



January 2010

The Practice of Just Compensation

Robert G. Kennedy

University of St. Thomas, rgkennedy@stthomas.edu

Follow this and additional works at: <https://via.library.depaul.edu/jrbe>

Recommended Citation

Kennedy, Robert G. (2010) "The Practice of Just Compensation," *Journal of Religion and Business Ethics*: Vol. 1, Article 1.

Available at: <https://via.library.depaul.edu/jrbe/vol1/iss1/1>

This Article is brought to you for free and open access by the LAS Proceedings, Projects and Publications at Digital Commons@DePaul. It has been accepted for inclusion in Journal of Religion and Business Ethics by an authorized editor of Digital Commons@DePaul. For more information, please contact digitalservices@depaul.edu.

Most textbooks in business ethics have a puzzling structure. They commonly begin with a survey of ethical theories, revised at times to include a theory *du jour* or two, before proceeding to a discussion of issues. Depending upon the inclinations of the author the issues typically fall into two categories: abstract questions (“Is capitalism morally legitimate?”) or exceptions (“When is whistle-blowing a duty?”). What is absent in all of the standard texts – and this is the puzzling part – is a treatment of the basic duties of business professionals.¹ There are few discussions of what it means to treat customers fairly, in price, in quality, in advertising and marketing. Obligations to communities are reduced to the category of corporate social responsibility, for which one must read “corporate philanthropy.” And what is more pertinent to this paper, there are virtually no systematic discussions of the employer-employee relationship and the professional responsibilities that it creates.²

DO MANAGERS HAVE A DUTY TO BE FAIR?

Notwithstanding the tendency of thinkers who are committed to certain financial models of business, the employment relationship cannot be reduced to an exchange of cash (or cash equivalents) for labor. It is a rich and complex human relationship that can be very fruitful and rewarding, but it imposes a variety of obligations on both employers and employees.³ One of the most

Robert Kennedy is professor and chair of the Department of Catholic Studies at the University of St Thomas (St Paul, MN) and co-director of the University’s Terrence J Murphy Institute for Catholic Thought, Law, and Public Policy. He also holds a joint appointment (as professor in the Department of Ethics and Business Law) in the College of Business, where he served as Chair of the Faculty in 2004-05. More specifically, Kennedy’s research interests have focused on topics in professional ethics and problems in contemporary society. He has written articles on corporate social responsibility, professionalism, spirituality in the workplace, wealth creation, and ethical investment, as well as a variety of issues related to culture and public life. His book, *The Good that Business Does*, was published by the Acton Institute in 2006.

¹ In this regard, business ethics texts are quite different from ethics texts in other professional areas, such as law, medicine, and the military.

² Once again, the exceptions tend to dominate or ethical considerations give way to the details of employment law. We see discussions about wages or working conditions in less-developed countries, or about affirmative action, or even about safety and workplace hazards. What we do not see is a systematic exploration of the requirements of professionalism concerning the management of employees.

³ Many of these obligations are reciprocal in nature. For example, employers must provide a safe workplace, but employees must exercise reasonable caution. Employers must be loyal to employees and not dismiss them for frivolous reasons, but employees must not take advantage of employers to leverage themselves into more rewarding positions elsewhere. Employers should be candid with employees, but employees must be discreet and protect confidential information. And employers should compensate employees fairly, but employees must work diligently.

sensitive and important of these obligations is the duty of employers to compensate their employees fairly.⁴ This assumes that the concept of “fair compensation” has meaning and that it is within the control of employers.

Even where there is agreement that employers ought to pay their employees fairly, there is considerable disagreement about what constitutes fairness in particular cases. A common objection throughout the history of this issue is the claim that employers have no real duty to pay employees fairly because fair compensation, or fair prices for that matter, cannot be accurately calculated. In response, we should recognize from the beginning that, like so many other things in business, this is essentially a matter of prudence, not precise formulas.⁵ That is to say, fairness in compensation can never be a matter of calculating a precise dollar amount, the slightest deviation from which would constitute real unfairness. Fair compensation is instead a range, more narrow in some cases than others, and never susceptible of being verified or determined with scientific precision by a formula. Furthermore, a determinate judgment about compensation often involves the consideration of a number of factors, many of them immeasurable and almost all of them subject to variation (more on this later).

