

# **Institutionalising the Difference Principle**

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## **INTRODUCTION**

In a recent paper, Andrew Williams has produced an ingenious critique of Jerry Cohen's attempt to undermine the incentives argument for inequality.<sup>2</sup> I, in turn, want to rebut his charges. I shall argue that a principle that persons should exhibit concern for the least advantaged in their market behaviour is more easily institutionalisable than Williams allows. Then I go on to argue a different point, namely that the distinction between structure and ethos is one that should be abandoned when we consider which form of society best operationalises the difference principle, because of the way in which the functioning of structures depends on ethos. But first a bit of scene-setting.

## **THE DIFFERENCE PRINCIPLE**

The so-called 'difference principle', the subordinate second part of Rawls's subordinate second principle of justice, has

perhaps generated as much criticism and commentary as the rest of his oeuvre put together. The principle - initially of multiply ambiguous formulation - enjoins that society be so-organised (subject to the meeting of a number of prior conditions) that the expectations of the least advantaged (whoever they turn out to be) are maximised. Those expectations are, in turn, to be measured in terms of a quantity of all-purpose means, called primary goods, available to those least advantaged persons over the course of a lifetime. That share, in the hands of those least advantaged persons, is not, according to Rawls, to be distributed directly, as an aim of public policy - or at any rate, not in the first instance. Rather, the economic distribution that emerges in society is to emerge as the result of the day-to-day operations of its 'basic structure', with tax and transfer policies being a mere 'mopping up' operation to secure what improvement can be secured over that naturally emergent distribution. The difference principle does not enjoin equality, but rather sanctions an unequal distribution of primary goods. The thought behind this is that the least advantaged will themselves benefit from an unequal distribution because the productivity-enhancing effects of economic incentives will be such as to increase the size of the economic cake and, crucially, of their slice of it.

In this paper, I say nothing very much by way of justification of the principle, since arguments on that score have been gone over many times. My interest in the body of the paper is to intervene in a debate that goes to the heart of Rawls's theory, namely G.A. Cohen's challenge to the idea that - for distributive justice at least - Rawls's is wrong to restrict his focus to the basic structure as the primary subject of justice and should

instead take account of the behaviour and motivations of persons within a 'well-ordered society' and of the distributive patterns that depend on their behaviour and motivations. I shall argue, with Cohen and contra some of his critics - such as Andrew Williams - that Cohen's expansion of concern beyond the basic structure of society is amply justified. But I shall also argue that there is more to be said on the subject of institutionalisation of an egalitarian ethos than Williams allows. I then go on to argue against the very possibility of identifying a difference-principle optimal basic structure in ignorance of the motivations of the persons who are to operate within in. The case of blood-transfusion - familiar from the work of Titmuss - will provide a familiar example.<sup>3</sup>

#### **THE BASIC STRUCTURE**

As Brian Barry and others have recognised,<sup>4</sup> Rawls's *A Theory of Justice* represented a massive leap forward in the discourse of liberal political theory in one significant respect (among many others) in that it fully took on board the lesson of Marx and of the classical sociologists, that social structure is profoundly fateful for how people's lives go. People, to paraphrase Marx, may well make their own lives, but not in circumstances of their own choosing, but rather within social and political structures that they have to take as pretty much given - at least in normal circumstances. Rawls focused on that structure and asked what its character would be if it were to be freely chosen in the light of our nature as moral beings, rather than imposed upon us. The whole thought-experiment of the 'original position' is aimed at

providing design principles for such a structure. In focusing on the structure of society in this way, Rawls achieved a remarkable ideological victory on two fronts: first he responded to the challenge of the left - which had long correctly recognised the importance of structure - and, second, he blunted the challenge of classical liberalism and libertarianism. He blunted this challenge by marrying justice in process and justice in outcome together through a legal, political and economic structure so that he was less vulnerable to the challenge mounted by Hayek (and later by Nozick) that social-democratic redistribution required constant and unjustifiable interference with everyday human activity. Rather, he sought both to guarantee essential freedoms and to construct permissible processes in such a way as to lead to desired distributive outcomes.

