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LAYOFFS AS A PROBLEM OF LOCAL JUSTICE

by

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My strategy in the present paper is an indirect one. Instead of offering a systematic discussion of layoffs in the perspective of local justice, I shall present an overview of concepts, problems, principles, consequences and explanations in local justice with illustrations taken from the layoff arena. First, however, I shall locate the study of local justice within a broader perspective.

The empirical study of justice

The study of local justice is a branch of the empirical study of justice. Generally speaking, such studies can be directed either at behavior

or at attitudes, and take place either in real-life contexts or in artificial settings such as surveys or experiments. Table 1 indicates the possibilities:

	Attitudes	Behavior
Real-life settings	(A) Content analysis	(D) Local justice Fairness in wage determination, taxation ec.
Artificial settings	(B) Surveys Experiments	(C) Experiments

Table 1

I shall briefly discuss and illustrate the various categories.

(A) To my knowledge, the study of attitudes towards justice in real-life settings is not much developed. I do not here have in mind the attitudes that may be revealed in allocative situations, but attitudes as manifested in verbal behavior not elicited for this purpose. One might conduct, for instance, a content analysis of parliamentary speeches for the purpose of identifying the conceptions of justice to which the speakers subscribe.

(B) The study of attitudes in an artificial context is illustrated by a well-known article by Daniel Kahneman, Jack Knetsch and Richard

Thaler.¹ Using a telephone survey they were able to identify the conceptions of market fairness held by their respondents. They found notably that ideas of fair allocation are governed by a reference-point effect similar to that previously identified in choice situations. Another instance of this approach is an equally well known article by Menachem Yaari and Maya Bar-Hillel.² They found, among other things, that the subjects tended to adopt the utilitarian criterion for some goods and the maximin criterion for others.

(C) The experimental-behavioral study of justice can be illustrated by the “ultimatum bargaining” experiments conducted by Werner Güth and others.³ Two subjects are asked to divide (say) ten dollars according to the following procedure. One subject proposes a division of the sum between himself and the other. If the other accepts the proposal, it is implemented. If the other turns the offer down, neither gets anything. The salient findings in these experiments were (i) the person who makes the offer usually leaves a substantial share for the other and (ii) that if the other is not given a substantial share, he is likely to reject the proposal. A natural interpretation of this finding is that the subjects are not motivated by selfish rationality, nor by altruism, but by some conception of fairness. (But note that it can also be understood in terms of envy and fear of envy.)

(D) The real-life behavioral study of distributive justice can be directed to the processes of wage formation and income transfers.⁴ It can

¹ “Fairness as a constraint on profit-seeking”, American Economic Review 76 (1986), 728-41.

² “On dividing justly”, Social Choice and Welfare 1 (1984), 1-14.

³ W. Güth, R. Schmittberger and B. Schwarze, “An experimental analysis of ultimatum bargaining”, Journal of Economic Behavior and Organization 3 (1982), 367-88.

⁴ See for instance Ch. VI of my The Cement of Society, Cambridge University Press 1989, for a discussion of conceptions of justice as a determinant of wages.

also be directed to what I call matters of "local justice": the decentralized allocation by institutions of scarce goods and necessary burdens. A fuller description is given below. Here I only want to emphasize that such local allocations, unlike wages and taxes, are not part of an overall system of distribution, redistribution and compensation. They are, indeed, local in the sense of being made independently of allocative decisions made in other spheres or arenas.

Before proceeding further, I want to say a few additional words about the purpose and methodology of the empirical study of justice. On the one hand, our main interest may be in the attitudes per se. A philosopher seeking to construct a theory of justice might, for instance, want to use people's intuitions about justice in particular cases as the raw material for a more theoretical elaboration. On the other hand, our interest may be in attitudes only to the extent that they shape behavior. In this perspective, attitudes towards justice would be quite uninteresting if it turned out that most people accord a very low weight to justice compared to (say) self-interest. The present paper is written with the latter approach in mind. We need to identify not only the conceptions of justice held by individuals in allocative positions, but also the importance of these conceptions compared to other determinants of their allocative behavior.

