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Principles of Distributive Justice, Counterfactuals and History*

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EGALITARIAN principles of distributive justice often permit departures from a strictly equal distribution of whatever they seek to equalize if the least advantaged people in the unequal state of affairs do better than the least advantaged under strict equality. One such principle, governing the distribution of certain 'primary goods', is John Rawls's difference principle,¹ but one can envisage a number of distributive principles that have the appropriate feature. One non-Rawlsian example might be a principle that called for the minimization of the Gini co-efficient subject to a constraint on worsening the situation of the worst-off. This paper aims to discuss a difficulty that arises in the interpretation of any such principle when we seek to use the principle to evaluate a given society.

For any society we can ask whether there is some alternative set of arrangements that would better satisfy the distributive principle we prefer. Is there, in a Rawlsian scenario, an alternative basic structure satisfying lexically prior principles that would improve the social primary goods available to the least advantaged? If we are straight income egalitarians, is there a policy (say a change in taxation) that would move us closer to income equality without so depressing the economy that the worst-off are harmed? Using an analogy with the Pareto principle I shall refer to social states of affairs as pattern-superior or inferior, the state of affairs we aim at being termed pattern-optimality.

* In the course of writing this paper I have benefited from the written or oral comments of G. A. Cohen, Robert E. Goodin, Keith Graham, Nick Rengger, Andrew Chitty, Brain Barry, Patrick Dunleavy, Deborah Fitzmaurice, Keith Dowding and Brendan O'Leary. Cohen's encouragement has been particularly valuable: I reached my claim in section V that the standardly interpreted difference principle is at best a principle of prudence and not a principle of justice via my contrast of the standard and counterfactual tests and was pleasantly surprised to learn that Cohen had reached similar conclusions via a quite different route. Subsequent revisions of section V have been heavily influenced by Cohen's reflections on the difference principle in his 1991 Tanner Lectures.

¹ John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1972) p. 302.

We can approach the question of whether a society is pattern-optimal in two ways. The most obvious and straightforward of these is when we ask whether there is something that can be done via reform, revolution or whatever, to bring about a pattern-superior state of affairs. But there is another question that might be posed. One might construe the question counterfactually and ask whether, if either some fact of history or some fact about the present that we have no power to change (such as the existence of South America) were other than it actually is, a pattern-superior state of affairs would obtain. I term the future-oriented way of looking at the problem the standard construal and the alternative the counterfactual construal. For the most part I shall be considering the contrast between the standard construal on the one hand and the historical-counterfactual construal on the other, although I shall have a little to say about the standard versus present-counterfactual problem below. To clarify: what I shall call the standard test asks what is possible now; the historical-counterfactual test asks what would be possible now had the past been different; and the present-counterfactual test asks what would be possible now if some feature of the actual situation which we cannot change could be changed.

The practically-minded reader, perhaps interested in questions of social policy, is likely to feel some impatience at the idea of a counterfactual construal. This is understandable. The past is past and cannot be changed (as economists like to say 'bygones are bygones'), and what on earth is the point of even considering features of the present that cannot be changed? But sometimes the case where a society passes the standard test but fails a counterfactual one is important. The grounds on which the least advantaged may be urged to give their allegiance to such a society can be different from the reasons that may be given in a society that passes both tests. If, for instance, history has locked the least advantaged into a social structure which is currently the best available but which was once rivalled by a pattern-superior alternative that is no longer a possibility, and insofar as the defeat of the alternative was the work of those who benefit from existing inequality, then the least advantaged may well be prudent to accept the status quo but their reasons for doing so are not ones of justice. If this is so, there may be a second, future-oriented reason for not giving up on the claim that the society that fails the historical-counterfactual test is not just even when it is the best available. The claim that the society is the best available is based on the imperfect social theory that we have and the weak and short-term predictions it gives us. The claim that a society is a just one may have the ideological effect of restricting the range of alternatives in the future and this would be undesirable. If it turns out that some alternative is indeed permanently unavailable, that may have one implication for political philosophy in its prescriptive role and another in its role of providing self-understandings for the institutions and social structures we inhabit.

In part I, I use an allegory and some examples in an attempt to persuade the skeptical reader that the problem is a real one before considering in part II various mechanisms that might make social structures that were feasible choices in the past become infeasible in the present. Part III deals briefly with examples of the present-counterfactual construal. In part IV I seek to distinguish between cases that are, in the end, germane to the issue of justice and those that are not. Part V makes some Rawls-specific observations concerning the peculiarity of the difference principle as a principle of justice. In Part VI, I draw the conclusion that principles of distributive justice need a historical dimension in their application.