As a consequence, a discussion of fairness in compensation as a practical matter cannot hope to produce a system or a formula that can enable an inexperienced or incompetent manager to calculate the value of a compensation package. Instead, we must aim at a set of principles or guidelines that can shape and inform the judgments of a prudent manager. This is the objective of this paper. That being so, the paper will not consider the wisdom or justice of particular public policies designed to bring about justice in compensation; still less will it address means for bringing about changes in public policy.⁶

Another objection is that fairness in compensation, or prices, is best produced, or only produced, by a market. Employers (and still less government

⁴ My concern in this paper will principally be to address the responsibilities of managers (as professionals) to employees and, with one exception, not to consider the reciprocal duties of employees.

⁵ Properly speaking, prudence is not synonymous with caution but is instead sound judgment about practical matters. The prudent person knows what goals are genuinely worth pursuing and knows how to accomplish them; sometimes caution is required and sometimes risks must be taken. In regard to judging fairness in compensation (and many other employment matters), the prudent person is able to assess and balance the various factors that must be taken into consideration in the concrete.

⁶ Much of the current literature (i.e., from the last 25 years) on fairness in wages addresses just these issues. Very little takes on the questions of principle. An exception is an article by my colleague, Michael Naughton, “Distributors of Justice: A Case for a Just Wage.” *America* (27 May 2000).

agencies) cannot hope to do deliberately what the market, the “invisible hand,” does without conscious human direction. At the very least, employers attempting to pay fairly are just as likely to introduce unintended and undesirable consequences.

This objection might be compelling (as it generally is in the case of prices) if it were true that a real, properly functional market exists for employment and that market forces usually determine compensation rates without other deliberate interventions. A properly functional market exists where there are multiple buyers and sellers – in this case multiple employers and numerous employees available to work – and where there are no significant factors that would interfere with the operation of the market. A market of sorts certainly exists for employment but this market may frequently fall short of being properly functional.⁷ As a result, market forces alone are not sufficient to ensure fairness in compensation.

On the assumption that compensation ought to be fair, the challenge is to determine on what principles and by what practices fairness might be achieved.

WHICH JUSTICE?

As Aristotle famously observed, justice (or fairness) is of two kinds.⁸ One kind is concerned with the equality of exchanges between two parties and the other has to do with the distribution of shares of a common resource to members of a community of some sort.

The first sort of justice Aristotle called “rectificatory,” by which he meant to suggest that a just exchange rectifies or makes things right between the parties to the exchange. It is also often called “commutative” justice or exchange justice. Such justice is exemplified in sales transactions, where each party believes that he has received something of value at least equal to what he has given up. It is also

⁷ A market produces fairness in prices (and compensation rates are prices of a sort) when three conditions are satisfied. First, buyers and sellers must negotiate freely, which means at minimum that each must be genuinely free to accept or decline an offer. Second, buyers and sellers must each have adequate information about what is to be exchanged, which we may assume usually to be the case in employment. Third, neither buyers nor sellers are under unusual pressure to buy or sell. In my judgment, the third condition is often violated in employment markets. In many cases, the need for workers to find work is so disproportionate to the need for an employer to hire that the worker is often under unusual pressure to “sell” his work. Or the high cost to a current employee of finding alternate employment rather than accepting a compensation package may also impose significant constraints. Of course, analogous pressures and constraints may also apply to employers but probably not so frequently. In any event, the three conditions may fail to be satisfied frequently enough to preclude relying on employment markets to produce fairness in compensation.

⁸ See Aristotle, *Nicomachean Ethics*, Book V, for the classic discussion of the nature and kinds of justice.

exemplified in situations where one party must compensate the other for harm done, whether that harm is personal injury or property damage. On some accounts, retributive punishment is made morally legitimate by the obligation of the criminal to give up something of value (e.g., his freedom) in return for the harm he has caused the civil community. In any event, the fundamental rule for commutative justice is that whatever is given up by one party in an exchange must be equal to what he receives.⁹

The second sort of justice, which we call “distributive,” is more subtle and complicated. It comes into play only within a community of some kind (families, clubs, businesses, and societies are all kinds of communities) and concerns the criteria for distributing shares of a resource belonging to a community fairly to members of that community. This also requires a person (or a group of persons) who will make concrete judgments about how to distribute that resource. The fundamental rule for distributive justice is that persons who are alike in relevant ways must be treated in the same way (which means that they must be given equal shares) but that persons who are different in relevant ways should be treated differently.

