

Distributive Justice

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The term "distributive justice" is not a neutral one. Hearing the term "distribution," most people presume that some thing or mechanism uses some principle or criterion to give out a supply of things. Into this process of distributing shares some error may have crept. So it is an open question, at least, whether redistribution should take place; whether we should do again what has already been done once, though poorly. However, we are not in the position of children who have been given portions of pie by someone who now makes last-minute adjustments to rectify careless cutting. There is no *central* distribution, no person or group entitled to control all the resources, (jointly) deciding how they are to be doled out. What each person gets, he gets from others who give to him in exchange for something, or as a gift. In a free society, diverse persons control different resources, and new holdings arise out of the voluntary exchanges and actions of persons. There is no more a distributing or distribution of shares than there is a distributing of mates in a society in which persons choose whom they shall marry. The total result is the product of many individual decisions which the different individuals involved are entitled to make. Some uses of the term "distribution," it is true, do not imply a previous distributing appropriately judged by some criterion (e.g., "probability distribution"); nevertheless, de-

spite the title of this essay, it would be best to use a terminology that clearly is neutral. We shall speak of people's holdings; a principle of justice in holdings describes (part of) what justice tells us (requires) about holdings. I shall state first what I take to be the correct view about justice in holdings, and then turn to the discussion of alternative views.¹

1. The Entitlement Theory

The subject of justice in holdings consists of three major topics. The first is the *original acquisition of holdings*, the appropriation of unheld things. This includes the issues of how unheld things may come to be held, the process(es) by which unheld things may come to be held, the things that may come to be held by these processes, the extent of what comes to be held by a particular process, and so on. We shall refer to the complicated truth about this topic, which we shall not formulate here, as the principle of justice in acquisition. The second topic concerns the *transfer of holdings* from one person to another. By what processes may a person transfer holdings to another? How may a person acquire a holding from another who holds it? Under this topic come general descriptions of voluntary exchange, and gift, and (on the other hand) fraud, as well as reference to particular conventional details

fixed upon a given society. The complicated truth about this subject (with placeholders for conventional details) we shall call the principle of justice in transfer. (And we shall suppose it also includes principles governing how a person may divest himself of a holding, passing it into an unheld state.)

If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings.

- (1) A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
- (2) A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
- (3) No one is entitled to a holding except by (repeated) applications of (1) and (2).

The complete principle of distributive justice would say simply that a distribution is just if everyone is entitled to the holdings they possess under the distribution.

A distribution is just if it arises from another (just) distribution by legitimate means. The legitimate means of moving from one distribution to another are specified by the principle of justice in transfer. The legitimate first "moves" are specified by the principle of justice in acquisition.² Whatever arises from a just situation by just steps is itself just. The means of change specified by the principle of justice in transfer, preserve justice. As correct rules of inference are truth preserving, and any conclusion deduced via repeated application of such rules from only true premisses is itself true, so the means of transition from one situation to another specified by the principle of justice in transfer are justice preserving, and any situation actually arising from repeated transitions in accordance with the principle from a just situation is itself just. The parallel between justice-preserving transformations and truth-preserving transformations illuminates where it fails as well as where it holds. That a conclusion could have been deduced by truth-preserving means from premisses that are true suffices to show its truth. That from a just sit-

uation a situation *could* have arisen via justice-preserving means does *not* suffice to show its justice. The fact that a thief's victims voluntarily *could* have presented him with gifts, does not entitle the thief to his ill-gotten gains. Justice in holdings is historical; it depends upon what actually has happened. We shall return to this point later.

Not all actual situations are generated in accordance with the two principles of justice in holdings: the principle of justice in acquisition and the principle of justice in transfer. Some people steal from others, or defraud them, or enslave them seizing their product and preventing them from living as they choose, or forcibly exclude others from competing in exchanges. None of these are permissible modes of transition from one situation to another. And some persons acquire holdings by means not sanctioned by the principle of justice in acquisition. The existence of past injustice (previous violations of the first two principles of justice in holdings) raises the third major topic under justice in holdings: the rectification of injustice in holdings. If past injustice has shaped present holdings in various ways, some identifiable and some not, what now, if anything, ought to be done to rectify these injustices? What obligations are the performers of injustice under to their victims? What obligations do the beneficiaries of injustice have to those whose position is worse than it would have been had the injustice not been done? Or, than it would have been had compensation been paid promptly? How, if at all, do things change if the beneficiaries and those made worse off are not the direct parties in the act of injustice, but, for example, their descendants? Is an injustice done to someone whose holding was itself based upon an unrectified injustice? How far back must one go in wiping clean the historical slate of injustices? What may victims of injustice permissibly do in order to rectify the injustices being done to them, including the many injustices done by persons acting through their government? I do not know of a thorough or theoretically sophisticated treatment of such issues. Idealizing greatly, let us suppose theoretical investigation will produce a principle of rectification. This

