

Comment

## COHEN ON RAWLS ON INCENTIVES AND EQUALITY

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What Cohen calls the “Incentives Argument” was intended, as I put it in my earlier papers on the subject (see Narveson 1976; Narveson 1978; Narveson 2002; Cohen 2009, 27 quotes the 1978 version), to enable us to steer a principled course between Scylla and Charybdis, where Scylla is pure egalitarian socialism, and Charybdis the pure free market society. The latter Rawls calls the “system of natural liberty,” by which he essentially means an economic system in which there is “a competitive market economy.” In such an economy, he says, “the particular efficient distribution which results in any period of time is determined by the initial distribution of assets, that is, by the initial distribution of income and wealth, and of natural talents and abilities” (Rawls 1971, 72).<sup>1</sup> (This characterization of a system in which what people *do* with those “assets” is what counts, is oddly typical of these discussions, not only by Rawls. The consequences of that curious omission are, I think, considerable, as was pressed by Robert Nozick, among many, and will be touched on again in this discussion.)

Rawls is perhaps best known for his Second Principle of Justice, which says that we may deviate from a general condition of equality in the “distribution” of what he calls “Primary Goods” only if the effect of this deviation is to improve the situation of the worst off. The Two Principles, in their first occurrence in *A Theory of Justice*, go as follows:

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<sup>1</sup> References to Rawls (1971) are to pages in *A Theory of Justice*.

First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all (60).

He adds that both are "a special case of a more general conception ..." namely this: that "All social values - liberty and opportunity, income and wealth, and the bases of self-respect - are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage." (62)

But the (a) part of the second principle is later refined thus: "social and economic inequalities are to be arranged so that they are ... (a) to the greatest benefit of the least advantaged, consistent with the just savings principle ..." (302)

We will ignore the issues involved in the just savings principle. The question is: just what is the actual substance of this principle, as stated?

When Rawls says, "to the *greatest* benefit of the *least* advantaged" there is a question just what this means. For if we suppose that a situation of equality, whatever he meant by that, is coherent - that is, that the envisaged "equality" is possible at all - then the claim that an *inequality* could possibly be of benefit to those emerging with the lesser "share" is puzzling. For after all, why would it not be possible to do whatever it is that produces the inequality in question in such a way that it *didn't* produce that inequality? If the net benefit to someone, A, is greater, why can't it be redistributed among the rest, as apparently called for by the wording of the principle, in such a way that those benefits are equally divided among all instead of skewed toward A?

Let's for the moment table all of the horrendous difficulties involved in claiming that a set of  $n$  ( $>1$ ) persons could exemplify equality in the envisaged sense. This is generally done, insofar as it is done at all, by confining the discussion to income and wealth, which after all are more or less commensurable in monetary units. (Even that is problematic. A dollar in central Vancouver is not obviously the same as a dollar in Tillsonburg, Ontario, population 14,822. But never mind.) Whether it is legitimate to do that is one thing - after all, there are, Rawls says, other primary goods besides income and wealth, notably liberties and rights, and it is specified in his first principle that liberties are to be equal and maximal - moreover, that it is to have lexical priority over the other principle altogether. The significance of that will be considered shortly, but meanwhile, confining the discussion to the financial dimension enables us to point up the impending difficulty. If "we" - the people, whoever they are, who are to do the "distributing" in question - argue that "we" should "give" a higher income to the potentially more productive Jones than to the less productive Smith, *because* that will maximize the income of the worst-off, then it surely looks as though it would be possible to give Jones a

smaller income for doing the same thing, and distributing the results equally to all. This will make the worst off literally as well off as they all can possibly be, because they can't all do better than *the same as everybody else*. Jones, of course, as an individual, could do better - perhaps a lot better, as in the case of today's many billionaires and multimillionaires. But he can't do so *and* have an income that is in principle redistributable, *and* use it for himself instead of doing the redistributing in question - not if he thinks that justice requires him to benefit the poor *as much as possible*.

For there to be any difference, then, between sheer equality and the allegedly better inequality envisaged by the Difference Principle, we need to suppose that there are people, like Jones, who could produce more, but as a condition for doing that "more" insist on a greater share for themselves: says Jones, "no greater share for me, no deal - take it or leave it!" At this point, though, a dilemma looms. Rawls is on record as having it that equality is the "benchmark"<sup>2</sup> of justice, and the principle as stated surely seems to support the reading that what this means is that we are *required as a matter of justice* to bring it about that people are, in the relevant respect, equal. Or at least, we are, unless somehow some *other* component of justice requires us to allow the disparity in question. But the consideration appealed to is *incentive*<sup>3</sup>, and the trouble with that is that incentive is a matter of the will. Jones acts from self-interest when he insists on this greater payment for his services, even though they do, he claims, benefit others (including the worst-off, let us suppose) as well. But surely self-interest cannot justify what is *otherwise an injustice*? The point of justice, indeed of morals in general, is surely to *override* self-interest, in some principled way, when the operation of self-interest gets us into problems. So, saying "but it's not what I want!" can't be a sufficient reply to "It appears to be unjust!" Only if justice *allows* the kind of self-interest envisaged can it be a satisfactory reply. But we are supposing that income differentials are allowable *only* if they are *necessary* to improve the lot of the poor, and one cannot appeal to self-interest in support of this as a *necessity*. (We'll not consider the proposition that moneymaking might be an irresistible compulsion.)

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<sup>2</sup> What Rawls says (62), exactly, is this: "Imagine, then, a hypothetical initial arrangement in which all the social primary goods are equally distributed: everyone has similar rights and duties, and income and wealth are evenly shared. This state of affairs provides a benchmark for judging improvements. If certain inequalities of wealth and organizational powers would make everyone better off than in this hypothetical starting situation, then they accord with the general conception." Cohen and I see problems with this last claim.