For example, children in a family have a highly developed sense of justice. They are acutely sensitive to failures on the part of parents to treat each child exactly as the others are treated. In many cases they are right to expect identical treatment, whether it involves sharing a limited supply of cookies or establishing curfews. To the extent that the children are the same, distributive justice demands that they be treated in the same way. However, sometimes there are relevant differences between children, even if the children do not see this or will not admit it. A family’s stock of medicine should be used only for the children who are ill. Sometimes treats are fairly given only to those children who have done their chores, finished their homework, or what not. And sometimes children who have not adequately demonstrated their maturity and trustworthiness require more restrictive curfews.

As we will see below, the problem of fairness in compensation is sometimes a matter of commutative justice and sometimes a matter of distributive justice. The difference is critical.

⁹ There can be a certain subjectivity to commutative justice since in voluntary exchanges we often value what we receive more highly than what we give up. We may also see situations in which something is highly valued by one person (a collector, for example) that another might not value at all.

A BIT OF HISTORY

Deeply rooted in the Western legal tradition is a reverence for the freedom of individuals to enter into contracts and to fix the terms of these contracts by voluntary negotiation. From Roman times at least, legal authorities have been strongly disposed to presume the justice of such contracts and to enforce them. Over the past century or two this freedom to contract (and the presumption of justice that follows upon it) has come to be a distinguishing characteristic of employment agreements. It seems quite natural to us that employers and employees should freely negotiate and define their relationship by contracts, but this has not always been so.

The Industrial Revolution of the 19th century profoundly reshaped the lives of countless workers. Prior to the 19th century, it was quite common for communities to fix wage rates for a variety of occupations. While it is true that more often than not the intention in fixing wage rates was to establish a maximum wage in order to stabilize prices and discourage the migration of skilled workers, it is nonetheless also true that the authority of civil rulers and guilds to do this was widely accepted. In time the wage rates of a great many occupations, perhaps most, were fixed either by law or by common practice (and so were “customary”). Communities were thus protected from wage-driven inflation, but workers were also given some protection from unjust employers.

The insatiable appetite of industrial capitalism for workers – especially unskilled and semi-skilled workers for factory positions – changed all that. There were no statutory or customary wages for workers in new industrial occupations, nor was there a solid precedent for understanding the new relationship between employers and employees.¹⁰ Ancient and customary relationships dissolved and new, less formal ones replaced them. Labor markets emerged where owners offered work at a particular wage and workers either accepted or sought better terms elsewhere. This gave rise to a new moral problem, in practice if not conceptually.

¹⁰ It is not a novelty, of course, that one person be employed by another, but employment prior to the Industrial Revolution tended to fall into categories that no longer seemed to fit. Employees in factories were not serfs under local landowners nor were they tenants. They were not apprentices bound to a craftsman, nor were they quite servants subject to masters. When their numbers were proportionately low, the law could treat them as if they did fit one or another of these categories, which in fact it continued to do long after industrial employment became commonplace. Absent a formal contract, the legal framework for thinking about employment has often been the master/servant model, though in recent decades the use of this model has eroded. Nor are most employees really independent contractors, as they often lack independence both in whether they will be employed and in how they will conduct their work.

In principle, employers and employees entered into their relationship voluntarily after having negotiated and agreed upon the wage rate and other terms of employment. In practice, it was (and remains) far more likely that the employer has much greater freedom and power to determine the terms of employment than the employee. They do not meet as equals, as the legal doctrine of contractual freedom assumes, but as parties who are decidedly unequal. In earlier centuries, where wages and terms of employment were often determined by someone other than the employer, the moral problem presented to the employer was essentially a question of whether to comply with law and custom. In the modern world, it is *de facto* the employer who must set the terms and so it is the employer, not the lawgiver, who must determine not only what is possible but also what is just.