principle uses historical information about previous situations and injustices done in them (as defined by the first two principles of justice, and rights against interference), and information about the actual course of events that flowed from these injustices, up until the present, and it yields a description (or descriptions) of holdings in the society. The principle of rectification presumably will make use of (its best estimate of) subjunctive information about what would have occurred (or a probability distribution over what might have occurred, using the expected value) if the injustice had not taken place. If the actual description of holdings turns out not to be one of the descriptions yielded by the principle, then one of the descriptions yielded must be realized.³

The general outlines of the theory of justice in holdings are that the holdings of a person are just if he is entitled to them by the principles of justice in acquisition and transfer, or by the principle of rectification of injustice (as specified by the first two principles). If each person's holdings are just then the total set (distribution) of holdings is just. To turn these general outlines into a specific theory we would have to specify the details of each of the three principles of justice in holdings: the principle of acquisition of holdings, the principle of transfer of holdings, and the principle of rectification of violations of the first two principles. I shall not attempt that task here. (Locke's principle of justice in acquisition is discussed below.)

1. *Historical Principles and End-Result Principles*

The general outlines of the entitlement theory illuminate the nature and defects of other conceptions of distributive justice. The entitlement theory of justice in distribution is *historical*; whether a distribution is just depends upon how it came about. In contrast, *current time-slice principles* of justice hold that the justice of a distribution is determined by how things are distributed (who has what) as judged by some *structural* principle(s) of just distribution. A utilitarian who judges between any two dis-

tributions by seeing which has the greater sum of utility and, if these tie, who applies some fixed equality criterion to choose the more equal distribution would hold a current time-slice principle of justice. As would someone who had a fixed schedule of trade-offs between the sum of happiness and equality. All that needs to be looked at, in judging the justice of a distribution, according to a current time-slice principle, is who ends up with what; in comparing any two distributions one need look only at the matrix presenting the distributions. No further information need be fed into a principle of justice. It is a consequence of such principles of justice that any two structurally identical distributions are equally just. (Two distributions are structurally identical if they present the same profile, but perhaps have different persons occupying the particular slots. My having ten and your having five, and my having five and your having ten, are structurally identical distributions.) Welfare economics is the theory of current time-slice principles of justice. The subject is conceived as operating on matrices representing only current information about distribution. This, as well as some of the usual conditions (e.g., the choice of distribution is invariant under relabeling of columns), guarantees that welfare economics will be a current time-slice theory, with all of its inadequacies.

Most persons do not accept current time-slice principles as constituting the whole story about distributive shares. They think it relevant in assessing the justice of a situation to consider not only the distribution it embodies, but also how that distribution came about. If some persons are in prison for murder or war crimes, we do not say that to assess the justice of the distribution in the society we must look only at what this person has, and that person has, and that person has . . . , at the current time. We think it relevant to ask whether someone did something so that he *deserved* to be punished, deserved to have a lower share. Most will agree to the relevance of further information with regard to punishments and penalties. Consider also desired things. One traditional socialist view is that workers are entitled to the product and full fruits of their la-

bor; they have earned it; a distribution is unjust if it does not give the workers what they are entitled to. Such entitlements are based upon some past history. No socialist holding this view would find it comforting to be told that because the actual distribution *A* happens to coincide structurally with the one he desires *D*, *A* therefore is no less just than *D*; it differs only in that the "parasitic" owners of capital receive under *A* what the workers are entitled to under *D*, and the workers receive under *A* what the owners are entitled to (under *D*), namely very little. Rightly in my view, this socialist holds onto the notions of earning, producing, entitlement, desert, etc. and he rejects (current time-slice) principles that look only to the structure of the resulting set of holdings. (The set of holdings resulting from what? Isn't it implausible that how holdings are produced and come to exist has no effect at all on who should hold what?) His mistake lies in his view of what entitlements arise out of what sorts of productive processes.