<sup>3</sup> Rawls also mentions costs of training (151), but these are not, as such, primary goods. Of course, one might view, say, a university education purely as a nice way to spend one's time, in which case we would have an expenditure of a primary good (money). But of course Rawls means the costs of the sort of training envisaged as being necessary to enable the agent to produce the more whose benefiting of the poor is what makes Rawls suppose that it might after all be just to depart from equality in that way. And those are not primary goods.

## Horn One

It appears that the “difference principle” cannot in fact justify any of the envisaged inequalities.

However, we started out with an equal-liberty principle that is yet stronger, in the Rawlsian official format, than the difference principle. *All* are entitled, always, to *the most extensive* basic liberty compatible with a similar liberty for (all) others. Many of us will insist that, given the characterization, “most extensive,” this principle ought to apply not only to social and political liberties but to economic ones as well - that is, the liberty to exchange services and goods with others, on a basis of agreement among the exchangers. And when it comes to economic ones, this surely looks as though it would mean, *market* liberties: that is, the freedom to exchange one’s exchangeable resources with others willing to engage in such exchanges.<sup>4</sup> In the market system, people are able to own things, and the notion of ownership means that they are at liberty do what they want with them, without fear of forcible interference from others, so long as they respect the rights to persons and properties of all others. Thus they can not only work on these things, changing them in various desired ways, but they can also make free exchanges with others who, after all, also have this same liberty. Of course, no such exchanges may literally *injure* third parties, and we stipulate that accordingly. (Undoubtedly many will claim that such exchanges *do* injure third parties; we will consider that further below.) An effect of the market system is no doubt very likely to be that some people, as time goes by, enjoy greater incomes and possess greater capitals, than others.

Rawls attempts to head off the inference from his first principle to economic rights by stipulating that we’re talking about the “right to hold (*personal*) property” (61, my emphasis). But this stipulation comes across as quite arbitrary. No doubt Rawls, in some kind of deference to Marx, thinks that capital is somehow intrinsically different, though the difference could only be that capital is productive property while something called “(personal) property” is not. In a later chapter on economic systems, Rawls

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<sup>4</sup> Rawls argues, indeed, that socialist institutions could incorporate market arrangements. To do this, we need to distinguish sharply between “the allocative and the distributive functions of prices. The former is connected with their use to achieve economic efficiency, the latter with their determining the income to be received by individuals in return for what they contribute.” (273) Sufficient discussion of this claim would take us far beyond the limits of this paper, but suffice it to say that most contemporary market proponents would deny that this distinction can be made in the principled way required to get it off the ground at all. It assumes the existence of a redistributive state, but how *that* can be brought about without violating the property rights definitive of the market economy is a mystery. (See, for example, Anthony de Jasay’s (2002) masterly analysis of “market socialism”.)

suggests that “All regimes will normally use the market to ration out the consumption goods actually produced” (270). Somewhat in the tradition of the later John Stuart Mill, he says “It is evident, then, that there is no essential tie between the use of free markets and private ownership of the instruments of production” (271). I shall take it as given that the separation of production and distribution required for these remarks to make sense is impossible. Valuable services and goods are produced by someone; if that someone is free to perform them or not, as he chooses, then to claim that we can coherently restrict production but not distribution is to go back on any commitment to freedom in general. People produce for purposes, and if those purposes are thwarted, freedom diminishes. If there are genuinely free markets, it is impossible to prevent the scope of market activity from including instruments of production. Any restriction that prevents people from using market-purchased assets for productive purposes is obviously a *restriction* on human activity. This is not to say that such restrictions cannot be made - obviously they can. But it is to say that those restrictions necessarily restrict *market freedom*, which is the essence of the system of natural liberty, so far as the “primary goods” of income and wealth are concerned.

Obviously, personally *held* property can also be productive while it's at it (and, of course, often is). Indeed, if we broaden the notion of production, as we should, to include the production of satisfactions of all kinds, then the whole point of any sort of property is to be “productive.” Investments, of course, are with a view to producing personal property for others, the customers who buy them. But why is this supposed to make so fundamental a difference to the theory of *justice* that we get to exclude holding such property as a right, when all the other liberties are made into such rights? That the result of such holdings might be economically unequalizing is, of course, agreed, but that disequalization should be a sufficient ground for trumping a general liberty principle claimed to have *lexical priority* is, to put it mildly, not obvious. It appears, indeed, question-begging.

Perhaps a word should be added here regarding economic liberty. Cohen, of course, is notorious for arguing that have a low income restricts one's liberty<sup>5</sup>. Without

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<sup>5</sup> See Cohen (1995, 38-66) among many others. The obvious point that you may, if you wish, forcibly prevent me from taking your car without permission, and thus that private property as an institution “restricts freedom” is no criticism whatever of the characterization of the market economy, with its extensive property rights, as being a system of freedom. I have a right of freedom to do x only if nobody is allowed to deprive me of x, and in turn those other person's freedom to restrict *my* freedom (of that kind - what we would usually refer to as “theft,” is intrinsic to the system. In like manner, the law against murder restricts people's liberty to kill - that's what it's *for*. (It is strange that Cohen should for so long have considered this to be a reason for denying the market system's claim to be a system of freedom. At one point, he does seem to recognize this: “Taxing him pretty unequivocally reduces Chamberlain's freedom: to think otherwise, you have to believe an implausible story about knock-on effects, or fancy Marxists stuff

belaboring that, the point is that *if* we are to take the first principle at what can reasonably be thought to be its face value, without arbitrary or ideologically motivated stipulations, it would imply that we all have the *right* to do precisely what Jones is envisaged above as doing : namely, holding out for a greater income for himself as his condition for producing more for others. In doing that, of course, he is doing what economic agents in general are normally envisaged to be doing: viz., ordering their activities so as to maximize their net incomes in interaction with others. If we impose the Liberty principle so understood, though, the result will be that Rawls' difference principle *cannot* be realized simultaneously with the first principle, except on one, very special, condition: namely, that the incentives operating on economic agents are themselves egalitarian - that is, that each economic agent, as an individual, is also an egalitarian by sympathy, preferring an equal outcome for all to an outcome in which he himself gets more. As I pointed out, and as Cohen in turn insists, it is perfectly *possible* for people *not* to act in the way that "economic agents in general" are normally assumed to act, namely with a motivation to increase *their own* incomes independently of those of others (except, of course, their trading partners, each of whom is in turn attempting, successfully, to improve his or her own situation when they make these exchanges).