This moral problem is particularly important because in the modern world employees are normally entirely dependent upon their wages to acquire the things they and their families need to live. Custom does not provide them with a cottage and a small plot of land; *noblesse oblige* does not ensure that they have enough to eat. They must provide everything for themselves from their earnings. As a consequence, those who have the power to determine wage rates also have the duty to ensure fairness. If they are unwilling to do so, then perhaps they should be prepared to surrender some of their liberty to shape the conditions of employment.¹¹

JOHN A RYAN AND A CHRISTIAN CONCEPTION OF FAIRNESS IN COMPENSATION

Msgr John A Ryan (1869-1945) was a Catholic priest who spent most of his career as a professor at the Catholic University of America in Washington, DC. He was well known as an articulate advocate of progressive economic and social policies. In 1906 he published his doctoral dissertation, *A Living Wage*, in which he argued that employers had a firm obligation to reject setting wages by “unlimited bargaining” (i.e., negotiation without constraint).¹² Instead, he argued that employers ought to commit themselves to establishing a minimum wage rate on moral grounds, viz., the need of workers to obtain a livelihood, and to avoid taking advantage of the economic weakness of workers to reduce wages. Ryan’s work was very influential in debates surrounding the adoption by various states of minimum wage legislation after 1911. His discussion of the issue, especially in

¹¹ Laws and regulations are blunt and often unsatisfactory instruments for securing justice in the workplace. We should not seek to impose them as remedies until it is clear that managers and owners have failed in their professional responsibilities to pay workers fairly, to provide adequately for their safety, to design jobs that are respectful of human dignity, etc.

¹² John A Ryan, *A Living Wage*. (New York: Macmillan, 1906).

his most important book, *Distributive Justice*, is considered by many to be a classic treatment of the subject.¹³

In *Distributive Justice* Ryan argued that the needs of workers for food, clothing, shelter and other requirements of human life must be taken into consideration in determining fairness in wages, though not as the only factor.¹⁴ He predicated this upon three principles.

First, the goods of the earth were intended by the Creator for the benefit of all human creatures, i.e., to provide what is necessary for each person to lead a materially decent human life. Since all persons are fundamentally equal in dignity, no individual has a greater inherent claim than any other to these goods. To put it another way, no individual can claim the right to possess more of the goods of the earth than he may reasonably require in the face of the serious unmet needs of others.

Second, Ryan insisted that this inherent right to share in the goods of the earth became “actually valid” through productive labor. A person who was unwilling to work when he or she was able to work forfeited this right to some degree. Of course, children, the sick and disabled, and anyone unable to work did not for that reason forfeit their right to a fair share.¹⁵

Third, those persons who actually control the distribution of the goods of the earth have a duty to ensure fair, though not necessarily equal, access to these goods. While this principle leads to a number of specific obligations, surely one of them is that these persons must ensure that those who contribute their labor receive a fair share of the available resources. Those who contribute more labor, or more critical labor, may justly deserve a larger share (in most cases), but those who make an adequate contribution are entitled to a minimally decent share. In contrast with an “unlimited bargaining” principle, this right to a minimum share would hold even in market conditions that would reach equilibrium at a lower level.

This final principle rests upon the first two and it provides a foundation for the claim that employers must not only attend to a “living wage” but must also seek to be fair in all compensation decisions. With freedom to control use and distribution comes the obligation to use well and distribute fairly.

¹³ John A Ryan, *Distributive Justice*, 3rd edition. (New York: Macmillan, 1942).

¹⁴ For this and the summary that follows, see Ryan, *Distributive Justice*, chapter 20.

¹⁵ It might be worth adding, too, that work here should be understood to be a broader category than employment. A mother who remains home to care for young children may not be employed but she is certainly engaged in work in the relevant sense.

THE SHAPE OF THE PROBLEM

Msgr Ryan's concern with wage fairness was focused on the urgent problem of providing a minimally decent life to the working poor. He did not discuss in any detail the broader problem of fairness in compensation at other levels but this must be addressed if we are to develop a comprehensive explanation.

Historically there have been several obstacles to developing such an explanation. One, I submit, is the failure to recognize that employment can take several different forms and that these different forms should not all be treated as matters of commutative justice. Our commitment to contractual freedom as a fundamental legal principle obscures this difference, as does the strong tendency to individualism in the Western tradition. We simply have difficulty acknowledging the social nature of human beings and the importance of a variety of communities in human life.

Another obstacle has been the intense focus on the issue of minimum wages. There is surely a matter of justice here but the whole question of fairness in compensation cannot be reduced to this. Fair minimum compensation is, I suggest, a subset of a larger problem, but its importance has tended to distract us from other issues.

Before we can deal effectively with this larger problem, however, we must be clear about the differences in the employment relationship.