Before proceeding with the argument I must make three remarks. First, one conclusion that I reach backs up Robert Nozick's point that our assessment of the justice of a distribution depends, at least in part, on how that distribution came about. This view, which, as Nozick points out, he shares with many socialists, can of course be held independently of the particular historical entitlement theory that Nozick subscribes to.

Second, concerning the interpretation of the standard test, I shall take it that a society passes the standard test if there is no reform of the basic structure of society that could be implemented that would result in a sustainable improvement in the expectations of the least advantaged in the short term. Sustainable, because it is easy to see that a windfall redistribution might be possible but would lead to economic catastrophe; short-term, to avoid the rejection of a distribution as pattern-inferior simply because of the consequences of normal economic growth. Of course, much of this is question begging, and it is sometimes interesting to look at the distributional impact of a policy over different longer and shorter time-periods. In particular, there are interesting cases where a short-term worsening of the position of the least advantaged would lead to an immense improvement in their long term situation (provided, of course, they survive the initial worsening). One such case is invoked in the discussion of social possibility. For the purposes of simplicity, I shall assume that, on the standard construal, a society will pass or fail the test according to whether it is false or true that there exists some coherent economic, political or social programme such that, if it were implemented, the expectations of the least advantaged would be improved.

Third, for the purposes of argument, I refer to three types of basic structure: socialist, welfare capitalist, and laissez-faire. I do not pretend that these exhaust the options, but most readers will recognize them. I make the assumption that where all three are possible social systems, socialism is pattern-superior to welfare capitalism and welfare capitalism is pattern-superior to laissez-faire. Anyone who is disinclined to accept this empirical assumption may, without damage to the argument, substitute whatever social types in whatever relative position they wish.

I. ILLUSTRATION OF THE HISTORICAL-COUNTERFACTUAL TEST

To illustrate the contrast between the historical-counterfactual and standard tests, let us engage in a little storytelling concerning the fictional republic of Ukania. Ukania is a modern liberal-democratic state with a capitalist economy and an extensive welfare sector. The welfare programmes are supported by a system of progressive income taxation. It is widely, and correctly, believed that any further attempt to improve the situation of the least-advantaged Ukanians would have the paradoxical effect of actually worsening their position because of the negative incentive effects on the skilled and talented of tax increases. It looks as if a Rawls-style egalitarian principle is satisfied.

But to describe Ukania thus is to tell the truth, but not the whole truth. The current configuration of Ukanian society is the result of a historical process, and had history gone differently the least advantaged would be better off than they actually are. Suppose that, twenty years ago, Ukania was not the liberal democratic state it is today but a society in the midst of revolutionary conflict. (Perhaps an authoritarian oligarchy had collapsed and the shape of the future constitution had yet to be determined.) Conflict raged between the pro-socialist and pro-capitalist forces, but the latter eventually triumphed. A transition to socialism was possible during the upheaval, but ceased to be so after the establishment of a settled constitutional order. After a period of time, a succession of amnesties etc., political exiles returned and the Ukanian socialists recognized that the hour for full-blooded socialism had passed. After twenty years they form part of the moderate social democratic-liberal coalition.

The least advantaged could have been better off, but everyone, including the Ukanian socialists, recognizes that they can be no better off than they are. How are we to judge such a society? Our final, all things considered, judgement on the justice of today's Ukanian society may well depend on the details of what happened twenty years ago. The elite blocked the transition to a pattern-superior system, but by what means? On the one hand, if the transition was blocked by means inconsistent with lexically prior principles of justice, by means involving the violation of rights, perhaps we will give one answer. But maybe, on the other hand, the elite simply made good use of the rights they possessed and blocked the transition to socialism by procedurally just means. How should that affect our answer? Should our judgement of the justice of present-day Ukania depend on how long ago it was that the revolution failed? Events of a hundred years ago do seem less relevant than last week's. If a transition to a pattern-superior form was possible at one time, why is it no longer possible at a later time? If it was possible to move to a socialist society twenty years ago, what makes such a change impossible now?