In comment on this, we should surely say: Well, yes, it *is* possible - some in this world are rather like that - but many others, and very likely most people, are decidedly not. And if the liberty principle is taken at face value, then those who are not like that, and who are capable of differential production, will *have the right* to those higher incomes than others, provided only that they get them in free exchange with others.

So, now: where does this leave us with the difference principle? In insisting that just activities "maximally benefit" the worst off, *subject to the priority of the liberty principle*, how much of a difference, between benefit to producer and benefit to bottom-level citizen, would be enough to get the imprimatur of the difference principle? That is to say, how much of a difference that arises when we are acting within our right to economic liberty, will be able to fulfill the requirements of the difference principle insofar as there is anything left for it to do? The pure communist distribution is (we are assuming) the equal distribution of money and property, and the few among capable producers who are pure communists will split their incomes accordingly (whatever that means when we have populations in the millions). But what about the rest, who do *not* deliberately set out to benefit the poor as much as they possibly can? The lower limit, surely, is reached when the effects of Jones's economic agency is to do *nothing* for the poor, one way or the other. That leaves them no better, but also no worse off than before. Now the liberty principle, in making economic liberties into a universal *right*, prohibits violence and fraud: economic benefits may not be derived from threatening evils to others nor from cheating

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about how deeply free we all really are when we are all equal together" (Cohen 1995, 55. But the ensuing paragraph re-mires him in the confusion I'm alluding to here.)

them. Thus this lower limit is already implied by the liberty principle anyway - it needs no separate specification or derivation. So: now it seems that the Difference Principle, as a principle of *justice*, is completely dispensable - the second principle can simply be deleted without loss.

### **Horn Two:**

That, then, is Horn Number Two: if we accept those interpretations of Rawls' principles, it appears that Rawls should be a pure libertarian. (Although the above argument has been couched entirely in economic terms, similar ones would confirm that civil liberties should likewise be of benefit to all, by virtue of being equal and maximal.) And so, he has not managed to steer, as I put it, the envisaged principled course *between* the Scylla of pure egalitarian socialism, and the Charybdis of pure free market society. The dilemma, then, is that, contrary to what he surely intended, and to what almost all of his sympathizers supposed, there really *is* no principled way to stop short of either pure communism or pure market capitalism, insofar as this liberal theoretical approach to theory of justice is our guide.

It might be held that some kind of "mix" of the two is possible. And of course, there not only could be, but there clearly is, such a mix, so far as real-world economic systems are concerned -- indeed, what we have today, in all the wealthy countries, is just that: all their economies are partly market and partly state-administered welfare states. But the trouble is that these mixed systems stand in need of principled justification, and on the face of it, that is what they lack, *if* Rawls is in general right about the fundamental principles of justice.

Rawls does not like either of these alternatives, though his main theoretical inclination seems to be against the market liberties. One of his main intuitions in *A Theory of Justice* was that the "system of natural liberty," which in effect is the libertarian system, is *unjust*:

The existing distribution of income and wealth, say, is the cumulative effect of prior distributions of natural assets - that is, natural talents and abilities - as these have been developed or left unrealized, and their use favored or disfavored over time by social circumstances and such chance contingencies as accident and good fortune. Intuitively, the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view" (72).

And he adds, “The liberal interpretation of the two principles seeks, then, to mitigate the influence of social contingencies and natural fortune on distributive shares” (73).

We should ask: what makes Rawls (and Cohen) think that the existence of differences in natural talents among us, these difference being, unsurprisingly, devoted to advancing the good of the lives of those who have them, is *unjust*? Note that Rawls does *not*, like Marx, point to long-ago genuine injustices, such as conquest and enslavement, as affecting current distributions. Those would be problems that any market enthusiast would agree need addressing somehow.<sup>6</sup> But Rawls is referring to these inequalities *themselves*, being employed in the market manner, within the framework of respect for the lives, liberties, and properties of all others. The question is, why is *that* supposed to be “unjust”?

What Rawls points to, as we saw, was the “moral arbitrariness” of these differential “distributions” of talents. But he fails to see that this moral arbitrariness, which is obvious enough - we cannot, after all, be blamed for having been born the way we were - does *not* imply the “injustice” he imputes to it. The fact that Jones has a natural talent for a sort of production that others will desire sufficiently that its possessor, if he works at it right, will become quite wealthy, does not mean that Jones is doing anything wrong when he does so. Indeed, on the face of it, he’s simply acting naturally - “in accordance with his nature” which in this case is, self-interested. Jones undermines no one’s liberty in doing the things we have in mind here. He therefore, by Principle One, has a right to do them, and the moral arbitrariness of the “distribution of talents” enabling him to do so is no fault of his - nor, in a sense, any virtue. However, in the eyes of those who benefit from his productions, those talents *will* be regarded as “virtues” in the broad sense of qualities that it is desirable to have. But no one, after all, does this “distributing” - which indeed makes the employment of the word ‘distribution’ dubious in the circumstances. And therefore, even if somehow God should have made men equal (something we should not without examination concede anyway), the fact that he did not is in no way an imputation of *injustice* to those among his creatures who happened to “get a greater share.”<sup>7</sup> Making someone liable for being more creative, stronger, faster, more alert, etc., etc., than the normal run of humans is no part of any sane theory of justice.