SOME KEY DEFINITIONS

The definitions we need concern the nature of compensation and the distinction between ordinary and non-ordinary employment.

Wages or Compensation?

Employment is a voluntary relationship in which the employee promises to contribute a significant portion of his productive energies toward the achievement of the objectives of another person or organization, and for which contribution the employee receives something of value commensurate with the value created by his efforts. We use the word "compensation" because the employee forgoes opportunities to use his energies for other purposes, whether or not these other purposes create economic value.

Significant changes in the nature of compensation have occurred over the past century or so. For our purposes, the most important of these changes has been the transition from cash wages for labor to a bundle of cash and non-cash benefits which we may call compensation. In general, compensation may be understood to be *the set of benefits properly due to an employee from his employer or as a direct result of his employment*. In most cases, the dominant portion of compensation is a

wage or salary, but over the past century non-wage compensation has grown proportionately larger. This portion of compensation may exceed 40% of the whole package. It may include ordinary benefits such as vacation days, a variety of insurance and retirement benefits, family and sick leave, childcare, subsidized purchases (e.g., stock, products and services), and educational subsidies. Extraordinary benefits (usually available only to senior management) can include cars, sabbaticals, stock options, low interest loans, and various personal services.¹⁶ Bonuses and gift incentives can be extraordinary benefits offered to a broad group of employees.

This change in compensation from cash wages to a package of wages and non-cash benefits sometimes obscures the real value of compensation. In order to consider the fairness of what an employee receives as compensation for work, we must make an estimate of the cash-equivalent value (to the employee) of the whole compensation package, not merely the value of the wage portion.¹⁷

Ordinary Employees

There are a variety of circumstances under which people exchange a certain amount of labor for something else of value. Not every one of these circumstances constitutes an employment relationship. For example, one might pay a neighborhood teenager a sum of money on one occasion to mow the lawn, with no expectation on the anyone's part that this will be a continuing chore. Similarly, someone might take a temporary job, or a part-time job, with no expectation or desire that the position will continue indefinitely or that it will lead to promotion. A judgment about what constitutes fair compensation in any of

¹⁶ We should not lose sight of the fact that virtually all non-wage benefits can be converted to a cash equivalent; at minimum we can estimate what it would cost an employee to purchase something comparable directly. The recent public dismay at the unusual benefits enjoyed by Jack Welch, the retired CEO of General Electric, shows how easy it is to miss this point. If there is anything to be distressed about in Welch's retirement agreement with GE, it is not that he received free tickets or meals or even the use of a company plane. The only relevant question is whether the overall cash value of the package is reasonable. To answer this question one would have to know how much of his current income is deferred compensation from his working years, how much is compensation for ongoing consulting, and so on. That some of his income might be in non-cash benefits, perquisites, is entirely irrelevant.

¹⁷ This paper will not be concerned with the mechanics of making such estimates, but it is important to keep in mind that a reasonable effort to make such an estimate is a prerequisite of determining fairness in pay. To take a common example, it is probably not a moral obligation binding on employers to provide health insurance coverage for their employees. However, there may well be an obligation to provide, at least to some employees, sufficient cash income to enable them to provide for their own health care. How the employer does this is immaterial; that it be done may be crucial.

these examples should differ in some respects from what should be expected of what we might call *ordinary* employment.

We may understand an ordinary employee to be *a properly qualified employee working full-time (e.g., 40 hours a week, 50 weeks a year) in a non-entry level position and expecting to support himself/herself and his/her family from his/her earnings.*

The relationship between an ordinary employee and an employer is not merely an exchange of labor for cash, as may be true of other cases; it is something far richer and more human. In some sense, to enter into ordinary employment is to participate in the life of a community of work. In such a community, one party offers all that he or she has to support the achievement of the goals of the community. The other party has a corresponding responsibility to ensure that the members of the community of work receive a fair share of the wealth created or acquired by the community, which must be at least a wage minimally sufficient to permit a decent human life.

Non-Ordinary Employees

In contrast with ordinary employment, all other forms of the employment relationship are non-ordinary. The essential difference is that non-ordinary employees are not full participants in a particular community of work. In practice, this is to say that one or more of the following conditions is present: 1) the employee is not yet properly qualified for the job, 2) the job is temporary, 3) the job is part-time, or 4) the job is entry-level.