Some of these points receive attention below. What I want to do here is to observe that the Ukanian story is not some unrealistic invented scenario, but

rather a commonplace of political life in the twentieth century. In the 1980s a Socialist government of Spain pursued vigorous modernizing policies that were far from the socialism they had espoused in opposition. While their policies could have been more egalitarian, there is little doubt they were limited in their possibilities and aspirations by Franco's institutional legacy and by the changed position of Spain in the international economy. Had there been a different outcome in the 1930s, the least advantaged of the 1990s might be better off than they actually are. Similarly, if General Pinochet had not overthrown the Allende government in Chile in 1973, and if Chile had not undergone a Chicago-inspired monetarist experiment, a reformist government in a democratic Chile might have been able to promote more egalitarian institutions than are possible today. Within the realm of constitutional politics, the pursuit of free-market policies by the Thatcher government in Britain may have undermined sentiments of social solidarity and responsibility so that material incentives to the most advantaged have become a prerequisite of the economic prosperity needed to sustain what remains of the welfare state.

Intuitions will differ in each of these cases, and the greater the time-lapse between the crucial events and the present, the less relevant those events seem to debates about the justice of existing institutions. There is an interpretation of each of those histories, though, under which the better off made an egalitarian outcome infeasible. The least advantaged may not be convinced of the justice of their current predicament by being told that it is now the best on offer.

II. SOCIAL POSSIBILITIES

'Men make their own history, but they do not make it just as they please, they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given, and transmitted from the past'.² One way of taking this well-known dictum from Marx is to say that while people may have a range of options available to them—both individually and collectively—the range of those options is limited by choices and actions made in the past. This seems a sensible idea, indeed it appears almost banal. But we do need to ask how options available at one time might be unavailable at a later one. In what sense might they be deemed unavailable? Surely almost any social structure that could be available at some time could be available at any later time if only people wanted it? I intend to deny this.

There are no doubt several ways of doing this. I shall deploy just three: the argument from quality of character, the argument from technological path dependence, and the argument from the politically incurred human costs of tran-

² Karl Marx, 'The Eighteenth Brumaire of Louis Bonaparte', *Karl Marx: Selected Writings*, ed. D. McLellan (Oxford: Oxford University Press, 1977), p. 300.

sition. Other possibilities, which I do not explore here, include the limitations on social change that result from a shared perception of its impossibility. A transition to socialism might be rendered impossible by the pessimism and demoralization that follow a defeated revolution, something well depicted in Gillo Pontecorvo's somewhat didactic film about revolution and counter-revolution on a Caribbean island, *Queimada*.³

QUALITY OF CHARACTER

Social structures require certain qualities of character in their citizens if they are to be sustained. This is a reasonably commonplace thought, to be found, for example, in Rousseau's denial that a state composed of men could be democratically administered. Some social and political structures, such as those found in Hobbes's *Leviathan*, require no great reservoir of altruism on the part of their citizens, simply a minimal amount of instrumental rationality, self-interestedness and foresight of probable consequences. Even Kant argues that a 'race of devils' could solve the political problem of setting up a liberal republic.⁴ But other arrangements do appear to demand more of their citizens: perhaps more extended altruism and a capacity for self-sacrifice, perhaps a more enlightened conception of self-interest. If socialism requires distinctive qualities of character, then the question of the transition to socialism will be problematic insofar as the type of people who are capable of sustaining a socialist society are not produced before or during that transition.⁵

We cannot through an act of will become the people we want to be. Often I wish I had qualities of tolerance, patient and diligence which I lack. Sometimes I can compensate for my lack of these qualities by an act of will, but the effort is short-lived and I am apt to relapse into my bad habits. Perhaps the simulation of virtue can give way to the real thing, but maybe I lack the disposition to persevere with the simulation long enough to generate the real thing. If a form of society requires me to possess certain qualities of character in order to sustain it, it follows that it is not enough that I sincerely desire to bring that form of

³ This is the flip-side of Aristide R. Zolberg's, 'Moments of Madness', *Politics and Society*, 2 (1972), 183–207. The standard collective action literature portrays revolution as a Prisoner's Dilemma, Zolberg's presentation makes it look more like an Assurance Game: each person will engage if they believe others will do so too. The flip-side is that if each believes no-one will move, no-one will. Robert E. Goodin pointed out to me this type of social impossibility. For revolution as an assurance game see Mark Wickham-Jones, 'Rationality, Revolution and Reassurance', unpublished MS.

⁴ Immanuel Kant, 'Perpetual Peace', *Kant's Political Writings*, ed. H. Reiss (Cambridge: Cambridge University Press, 1970), pp. 112–13.