The main methodological problem in this area is to sort out the relation between what people think, what they say, and what they do. Because of self-ignorance a person may think he would do one thing in a given situation, and yet do something else when it actually occurs. Because of deception or self-deception, he may say one thing and both think and do something else. Because of pressure to conform, a person may do one thing and secretly prefer another. These problems are common to all attitude

DISTINCTION
WITHIN VALUES OF JUSTICE
AND PRACTICES OF CHOICE
ACCORDING TO PRINCIPLES / VALUES OF JUSTICE

research, but they may be especially acute in the study of attitudes towards justice and of the impact of such attitudes on behavior.

Local justice illustrated by layoff⁵

The study of local justice can be summarized under five headings: concepts, problems, principles, consequences and explanations. In expounding these aspects of the issue, I shall make a systematic use of illustration from layoff cases, while also drawing on other arenas to identify suggestive similarities and differences. Although there are literally innumerable cases of local justice, I shall limit myself to the following:

- military service in wartime
- demobilization from the army
- allocation of kidneys, livers and hearts for transplantation
- hiring workers
- selection of workers for layoffs
- admission to higher education
- allocation of sperm for artificial insemination
- selection of adoptive parents
- award of child custody
- admission to nursery school
- admission to nursing homes
- division of household work
- immigration

⁵ For fuller discussions and references, see my Local Justice, New York: Russell Sage Foundation 1992.

Concepts. Local justice concerns, as I said, the allocation of scarce goods and necessary burdens. Sometimes, it may be hard to tell whether a given option is a good or a burden. It may be a good for some and a burden for others, or a good up to a point and a burden beyond that point. Layoffs illustrate both points. Older workers may welcome a temporary layoff as an unpaid vacation, and yet be worried if it goes on for too long. Although any allocation of burdens can also be described as an allocation of goods (viz. exemptions from the burdens), there is a substantial difference that should not be obscured by this formal similarity. Burdens make people worse off than they were in the pre-allocative stage, goods make them better off. This difference is reflected in the choice of allocative criteria and mechanisms. In surveys, lotteries are deemed more acceptable in the allocation of burdens than in the distribution of goods,⁶ a difference that is probably also found in actual allocations. Nevertheless, I do not know of any examples of layoffs regulated by lottery.

Goods can be classified along three dimensions: scarcity vs non-scarcity, homogeneity vs heterogeneity, divisibility vs indivisibility. Local justice problems arise either because there is not enough of the good to satiate all who want it (scarcity), or because not all can get the best variety of the good (heterogeneity). When the good in question is a job, the former situation obtains in market economies and the latter in centrally planned economies. Whereas scarce, divisible goods can be allocated so that everybody gets something, indivisibility combined with scarcity necessitates a partition of the potential recipients into winners and losers. When jobs can be divided without loss of efficiency, time sharing is an alternative to

the nature of subject taken into local justice procedures can sometimes determine the choice of procedure adopted.

⁶ W.Hofstee, "Allocation by lot", Social Science Information 29 (1990), 745-63.

Thus, the indivisibility of the goods makes arising ZERO-SUM GAMES.

? In Germany, France, Italian and some other country's experience, would that be possible to understand the time sharing as a sort of

- 7 - an additional helping measure, adopted under state public policies to face

↑
structural unemployment

layoffs. In the long run, however, jobs are treated as indivisible; as far as I know, time sharing is never more than a temporary arrangement.

Allocation mechanisms can take three main forms: selection, admission, and placement. A selection procedure compares individuals against each other, usually by producing a ranking list, and admits them by starting at the top and going down the list until the good is exhausted. An admission procedure compares individuals against an absolute threshold, and offers the good to all those and only those who exceed the threshold. A placement procedure regulates the allocation of non-scarce, heterogeneous goods, ensuring that each individual ends up with some unit of the good. As mentioned earlier, centrally planned economies operate on a placement system. In market economies, hiring (always) and layoffs (usually) are regulated by selection procedures. When admission procedures are used in layoffs, they are usually a proxy for selection, with the threshold chosen with a view to match the number of applicants with the number of available places.

The urgency and importance of allocative justice can be assessed by answering two questions. How many individuals will have to go without the good (or assume the burden)? How urgent or important is getting the good (or escaping the burden) for the individual? Layoffs, for instance, represent a medium-sized problem for a medium-sized number of persons. Admission to the college of one's first choice (as distinct from admission to some college or other) is a small problem for a large number of individuals. The allocation of organs for transplantation is a large problem, often involving life and death, for a small number of individuals. The selection of soldiers for military service in wartime constitutes a large problem for large numbers of young men.