Many instances of non-ordinary employment are quite normal and mutually satisfactory, though other instances may be unjust because they are a deliberate effort on the part of employers to discourage or avoid ordinary employment.¹⁸

Different forms of non-ordinary employment give rise to different obligations on the part of the employer. Part-time employment, by its very nature cannot be intended to provide everything an employee might need for a

¹⁸ This may occur, for example, where an employer hires several people on a part-time basis to do the equivalent of a full-time job in order to avoid the obligation to provide non-cash benefits (e.g., health insurance). On the other hand, it is not morally objectionable to offer part-time jobs to those who prefer them (students, some parents or older workers) where there is no intention to deny the employees a share of the goods they deserve to have. since the owner or manager controls access to work and the benefits of work, he or she may have an obligation at times to offer full-time employment so that a person can fulfill his needs through work.

reasonably decent human life, and so the employer is not morally obligated to use human need as a measure of compensation.¹⁹

Entry-level positions, which may be full- or part-time, are usually temporary by nature. Employees in these positions generally lack the minimum skill set or experience required for ordinary employment, but the implication is that, other things being equal, the employee will move on to ordinary employment once he or she is qualified. A menial, unskilled job which provides no opportunity for the acquisition of job skills and from which employees are seldom promoted to better jobs is not an entry-level position.

In sum, while there is nothing wrong in principle with employing persons in non-ordinary ways, there should be a bias on the part of employers in favor of inviting people to full participation in a community of work as ordinary employees. This difference between full participation and less than full participation in a community of work leads to a difference in the criteria of justice to be applied.

JUSTICE IN ORDINARY EMPLOYMENT

The essential characteristic of the ordinary employee is that he or she is a full participant in a community of work. Because this community of work, whether it be a business, a non-profit organization of some sort, or a branch of government, accepts or appropriates the full-time energies, skills, and creativity of the employee, it has a corresponding duty to provide each employee with a share of its available resources. This makes the problem of fairness in compensation for ordinary employees a problem of distributive justice.

In other words, a compensation rate is not a price paid for work, but is instead a share of a resource held by the community to which the worker belongs. In this community the employer is the party who makes the judgments about distribution and to the extent the employer is left free to do this, he or she must attend to the rules and criteria of fairness proper to distributive justice.

Not every employee, of course, deserves the same share of the pool of resources available for compensation. As a result, there need to be some criteria for judging what differences among ordinary employees are relevant to determining differences in compensation. Furthermore, market mechanisms have a role to play in specifying how some of the criteria are to be calculated, though

¹⁹ Even part-time, temporary and seasonal employees, however, continue to be full members of the civic community, which in many cases (particularly where a person cannot work full-time) bears a responsibility to insure that these members can still satisfy their fundamental human needs. To put it another way, the community has a duty to supplement from its own resources what these employees can earn from their work.

these mechanisms must be monitored to insure that they are functioning properly and not distorted by external pressures.

The Principle of Dignity

The first and most fundamental principle of distributive justice in this area has to do with human dignity. As discussed above, work is the ordinary way in which persons acquire the material requirements of life for themselves and their families. No one who contributes a full-time effort to a community of work and performs at a satisfactory level should fail to receive an income that is minimally sufficient to meet these requirements.²⁰

Consequently, no one has a just claim on an income more than sufficient to meet the requirements of decent human life until every member of the community has received a minimum income. The difficulty of calculating this minimum income should not be underestimated, nor should the difficulty persuade people that it cannot be done.²¹ We should begin by remembering that this rate of compensation is an estimate, not a precisely calculable number. We should also keep in mind that it must include not only the cost of the absolute essentials of life (e.g., food, clothing, shelter, medical care, education, etc) but also the cost of those things that make life decently human. In this category we could include provisions for leisure and entertainment, religious practice, aesthetic experience, participation in cultural events, access to communication technologies, and so on.²² In estimating what level of income would be required to achieve this in a particular community at a particular time²³ it may often be useful to apply the Golden Rule: What would the employer think would be a minimally acceptable compensation package for himself or his adult children were he in the position of the worker?

²⁰ An exception, to be discussed below, is a situation in which an organization temporarily lacks the resources necessary to provide every full-time employee with a minimum level of income.

²¹ Ryan made an attempt to model the calculation of a such a minimum income, with quaintly amusing results. See *The Living Wage*, chapter VII, pp 123-150.