We construe the position we discuss too narrowly by speaking of *current* time-slice principles. Nothing is changed if structural principles operate upon a time sequence of current time-slice profiles and, for example, give someone more now to counterbalance the less he has had earlier. A utilitarian or an egalitarian or any mixture of the two over time will inherit the difficulties of his more myopic comrades. He is not helped by the fact that *some* of the information others consider relevant in assessing a distribution is reflected, unrecoverably, in past matrices. Henceforth, we shall refer to such unhistorical principles of distributive justice, including the current time-slice principles, as *end-result principles* or *end-state principles*.

In contrast to end-result principles of justice, *historical principles* of justice hold that past circumstances or actions of people can create differential entitlements or differential deserts to things. An injustice can be worked by moving from one distribution to another structurally identical one, for the second, in profile the same, may violate people's entitlements or deserts; it may not fit the actual history.

2. *Patterning*

The entitlement principles of justice in holdings that we have sketched are historical principles of justice. To better understand their precise character, we shall distinguish them from another subclass of the historical principles. Consider, as an example, the principle of distribution according to moral merit. This principle requires total distributive shares to vary directly with moral merit; no person should have a greater share than anyone whose moral merit is greater. (If moral merit could be not merely ordered but measured on an interval or ratio scale, stronger principles could be formulated). Or consider the principle that results by substituting "usefulness to society" for "moral merit" in the previous principle. Or instead of "distribute according to moral merit," or "distribute according to usefulness to society," we might consider "distribute according to the weighted sum of moral merit, usefulness to society, and need," with the weights of the different dimensions equal. Let us call a principle of distribution *patterned* if it specifies that a distribution is to vary along with some natural dimension, weighted sum of natural dimensions, or lexicographic ordering of natural dimensions. And let us say a distribution is patterned if it accords with some patterned principle. (I speak of natural dimensions, admittedly without a general criterion for them, because for any set of holdings some artificial dimensions can be gimmicked up to vary along with the distribution of the set.) The principle of distribution in accordance with moral merit is a patterned historical principle, which specifies a patterned distribution. "Distribute according to I.Q." is a patterned principle that looks to information not contained in distributional matrices. It is not historical, however, in that it does not look to any past actions creating differential entitlements to evaluate a distribution; it requires only distributional matrices whose columns are labeled by I.Q. scores. The distribution in a society, however, may be composed of such simple patterned distributions, without itself being simply patterned. Different sectors may operate different patterns, or some combination of patterns may

operate in different proportions across a society. A distribution composed in this manner, from a small number of patterned distributions, we also shall term patterned. And we extend the use of "pattern" to include the overall designs put forth by combinations of end-state principles.

Almost every suggested principle of distributive justice is patterned: to each according to his moral merit, or needs, or marginal product, or how hard he tries, or the weighted sum of the foregoing, and so on. The principle of entitlement we have sketched is *not* patterned.⁴ There is no one natural dimension or weighted sum or combination of (a small number of) natural dimensions that yields the distributions generated in accordance with the principle of entitlement. The set of holdings that results when some persons receive their marginal products, others win at gambling, others receive a share of their mate's income, others receive gifts from foundations, others receive interest on loans, others receive gifts from admirers, others receive returns on investment, others make for themselves much of what they have, others find things, and so on, will not be patterned. Heavy strands of patterns will run through it; significant portions of the variance in holdings will be accounted for by pattern variables. If most people most of the time choose to transfer some of their entitlements to others only in exchange for something from them, then a large part of what many people hold will vary with what they held that others wanted. More details are provided by the theory of marginal productivity. But gifts to relatives, charitable donations, bequests to children, and the like, are not best conceived, in the first instance, in this manner. Ignoring the strands of pattern, let us suppose for the moment that a distribution actually gotten by the operation of the principle of entitlement is random with respect to any pattern. Though the resulting set of holdings will be unpatterned, it will not be incomprehensible, for it can be seen as arising from the operation of a small number of principles. These principles specify how an initial distribution may arise (the principle of acquisition of holdings) and how distributions may be transformed into others (the principle

of transfer of holdings). The process whereby the set of holdings is generated will be intelligible, though the set of holdings itself that results from this process will be unpatterned.[. . .]