Perhaps it will be said that egalitarianism does not “make people liable” in that way. But after all, taxation, for example, is compulsory, and potentially enforced by imprisonment and the like. To insist that someone’s use of her talents, when the effect is to unequalize her income relative to many others, may be forcibly constrained along some schedule devised by the government of the day, is precisely to “make them liable.”

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<sup>6</sup> For example, there’s the famous passage in Robert Nozick’s (1974) *Anarchy, State and Utopia*, 230-31. There has been much published discussion of this passage, e.g. Colin Farrelly (2004, 49). For my own further discussion, see Narveson (2009).

<sup>7</sup> For further, see Narveson 1997 and Narveson 2002, especially 54-56.



Rawls, to be sure, does not envisage that socialism would necessarily be an attempt to impose radical economic equality. We may, of course, accept this as a generalization about the various systems that have been introduced under the name of ‘socialism,’ just as we may agree that actual political economic systems can be devoted to all sorts of things, irrespective of ideological profession or labeling. But we are here interested in fundamental features of Rawls’ social theory, not day-to-day politics, and for these purposes, we don’t have to, or want to, get involved in the myriad of possibilities indicated. For Rawlsian principles, as he says, involve the “distribution” of what he calls *primary goods*, which includes “All social values - liberty and opportunity, income and wealth, and the bases of self-respect.” Regarding these, there is a fundamental argument for an initial stance of equality: they, he says, “are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone’s advantage” (Rawls 1971, 62). Later this is refined or restated as the familiar Difference Principle, which has it that if equalities are to be accepted, it must be under the requirement that they maximize the index of primary goods of those “at the bottom,” which, roughly, are the poorest. (How we would factor “liberty, opportunity and the bases of self-respect” into the metric is, to put it mildly, no easy matter. Even trying to understand what the envisaged equality would mean in strictly economic terms is a daunting prospect.) But I take it that Cohen believes that the egalitarianism that Rawls takes to be the “benchmark” is, somehow, definable, sufficiently so that his criticisms can make sense.

Moreover, if he is right, then Rawls would not be able to defend any of the intermediate systems, in which there is a mix of market elements and public ownership of the means of production. And, of course, all of the non-liberal systems -- in which society’s resources are devoted to such “public benefits” as the building of heroic statues of the Great Leader -- are simply out of consideration here: Cohen and I, and most of us, are liberals, holding that what should matter to any government (or, any moral principle claiming to be plausible) is what matters to the individual people being governed, rather than what matters to their leaders such as the Central Committee, or according to some social philosopher.

Now, the problem facing Rawls, as I argued (as noted earlier, see Narveson 1976; 1978; 2002) and as Cohen agrees, is this. If we start out with a claim that all that stuff is to be distributed equally, and this is taken to be the “benchmark” of justice, then how are we to render a departure from equality just? To this Rawls has only two answers: costs of training and *incentive*. The former, however, are essentially irrelevant, since they are not, *prima facie*, primary goods. But incentive is another matter. If the idea is indeed that equality is a “benchmark” in the sense of a *prima facie* requirement, then someone who insists on more for himself as a condition of producing more for others would be trying to make his own preferences override a *prima facie* requirement of justice. But whatever can do that, mere individual preference can’t: justice is to override such preferences -

that's what it's essentially *for*. Some would find this easy by suggesting that there are other requirements of justice besides equality; the talented can spend more money on their families, perhaps, or some other causes endorsed by justice. It is not clear that there are any other such available, however.

Thus Cohen quotes my little dialogue from the second version of that article.<sup>8</sup> Much of his chapter on Incentives is an intensely worked-up restatement of that argument. Our questions are: is there any sort of escape for Rawls? And if not, which prong of the dilemma should we take: Equality, or free market?

I identify the latter with libertarianism; some would cavil at this. At the risk of making an already much-lengthened discussion still longer, I remind the reader that the Libertarian view is that force may be used *only* to counter force. It may *not* be used to promote other social objectives, including ones that the reader, or writer, may think to be good ones. I further take it that our subject here, political justice, is *essentially* about the permissible uses of force. Laws require us to do or not do various things, and require us in the sense of making us liable to punishments if we do not comply. So the question of justice is: when may we intervene, forcibly, to prevent someone's doing what he would like to, possibly even to damage him physically or mentally? In the libertarian's view, the "somethings he would like to" include operating with various things that can also be exchanged; thus, market freedom.

## 2. Cohen on incentives

Now let's turn briefly to Cohen's own (2009, 27-86) exploration of this topic in the opening chapter of *Rescuing Justice and Equality*. "The Incentives Argument" consists largely of a detailed expansion of the general argument presented above.<sup>9</sup> Let's, fairly briefly, follow it in his exposition.

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<sup>8</sup> "Well-Off: Look here, fellow citizen, I'll work hard and make both both you and me better off, provided I get a bigger share than you.

Worse-Off: Well, that's rather good, but I thought you were agreeing that justice requires equality?

Well-Off: Yes, but that's only as a benchmark, you see. To do still better, both of us, you understand, may require differential incentive payments to people like me.

Worse-Off: Oh. Well, what makes them necessary?

Well-Off: What makes them necessary is that I won't work as hard if I don't get more than you.

Worse-Off: Well, why not?

Well-Off: I dunno ... I guess that's just the way I'm built.

Worse-Off: Meaning, you don't really care all that much about justice, eh?

Well-Off: Er, no, I guess not." (Narveson 1978 quoted in Cohen 2009, 27).

<sup>9</sup> I thought this was the first such analysis of the argument. But Tom G. Palmer, in *Realizing Freedom* (2009) has pointed out that Thomas C. Grey (1973) discovered what amounts to the same problem.