One might remark at this stage that Rawls appears to have a great deal of confidence - as was perhaps appropriate during the post-war boom - in the ability of economic experts to work out which structure is to the long-term advantage of the least advantaged. Given a lower degree of confidence in that ability - as is certainly appropriate today - it may be rational to favour more egalitarian short-term solutions because of a heavy rate of discount of long-term egalitarian predictions.

#### **COHEN'S CHALLENGE**

When Rawls invites us to think about the problem of social justice, he invites us to consider three perspectives: first, our own 'considered judgements' about the matter in hand; second, his own contractarian construction - the original position - which is

supposed to be a procedural embodiment of those judgements; and third, the viewpoint of the 'well-ordered society'. The 'well-ordered society' is an imagined institutional realisation of principles of justice where citizens act from a commitment to the principles of justice.

Now Cohen's key point is this. Given that such citizens have a commitment to the principles of justice, how could it be the case that they require productivity-enhancing incentives to supply their skills in the amounts necessary to be of the greatest benefit to the least advantaged? To be sure, some inequalities of income might be needed: such as those strictly causally necessary to elicit the required performance and those needed to compensate people for the intrinsic unpleasantness of certain types of work. But the latter, at least, is perhaps best understood anyway as the fulfilment of what equality requires rather than a deviation from it. What Cohen is above all concerned to rule out, as incompatible with a commitment to justice, is the attitude of the hard-bargaining high-flier in the market, who says, in effect, 'I will only supply my scarce skills, if you pay me  $n$ ', where  $n$  is some figure far in excess of what the person actually needs in order to perform the work in question. When a person takes such an attitude, it may well be prudent to accede to their demands, but their making those demands is revealing of a lack of fraternity with the putative beneficiaries of the supply of those skills - the least advantaged.

One reply to Cohen's gambit is to insist on its irrelevance to the critique of Rawls, on the grounds that Rawls's focus is the basic structure of society and not the attitudes of its members, so long as those members conform to the requirements of that

structure. Such an approach runs up against Rawls's numerous *obiter dicta* about the motivation of citizens, fraternity, and so on. But as Cohen has pointed out, it also presents Rawlsians with a dilemma. The first horn of that dilemma is that if one conceives of the basic structure of society as simply its formal legal structure, then the defence of Rawls is straightforward but costly. Rawls could indeed maintain the position that incentive-generated inequality is consistent with justice understood as legal conformity, but given the fatefulness for human lives of social phenomena more extensive than the basic structure, the restriction of focus would seem arbitrary and indeed subversive of the point of a theory of social justice. The second horn is that if one moves beyond formal legal structure to the wider network of social practices (as the requirement of fatefulness would seem to enjoin) then it becomes much more difficult to distinguish structure from behaviour since structures (e.g. of the family) are often constituted by behavioural regularities. The patriarchal family has the structure that it has because of the behaviours of the members that constitute it.

The great strength of Andrew Williams's critique of Cohen's critique of Rawls is that, taking as its starting point the same vantage point as Cohen - namely, the perspective of the well-ordered society - Williams manages an elaboration of the basic structure objection which permits both a more extensive construal of the basic structure than the merely legalistic and a restriction of its focus to exclude the motivation of law-abiding agents in the marketplace. Williams does this by an ingenious combination of two factors. He refuses to accept a definition of the basic structure in terms which are either purely

dispositional (that which is fateful for people's lives) or in terms of a list of intrinsic properties (coercive legal relations). Instead he opts for a mixed definition, claiming that Rawls's account of social unity in a well-ordered society gives us reason to restrict the scope of the basic structure to those aspects of society that are both (a) fateful and (b) institutionalisable in public systems of rules. The key point here is that in a well-ordered society, justice must not only be done but must be seen to be done. Public systems of norms hold open the possibility for citizens of mutual verification that their actions are in conformity with the shared social framework that they are committed to and which they take to be expressive of their moral personality. By contrast, the motives of agents in the marketplace are often obscure (even to the agents themselves) and so fall outside the purview of justice. In other words, Rawls's cut between elements which fall within and without the basic structure is not an arbitrary one, but one mandated by other important elements within his theory.