⁵ Robert E. Lane has explored some of the difficulties. It is worth citing his estimation of the tensions between the views of capitalist socialization and socialist optimism in Marxist theory: 'The more nearly correct the analysis of capitalist destruction of human capacities and values, the more certainly wrong the hope of easy and rapid transformation', 'Capitalist Man, Socialist Man', *Philosophy, Politics and Society*, 5th series, eds P. Laslett and J. Fishkin (Oxford: Basil Blackwell, 1979).

society about and indeed to act as it requires, for I may lack the requisite qualities or the ability to generate them. A society may not require certain virtues in the 'inner' sense, only dispositions to act appropriately. But those dispositions to act appropriately are themselves qualities of character.

Perhaps certain social forms are available at some times and not at others for reasons to do with qualities of character. I have not demonstrated this. It might just be that certain social forms are permanently unavailable to an irremediably imperfect humanity. There may indeed be social forms that are unavailable for just this reason, but it also seems plausible that forms of society foster distinctive sets of dispositions in their members. It may be that the citizens of Britain immediately after the second world war had a disposition to social solidarity that made a socialist society a possible option for them in a way it may not be for the inhabitants of a more fragmented and individualistic culture forty years on. For Rousseau the social possibilities available to the inhabitants of the golden age are different to those that come about once the advent of social co-operation has given pre-eminence to amour-propre.

One way, therefore, in which the transition to a new social order might be available at one time and unavailable at a later one is where people at one time have, or are capable of forming, the qualities of character necessary for the construction and conservation of an alternative social order, and at a later time lose those capacities. One reason they may lose those capacities is because the existing social order fosters and sustains dispositions that are antithetical to the social alternative. A culture that fosters contempt for others and where all measure their worth by their rank in a pecking order will undermine the possibility of a social order based on equal respect.

THE ARGUMENT FROM TECHNOLOGY

At any time a society may have a choice of possible technological futures. It may choose VHS or Betamax, IBM or Apple, nuclear power or fossil fuel. The success of one technology over its rivals is often simply a consequence of its technical superiority. But it may be simply a result of the greater market or political strength of its institutional proponents. It may also be that a technology is preferred to another one because of its greater compatibility with organizational features of capitalist enterprises.

Whatever the reason for the dominance of a given technology, once one technology has emerged triumphant the society as a whole may be committed to tinkering with and improving that evolutionary line rather than face the costly alternative of switching to a new technology. Now if the choice of technologies has consequences for the pattern of distribution of wealth, resources or primary goods, then that will set limits on the possible futures of a given society. Tech-

nological options that were once open, and made a range of social options available, close. Once the technological options are gone, so are the social ones.⁶

It may be objected that the alternatives have not become unavailable, just very costly or difficult. The appropriate reply is surely that when the cost or difficulty is such that our accumulated knowledge in psychology or sociology tells us that human agents will either not undertake or not complete such a transition, then there is a suitable sense in which the options have indeed become unavailable.

It is not hard to tell a story where the distribution of at least one primary good, education, is technologically path-dependent. One path of development might require an elite of highly trained technicians supplemented by a pool of less skilled labour, another might dictate a high level of general education for most of the population. Let us call these paths A and B. Suppose we apply the difference principle to the allocation of the primary good of education. In path A, a high proportion of resources go to a small elite and the worst off get a basic education. In path B, everyone gets a much higher level of education than the worst off do in A. But, example hypothesi, the path A allocation satisfies the standard test and is therefore pattern-optimal under it because any redistribution of educational resources away from the elite would so reduce the total amount of such resources available for distribution (because of lowered general economic performance) that the worst-off would do still worse. Having chosen path A over path B in the past, it becomes impossible to move over to path B and its associated distributive pattern (because the entire economy is now geared around A-type technology).

THE COSTS OF TRANSITION

At any given moment, the futures that are available to a society may well be opaque to it. If the society is in equilibrium, then a feasible option will be to stay with the status quo. Various reformist variations on the status quo will also be available. There may also be a range of alternative equilibrium points to which the society could move if only (i) it were known that those alternatives existed and (ii) some way of getting them could be devised. At a given time there may be a pattern-superior equilibrium, but people may be either ignorant of

⁶ For an illuminating discussion of these issues see W. Brian Arthur, 'Self-Reinforcing Mechanisms in Economics', *The Economy as an Evolving Complex System*, eds P. W. Anderson, K. J. Arrow and D. Pines (Redwood City, Ca.: Addison-Wesley, 1988), pp. 9–31. For a readable and entertaining illustration see Paul A. David, 'Understanding the Economics of QWERTY: the Necessity of History', *Economic History and the Modern Economist*, ed. W. N. Parker (Oxford: Blackwell, 1986) pp. 30–49.

what it is or of how to get there. In these cases, that alternative is not on the agenda.