Cohen: “Left-wing liberals deny the factual claim that the vast inequalities in Britain or America actually do benefit the badly off, but they tend to agree that if they did, they would be justified, and they defend inequalities that really are justified, in their view, by the incentive consideration. That is a major theme in John Rawls’s work. For Rawls, some people are, mainly as a matter of genetic and other luck, capable of producing more than others are, and it is right for them to be richer than others if the less fortunate are caused to be better off as a result. The policy is warranted by what Rawls calls the difference principle, which endorses all and only those social and economic inequalities that are good for the worst off or, more generously, those inequalities that either make the worst off better off or do not make them worse off: in this matter there is a certain ambiguity of formulation in Rawls, and in what follows I shall take the difference principle in its more generous form, in which it allows inequalities that do not help but also do not hurt the worst off.” (29<sup>10</sup>)

That difference, we should bear in mind, is critical. If we could not act justly without directly benefiting *everyone* worse off than ourselves, or even without *benefiting* the “worst off” - assuming we can determine who those are - action would be well and truly stymied. The non-harm condition is far more realistic, as a requirement. We should bear in mind, however, that it is part and parcel of the market view that Rawls means to be opposing that *no one*, including therefore the worse- and the worst-off, are to be literally *harmed* or *hurt* by one’s actions.

No doubt it will be said, in criticism of the market system, that a business that moves into a community and then outcompetes many rivals whose employees are consequently thrown into unemployment *would* hurt those people. At that point, considerable economic analysis is needed. Increased efficiencies in an economy always “hurt” the inefficient, but not in the way that, for example, brigands burning down their houses would hurt them. Rather, it’s that the people who formerly employed them profitably can no longer do so, and so the benefits previously rendered to those employees by those particular employers - their salaries or wages, especially - are no longer available to give to them. This of course makes them, for the present anyway, worse off than they would have been if they had been able to remain employed. Of course, under the circumstances, they *can’t* remain employed in just that way, since their being so is contingent on its being worthwhile for their particular employers so to employ them, which it no longer is (indeed, those employers themselves are quite possibly unable to continue the business.) However, a market economy supposes some flexibility in the set of employable people, and in a case like the above, it is to be expected that the resources now made available will be employed by other entrepreneurs who will hire those people to do new and, hopefully, in the end, better-remunerated things. (The poor in

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<sup>10</sup> Parenthesized numbers are page references to the Cohen volume.

contemporary Canada, say, are wealthy by comparison with the poor in 1850 Toronto or 1750 New York.<sup>11</sup> )

The example of Wal-Mart comes to mind. That firm tends to be spectacularly successful, and is so because its prices are much lower than the competition's. Of course that hugely benefits all the customers of that firm - who are very numerous in any given locale; and many of those customers are among the poorer in that community. *Those* people's real incomes are now increased, since their incomes now go farther. And the money they aren't spending on the more expensive goods of the out-competed firms is now available for spending on something else - including things that the new entrepreneurs in question will expectedly come forward to supply - and which they hire the lately unemployed to help produce. And that *can* be a basis for claiming that the greater incomes of the owners and managers of Wal-Mart do their bit for the Difference Principle. (Many "left-wing" thinkers will of course dispute much of the economics asserted in the above account, though I don't think Cohen would have. It is the basis of the immense "material" progress that we expect, and observe, in thriving market economies.) Meanwhile, the point is that in the usual meaning of "harm" and "hurt", doing what is properly so described to *anybody* is forbidden by morality and specifically by the "bourgeois" morality leftists tend to decry. Respect for persons, their liberties, and their property, is, obviously, essential to the free market philosophy. The issue with the "left" has to be whether some kind of political initiative that *prohibited* market activity of the kind described could actually benefit the "badly off," in any longer run. Such more nearly "pure" cases of socialism as Soviet Russia, Maoist China, and Fidel Castro-governed Cuba, do not provide much encouragement for the socialist in that regard.

Cohen adds that the real concern of the socialist egalitarians he has in mind is: "why should some people be *badly* off, when other people are so *well* off? That is not the same as the colorless question, Why should some people be better off than others?" (30-31), noting that he didn't think many egalitarians would worry about the difference between millionaires and billionaires, even though that gap is enormously greater than the gap between an ordinary income-earner and the typical poor person, at least in a contemporary well-off society such as ours; the problem rather is "that there is, so they think, unnecessary hardship at the lower end of the scale." (31) Thus they think that "equality would be a good thing because it would make the badly off better off. They do not think it a good thing about equality that it would make the well off worse off." Indeed, they think that "if leveling down were necessary, then equality would lose its appeal." (31) This is especially interesting since any initiative to this end brought about by the coercive means of government *necessarily* "levels down" in the sense that it makes those better off

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<sup>11</sup> In this essay, I lean on common knowledge of how things are these days. Clear and insightful analyses of the situations of the contemporary poor in Canada are provided by Sarlo (1996) and Eberhardt for the United States (2008).

whose incomes are taxed to this end worse off than they would have been absent the tax. This is income, after all, that they *really have* - it isn't that some wealthy persons are worse off than they conceivably hypothetically might have been; it's that they are rendered worse off in terms of income that they do *actually have* prior to the tax. When someone's income is literally taken from him, under threat, rather than reduced as the result of fair market competition, it is reasonable to speak of "harm" in a more literal sense. Political initiatives aimed at "redistribution" do, then, literally harm some people (the wealthy) in order to help others (the poor.) "Leftists" may also claim, of course, that these greater incomes are not got by liberty-respecting means, or they may hold that liberty-respecting is either no part or not a very important part of justice. There is considerable reason to think that Cohen, at any rate, is not among those. (His Chapter 5, "The Freedom Objection" as well as earlier work of his, makes that clear.) At any rate, he appeals to no such arguments in his dealing with the Incentive Argument.