#### **PUBLICITY AND INSTITUTIONALIZATION**

Andrew Williams has made the publicity requirement central to his critique of Cohen because of the role that the requirement plays in the possibility of 'well-ordered social co-operation'. 'According to that ideal,' Williams explains, 'a society is well-ordered only if regulated by a conception of justice that is both public and stable. Under such conditions ... everyone accepts and knows that others accept the same conception, and everyone knows that conception is satisfied. Furthermore, everyone willingly

complied with the conception because, having witnessed others' readiness to act justly, they have internalized its requirements, which in turn are congruent with their other values.'<sup>5</sup> According to Williams, then, the institutional rules that comprise the basic structure must be public in three respects: individuals must be able to 'attain common knowledge of the rules' (i) general applicability, (ii) their particular requirements, and (iii) the extent to which individuals conform with those requirements.'<sup>6</sup> Williams regards as 'clearly disqualified' both self-effacing moral principles and 'those norms which are so informationally demanding that individuals are incapable of mutually verifying the status of their conduct.'<sup>7</sup>

Now it can be difficult to reason about the character of an ideally-just or well-ordered society. Such reasoning at the same time neither purely a *priori* nor just a matter of empirical generalisation. It isn't for example, part of the very idea of an ideally just society that all the various desiderata of justice are completely satisfied, since - given conflicts and trade-offs among those desiderata - the maximally just society may nevertheless remain defective when considered purely from the perspective of liberty, equality or publicity. And rather like those other desiderata, publicity is something which admits of degrees of satisfaction. It is rather easier, for example, for citizens to verify mutual compliance with some rules than with others. In the case of highly complex rules, like those governing corporate fraud, there may be some significant variation in citizens' ability to grasp either the rule's general applicability or their particular requirements. Given that many rules playing an important function in securing the basic



liberties, guaranteeing equality of opportunity or maximising the advantage of the least advantaged will inevitably fail to be maximally public, it would be heroic to insist on the maximal publicity of rules as a necessary condition for a society to count as just. This at least opens the door to norms, including those derived from egalitarian ethics, which encounter some difficulties on the road to full publicity.

It is worth noting that John Rawls's own remarks about the institutional character of the basic structure are more nuanced - or at any rate more vague and evasive - than Williams's interpretation might lead us to believe. Williams cites Rawls's definition of an institution as 'a public system of rules' and reminds us that Rawls 'does not regard all norm-governed activity as institutional. Instead he reserves the term for activity which realises a certain type of norm, which is, in some sense, public.'<sup>8</sup> But Rawls goes on to tell us that that which is definitive of publicity here - and most importantly the possibility of mutual verification of compliance - is not always a feature of actual institutions but is an, albeit reasonable, simplifying assumption. Now where institutions consist to some degree of non-public rules, Rawls thinks that is to be deplored (and - other things being equal - I need not disagree with him). But it surely remains the case that those institutions whose guiding norms are wholly or partly non-public still remain a part of the basic structure of the wider societies that they inhabit.

How difficult is it going to be for a norm mandating that people aim through their actions in the economic arena to bring about the greatest benefit of the least advantaged to meet Williams's publicity conditions? We can address this issue from a number of

directions. We could just ask how difficult it is in absolute terms for such a norm to meet those conditions. But we can also ask how this norm fares on the dimension of publicity compared to other norms which Williams (and Rawls) want to see institutionalised. If rules derived from an egalitarian ethos fare no worse (or not much worse) on the publicity dimension than other rules, then that will weigh against Williams's arguments. And we can ask whether an egalitarian ethos which could not itself satisfy those publicity requirements (to an adequate degree) might nevertheless justify more concrete rules which could meet those requirements.

### **Mutual verifiability**

One of Williams's three criteria of publicity is the mutual verifiability requirement. Now I'm somewhat sceptical about Williams's attribution to Rawls of this part of the publicity requirement being a necessary condition for a norm to be embodied in the basic structure. After all, if our model is that of a well-ordered society, we already know by hypothesis that individuals are motivated to act in accordance with principles of justice, so the need to check whether they are in fact conforming with the rules is pre-empted by an assumption of social trust.<sup>9</sup> Finding out whether or not norms are being complied with is, in any case, afflicted with difficulties of two different kinds, one of which is much more important than the other. We can distinguish between the difficulty of finding out whether or not there are many acts which violate rule R and the difficulty of knowing whether or not an act A is of a type which violates rule R. So, for example, it might be very difficult to tell (for

obvious reasons) whether a prohibition on some sexual practice is widely complied with, but it might be easy to tell of some particular act (observed or indulged in) whether or not it is an act of the putatively prohibited type. We can also distinguish between first- and third-person perspectives on an act. Equal opportunity legislation may leave little doubt about which acts are permitted and which prohibited, but it may be hard for a third-party to tell (and harder to establish) whether a given act is an act violating the rule. A familiar example of this would be when a pregnant woman is not appointed to a post. Denial of employment on grounds of pregnancy would clearly be in breach of the law, but the reasons publicly given by the employer are not those which we suspect were actually operative.