When a society is in crisis, however, and the continuation of the status quo is not an option for anyone, the choice between different equilibria poses itself quite differently. The status quo must be abandoned and a range of alternatives—that in normal times would be considered too hazardous to pursue—present themselves. One story that is consonant with this paper is where an elite resolves a crisis and a particular equilibrium emerges. During the crisis, a range of solutions were possible and some were pattern-superior to the one actually chosen; after the crisis, although alternatives may (hypothetically) be available, no sensible person would engage in the hazardous venture of finding out whether they are in fact available.

Having forced a particular equilibrium on subordinate social groups an elite may truly claim that it would be highly imprudent for those groups to disturb that equilibrium. Leaders of those subordinate groups may well advise their followers that pursuit of a pattern-superior equilibrium would be a leap in the dark and that (for all they know) some reforms within the present equilibrium will achieve the pattern-optimum (they may even be morally obliged to issue such advice). But a superior equilibrium might have emerged in the past and if it could have done (and the elite prevented it) the elite can hardly address the subordinate groups with a moral justification of the status quo as the best available option for the subordinate groups.

The more just society may always be there 'in the background' as an alternative. It may be, however, that if the least advantaged are to get to the just society from the existing alternative in equilibrium they will suffer a worsening of their position for a transitional period. It may well be that the least advantaged are unable to weather the short-term disadvantages and that making the transition to a pattern-superior alternative will not be in their interest because they will die as a result of making the attempt. James C. Scott makes use of R. H. Tawney's image of the peasant as a man up to his neck in a river: the slightest ripple will drown him.⁷ Starting out from a situation of disequilibrium, where future prospects are uncertain within the existing basic structure, the best choice will be to attempt to implement the structure that, all things considered, will maximize the expectations of the least advantaged. At other times, however, the least advantaged will be well advised to avoid the costs of transition and seek the best accommodation they can within the existing structure.⁸

⁷ James C. Scott, *The Moral Economy of the Peasant* (New Haven: Yale, 1976); R. H. Tawney, *Land and Labour in China* (London: Allen & Unwin, 1976), p. 77.

⁸ For discussion of the costs of transition see Adam Przeworski, *Capitalism and Social Democracy* (Cambridge: Cambridge University Press, 1985), especially ch. 5.

III. THE PRESENT-COUNTERFACTUAL TEST

The counterfactual interpretation of an egalitarian principle does not limit us to historical cases alone. There may be features of present reality that we can suspend in a thought experiment with a view to determining their effect upon distributional patterns. This present-counterfactual construal differs from the standard construal because it considers changes in an environment that someone applying the standard construal must take as a given. What the present-counterfactual interpretation allows us to do here is to focus on some feature of the situation and its role in bringing about inequality. Perhaps the feature is an unavoidable fact of geography or natural science, or it may be that it is an inescapable political constraint. It may be that our favourite distributional pattern is thwarted by some other principle that we give priority to, or that we are constrained by the dispositions of the advantaged. As we focus on each specific feature we may be led to concentrate on the claims made for its ineliminability. We may decide that it is a fact of nature, a fact of life, a fact of politics, independently justified etc. Which of these we finally decide on—and the list is not supposed to be exhaustive—will lead us to make a judgement about whether a distribution is just, or whether it is simply a ‘justifiable injustice’.

The first object of such an operation might be the institutions comprising the basic structure of a society. To perform a counterfactual operation on the basic structure leads us in the direction of John Roemer’s *General Theory of Exploitation and Class*. Our approach might be broader than Roemer’s in that we might extend the notion of the basic structure beyond property relations to include legal systems, family structures etc. Roemer invites us to imagine a basic structure comprising property relations and ‘inhabited’ by two classes/coalitions. There is a hypothetically feasible alternative structure/property regime (which may not be actually feasible). If a coalition is in a situation of dominance over another coalition, and if the dominated could do better and the dominators worse were the dominated coalition to withdraw and set itself up under the alternative structure, then the dominators exploit the dominated. An essential feature of the basic structure is changed while everything else (including, perhaps, incentive effects of that structure) is left unchanged.⁹

We may also be tempted to look for relevant counterfactuals by considering a country’s location within the international system. Take a case where a poor country (Poorland) borders a rich one (Richland). A group of people has a particular skill: ‘galumping’. Galumpers from the poor country might threaten to emigrate if not paid a salary sufficiently high to bring them up to the standard of living they would enjoy in Richland. We can imagine a counterfactual where

⁹ John Roemer, *A General Theory of Exploitation and Class* (Cambridge, Mass.: Harvard University Press, 1982). For some critical comment see Christopher Bertram, ‘A Critique of John Roemer’s General Theory of Exploitation’, *Political Studies*, 36 (1988), 123–30.