Allocative decisions are often referred to as “second-order choices”, and contrasted with the “first-order choices” that determine how much of the scarce good will be made available.⁷ In addition, there are “third-order choices” which are made by recipients of the scarce good to increase the likelihood of obtaining it. Before a firm decides which workers to lay off, it has to decide how many jobs that are to be eliminated. If the principle is that the more senior workers are laid off last, workers can invest in seniority by staying in the firm rather than leaving for another job.

As will be clear from the examples below, many local justice issues have an “inverse”, in the following sense. Assume that the problem is getting good A or getting into institution X. The inverse will then be the loss of A, or leaving X. Getting a job and being laid off from one are obvious examples. A general research issue can then be formulated as the task of determining the relation between the criteria used to regulate a given allocative problem and those used to regulate its inverse. Note that some problems have no inverse: immigrants who receive citizenship cannot later be expelled from the country, and a successfully transplanted liver is never re-transplanted into another recipient.

Problems. There is an indefinitely large number of allocative issues that fall under the heading of local justice as described above. To facilitate comparison with layoffs I shall briefly describe some of the cases that have been studied as examples of local justice.

In the labor market, hiring and promotion no less than layoffs create problems of local justice. Ability matters for all three decisions. In

⁷ This terminology is due to G. Calabresi and P. Bobbit, Tragic Choices, New York: Norton 1978.

promotion and layoffs, seniority is also a major factor. In layoffs, need can also be a criterion. Although one might imagine seniority (duration of unemployment) as a criterion in hiring decisions, to my knowledge this proposal has never been made, much less implemented.

There are many child-related issues of local justice: selection of parents for adoption, allocation of sperm for artificial insemination, admission to nursery schools, choice of a custodial parents in contested divorce cases, and the conflict between the biological family and a foster family in child placement cases. The first two cases are analogous to not being hired for a job, the last two are analogous to being laid off from a job. In both arenas, having an application for a good turned down is less distressing than losing a good that one has, because in the latter case one also loses an investment of skills and emotions.

Manning an army in wartime creates local justice problems at both ends, as it were. At the outset, one must decide which young men are fit for service and, among that subset, who should be ^{dispensed} exempted for reasons of need (they may have dependents to support) or efficiency (they may be better employed in industries that are vital for the war effort). After the war, demobilization must take place serially, thus creating a need to determine who should be allowed to leave the army first. After World War II, for instance, the American Army conducted a large survey to identify the principles and criteria that could be generally accepted as a just procedure for demobilization.

Admission to selective institutions of higher education is a local justice issue that affects large numbers of individuals at some time in their life. The problem has no inverse, because (like the army) the institution has only transient members, and because (unlike the army) there

is no need to regulate the order in which people leave. In the perspective of each institution, we are dealing either with a selection problem or an admission problem, as those terms were defined above. In a larger perspective, we are dealing with a decentralized placement problem, because almost all applicants end up being accepted by some institution. Some countries, in fact, have centralized placement programs that match applicants with places according to some algorithm.

Allocation of scarce, life-saving medical goods creates some of the most acute local justice issues. Admission to intensive care units and selection of patients for transplantation are two well-known cases. For two reasons, the second is much more rigidly constrained than the first. Intensive care is divisible: patients can be transferred to the general ward after a shorter or longer period. Also, the number of intensive care units can be expanded more or less indefinitely: the scarcity is man-made rather than natural. By contrast, organs are indivisible and subject to irremediable scarcity. The first years of penicillin treatment exemplifies the case of natural scarcity combined with divisibility. The last case - man-made scarcity combined with indivisibility - is illustrated by the waiting lists for hip operations and heart bypass surgery in Norway.

Principles. The goods and burdens allocated in local justice issues are regulated by a large variety of criteria and mechanisms. Some of them are "pure", others are "mixed" (that is, a mix of pure principles). I begin with a survey of the main pure principles, before a brief discussion of some methods of combining them.

some practice the principles are mixed

The general category of mechanisms consists of principles that do not require individualized knowledge of the recipients, but can be applied in an impersonal, anonymous manner. The most important

mechanism is also the most simple: equal division. As noted above, it can only be applied when the good in question is divisible (or does not lose too much of its value by being divided). However, even indivisible goods can be allocated in ways that reflect the spirit of egalitarianism. In the arena of work, rotation of undesirable jobs among the members of a collective offers one example. Assignment of jobs (or layoffs) by an equal-chance lottery could in theory offer another. (Lotteries with unequal chances of obtaining the good are discussed below.)