3. *How Liberty Upsets Patterns*

It is not clear how those holding alternative conceptions of distributive justice can reject the entitlement conception of justice in holdings. For suppose a distribution favored by one of these nonentitlement conceptions is realized. Let us suppose it is your favorite one and call this distribution D_1 ; perhaps everyone has an equal share, perhaps shares vary in accordance with some dimension you treasure. Now suppose that Wilt Chamberlain is greatly in demand by basketball teams, being a great gate-attraction. (Also suppose contracts run only for a year, with players being free agents.) He signs the following sort of contract with a team: In each home game, twenty-five cents from the price of each ticket of admission goes to him. (We ignore the question of whether he is "gouging" the owners, letting them look out for themselves.) The season starts, and people cheerfully attend his team's games; they buy their tickets, each time dropping a separate twenty-five cents of their admission price into a special box with Chamberlain's name on it. They are excited about seeing him play; it is worth the total admission price to them. Let us suppose that in one season one million persons attend his home games, and Wilt Chamberlain winds up with \$250,000, a much larger sum than the average income and larger even than anyone else has. Is he entitled to this income? Is this new distribution D_2 unjust? If so, why? There is *no* question about whether each of the people was entitled to the control over the resources they held, in D_1 , because that was the distribution (your favorite) that (for the purposes of argument) we assumed was acceptable. Each of these persons *chose* to give twenty-five cents of their money to Chamberlain. They could have spent it on going to the movies, or on candy bars, or on copies of *Dissent* magazine, or of *Monthly Review*. But they all, at least one million of them, converged on

giving it to Wilt Chamberlain in exchange for watching him play basketball. If D_1 was a just distribution, and people voluntarily moved from it to D_2 , transferring parts of their shares they were given under D_1 (what was it for if not to do something with?), isn't D_2 also just? If the people were entitled to dispose of the resources to which they were entitled (under D_1), didn't this include their being entitled to give it to, or exchange it with, Wilt Chamberlain? Can anyone else complain on grounds of justice? Each other person already has his legitimate share under D_1 . Under D_1 there is nothing that anyone has that anyone else has a claim of justice against. After someone transfers something to Wilt Chamberlain, third parties *still* have their legitimate shares; *their* shares are not changed. By what process could such a transfer among two persons give rise to a legitimate claim of distributive justice on a portion of what was transferred, by a third party who had no claim of justice on any holding of the others *before* the transfer?⁵ To cut off objections irrelevant here, we might imagine the exchanges occurring in a socialist society, after hours. After playing whatever basketball he does in his daily work, or doing whatever other daily work he does, Wilt Chamberlain decides to put in *overtime* to earn additional money. (First his work quota is set; he works time over that.) Or imagine it is a skilled juggler people like to see, who puts on shows after hours.

Why might some people work overtime in a society in which it is assumed their needs are satisfied? Perhaps because they care about things other than needs. I like to write in books that I read, and to have easy access to books for browsing at odd hours. It would be very pleasant and convenient to have the resources of Widener Library in my back yard. No society, I assume, will provide such resources close to each person who would like them as part of his regular allotment (under D_1). Thus, persons either must do without some extra things that they want, or be allowed to do something extra to get (some of) these things. On what basis could the inequalities that would eventuate be forbidden? Notice also that small factories would spring up in a socialist society,

unless forbidden. I melt down some of my personal possessions (under D_1) and build a machine out of the material. I offer you, and others, a philosophy lecture once a week in exchange for your cranking the handle on my machine, whose products I exchange for yet other things, and so on. (The raw materials used by the machine are given to me by others who possess them under D_1 , in exchange for hearing lectures.) Each person might participate to gain things over and above their allotment under D_1 . Some persons even might want to leave their job in socialist industry, and work full time in this private sector. I say something more about these issues elsewhere. Here I wish merely to note how private property, even in means of production, would occur in a socialist society that did not forbid people to use as they wished some of the resources they are given under the socialist distribution D_1 . The socialist society would have to forbid capitalist acts between consenting adults.⁶