Richland does not exist or where we can prevent emigration by some means (by building some physical barrier, for instance). Of course, we can have no means of knowing the level at which Galump salaries would actually settle but we can imagine a difference between their actual salary S and their hypothetical salary S' , such that $S - S' = D$. A society in which galumpers are paid the emigration factor D may meet the standard construal in the sense that there is no distribution to which we can move in which the least advantaged would be better off, but in view of its non-satisfaction of the counterfactual test, do we wish to term the distribution just?

Unless we have good reason to believe that the skilled in Poorland owe something special to their fellow citizens on the ground of shared nationality—a claim that seems an unlikely one—to demand that they stay at the cost of considerable material sacrifice would be to expect them to perform a supererogatory act. To force them to stay would be to perform an even greater act of injustice than the one being avoided—the Berlin Wall is perhaps the most famous example of skilled labour being retained by coercive means. Nevertheless the fact that the Galumpers owe their relatively privileged position in Poorland to the possibility of baling out of that society altogether may well place limits on the arguments they may consistently address to their fellow citizens. One imagines the situation where the head of the Institute of Galumpers appeals to his fellow citizens for wage restraint on the grounds that ‘We’re all in it together’!¹⁰

IV. RELEVANCE, INTENTION AND PROCEDURE

A counterfactual test will sometimes be a better test of the justice of a given distribution than the standard one. But this will often not be so. Any counterfactual test must be justified as relevant to the case in hand. We will not wish to declare a late twentieth-century society unjust on the grounds that a superior path was not chosen in 1066. Second, we will not want to declare a distribution unjust if its emergence and the foreclosing of alternatives is a result of chance or understandable lack of foresight. We also need to consider circumstances where alternatives were blocked by means that were procedurally just.

Perhaps some set of actions or events in the very distant past set us on a path that was pattern-suboptimal. These events may be of interest to the historian, but they are unlikely to govern our moral assessment of any existing distribution. The alternative paths that are appropriate for consideration are those involving persons now living, and perhaps their immediate ancestors. It is not possible to give a hard and fast criterion for this, but simply to point to cases which straddle the horizon of relevance. One such case might be that of post-Franco Spain,

¹⁰ G. A. Cohen has much to say in his 1991 Tanner Lectures about the pragmatic inconsistency that underlies appeals of this sort.

discussed briefly above. Let us suppose, simply for the sake of argument, that this society is pattern optimal on the standard test. It might be true, nonetheless, that a Spain where the Republic had triumphed would have been pattern-superior to actual 1980s Spain. There are arguments here both for and against invoking a counterfactual interpretation. On the one hand events that many still living can remember had a profound effect on the social structure; on the other hand, it is increasingly difficult to distinguish between those effects and the effects of other causes that might have been present anyway.

It may be true that, if history had been different, the distribution would have been other than it is. But unless this is a consequence of people's choices to bring about one outcome or to block another, nobody would have grounds for complaint. A technology may be adopted not in order to force a particular distribution of educational resources, but rather because it seemed to offer the most potential at the time. A particular set of political institutions may be adopted in ignorance of their long-term effects on the distribution of resources. Good faith may, however, be necessary if we are to neutralize a critique of a society based on the historical-counterfactual test. It will hardly be sufficient though, for that would be to ignore the impact of ideology, wishful thinking and self-deception on those responsible for social choices.

What happens when we miss a pattern-superior path due to a sequence of steps or choices that are themselves all just? If the beneficiaries of social inequality have secured their position by acting within their rights, according to the 'rules of the game' etc., is it just too bad that the least advantaged could have done better if history had been different? Or to consider the present-counterfactual test: how are we to judge the case where the exploitation of lexically prior rights by the most advantaged prevents us from enjoying a more equitable distribution? This problem points to a difficulty right at the heart of a scheme like Rawls's. If the beneficiaries of inequality have brought about the existing distribution by hard bargaining within their rights, then no procedural principles of justice may have been broken. This may lead us to judge that the situation is just from one point of view (procedural) but unjust from another (patterned). Alternatively, we may assess the justice of the situation as a whole by the application of some priority rules governing the relationship between procedural and patterned principles or we may search for other ways of combining the two in our judgement of particular outcomes. To some extent my remarks on this point must remain programmatic, although the reflections on Rawls in the next section begin to address the difficulties.

