One might argue that self-determination is a *prima facie* principle of justice, but that in a case like

that we are considering here such a principle must be overridden by a more general concern for the social welfare. If we leave decisions about the siting of hazardous waste treatment plants entirely or primarily to the residents of the communities in which such plants might be located, this argument might go, then we would not be likely to site any plants. For communities reason from the point of view of their own interests, goals and safety, and not from an impartial view of all the benefits that might be involved for all other agents. Residents are likely to find the risks associated with a waste treatment plant of the size and diversity of that proposed in this case of greater potential cost than the benefit it might bring. If no communities, when given the choice, agree to have plants sited in their borders, however, disaster will follow. With no means of treating and disposing of their wastes in a contained and supervised manner, industries will continue to dispose of them in irresponsible ways, creating a vastly greater risk to a far greater number of people than would be at risk from a large, multi-process plant. Thus, this argument concludes, state coercion is necessary in order to promote the greater interests of the whole, and is justified on those grounds, especially since the state has made provisions that the community be compensated for the risk and inconveniences it will suffer. We are back to a straightforward utilitarian argument, with all the problems that entails.

In contemporary discussions of the siting of industrial facilities, this "not in my backyard" syndrome is often regarded as irrational selfishness on the part of potentially affected communities. If we take seriously a principle of self-determination, however, as a fundamental principle of justice, we can look at this circumstance a bit differently. If a proposed industrial facility is harmless enough to render its rejection by a community irrational, then it should be possible to find a community that will agree to site it. If, on the other hand, it really is the case that no community, if given the choice, would

agree to have a plant like that proposed by the IT corporation within its borders, then it should follow that such a plant is not a good solution to the problem of hazardous waste.

Accepting the right of communities to decide whether to site hazardous waste treatment facilities can reveal the degree to which many decisions have already been made which produce the problem and conflict that arise in this case. The products that will be produced, the materials and processes that will be used to produce them, the methods of collecting wastes and by-products on site, are all decisions made privately and in some aspects secretly by producing enterprises. Consistent application of the principle of self-determination as a principle of justice might entail claiming that decisions such as these, which have enormous effect on a huge number of people outside those enterprises, should be socially and democratically, rather than privately, made.

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NOTES

1. Information about this case is derived from *Worcester Magazine*, Issue 164, November 18, 1981.

2. R. P. Wolff makes a similar criticism specifically of Rawls' theory of justice, in *Understanding Rawls* (Princeton University Press, 1978).

3. K. Neilsen, *Radical Egalitarian Justice*, forthcoming, Littlefield Adams, 1983.

4. David Miller, for example, explicitly restricts the questions of justice entirely to questions of the distribution of social goods. He specifically excludes consideration of power from the concept of justice, claiming that questions of power belong to a different concept of political theory, namely democracy. Thereby he implies that the concepts of justice and democracy have no necessary relation. See *Social Justice* (London: Oxford University Press, 1976).

5. A more thorough criticism of distributively oriented theories of justice occurs in I. M. Young, "Toward a Critical Theory of Justice," *Social Theory and Practice*, Fall 1981.

6. See Michael Walzner, "Philosophy and Democracy," *Political Theory*, Vol. 9, no. 3, August 1981, pp. 379-399; he poses this question of philosophical neutrality and shows how it can come into conflict with practical democracy.

7. See Eric A. Nordlinger, *On the Autonomy of the Democratic State* (Cambridge: Harvard

University Press, 1981).

8. I. M. Young, "Self-Determination as a Principle of Justice," *The Philosophical Forum*, Fall 1979.