The general point illustrated by the Wilt Chamberlain example and the example of the entrepreneur in a socialist society is that no end-state principle or distributional pattern principle of justice can be continuously realized without continuous interference in people's lives. Any favored pattern would be transformed into one unfavored by the principle, by people choosing to act in various ways; e.g., by people exchanging goods and services with other people, or giving things to other people, things the transferrers are entitled to under the favored distributional pattern. To maintain a pattern one must either continuously interfere to stop people from transferring resources as they wish to, or continually (or periodically) interfere to take from some persons resources that others for some reason chose to transfer to them. (But if some time limit is to be set on how long people may keep resources others voluntarily transfer to them, why let them keep these resources for *any* period of time? Why not have immediate confiscation?) It might be objected that all persons voluntarily will choose to refrain from actions which would upset the pattern. This presupposes unrealistically (a) that all will most want to maintain the pattern (are those who don't,

to be "reeducated" or forced to undergo "self-criticism"?); (b) that each can gather enough information about his own actions and the ongoing activities of others to discover which of his actions will upset the pattern; and (c) that diverse and farflung persons can coordinate their actions to dovetail into the pattern. Compare the manner in which the market is neutral among persons' desires, as it reflects and transmits widely scattered information via prices, and coordinates persons' activities.

It puts things perhaps a bit too strongly to say that every patterned (or end-state) principle is liable to be thwarted by the voluntary actions of the individual parties transferring some of their shares they receive under the principle. For perhaps some *very* weak patterns are not so thwarted.⁷ Any distributional pattern with any egalitarian component is overturnable by the voluntary actions of individual persons over time; as is every patterned condition with sufficient content so as actually to have been proposed as presenting the central core of distributive justice. Still, given the possibility that some weak conditions or patterns may not be unstable in this way, it would be better to formulate an explicit description of the kind of (interesting and contentful) patterns under discussion, and to prove a theorem about their instability. Since the weaker the patterning, the more likely it is that the entitlement system itself satisfies it, a plausible conjecture is that any patterning either is unstable or is satisfied by the entitlement system.[. . .]

5. *Redistribution and Property Rights*

Apparently patterned principles allow people to choose to expend upon themselves, but not upon others, those resources they are entitled to (or rather, receive) under some favored distributional pattern D_1 . For if each of several persons chooses to expend some of his D_1 resources upon one other person, then that other person will receive more than his D_1 share, disturbing the favored distributional pattern. Maintaining a distributional pattern is individualism with a vengeance! Patterned distributional principles do not give people what entitlement principles do, only better distrib-

uted. For they do not give the right to choose what to do with what one has; they do not give the right to choose to pursue an end involving (intrinsically, or as a means) the enhancement of another's position. To such views, families are disturbing; for within a family occur transfers that upset the favored distributional pattern. Either families themselves become units to which distribution takes place, the column occupiers (on what rationale?), or loving behavior is forbidden. We should note in passing the ambivalent position of radicals towards the family. Its loving relationships are seen as a model to be emulated and extended across the whole society, while it is denounced as a suffocating institution to be broken, and condemned as a focus of parochial concerns that interfere with achieving radical goals. Need we say that it is not appropriate to enforce across the wider society the relationships of love and care appropriate within family, relationships which are voluntarily undertaken?⁸ Incidentally, love is an interesting instance of another relationship that is historical, in that (like justice) it depends upon what actually occurred. An adult may come to love another because of the other's characteristics; but it is the other person, and not the characteristics, that is loved. The love is not transferable to someone else with the same characteristics, even to one who "scores" higher for these characteristics. And the love endures through changes of the characteristics that gave rise to it. One loves the particular person one actually encountered. Why love is historical, attaching to persons in this way and not to characteristics, is an interesting and puzzling question.

Proponents of patterned principles of distributive justice focus upon criteria for determining who is to receive holdings; they consider the reasons for which someone should have something, and also the total picture of holdings. Whether or not it is better to give than to receive, proponents of patterned principles ignore giving altogether. In considering the distribution of goods, income, etc., their theories are theories of recipient-justice; they completely ignore any right a person might have to give something to someone. Even in exchanges where each party is simultaneously giver and

the same? Why shouldn't the better endowed treat this latter proposal as beneath consideration, supposing someone to have the nerve explicitly to state it?