### Community

Well, what's the problem? Cohen puts it as follows:

... I believe that the idea that an inequality is justified if, through the familiar incentive mechanism, it benefits the badly off is more problematic than Rawlsians suppose; that (at least) when the incentive consideration is isolated from all reference to desert or entitlement, it generates an argument for inequality that requires a model of society in breach of an elementary condition of community. The difference principle can be used to justify paying incentives that induce inequalities only when the attitude of talented people runs counter to the spirit of the difference principle itself: they would not need special incentives if they were themselves unambivalently committed to the principle. Accordingly, they must be thought of as outside the community upholding the principle when it is used to justify incentive payments to them (32).

On the face of it, what Cohen says here has the problem that "the principle" was supposedly capable of generating a scheme for genuinely justifying inequalities. Why, then, would a community *upholding* that principle not be able to include those who come out on the upside of such inequalities? It seems to me that Cohen is implicitly leaning here on the point I emphasized above: that *justice* is normally understood to be incompatible with simple self-interest as such - it is, indeed, intended to curb our presumptively natural impulses to prefer ourselves by whatever means - and thus that if the inequalities envisaged are due to the self-interest of those who insist on them (as they

surely are), then there is scope for claiming that those persons are not wholly sympathetic to the starting point of equality that both Rawls and Cohen - and everybody? We'll see about that - agree to be essential to justice.

This bringing in of the notion of "community" is interesting, but puzzling. In context, what is envisaged is a community of people *upholding that principle*, although in the phrase's first occurrence - "a model of society in breach of an elementary condition of community" - no such restriction is implied. In that sentence, the reader is certainly to be forgiven for taking that Cohen thinks that use and acceptance of the argument for inequality violates *community* - not merely the "community" of those who think that the rich cannot claim to be justified in getting rich by normal market means unless in the process they think that the *point* of their excessive wealth is, nothing more nor less than, to improve the lot of the very poor.

It is, we might also note, quite unlikely that the poor themselves think any such thing - *their* efforts are aimed at improving their *own* lot, by and large. (Thus, for example, many of the poor buy lottery tickets, in hopes of quickly propelling themselves out of their current economic echelons; few of those poor, if they do win sizable amounts, turn around and give virtually all of it back to the community.)

So far, then, Cohen and I, I believe, are in complete agreement about the essentials here. If we take the achievement or at least promotion of equality as a *prima facie* moral requirement, then we have to regard individuals who refuse to devote their efforts to that end except on condition of superior payoffs to themselves, as being at least *prima facie* thereby shown to be acting contrary to justice. If we are right about that, then, the only question, is: yes, but which way do we bounce? Do we go along with Rawls's First Principle (as I understand it, and as I claim most people would), calling for general respect for liberties all around, including economic ones? Or do we take the Difference Principle as preemptive, with its implication that inequalities of income can't actually be *justified* at all? In affirming the priority of liberty, it seems to me, Rawls should be taking the first option. He simply fails to see the trap he has set for himself, to put it somewhat baldly. Cohen's is a more complicated case, however, for unlike Rawls, he turns out not to be talking about what we might think.

In devoting so much of *Rescuing Justice and Equality* to the further and detailed exposition of this problem for Rawls and Rawlsians, we must ask, what's the point? - since, after all, the problem has already been appreciated by others (myself and Grey, at least, among Cohen's predecessors). In my view, Cohen must think that in the process, the case in favor of egalitarianism has in some way been forwarded. But I'm doubtful about that too. After all, he appears to be simply assuming the truth of egalitarianism and then pointing out that Rawls has the above problem. Further, he is ready to agree that the strategy of manipulating incentives is probably the plausible way to go, in real-world terms, given that a strategy of imposing egalitarianism isn't likely to (as indeed it isn't):

And scarcity in the Marxist sense is not poverty of supply but the wider circumstance that, to secure what might be a quite reasonable supply, most people must spend most of their time engaged in labor that interferes with self-realization. ...

Under such a condition, and it is a huge and difficult question whether we are still in it, it might be right to tolerate and even, sometimes, to nourish, incentive motivation, despite the fact that it contradicts justice. Sometimes the difference principle in its lax interpretation can be recommended as a first virtue of social institutions, because we cannot get justice, and the injustice that goes with incentives is the best injustice we can get (84-5).

Here Cohen assumes that the departures from equality expected in a market economy are really *injustices*. But readers should bear in mind that he has not even tried literally to prove, or even to argue for, that claim. Thus far, he is simply arguing on the basis of the Rawlsian text. Later on (Chapter 6, “The Facts,” and Chapter 7, “Constructivism”), Cohen devotes a lengthy theoretical discussion to a claim that normative principles must ultimately be “fact-independent.” This thesis, he notes, is “meta-ethical, because it is a thesis about principles that is silent about which principles should be accepted and which rejected ...” (257) His own view is that justice’s being equality is an ultimate, fact-independent thesis. Thus “while unequalizing Pareto improvements on equality may represent sound policy, such (possibly) sound policy does not promote justice” (317)... “I am far more convinced that legislating for an inequality that incorporates this sort of brute luck produces an injustice than that either the Rawlsian or the Scanlonian procedure for determining what is just is sound. In my view, the Scanlonian and Rawlsian procedure do not yield justice, precisely because “accidental” inequalities are unjust ...” (318) - and, strikingly, he says “Of course, some readers will not share the egalitarian intuition... that is at the heart of the present disagreement ...” (318).

I find this disheartening. We are, after all, talking about *social* justice, a normative theory for *interpersonal* contexts. If Cohen accepts that some readers will not *share* his intuition, and recognizes it to *be* an intuition, then he would seem to be in the standard intuitionist sand-trap: no intuitionist can literally defend his view, because all such views are required, according to their analysis, to be ultimate, beyond the reach of any factual sort of findings. Can a theory for the world we live in, with its many different persons who, considerably, do not share his intuitions, really be of the general sort that he, or his predecessors such as Ross and Ewing, say it is? I would think not.