Other important mechanisms are queuing and waiting lists, which differ in that the former requires one to waste time standing in line, whereas the latter operates simply by inscription on a list. Access to general practitioners is often regulated by queuing, whereas specialists use a waiting list. Both mechanisms have some affinity to seniority, which is a central criterion in layoff decisions. Yet they differ in that seniority is a by-product rather than a main goal of the activity that generates it. People do not take jobs for the sole purpose of eventually accumulating enough seniority to avoid layoffs.

We may count seniority as a mechanism, although it could also be seen as an individualized criterion, based on the individual's time of entry into the organization. Outside the labor market, seniority is used to regulate access to important political positions, such as committee chairmanships in the American Senate or the position of doyen in the Corps Diplomatique. In British colleges, table prayer is said by the senior fellow present. But by far the most important role of seniority is to structure promotions and layoffs in the enterprise. The consequences of using this criterion are further discussed below.

Individualized criteria may be present-oriented, backwards-looking or forwards-looking. Allocation according to need is a present-oriented criterion. In medical contexts, it often implies giving priority to the patients in the most critical condition. In contexts such as induction into the army or layoffs in a firm, it usually implies concern for individuals who have a spouse or children to support. However, in a German case a worker was protected from being laid off because his child had a speech defect that required attendance at a special school. As this example shows, arguments from need can be based on very special features that can only be handled by discretionary procedures.

Allocation according to desert is a backward-looking criterion. An example can be taken from the American demobilization scheme, where those with combat decorations were allowed to leave before other (*ceteris paribus*: see below). In theory, desert, like need, can stem from many sources. In practice, however, I believe that usually allocators only take account of desert that is somehow related to the good to be allocated.⁸ From the point of view of a worker, for instance, protecting the most senior workers from layoffs can be seen as a form of allocation according to desert. Workers who have devoted their lives to the firm deserve to retain their jobs. By contrast, I do not think anyone has argued that a worker who is active in his local community for that reason deserves to keep his job.

Allocation according to efficiency is a forward-oriented criterion. In a medical context, it tells us to give scarce goods to the patients who can benefit most from them or, in another interpretation, who

⁸ This adds another sense in which local justice is local. Not only are different goods allocated by different criteria, but a given criterion (such as desert) can have different interpretations in different spheres.

would benefit society most if they got well. In the layoff context, it might seem obvious that the most efficient procedure, at least from the point of view of management, would be to retain the most able workers. Efficiency may also, however, favor seniority. For one thing, the use of seniority reduces costly turnover. For another, it forecloses arbitrary foreman behavior with the concomitant unrest among the workers.

A further, important set of individualized criteria are those defined in terms of status: gender, race, age, residence, citizenship, occupation. Sometimes, these are used as principles in their own right, as when women or blacks are the subject of negative or positive discrimination. Often, they are used as proxies for other criteria, as when age is used to select patients for medical treatment on the grounds that beyond a certain age they are unlikely to benefit from it. Most frequently, perhaps, status criteria play a negative role: allocation shall be status-blind. Because positive discrimination of one group creates negative discrimination of another and may involve efficiency losses as well, status neutrality may be defended on grounds both of equity and efficiency. Note, however, that neutrality can be taken in two meanings here. In layoffs, for instance, it may mean that status criteria shall play no role whatsoever in layoff selections, or that the group chosen for layoffs shall have the same status composition as the work-force as a whole.

The pure principles discussed so far are almost never used in practice. Actual allocative schemes virtually always ^{include} embody a mix of several pure principles. The most frequently used technique for combining principles is that of a point system, in which different criteria are combined in a linear, additive scheme. The American demobilization, for instance, accorded 1 point per month in the Army, 1 point per month in

overseas service, 5 points per campaign star or combat decoration, and 12 points per child under 18, up to three children. The allocation of kidneys in the United States is also based on a point system. There are cases, too, of layoffs being regulated by point systems. A British firm selected employees for dismissal with points allocated for length of service, age, marital status, dependents, quality of performance, and versatility. My impression, however, is that this practice is infrequent.