Rawls devotes much attention to explaining why those less well favored should not complain at receiving less. His explanation, simply put, is that because the inequality works for his advantage, someone less well favored shouldn't complain about it; he receives *more* in the unequal system than he would in an equal one. (Though he might receive still more in another unequal system that placed someone else below him.) But Rawls discusses the question of whether those *more* favored will or should find the terms satisfactory *only* in the following passage, where *A* and *B* are any two representative men with *A* being the more favored:

The difficulty is to show that *A* has no grounds for complaint. Perhaps he is required to have less than he might since his having more would result in some loss to *B*. Now what can be said to the more favored man? To begin with, it is clear that the well-being of each depends on a scheme of social cooperation without which no one could have a satisfactory life. Secondly, we can ask for the willing cooperation of everyone only if the terms of the scheme are reasonable. The difference principle, then, seems to be a fair basis on which those better endowed, or more fortunate in their social circumstances, could expect others to collaborate with them when some workable arrangement is a necessary condition of the good of all (p. 103).

What Rawls imagines being said to the more favored men does *not* show that these men have no grounds for complaint, nor does it at all diminish the weight of whatever complaints they have. That the well-being of all depends on social cooperation without which no one could have a satisfactory life could also be said to the less well endowed by someone proposing any other principle, including that of maximizing the position of the best endowed. Similarly for the fact that we can ask for the willing cooperation of everyone only if the terms of the scheme are reasonable. The question is: what terms *would be* reasonable? What Rawls imagines being said thus far merely sets up his problem; it doesn't distinguish his pro-

posed difference principle from the (almost) symmetrical counterproposal that we imagined the better endowed making, or from any other proposal. Thus, when Rawls continues, "The difference principle, then, seems to be a fair basis on which those best endowed, or more fortunate in their social circumstances, could expect others to collaborate with them when some workable arrangement is a necessary condition of the good of all," the presence of the "then" in his sentence is puzzling. Since the sentences which precede it are neutral between his proposal and any other proposal, the conclusion that the difference principle presents a fair basis for cooperation *cannot* follow from what precedes it in this passage. Rawls is merely repeating that it seems reasonable; hardly a convincing reply to anyone to whom it doesn't seem reasonable. Rawls has not shown that the more favored man *A* has no grounds for complaint at being required to have less in order that another *B* might have more than he otherwise would. And he can't have shown this, since *A does* have grounds for complaint. Doesn't he? [. . .]

Notes

1. The reader who has looked ahead and seen that the second part of this essay discusses Rawls' theory, mistakenly may think that every remark or argument in the first part against alternative theories of justice is meant to apply to or anticipate a criticism of his theory. This is not so; there are other theories also worth criticizing.
2. Applications of the principle of justice in acquisition, may also occur as part of the move from one distribution to another. You may find an unheld thing now, and appropriate it. Acquisitions also are to be understood as included when, to simplify, I speak only of transitions by transfers.
3. If the principle of rectification of violations of the first two principles yields more than one description of holdings, then some choice must be made as to which of these is to be realized. Perhaps the sort of considerations about distributive justice and equality I argue against play a legitimate role in *this* subsidiary choice. Similarly, there may be room for such considerations in deciding which otherwise arbitrary features a statute will embody, when such features are unavoidable because other considerations do not specify a precise line, yet one must be drawn.
4. One might try to squeeze a patterned conception of distributive justice into the framework of the enti-

tlement conception, by formulating a gimmicky obligatory "principle of transfer" that would lead to the pattern. For example, the principle that if one has more than the mean income, one must transfer everything one holds above the mean to persons below the mean so as to bring them up to (but not over) the mean. We can formulate a criterion for a "principle of transfer" to rule out such obligatory transfers, or we can say that no correct principle of transfer, no principle of transfer in a free society will be like this. The former is probably the better course, though the latter also is true.

Alternatively, one might think to make the entitlement conception instantiate a pattern, by using matrix entries that express the relative strength of a person's entitlements as measured by some real-valued function. But even if the limitation to natural dimensions failed to exclude this function, the resulting edifice would *not* capture our system of entitlements to particular things.

5. Might not a transfer have instrumental effects on a third party, changing his feasible options? (But what if the two parties to the transfer independently had used their holdings in this fashion?) I discuss this question elsewhere, but note here that this question concedes the point for distributions of ultimate intrinsic noninstrumental goods (pure utility experiences, so to speak) that are transferrable. It also might be objected that the transfer might make a third party more envious because it worsens his position relative to someone else. I find it incomprehensible how it can be thought that this involves a claim of justice. On envy, see *Anarchy, State, and Utopia*, chap. 8.

