A Response to Lars Lindblom

Pernilla Leviner and Tim Holappa

In the chapter ‘Distributive Justice for Children’, Lars Lindblom challenges theories of justice from a child perspective. This is significant, as issues of distributive justice tend to be conceptualized as involving only adults and not children. Lindblom poses the question of what happens with such theories if children are taken seriously. The educational setting is used to highlight broader issues of equality for children. Against the backdrop of various principles and approaches to justice, Lindblom investigates how a child-focused view could affect our account of justice.

Four aspects of justice are investigated in the chapter: 1) the metrics of justice, i.e. the goods with which the theory of justice is concerned; 2) the timeframe taken into account, in which the ‘whole-life perspective’ is contrasted with a view of childhood as an important period in itself; 3) re- and pre-distribution as ways of differentiating between helping people up or preventing people from falling; and 4) the different spheres of justice in which society is divided.

Lindblom concludes that in order to take justice for children seriously, the prioritarian principle would be an appropriate perspective on justice. In the education setting, this would entail teachers helping students who most need help as the best means of achieving the goal: to bring each pupil above the threshold. In a broader sense, need is thereby the basis for providing help, and the strength of this approach to justice is that it also acknowledges that children are not responsible for their need for help.

From a legal, not the least a welfare law, perspective, Lindblom’s analysis is very interesting. It challenges the ‘go-to’ notion of formal justice in public administrative law as it is found in the Swedish setting – namely of justice being achieved through legal certainty in the exercise of public power. The basis for this notion of justice specified in our constitution, the Instrument of Government (Section 1:9), is that everyone is equal before the law and that courts and public authorities are to observe objectivity and impartiality.¹ In other words, justice within the sphere of the exercise of public authority is achieved when like cases are treated alike; this notion, at least, is what is most

often discussed in the Swedish legal literature. Less discussed, but very central in welfare law and highlighted in Lindblom’s chapter, is whether the administration and decisions by public authorities, from the perspective of the legal system and legislation, provide equal opportunities and the prerequisites for a good life. Indeed, ethical and legal principles do exist in certain areas of the legal system concerning welfare, for example, within healthcare, principles demand that those who are most sick receive care first (Section 3:1 Healthcare Act, hälso- och sjukvårdslagen). This can be seen as giving an expression for justice. Another example can be found in the discussions regarding priorities during the Covid-19 pandemic; it was considered obvious that those who were most vulnerable were to be vaccinated first, etc.

It can be noted here that Lindblom’s analysis of justice underscores new aspects in the discussion of how we view children and childhood during the pandemic. For example, it has been reported that child healthcare needed to take a back seat to allow its resources to be used in the care of adult Covid-19 patients. This can be questioned from the perspective of childhood as a particularly important (and brief) period. A child who must wait three months for an operation can experience a significantly greater negative effect than an adult with this same waiting period, as the wait could greatly delay a child’s development.

Relating to the Swedish legal view of justice, the concept of substantive justice within the field of welfare law can be discussed in contrast to the overarching focus on formal legal certainty that arguably dominates Swedish public-law discussions. In addition to living up to the formal requirements that are typically given as important principles for legal certainty, a decision in welfare law must be compatible with ethical requirements. It has been argued that for the exercise of public power by government authorities to be considered as substantively legally certain, the welfare state ought to focus on and protect the needs and interests of individuals, and that economic support is to be given based on substantive equality. As legal support for this claim, reference

---

3 Legislative Bill 1996/97:60.
5 Gustafsson, H., Rättens polyvalens, en rättsvetenskaplig studie av sociala rättigheter och rättssäkerhet (Gothenburg: Göteborgs universitet, 2003); Bäckman, T., Gymnande besluts negativa rättskraft och rättssäkerhet: för människor med funktionsnedsättning inom rättsområdena SoL och LSS (Gothenburg: Göteborgs universitet, 2013).
is often made to Section 1:2 of the Instrument of Government, which prescribes that public power is to be exercised with respect to the equal worth of all and the liberty and dignity of the individual. With respect to the right to support according to the Social Services Act (socialtjänstlagen) that we discuss in our chapter in this anthology, the starting premise for the decision-maker must be the needs of the individual. Support is in turn to be structured so that the individual achieves an adequate standard of living – something that can be seen as an expression for a form of substantive justice.

In the Swedish welfare law discussion on substantive legal certainty in the welfare state, the child perspective is noted to a great degree by its very absence. In our chapter, we attempt to problematize the regulations and application of social economic support in connection to children. Based on Lindblom’s analysis of children’s rights and distributive justice, we also find that when it comes to adequate living conditions, additional questions can be raised when justice for children is taken to its limits, as opposed to when it is a question of justice for adults. As we point out in our chapter, requirements that can appear reasonable when imposed on adults are neither reasonable nor proportional when assessed from a child perspective.

It is important to note that as children cannot be held responsible for their needs in school, they cannot be held responsible for their needs for economic support; they have the right to be supported by their parents and, ultimately, by society. Depending upon the perspective of justice that is taken into account, the legal formation of the child’s right to support can be discussed with different approaches; if one takes a starting point in the prioritarian principle, particular attention and support should be given to the most vulnerable children first. Children’s rights clearly challenge our welfare system, but they also challenge our legal view of justice – something that Lindblom illustrates very well indeed.

References