Especially, we should return to what has been regarded (correctly) as a basic of this subject: that what *justice* is concerned with - justice as *distinct* from the most general

normative principles without further distinction - is the use of *socially approved coercion* in a community (ultimately, *the* community, of the whole human social world.) We do not have a principle of *justice* if all it says is, “here, this is better than that!” Rather, we have a principle of justice when it says, “You may be *compelled*, if you won’t do it voluntarily, to comply with the following ...” And Cohen, as I have argued elsewhere, astonishingly accepts that we may *not* use such force to do all sorts of nice things, such as helping lame persons across intersections or, even, feeding starving children. He would not “take the Stalinist plunge and force the doctor to doctor” or more generally to apply coercion to occupational choice, or to enforce noncommercial promises, and more (221).

These points suggest that Cohen would at least be edging close to the libertarian’s view - that we are to harm *no one* except *only* if that action was intended to deal with uses of force that were not motivated in that way, but only by self-interest. And yet he does “qualmlessly allow coercive taxation”, adding, “For epistemic and deterrence reasons, coerced labor would remain unacceptable, but would it be acceptable even if there were no practical or epistemic obstacles to it? I think not ... Income taxation forces you to give money on the basis of (fairly) readily determined information about your income.” ... (221) In the end, “Coercive progressive taxation can be justified on the egalitarian welfarist ground that *on average* welfare is higher the more wealth a person has: we only need confidence in the averages, we need not invade individual psyches, to tax on a welfarist basis.” (222) But this, he also says, is a matter of “nonideal theory” rather than the theory specifying what would happen in the fully just society. He still thinks that that ideal one would be fully egalitarian, where, say, “taxation on behalf of equality would not need to be coerced. But there might still be a state, that is, a central organizing body, that proposes a tax structure of egalitarian inspiration around which people would voluntarily coordinate.” (221) As usual, then, Cohen’s egalitarian intuitions are brought in to justify invasions on freedoms that Cohen would otherwise be hard put to justify. Like Rawls, the fact that someone has more is regarded as in itself fundamentally objectionable, and thus ground for what, in the case of privately acting individuals, would be regarded as theft.

### Incentives Again

Let’s now go back to the general question of the role of incentives in theories of justice. Rawls holds that the prospect of superior gains constitutes an acceptable incentive for doing what will otherwise contribute to the well-being of the poor. Cohen denies that such incentives would be just, given the egalitarian starting-point that appears to animate much of Rawls’ *A Theory of Justice*, though he accepts that perhaps we should, for reasons of practicality (in effect) go along with policies allowing such incentives. Are either of them right? Is what makes it just for someone to engage in normal commercial dealings - to make, and accept, arrangements with some others that will make him (and



his trading partners) better off - the fact that this arrangement will *also* conduce to the well-being of the poorest? More precisely, is that not only just, but a *necessary condition* of its being so, as both Rawls and Cohen maintain?

Neither Rawls nor Cohen is an enthusiast for labored definition, but there are surely many philosophically discussed notions that might profit from some such labors - the notion of justice itself, as I've complained above, being one of them. Incentive itself is another, along with the much-employed word "distribution." In this favored left-liberal terminology, economics is concerned with the "distribution" of, roughly speaking, interpersonally transferable resources, and an *incentive* is a sort of reward, as with primary school teachers' gold stars for good behavior and the like. Incentives, in such contexts, are essentially exogenous to their recipients.

Such talk is seriously misleading, indeed distorting. In the most general sense, everyone is always acting on some or other sort of incentive: an "incentive" is what impels the agent to act. But in that most general sense, obviously incentives do not need to come essentially "from the outside." The person driven by sheer curiosity has thereby an incentive to engage in research, regardless of what someone else might or might not offer him in order to engage in such behavior. We might say that he *needs* no incentive, though we might better say that he needs no *externally provided* incentive.

Now in the world of what we call "the economy" a great many people are acting in such a way as to attempt to maximize their net incomes (roughly speaking - which is enough for present purposes.) This can be done in many ways: by armed force, by applying for a government grant or inducing some official to give your firm a special handout - or by engaging in commerce. The rules of the market economy forbid the first, and its serious proponents would claim that it also forbids the second. But when it comes to the third, we need to bear in mind that there are plenty of activities that are of none of these three types, though they have economic aspects - notably private charities and philanthropies, engaging in which is done essentially because of the social motivations of their main actors. Employees of philanthropies may have just been "looking for a job" and have no special extra sympathy for the cause that their employers are devoted to, but the philanthropists themselves, providing sizable fractions of their incomes, sometimes in the multiple millions or, in the most spectacular cases, billions of dollars, and plainly not thereby seeking essentially to maximize their *incomes*, in the usual narrow sense of that term. And again, there are many who devote themselves to aesthetic pursuits, without even social benefit to others foremost in their minds - they do it for their own pleasure and satisfaction. To preserve the axioms of economics as often understood, we would have to say that they are trying to maximize their "psychic income" or some such. And indeed, we might as well retreat to the innocuous formulation that they are trying to maximize their *utility*, a characterization that tells us nothing at all about the detailed motivations of the agents. The point, however, is that talk of "distribution" as though

there was some kind of overarching agency whose necessary business it is to *distribute* various benefits to sundry persons for sundry reasons is very far from capturing these realities. The idea of “distribution” at all is simply inapplicable to some of these.

And in the case of many others, notably our central purely commercial ones, the term is misleading because when we *pay* someone for some service that we want done for us, we do not see ourselves as issuing a “reward” or “distributing” in any other sense than that we have some sort of budget and our purchase, we suppose, is consistent with our budgetary constraints. We do not have either the poor or the rich in mind: what we have in mind is the desirability of having this person perform this service (including such services as transferring to us the right to a certain new car, or innumerable other services as those done for some of us by opera singers or professors of Renaissance History), as compared with taking some other option available within our price range, or not spending our money at all at this point but taking a nap or going for a walk instead. These sorts of good “things” are the stuff of life, and not the stuff of some dictator or mysterious godlike being or some government deciding how to parcel out a bunch of goods that might as well have fallen from the sky (as in Nozick’s delightful “manna from heaven” example.) They are, instead, the result of interaction of our interests and our personal resources.