Here and elsewhere in this essay, a theory which incorporates elements of pure procedural justice might find what I say acceptable, *if* kept in its proper place; that is, if background institutions exist to ensure the satisfaction of certain conditions on distributive shares. But if these institutions are not themselves the sum or invisible-hand result of people's voluntary (nonaggressive) actions, the constraints they impose require justification. At no point does *our* argument assume any background institutions more extensive than those of the minimal night-watchman state, limited to protecting persons against murder, assault, theft, fraud, etc.

6. See the selection from John Henry MacKay's novel, *The Anarchists*, reprinted in Leonard Krimmerman and Lewis Perry, eds., *Patterns of Anarchy* (New York, 1966), pp. 16–33, in which an individualist anarchist presses upon a communist anarchist the question: "Would you, in the system of society which you call 'free Communism', prevent individuals from exchanging their labor among themselves by means of their own medium of exchange? And further: Would you prevent them from occupying land for the purpose of personal use?" The novel continues: "[the] question was not to be escaped. If he answered 'Yes!' he admitted that society had the right of control over the individual and threw

overboard the autonomy of the individual which he had always zealously defended; if on the other hand, he answered 'No!' he admitted the right of private property which he had just denied so emphatically. . . . Then he answered 'In Anarchy any number of men must have the right of forming a voluntary association, and so realizing their ideas in practice. Nor can I understand how any one could justly be driven from the land and house which he uses and occupies . . . every serious man must declare himself: for Socialism, and thereby for force and against liberty, or for Anarchism, and thereby for liberty and against force.'" In contrast, we find Noam Chomsky writing, "Any consistent anarchist must oppose private ownership of the means of production," and "the consistent anarchist then . . . will be a socialist . . . of a particular sort" (Introduction to Daniel Guerin, *Anarchism: From Theory to Practice* [New York, 1970], pp. xiii, xv).

7. Is the patterned principle stable that requires merely that a distribution be Pareto-optimal? One person might give another a gift or bequest that the second could exchange with a third to their mutual benefit. Before the second makes this exchange, there is not Pareto-optimality. Is a stable pattern presented by a principle choosing that among the Pareto-optimal positions that satisfies some further condition *C*? It may seem there cannot be a counterexample, for won't any voluntary exchange made away from a situation show that the first situation wasn't Pareto-optimal? (Ignore the implausibility of this last claim for the case of bequests.) But principles are to be satisfied over time, during which new possibilities arise. A distribution that at one time satisfies the criterion of Pareto-optimality might not do so when some new possibilities arise (Wilt Chamberlain grows up and starts playing basketball); and though people's activities will tend to move then to a new Pareto-optimal position, *this* new one need not satisfy the contentful condition *C*. Continual interference will be needed to insure the continual satisfaction of *C*. (The theoretical possibility should be investigated of a pattern's being maintained by some invisible-hand process that brings it back to an equilibrium that fits the pattern when deviations occur.)
8. One indication of the stringency of Rawls' difference principle, which we attend to in the second part of this essay, is its inappropriateness as a governing principle even within a family of individuals who love one another. Should a family devote its resources to maximizing the position of its least well off and talented child, holding back the other children or using resources for their education and development only if they will follow a policy throughout their lifetimes of maximizing the position of their least fortunate sibling? Surely not. How then can this even be considered as the appropriate policy for enforcement in the wider society? (I discuss below what I think would be