Two-stage selection according to different criteria is also quite common. One version of this idea is the lexicographic method, in which a secondary criterion is used to select among those who are indistinguishable on the primary criterion. In layoff decisions, for instance, seniority may be used in selecting among workers of relatively equal ability. Another idea is that of first creating a pool of eligibles and then selecting from the pool. Seniority may be used to select among all those who pass some ability threshold.

An intriguing idea is that of combining impersonal mechanisms such as lotteries or queuing with individualized criteria. Thus in Holland students are admitted to medical school by a weighted lottery, with high school grades used as weights. Some medical institutions have allocated goods by multiple waiting lists, so that, for instance, older patients would wait for a small number of goods in one queue, and younger patients for a larger number in another. While old patients would never get to the head of a single queue, multiple queues give them at least a shot at the good. I have not come across similar practices or proposals in the labor market. I conjecture, however, that if lotteries were ever to be used to regulate layoffs, they would be stratified according to status rather than

simply random. (In Norway, jurors are chosen in a lottery stratified by sex.)

Consequences. The use of an allocative principle may have certain indirect effects that are not explicitly embodied in the principle itself. I shall discuss two classes of consequences: secondary effects and incentive effects.

A secondary effect arises when the individuals chosen as recipients of the good (or burden) systematically have certain properties in common, over and above the properties by virtue of which they were selected. When in the beginning of the century applicants for immigration to the US were selected by a literacy test, a secondary effect was that of excluding applicants from South-Eastern Europe. When in the 1920s Yale University rationed students on the basis of geographical diversity, a secondary effect was that of reducing the number of accepted Jewish applicants, who came from the populous state of New York. When kidneys are allocated by a point system that gives great weight to genetic matching, the result may be that groups with unusual antigen patterns, such as blacks, receive disproportionately fewer grafts. If workers are laid off on the basis of seniority, the body of dismissed workers may be predominantly black or female, if these groups only recently gained access to the occupation in question.

These four cases differ in one important respect. In the first two cases the secondary effect was also an intended effect, the real (but hidden) reason for adopting the scheme. This is not true of layoffs or transplantation. Seniority systems have never, to my knowledge, been adopted for the purpose of protecting white, male workers over other groups, nor was the matching criterion for transplantations chosen to keep

the number of transplanted blacks down. There is a disparate impact of these systems on blacks and women, but no disparate intent. The question of remedial action nevertheless arises in these cases as well.

Incentive effects belong to the realm of third-order decisions: knowledge of the allocative scheme may induce individuals to change their behavior compared to what it would have been had the scheme not existed (or been unknown to them). One effect of this kind is usually referred to as moral hazard, a phenomenon that arises when an individual's knowledge that he will receive compensation or treatment in the case of an accident or other unforeseen event influences behavior so as to make that event more likely to occur. Fire insurance, for instance, makes fires more likely because the knowledge that they will be compensated makes house owners behave more ^{disaster - precipitated} recklessly. A plausible instance in local justice contexts is seniority. If layoffs are made strictly by seniority, or with only minimal qualification requirements, workers may be less diligent in acquiring skills than if they know that firms will use ability as the main criterion. Furthermore, if less-qualified senior employees are retained in a layoff, then the profits of the firm may be negatively affected, thus creating a need for more workers to be laid off than would otherwise have been the case.

Another incentive effect is that of investments in entitlements. Many examples are found in the army, where stratagems to get exemption or deferment from military service have included the following: joining religious orders, bungling a burglary to get into jail, joining the National Guard, cutting off a finger or toe, going on a severe diet, inducing severe obesity, blinding an eye, taking drugs, growing an ulcer, getting married. With the possible exception of the last, all these investments are wasteful. In the layoff arena, investments in entitlements are common, but in

general not wasteful. If the more able workers are retained, investment in skill acquisition is a valuable response. If the firm decides to retain the more senior workers in a case of layoff, one reason for doing so may precisely be that they expect the workers to respond to the incentive thus created to stay in the firm.

Finally, allocative schemes may encourage misrepresentation of skills, preferences, pain and other unobservable states. Such problems are routinely encountered in the allocation of household tasks within the family, where spouses or children may appeal to back pains and headaches, lack of skill or lack of interest in the output to obtain exemption from the work. Layoff situations do not seem to encourage such behavior, except in the indirect sense that some workers seek an alternative to layoffs by claiming to have unobservable ^{pains} that will entitle them to early retirement and disability benefits.