Rawls and Cohen point to the utter arbitrariness of our initial genetic endowment (from our point of view, that is - our parents may possibly have supposed that they would have an offspring much as you or I actually turned out to be, and be happy accordingly) - “so arbitrary from the moral point of view” as Rawls puts it. And they seem to think that this points to a potential *injustice* in the *distribution* of those very endowments. I am, of course, far from alone in complaining about the attempt to apply any notion of justice at this level. From the point of view of each individual one of us, our “endowments” are simply facts, starting-points. They are not up for “distribution” on that, or any, score. They are, indeed, starting points in the sense of where we go from, to make such use as we may. It is absurd to suppose that the not-so-bright get to *complain* about the existence of the very bright, and neither is it for them to *complain* that the possessors of those superior capabilities do not use them specifically for the alleviation or amelioration of their situations. Appreciating these “existential” points about our general situations leads us either to be grateful when the gifted and bright and energetic do things that in fact do make our own lives much better than they would otherwise be - or to using our abilities to inveigle, or coerce, such potential benefits. We have strong reasons to resist these latter uses of people’s abilities - that’s where the “social contract” idea becomes plausible. But there simply is no basis for insisting that the *point* of our *having* the abilities we do, in the cases where they are potentially productive of benefits to others, is to produce those very benefits. They are what they are, and what we’re going to do with them is up to us.

But in the absence of some such basis, there is also no traction for the radically egalitarian premises upon which Rawls and Cohen pursue their cases. We take things as they are, we do the best we can - and that "best" will, as I think both Cohen and I would have agreed, be much advanced by a general recognition of rights to be and do as we are, compatibly with the same right extended to all. There is a genuine case for that. There is not, it seems to me, a genuine case for the egalitarian principle, and thus for regarding a *justification* along the lines of "incentives" as prerequisites for legitimizing our perfectly normal behavior in markets and other contexts of social life - much less for regarding these as injustices that we perforce had probably best put up with under the circumstances. Humans deserve better than that.

### Afterward

When I first met Jerry Cohen, he was that rarity - a Marxist with a sense of humour. That was back in the 1970s, when advanced versions of his interesting study, Marx's Theory of History, got read/expounded by him at the University of Waterloo (at my instigation). Over the years since, the humour remained even as the Marxism tapered off, to be either refined, or, according to your ideological lights, transmogrified into his recent luck-egalitarian format - one that I, with many, have not found all that easy to understand nor to agree with.

The hospitality continued, too, including a memorable visit with him at All Souls College, where I was wined and dined in wonderful style. I will never forget his taking me over to the window of his rooms, pointing to the magnificent view of the Sheldonian and various Oxonian towers, and saying, in the context of a discussion of relative salaries at North American and British universities, "Well, Jan, tell me: what is *that* worth?!" Point made. Of course it also made me reflect that for someone claiming to be an Egalitarian, the question arises - why do we have to talk in terms of money? Inequalities in terms of who gets to have what magnificent-or-awful views in the course of his or her life are surely at least as telling- I should think, really very much more - than just inequalities of incomes. But I digress!

Over those years too, I read almost everything of his (I think - there's a lot!), and continued in various ways to disagree with much of it. Most signally, and somewhat painful to me, there is an exchange in *The Journal of Ethics* (1998) ending with a critique of my piece by Jerry to which, alas, I never responded. When news of his sudden and unexpectedly early death reached me (within a remarkably few hours of the event), my second thought, after astonishment and sorrow, is that now if I ever responded to that criticism, there'd be no one to reply in return - a response that I would certainly have found interesting and probably chastening.

He died while I was reading the then-new *Rescuing Justice and Equality*, and that

generated my third thought, which was to spread the news around to my colleagues in Canada to run a symposium at the Learned Societies meetings in Montreal in May 2010. The CPA secretaryship kindly enabled me to get an invitation out to all CPA members to contribute to this symposium (and for many, it was also the source of the news of his death), and as luck would have it, a number responded that was compatible with putting almost all of them on the program.

I proposed this program to the CPA program people of the time, and they said that sounded just fine. Alas, I took them to mean that it had been accepted. But after having heard nothing for a couple of months, I wrote to inquire and discovered I was beyond the deadline for submission! Luckily, a member of the Society for Socialist Studies (SSS) stepped in and saved the day, offering to take it under its wing. Panel saved! Many thanks to the SSS people for inserting this big panel into their already very full schedule. And many thanks to Elaine Coburn for proposing to publish a substantial selection of the papers, and to invest a great deal of her time in editing the set.

In this note I won't try (yet again) to set forth our differences. Cohen was remarkable in his perception of the plausibility of the major criticisms of the socialism to which he was attached as, virtually, a birthright. I encountered such criticisms early on, and quickly abandoned what little taste I had for socialism at that time; he, on the other hand, persisted in various ways, though whether what he ended up with is, strictly speaking, socialism, is for others to judge. Meanwhile, there is the question of how much strictly rational analysis and discussion has to do with all these differences. My hope and belief is that it's a lot. People often make reference to "intractable differences" among theorists (and among real people, too), especially about matters of social theory and practice. A meta-ethic such as what he seems to profess in his magnum opus has the unfortunate property that it would seem, apart from luck, practically to guarantee the intractability in question. My flirtation with intuitionism - a flicker, really - was even more short-lived than my flirtation with socialism: retreating to a philosophical stance that guarantees against the sort of accountability that we hope for from naturalism of some sort seemed (and seems) to me an unhappy ideological move. The rest of us need to keep working on that one.

It remains to state the obvious: that Cohen's contributions to philosophy are awfully interesting and beautifully set forth. Those of us who knew him personally know how much more there was to miss than what is found only on all those interesting pages.

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