- Rawls' reply: that some principles apply at the macro-level which do not apply to microsituations.)
9. I am unsure as to whether the arguments I present below show that such taxation just *is* forced labor; so that "is on a par with" means "is one kind of." Or alternatively, whether the arguments emphasize the great similarities between such taxation and forced labor, to show it is plausible and illuminating to view such taxation in the light of forced labor. This latter approach would remind one of how John Wisdom conceives of the claims of metaphysicians.
 10. Nothing hangs on the fact that here and elsewhere I speak loosely of *needs*; since I go on, each time, to reject the criterion of justice which includes it. If, however, something did depend upon the notion, one would want to examine it more carefully. For a skeptical view, see Kenneth Minogue, *The Liberal Mind* (New York, 1963), pp. 103–112.
 11. Further details that this statement should include are contained in my essay, "Coercion," in *Philosophy, Science, and Method*, ed. S. Morgenbesser, P. Suppes, and M. White (New York, 1969).
 12. On the themes in this and the next paragraph, see the writings of Armen Alchian.
 13. See *Anarchy, State, and Utopia*, chap. 3.
 14. Compare sec. 2 of Robert Paul Wolff's "A Refutation of Rawls' Theorem on Justice," *Journal of Philosophy* 63 (March 1966): 179–190. Wolff's criticism does not apply to Rawls' conception under which the baseline is fixed by the difference principle.
 15. I have not seen a precise estimate. David Friedman discusses this issue in *The Machinery of Freedom* (New York, 1973), pp. xiv, xv, and suggests one twentieth (of national income) as an upper limit for the first two factors mentioned. However, he does not attempt to estimate the percentage of current wealth that is based upon such income in the past.
 16. Fourier held that since the process of civilization had deprived the members of society of certain liberties (to gather, pasture, engage in the chase), a socially guaranteed minimum provision for persons was justified as compensation for the loss. Alexander Gray, *The Socialist Tradition* (New York, 1968), p. 188. But this puts the point too strongly. This compensation would be due those persons, if any, for whom the process of civilization was a *net loss*, for whom the benefits of civilization did not counterbalance being deprived of these particular liberties.
 17. For example, Rashdall's case of someone who comes upon the only water in the desert several miles ahead of others who also will come to it, and appropriates it all. Hastings Rashdall, "The Philosophical Theory of Property," in *Property, Its Duties and Rights* (London, 1915).
 18. The situation would be different if his water hole didn't dry up, due to special precautions he took to prevent this. Compare our discussion of the case in the text with Hayek's, *The Constitution of Liberty*, (p. 136); and also with Ronald Hamowy's "Hayek's Concept of Freedom; A Critique," *New Individualist Review* (April 1961): 28–31.
 19. I discuss overriding and its moral traces in "Moral Complications and Moral Structures," *Natural Law Forum* 13 (1968): 1–50.
 20. (Cambridge, Mass., 1971). Otherwise unidentified references in the text that follows are to this volume.
 21. See Milton Friedman, *Capitalism and Freedom* (Chicago, 1962), p. 165.
 22. On the question of why the economy contains firms (of more than one person), and each individual does not contract and recontract with others, see Ronald H. Coase, "The Nature of the Firm," reprinted in *Readings in Price Theory*, ed. George Stigler and Kenneth Boulding (Homewood, Ill., 1952); and Armen A. Alchian and Harold Demsetz, "Production, Information Costs and Economic Organization," *American Economic Review*, 1972.
 23. We do not, however, assume here or elsewhere the satisfaction of those conditions specified in economists' artificial model of "perfect competition." One appropriate mode of analysis is presented in Israel M. Kirzner, *Market Theory and the Price System* (Princeton, N.J., 1963).
 24. Receiving this, we should note, is not the same as receiving the equivalent of what the person *causes* to exist, or *produces*. The marginal product of a unit of F_1 with respect to factor F_2, \dots, F_n is a *subjunctive* notion; it is the difference between the total product of F_2, \dots, F_n used most efficiently (as efficiently as known how, given prudence about many costs in finding out the most efficient use of factors), and the total product of the most efficient uses of F_2, \dots, F_n along with a unit less of F_1 . But these two different most efficient uses of F_2, \dots, F_n along with a unit less of F_1 (one with the additional unit of F_1 the other without it) will use them differently. And F_1 's marginal product (with respect to the other factors), what everyone reasonably would pay for an additional unit of F_1 , will not be what it *causes* (it causes) combined with F_2, \dots, F_n and the other units of F_1 , but rather the difference it makes, the difference there would be if this unit of F_1 were absent and the remaining factors were organized most efficiently to cope with its absence. Thus marginal productivity theory is not best thought of as a theory of actual produced product, of those things whose causal pedigree includes the unit of the factor; but rather as a theory of the difference (subjunctively defined) made by the presence of a factor. If such a view were connected with justice, it would seem to fit best with an entitlement conception.
 25. Readers who believe that Marx's analysis of exchange relations between owners of capital and laborers undercuts the view that the set of holdings which results from voluntary exchange is legitimate, or who believe it a distortion to term such exchanges "voluntary," will find some relevant