²² This does not mean that all full-time workers must be paid enough to buy season tickets at the opera or the ball park, or that they should all have high-speed internet connections and satellite television. It does mean that they should not have so little income that they cannot afford, in contemporary America for example, a telephone, some means of transportation, an occasional ticket to a movie, modest birthday presents for their children, and the like.

²³ It should go without saying (and so I will say it in a footnote) that a minimum fair income will always be a function of the cost of living in a particular place. A worker in Detroit may quite reasonably expect to receive a higher absolute income than a worker in, say, Des Moines Mexico, or Thailand.

The Principle of Equity

As mentioned above, another fundamental rule of distributive justice is that persons who are alike in relevant ways must be treated in the same way. In the case of compensation, this means that persons holding the same job, performing at more or less the same level, with the same prospects for future growth, should be paid at the same level. This rule is famously violated if pay differences are grounded in gender, race, age or other irrelevant characteristics, but it may also be violated by considering such factors as education or personal needs.²⁴

The Principle of Contribution

Assuming the principle of dignity to be satisfied, different compensation levels for employees can be fairly calculated according to the “value” of the contribution they make to the organization’s operation. They should receive a share of the compensation pool commensurate with the value they contribute.²⁵ This is virtually impossible to calculate in the abstract and so it is reasonable to rely on market mechanisms to make this determination. A market mechanism may do one of two things. It may actually reflect the compensation demanded and received by persons who have recently obtained a new job comparable to the one under consideration, or it may be a sort of virtual market which would reflect the compensation paid in other organizations to persons doing a very similar job.

This second sort of market mechanism, the virtual market, is used quite commonly and Human Resource departments can devote a great deal of energy to compiling information on compensation rates. Many organizations make a commitment to insure that their employees will receive compensation within a certain part of the range represented by such data. There is nothing inherently

²⁴ Education can be a relevant factor if it increases employee competence or expands an employee’s ability to manage the unexpected or to contribute to the organization in new ways in the future, but it is probably not an appropriate principle if the education contributes little or nothing to an individual employee’s performance.

²⁵ While employers and employees often speak in terms of the “value” of a particular job, there is little consistency in the means used to estimate value. Sometimes an employee might be valuable because her skills are very scarce, which is the sort of thing a market measures well. On the other hand, we might attribute value to the complexity or sophistication of the job, or to the “dignity” (i.e., rank) of the employee, or the level of education required, or to seniority, or even to the costs the organization would incur if an employee were not available to do the job. The inconsistent, and therefore frequently unfair, use of such evaluative criteria is a common source of confusion and frustration to employees and has led in the past to demands for mechanisms for calculating “comparable worth.”

unfair in this but there are a couple of signs that indicate that this market may not be functioning properly.

Salary compression and salary inversion are signs of dysfunctional markets. The test of a virtual market is whether it accurately reflects what employees might receive if they were to obtain similar employment at another, comparable organization. An organization that finds that it must pay new and relatively inexperienced employees salaries quite close to what they pay long-time experienced employees ought to reconsider its salary scales. And an organization that finds it must pay new employees more than it pays its seasoned workers is almost certainly exploiting the inertia, loyalty and ignorance of these employees.²⁶

The Principle of Sustainability

No one responsible for distributing shares of a common resource can give what the organization does not have. In some cases, an organization will not have the resources to pay its employees fairly, perhaps not even to pay a minimum wage. Justice does not demand that an organization do what it cannot do, but it does require that the managers and directors of the organization consider the future carefully.

Compensation rates are not fair if they threaten the survival of the organization itself. However, this can happen in two very different ways. On the one hand, an organization may be just beginning its operations and not yet have achieved the success for which it reasonably hopes. There is no injustice if all employees, including the managers, are underpaid temporarily in order to lay the foundation for future success. However, the organization should be prepared to repay employees, especially the employees at the bottom of the pay scale, the compensation they were willing to forgo.²⁷ Similarly, an established industry or a region of a country may be experiencing a temporary setback that requires a reduction in compensation. Such a reduction should fall first upon those most able to bear it, but it would not be unjust to impose it eventually on every employee. In both of these cases, however, the assumption is that the financial stress is

²⁶ Many universities, for example, have found in recent years that the market for new PhD's in some fields is so demanding that they must offer starting salaries to assistant professors that are close to or even higher than the salaries of tenured full professors. This should be a sign that they should reevaluate the compensation of senior professors, but they may choose instead not to adjust salaries but to exploit the reluctance of their senior people to seek positions at other schools.