Explanation. The most important and the most difficult part of the study of local justice is to explain why, in a given allocative situation, a specific allocative scheme is chosen. I do not believe that we shall ever be able to predict such choices from a simple general postulate, such as the axiom of profit maximization in economics. We probably cannot do better than sketch a framework that may serve as a guide to which questions to ask, while leaving the answers to the analysis of individual cases.

First, we have to identify the actors that are involved in the process from which the allocative scheme finally emerges. Corresponding to the three levels of decision-making, we may distinguish between first-order actors (political authorities), second-order actors (administrators in the institutions that allocate the scarce good) and organized third-order actors (recipients of the scarce good). In addition, public opinion often

when to classify, f.m., antid union / role - other local justice
decision has 3rd. order or as public opinion?
Public opinion as an actor or as an arena?

serves as a quasi-actor, in the sense of expressing preferences and, especially, indignation over particular schemes. Not all cases of local justice involve all sets of actors. In the case of layoffs, for instance, the distinction between first-order and second-order actors is somewhat tenuous, although the Chief Executive Officer and the Chief Personnel Manager to some extent represent these positions. On the other hand, the case of layoffs is one of the rare examples of a well-organized set of recipients. Most other recipients are either too transient or too weak to have the incentive and the ability to organize themselves.

I wonder if prophetic adoption, by
unwary & unorganized firms - at the same way described by
Stewart & Mann on the paper of 1979 -
could be considered an instrument
of influence of the 3rd. order
actor in spite of
its weaknesses

Next, we have to identify and if possible explain the preferences of these actors with regard to the feasible ^{practical} allocative schemes. The following generalizations have many exceptions, so many, perhaps, that they ought not even to be put on the table. They may nevertheless have some heuristic value for the purpose of generating discussion. First-order actors are concerned with global efficiency, because as managers of society as a whole rather than any one particular sector, they are acutely aware of the fact of scarcity. Whereas scarcity can usually be alleviated in any given sector, it cannot be reduced in all sectors at once. These actors are also somewhat concerned with equity, because inequitable practices can lead to public outcries that are politically costly. Administrators are concerned with local justice and with local efficiency. Actual and potential recipients are moved mainly by their self-interest. Public opinion is upset when worthy ^{notable} recipients are turned down or when someone manipulates the scheme to his advantages, but rarely when scarce resources are used in a wasteful manner. When an identifiable child is denied a liver transplantation, there is a potential for scandal; when a given patient

Why not employees & distributors?
Except the underdeveloped state actors, private owners of public institutions.

Is it possible to identify any purpose beyond these assertions?

receives five different organs that might have saved the lives of as many (unidentifiable) others, there is not.

In the layoff context, the analysis is much simplified. There are basically two actors: management and labor. (In the following I assume that the workers are organized. If they are not, management can, with various exceptions and limitations, basically set the layoff rules unilaterally or not use any rules at all.) Public opinion matters little. Whereas one does not go far wrong in assuming that management wants to maximize profits, the objective function of labor is more controversial. Although it is usually assumed that both wages and employment are arguments of its utility function, the form of that function is a matter of debate.

unilateral procedure

The final step in the process is that of preference aggregation. Often, that step can be broken down in two separate stages. First, there is a process of coalition formation between parties who subscribe to different principles which nevertheless, in the case at hand, have the same operational consequences. The solid employer-employee coalition around seniority as a principle for layoffs offers a clear illustration. Workers believe that senior employees deserve preferential treatment, and management finds it efficient to accord it to them. Also, under many circumstances seniority would be adopted by majority voting among workers based on simple self-interest, further cementing the alliance. Next, there is a process of bargaining between these coalitions. In the case of layoffs, this step is not observed, since there is no coalition to oppose the worker-management alliance, which is in fact so strong that only a fool would try to oppose it.⁹ In other cases, however, we do observe bargaining

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⁹ I have heard Norwegian politicians assert in private that it would be socially desirable to retain the least senior workers in layoffs, to stabilize what is often a fragile insertion into

between groups with different preferences. A frequent outcome will then be agreement on a point system, in which the weights accorded to the various criteria roughly reflect the bargaining power of the parties.