V. THE DIFFERENCE PRINCIPLE AND THE SENSE OF JUSTICE

We can usefully contrast a standard test for the satisfaction of the Rawls's difference principle with a counterfactual test. The standard test would simply

ask whether the tax and transfer regime operating within a given society could be altered so as to improve the expectations of the least advantaged (cashed out in terms of primary goods). If no improvement can actually be made then the difference principle is satisfied. The counterfactual test—in its historical and nonhistorical forms—will ask whether if some event or events had been different or if some feature of existing society that we must take as a given were other than it in fact is, the expectations of the least advantaged would be greater than they in fact are. Now if the features of the past that cut us off from a difference-principle superior outcome are the result of unjust actions by the beneficiaries of inequality or if the features of the present that make such an outcome unattainable are themselves morally objectionable (though ineliminable), the least advantaged will regard the standardly interpreted difference principle as being not a principle of justice but at best a principle of prudence. Now it might be thought that Rawls has insured himself against criticism of this type. After all, he does insist that ‘to each according to his threat advantage is not a principle of justice’. Insofar as the most advantaged make it true through their past actions that they must do better than might have been necessary in order to benefit the least advantaged, or insofar as they require special high payments to elicit their talents because of morally objectionable features of their characters (such as greed), then we might think that Rawls ought to refuse to call the outcome just. But in fact there is an oft pointed out but unresolved tension in Rawls’s work between the assumption that the sense of justice has a strong motivational force in a just society and the assumption that agents act within the economic sphere in an essentially self-interested way.¹¹

Brian Barry has pointed out that the attitude of Rawlsian citizens to the institutions of the just society is quite different from that of the inhabitants of a Benthamite state. While Benthamites are basically selfish and have institutions to alter the pay-offs associated with various courses of action in order to secure the common good, Rawlsians recognize their institutions as embodying a conception of justice with which they identify.¹² But for all this difference between the Benthamite and Rawlsian conceptions, the difference principle seems to depend for its operation on the sense of justice in a way in which the other

¹¹ See inter alia Brian Barry, *A Treatise on Social Justice, Vol. I: Theories of Justice* (London: Harvester-Wheatsheaf, 1989) Appendix C; G. A. Cohen, Tanner Lectures 1991; Thomas C. Grey, ‘The First Virtue’, *Stanford Law Review*, 25 (1973). Following Cohen, I take the view that Barry fails to establish the compatibility of the view that incentives are required to motivate the talented with the other remarks that Rawls makes about the citizens of the just society being informed by a sense of justice as they go about their daily business. Of course it would be unjust to force the talented to work for the good of the least advantaged, but if they are motivated by the sense of justice they will certainly not demand above average remuneration for the supply of the skills they are fortunate enough to possess (unless such remuneration is for some reason strictly necessary for the continued supply of such skills). For relevant passages from Rawls see e.g. ‘Kantian Constructivism in Moral Theory’, *Journal of Philosophy*, 77 (1980) pp. 521, 528, 532 and *A Theory of Justice*, p. 253.

¹² Barry, p. 394.

principles do not. Rawls tells us, 'The role of basic social institutions is to set up a framework within which citizens may further their ends, provided these ends do not violate the prior and independent principles of justice'.¹³ But while the pursuit of ends is literally policed by the institutions for the other principles (since those who pursue their ends in violation of those principles are liable to criminal sanction), the institutions do not determine a unique distribution of primary goods. The distribution that actually emerges will largely depend on the extent to which the sense of justice is effective in getting citizens to moderate their claims and refrain from unfair bargaining.