²⁷ In many business start-ups this has been done by giving employees an equity stake in the company, which can be enormously valuable if the company does well. There is always risk involved for the employees of such companies but this risk does not mean that their conditions of employment are unjust.

temporary and there is some reason to believe that the lost income can eventually be repaid in some way, especially to the poorer employees.

Quite a different situation exists in a failing organization or in an industry facing a permanent contraction. In this case there is no reasonable prospect for the organization to return to profitability and managers have a solemn responsibility to bring operations to a close while the resources still exist to give employees and creditors what they are due. Managers who continue operations in the unreasonable hope that things will turn around unfairly place their employees and creditors at great risk of loss.

CONCLUSION

Ordinary employees are fully participating members of a community of work. Their *compensation* for contributing their full energies and talents is a share in the resources of the organization, and so fairness here is a matter of distributive justice. The criteria of distributive justice require first of all that basic needs be met (and so there will be a minimum fair level of compensation) and secondly that similar employees be treated similarly.

Differences in compensation will be justified to the degree that there are genuine relevant differences in the employees and their performance or contribution. Market mechanisms can be very helpful in identifying and calculating the relative value of such differences, but these mechanisms are subject to external pressures that can impede their proper function. Fair and competent managers will be alert to signs that compensation markets are not functioning well and will take corrective action.

In some special circumstances it may not be unfair to pay employees less than a decent minimum, but these situations must be temporary and the real possibility should exist to make good any employee losses.

Non-ordinary employees, as defined above, are not fully participating members of communities of work and therefore fairness in compensation is not a matter of distributive justice. It is instead a matter of commutative justice, which demands equality in exchange. A compensation rate in non-ordinary employment, then, is very much like a price.

As a practical matter, fairness in compensation for non-ordinary employees can largely be a matter of market determinations and freedom to contract. There is no obligation on the part of employers to provide compensation adequate to meet all of the requirements of a decent human life. This is not to say that people who work at part-time or temporary jobs do not deserve an adequate income, but merely to acknowledge that it is not solely or perhaps even primarily the responsibility to the employer to insure that income.

Fairness may be presumed to exist where non-ordinary employees have some choices about where to work and employers have choices about whom to

employ, where both parties are free from unusual pressures, and where each has adequate knowledge about the matter.²⁸ Where these conditions do not exist, managers have a duty in justice to take corrective action, and employees have a duty not to exploit the occasional vulnerability of employers. The scarcity or abundance of workers may cause wages to rise or fall significantly without creating an injustice, though such changes can create opportunities for mischievous employers or employees.

The situation of entry-level employees presents a special case. On the one hand, they are often invited to join a community of work and they are expected to become ordinary employees at some future time. On the other hand, they typically lack the skills and experience necessary for them to participate fully in this community. They are, in some respects, like apprentices. As a result, it will normally be fair to pay them something less than a minimum decent wage because they cannot yet make an adequate contribution to the organization and, correspondingly, because the organization is investing something in the training they receive.

In a market economy, where the State honors and protects the freedom of people to enter freely into contracts, and where it intervenes in the marketplace largely to take corrective action to insure the proper functioning of markets, employers and owners of resources have considerable economic freedom. This freedom to organize the work of others, to make and sell what they wish, and to employ whom they wish carries with it some serious obligations. Among these obligations is the duty to insure as far as possible that all of their employees are paid fairly.

The employment relationship is not normally the exchange of labor for a wage; it is commonly participation in a community of work. For ordinary employees who do participate fully in a community of work, fairness in compensation is determined by the principles of distributive justice, with special emphasis given to the protection of the human dignity of the employee. For other, non-ordinary employees, who do not participate fully (or perhaps at all) in a community of work, fairness in compensation is determined by the principles of commutative justice.

In either case, given the variables at play and the limited tools available for measuring those variables, fairness in compensation is never a precise figure

²⁸ At the risk of redundancy, we must remember that employers, who *de facto* control access to employment, a fundamental human good, have an obligation to make ordinary employment available whenever possible. Thus, even employers who pay an objectively fair wage to non-ordinary employees may still do them an injustice if they deliberately deny them the ordinary jobs they want and ought to have.

but is instead a range determined by a conscientious application of the principles of justice.