We should in any case be wary of excessive scepticism concerning the possibility of establishing whether a given other person is conforming to a rule. For most offences in the criminal law - by anyone's lights part of the core of the basic structure - it is necessary for the prosecution to establish not only that the accused exhibited the behaviour specified by the law (the *actus reus*) but also that they had the mental state appropriate for the act in question (the *mens rea*). So, for example, a prosecution for theft has to establish not only that a person, say, left a shop with some unpaid-for goods, but also that they intended permanently to deprive the rightful owner of their property. Other laws explicitly build in reference to intention. There is, for instance, a law against driving without due care and attention. In all of these cases we draw inferences from public behaviour and other facts concerning the mental state of the putative offender - there is not, in practice, a great difficulty

about institutionalising such laws and nor need there be about institutionalising other rules.

### **Particular requirements**

All of the above leads me not to dismiss entirely, but at least to heavily downgrade the importance of mutual verifiability of compliance with norms in a well-ordered society. But a much greater challenge is posed by the need for citizens to know what, specifically, the rules demand of them. Here again, there are ambiguities. Is it enough, to satisfy this condition, that there is for a rule a means of telling for each act whether or not it is in conformity? Clearly not, for we can imagine rules for which that condition is satisfied but only in ways that place intolerable burdens on citizens' reasoning or information-handling capacities. (Perhaps, to establish whether or not a given act is in conformity with the rule, citizens would have to follow a long and complicated algorithm.) Do we want to say that the condition is met if citizens can establish whether or not their conduct complies with the rule so long as they consult an expert (a lawyer, accountant, priest or sociologist)? If such consultation is expensive, does that mean that the publicity condition is met to any lesser degree?

There are surely many instances where citizens may find it difficult or costly to discover whether or not their behaviour is in conformity with a rule. But it may be possible for them to find out something else, namely, whether their behaviour is in a 'zone of risk'. Citizens may not be sure whether or not a given gesture is, technically speaking, an assault, or whether or not a given piece of financial sharp practice counts, strictly

speaking, as fraud. But they do know that there is a general principle - 'fraud is wrong' - which finds expression in more or less detailed regulations. The general principle does not itself issue in specific rules, but specific rules are needed to give it detailed expression. If we just consider the rules by themselves, they don't seem to meet the publicity requirement, since they are too informationally demanding. If we consider the principle alone, it doesn't meet the conditions of publicity either because it is too vague. But take the two together and we have an ensemble which is capable of guiding conduct to a sufficiently tolerable degree.

How does a norm mandating that people act so as to maximise the advantage of the least advantaged fare? As Williams points out, there are clear difficulties with meeting the condition that citizens acquire knowledge of its particular requirements and consequent problems that arise for mutual verifiability of conformity. Some of these difficulties arise from the connection between the principle and occupational choice: does the norm require that I work in the job where my work will be to the greatest benefit of the least advantaged? Other difficulties arise from the egalitarian compensation requirement: am I due extra pay to compensate me for the intrinsic unpleasantness of my work? And some arise from the interaction between the principle and reasonable agent-centred prerogatives.<sup>10</sup> All of these considerations suggest - as Williams argues - that Cohen's egalitarian ethos cannot be directly institutionalised in the form of public rules that could form a part of the basic structure. But that may not be to say anything very damaging: the basic principles of justice themselves, and close derivatives of

them (such as the prohibition on fraud) are in a similar position. The difficulties establish that institutionalisation is not a straightforward matter and that there may be morally required and epistemically inescapable limits to it, they don't establish that nothing can be done.