Now, of course, the sense of justice does not just come from nowhere. Indeed it plays a central role in the thought experiment that leads us to recognize what justice requires of us. Furthermore, one of the features of just social institutions is that they foster a sense of justice which has a stabilizing effect upon them. But the harmony between institutions and *conscience collective* only comes at the end of a process (and perhaps that process is without an end). If individuals acquired the sense of justice to a sufficient degree it is questionable whether they would need the institutions to regulate their interaction: we would have a liberal version of the 'withering away of the state'. The circumstances in which the principles of justice are needed are precisely ones in which:

Men suffer from various shortcomings of knowledge, thought and judgment. Their knowledge is necessarily incomplete, their powers of reasoning, memory and attention are likely to be distorted by anxiety, bias, and a preoccupation with their own affairs. Some of these defects spring from moral faults, from selfishness and negligence; but to a large degree, they are simply part of men's natural situation.¹⁴

The difference principle will typically be invoked either as justification or critique, in circumstances where people either possess the sense of justice incompletely, or where some possess it and others do not, or where people recognize the demands of justice but lack the qualities of character that would enable them to act justly. Perhaps, given a degree of motivational failure, it is necessary to provide the most advantaged with more in the way of material incentives in order that the situation of the least advantaged be optimized than would be needed if the sense of justice were effective in moderating the bargaining of the most advantaged. In such situation, the standard test is passed since the actual incentive structure is indeed required to optimize the position of the least advantaged.

¹³ 'Social unity and primary goals', in Amartya Sen and Bernard Williams eds, *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982), p. 161.

¹⁴ *A Theory of Justice*, p. 127. As Brian Barry has suggested to me the argument that the least advantaged should accept an unequal distribution as a matter of prudence where the standard test is satisfied will carry weight only where the 'least advantaged' designates the same group in all relevant future scenarios. Because 'the least advantaged' designates non-rigidly it may turn out that neither arguments of justice nor of prudence will cut much ice with those who are actually the least advantaged.

It is nevertheless evident that the distribution is imperfect from the point of view of what justice requires. If the most advantaged were to justify the distribution to the least advantaged on the grounds that the least advantaged were doing better than under any feasible alternative, their justification would invite the retort: 'What you say is true, but only because you lack or are incapable of acting on the virtues appropriate to a just society'. In the case where past actions have rendered some difference-principle superior outcome infeasible the least-advantaged will respond 'What you say is true, but only because you made it so'. In either case it may be rational for the least advantaged to accept the outcome, but it would be false to term that outcome 'just'.¹⁵

VI. CONCLUSION

In the course of history, various social structures and forms of life are available. Often they cease to be available because of changes in technology, resources or human character. Marx remarks somewhere of Don Quixote that knight errantry is not compatible with all modes of production. Egalitarianism is similarly not an option for all peoples at all times. Perhaps because of the technologies they use, perhaps because of their human failings, people who at one time could sustain a more egalitarian distribution of resources cease to be able to do so. Sometimes these changes are simply the result of the sum of individual decisions and are intended by no-one in particular, but at other times ruling elites and governing classes act to prevent transitions to more egalitarian forms of society. If, at some later stage, the society that results from their intervention maximized the expectations of the least advantaged more than any actual available alternative, the least advantaged might be well advised to go along with those social arrangements. But what dictates this acquiescence is not justice, but at best simple prudence.

Robert Nozick is undoubtedly right to insist on the historical dimension to distributive justice. The story of how a distribution came about is one that must be told not only for an entitlement conception of justice but also for one that calls for the realization, so far as possible, of some pattern. Questions about which facts are relevant, how far back in history we should look, and who is responsible, are matters for judgement and (probably open-ended) debate.

To say of social arrangements that they are just, and therefore morally legitimate, will probably have the effect of reducing the scope of political action to tinkering with existing institutions. The path from the status quo to radically different institutions will rarely be clear, but in the past such alternatives have

¹⁵ The use of such a dialogue is inspired by Michael Rosen's 'Une autre argumentation en faveur du principe de différence', *Critique* 505-06 (Juin-Juillet 1989), pp. 498-505. See also Jan Narveson, 'Rawls on Equal Distribution of Wealth', *Philosophia*, 7 (1978).

seemed available. Theorization about radical alternatives has two parts: the elaboration of a workable blueprint for social and economic arrangements, and the specification of political strategies to get us from the present to utopia. Much existing work is concerned with the former, and very little with the latter. If we judge the present not only by the standards of what looks immediately feasible, but also by what might have been, our practical interest in change may be aroused. The arousal of that interest can have an effect on the possibilities that are open to us. 'A map of the world that does not include Utopia is not even worth glancing at . . . Progress is the realization of Utopias'.¹⁶

¹⁶ Oscar Wilde, 'The Soul of Man under Socialism,' cited in Keith Graham, *The Battle of Democracy* (Brighton: Harvester, 1986), p. 231.