What can be done? Whether or not there is a principled moral distinction to be made between acts and omissions, it does seem to be the case that the law (as one system of rules) finds acts easier to deal with than failures to act: it is generally easier to establish that A harmed B (when A did) than that A failed in her duty to aid B. We certainly should not criminalise the person who simply fails to assist the least advantaged to the greatest possible degree. But that should not prevent us from establishing a prohibition on knowingly conducting oneself in a way seriously harmful to expectations of the least advantaged. If this norm were embodied in law, convictions would no doubt be hard to secure, especially given the need to prove intent. Since the case would be difficult to prove, it would be hard for talented high-fliers to complain that they were being unfairly placed in jeopardy and, in any case, such fears would have to be balanced against the long-term interests of the least advantaged. Even if there were *no cases ever*, such a law would both fulfil an important symbolic purpose: a society that implemented it would signal its commitment to the principle of fraternity. (Exemplary use of the criminal law is just one possibility, though. The British Government of Tony Blair has already made use of 'windfall taxation' in order to seize the excessive profits of privatised utility companies - similar measures could perhaps be employed to seize excessive personal income!)

A final suggestion for how we might implement an egalitarian ethos concerns the behaviour of firms and other institutions. To be sure, the ethos is an ethos governing the conduct of individuals, but we may further it and establish its status as a customary rule by placing requirement on employers. We could legislate to require firms to have due regard to the satisfaction of the difference principle in their employment practices and obliging them to report on how they implemented that requirement. Experience of similar laws concerning the environmental impact of a company's policy has not been the catalogue of cynical evasion that might have been expected. Of course, it might be difficult to determine which employment practices would have the desired effect. But given the reporting requirement we might hope to build up a body of knowledge over time which could come to guide decisions. Remuneration committees of large firms would have to show how their decisions were consistent with the requirement and we might expect overly cynical rationalisations to be the focus of media scrutiny.

In all of these attempts at institutionalisation, what we have to bear in mind is the weight that should be given to the various desiderata of social justice. A basic structure which implements an egalitarian ethos may, despite what I have said, do worse on the dimension of publicity than one which does not. But the principle of publicity is only instrumental to the goal of well-ordered social co-operation and it may be more or equally damaging to the achievement of that goal if the disadvantaged come to resent the cynical and exploitative behaviour of high-flying market maximisers.

## **ETHOS AND STRUCTURE**

The so-called 'basic structure' rebuttal of Cohen relies upon the drawing of a sharp line between structure and ethos. Up till now my aim has been mainly negative, I have been seeking to rebut Williams's critique of Cohen. But I want to move on to raise a further problem for those who seek to maintain a basic structure-ethos distinction. I want to point to one way in which structure depends on ethos and then argue that the identification of the difference-principle optimal structure, an identification which the implementation of the difference principle requires, cannot be done without taking account of the prevailing ethos. This is a less radical approach than is involved in Cohen's attempt to blur the distinction between structure and ethos in two respects. First, while for Cohen the problem is the deep one that some kinds of structure are constituted by behavioural regularities, my claim is that certain structures depend for their (effective) functioning on ethi of certain kinds. Second, mine is more of a rhetorical point against someone who believes that ethos is irrelevant to justice. Someone who rather believes that people have an obligation to act - within the limits of psychological and physical necessity and making due allowance for agent-centred prerogatives - in order to maximise the expectations of the least advantaged, will not be concerned by what I have to say here.<sup>11</sup>

My thought is this: that the functioning of objectively described basic structures will in many cases be a function of a prevailing ethos. (I should add for the sake of completeness the Rousseauian thought that the prevailing ethos may be the consequence of the structure.) Let me say a little, by way of elaboration. The basic structure that obtains in a Rawlsian just



society will emphatically not be a regime of free markets plus tax and transfer. Rather, Rawls is clear that the ideal of a 'property-owning democracy' is to be instantiated through an economic and social system which is likely to be a mix of different forms of tenure, organisation, property law, and so on. In any given 'property-owning democracy, we may expect to find state-owned industries, firms operating employee share-ownership schemes, worker co-operatives, private companies and so on. And there will also be much room for variation in the extent to which various goods and services are provided as commodities through the market or as direct benefits from the state, or by people, their social networks and families.<sup>12</sup> Allowing for that multidimensional variation in possible basic structures, we can imagine a space containing all the different possible basic structures, perhaps a space resembling Borges's library of Babel which Daniel Dennett makes such effective expository use of in his *Darwin's Dangerous Idea*.<sup>13</sup> Now consider the following question: which of these structures is optimal for the satisfaction of Rawls's difference principle? I submit that there is no answer to that question in abstraction from what the prevailing ethos of society is.

Someone might disagree with that. They might think that the contribution of structure and ethos to difference-principle satisfaction is additive: a particular structure always contributes a constant amount to the satisfaction of the difference principle and a particular ethos also contributes a certain amount. Under that assumption, we might imagine all the structures lined up in space with the most difference-principle friendly on the left and the least friendly on the right and the

ordering of those structures from left to right would not vary however we changed our motivational assumptions about the people working in them (although the situation of the least advantaged would vary for each structure as the ethos was changed). That 'invariance assumption' is deeply implausible. A simple illustration should bring this out: that of blood transfusion.

Richard Titmuss's famous study of *The Gift Relationship* deals with the motivation of donors to the UK Blood Transfusion service.<sup>14</sup> Titmuss argued, not that donors were motivated by pure altruism, but rather by a sense of generalised reciprocity: they ought to give because, after all, blood transfusion might be something that they too would need in the future. Purely self-seeking market-maximisers would not contribute blood, of course, because they would receive neither monetary reward nor an improvement in their own situation were they themselves to need a transfusion. It is easy to see that, given the objective of getting enough blood to transfuse needy patients, the best structure will differ depending upon the patterns of motivation that exist in society. There is no optimal structure to be picked out independently of those motivations and an attempt by an economist to do so using the standard tools of their trade would often pick out a structure that would be suboptimal. Given the predominance of a self-seeking motivation, a system of voluntary blood donation would be a disaster and would not generate the desired result: rather a market based system of incentive (payment for blood supplied) or disincentive (denial of transfusion to non-donors) would be called for. But where persons are motivated by a sense of mutual responsibility and dependency, voluntary donation is superior.

Any attempt to treat structure and ethos separately is, in any case, going to come to grief on the social and psychological fact of the profound effect of structure on ethos, a fact noted and emphasised by many writers and borne out by common experience. Public sector institutions in the UK which have introduced internal markets or devolved budgeting systems have also experienced profound changes in the motivation and ethos of their staff. Where once colleagues in one university department would gladly do a bit of teaching for another one on the basis of rough reciprocity or even just goodwill, the introduction of cost centres means that what was once informal exchange is now accounted and costed. As a result, much activity that once took place now does not. No doubt there are many issues to consider when an institution considers whether it should run on a decentralised market basis, as a central dictatorship, as a federation of co-operatives etc, and I don't want to suggest that one model is necessarily better than another in all circumstances. What I do want to do is to deplore the treatment of these structures as neutral technologies for turning preferences into outcomes in a way that neglects the way in which structures transform preferences.

If we look at Rawls himself, we find, I believe an ambivalence about the relationship between ethos and structure. Rawls is often concerned with the way in which a form of society interacts with the motivations of citizens and indeed emphasises the importance of institutions that in practice foster a sense of justice. He tells us, in another of his *obiter dicta* that 'In designing and reforming social arrangements one must, of course, examine the schemes and tactics it [the institution] allows and

the forms of behaviour which it tends to encourage'.<sup>15</sup> When he talks about operationalising this idea, though, he immediately slips into discussion of the Smithian invisible hand which implies a conception of the state as providing systems of incentives and disincentives for rational persons in order to bring about some desired result. Sometimes forms of behaviour are taken by Rawls as consequences of social structure, sometimes as more or less given. I believe that it makes more sense to treat the two together as interacting. The trouble is, that despite more than two centuries of social theory we still have little idea how to do this: although we can see that such interaction does take place. But the difficulty of operationalising such an idea is no real excuse for persons - like Rawls - who do accept the plasticity of individual motivation to rely, in their design of social institutions, on a body of theory which denies it.<sup>16</sup>

#### BY WAY OF CONCLUSION

I have tried to argue that whilst we should accept Andrew Williams's point that the goal of well-ordered social co-operation requires that principles of justice should be implemented as far as possible through public systems of rules there may be more room for the implementation of norms preventing maximising behaviour by high-fliers than he allows. In any case, meeting the publicity requirement is a tough test not just for such norms but for many others, including those that Williams himself must see as central to a just society. The goal of well-ordered social co-operation requires not just publicity, but also fraternity, and in order to secure it some trade-offs will be needed. In any case, because of the well-documented interaction between structure and ethos, the very identification of the

difference-principle optimal basic structure cannot be done without a consideration of the ethi that it will permit and foster. Whatever the difficulties in implementing an egalitarian ethos, Cohen is right in his contention that a theory of social justice cannot plausibly restrict itself to the evaluation of abstract systems of rules but must also range over individual behaviour and motivation.

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<sup>1</sup> Very much 'work in progress', so please don't cite without permission. Thanks to Andrew Williams for discussion and comments.

<sup>2</sup> Andrew Williams, 'Incentives, Inequality and Publicity', *Philosophy and Public Affairs*, 27, no. 3 (1998), pp.226-248. For Cohen see, 'Incentives, Inequality and Community', in G.B. Petersen ed., *The Tanner Lectures on Human Values. Vol. 13* (Salt Lake City: University of Utah Press, 1992) pp. 262-329; 'The Pareto Argument for Inequality', *Social Philosophy and Policy* 12 (1995), pp. 160-85; and 'Where the Action Is: On the Site of Distributive Justice', *Philosophy and Public Affairs* 26, no. 1 (Winter 1997) pp. 3-30.

<sup>3</sup> Richard Titmuss, *The Gift Relationship* (London: George Allen & Unwin, 1970).

<sup>4</sup> For remarks along these lines see, e.g., Brian Barry, *Justice as Impartiality* (Oxford: Oxford University Press, 1995), p. 214.

<sup>5</sup> Williams, p. 245.

<sup>6</sup> Williams, p. 234.

<sup>7</sup> Ibid., p. 235.

<sup>8</sup> Ibid., p. 234.

<sup>9</sup> As Andrew Williams has pointed out to me, this assumes that the relevant laws don't have the form, 'perform act P in circumstance q if you know that sufficient others will do x in q'. I do indeed make this assumption and I believe that Williams should too, since laws of

such a form – and it would be unusual for laws to be so framed – would be likely to be more informationally demanding than he permits.

<sup>10</sup> For an extensive exploration of the impact of agent-centred prerogatives on Cohen's critiques of Rawls see David Estlund, 'Liberalism, Equality and Fraternity in Cohen's Critique of Rawls', *Journal of Political Philosophy*, vol. 6, no. 1 (March 1998),

<sup>11</sup> I don't think that there is much mileage in the following paradoxical thought, commonplace among proponents of Victorian capitalism: those genuinely concerned about the least advantaged should not seek to aid them but should instead promote and exemplify an ethos of individual self-reliance. A variant of this would be to argue, contra-Cohen, that inequalities are to the benefit of the least advantage but not because of their productivity-enhancing effect on those that have, but rather on those that have not.

<sup>12</sup> See Krouse, R. and M. McPherson, 'Capitalism, "Property-Owning Democracy", and the Welfare State', in A. Guttmann ed., *Democracy and the Welfare State*.

<sup>13</sup> Daniel C. Dennett, *Darwin's Dangerous Idea* (Hamondsworth: Allen Lane, 1995) ch, 5; Jorge Luis Borges, 'The Library of Babel', in *Labyrinths* (New York, 1962).

<sup>14</sup> Richard Titmuss, *The Gift Relationship* (London: George Allen & Unwin, 1970). My discussion draws heavily on Alan Carling, 'What Do Socialists Want?', unpublished ms.

<sup>15</sup> *A Theory of Justice*, p. 57.

<sup>16</sup> Perhaps this is too strong, since economists often say that any (consistent) motivational pattern is representable in theory. What can be said, though, is that 'one of conditions of the welfare theorems of neoclassical economics [is] that agents exhibit no concern for the interests of those with whom they interact', Christopher W. Morris, 'The Relation Between Self-Interest and

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Justice in Contractarian Ethics', *Social Philosophy and Policy*, check exact reference. If social institutions have the effect of fostering such concern and thus render possible forms of interaction and co-operation denied to non-tuistic agents, that fact will go unremarked in the models used by standard economics.