



Incentives, Inequality, and Publicity

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I. INTRODUCTION

Critics of egalitarianism often claim that the pursuit of economic equality must be tempered because its crushing effect on incentives jeopardizes efficiency. The most challenging version of their argument appeals to John Rawls's difference principle, according to which departures from equality are just if necessary to benefit the least advantaged maximally.¹ This paper examines the latest stage in G. A. Cohen's campaign against the Rawlsian defense of inequality-generating incentives.² It ar-

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1. See J. Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 83, for a statement of the difference principle, and pp. 151, 158, and 279 for Rawls's brief remarks on incentives. For further discussion of the way in which the principle combines concerns for equality and efficiency, see A. Williams, "The Revisionist Difference Principle," *Canadian Journal of Philosophy* 25, no. 2 (1995): 257–81.

2. The relevant publications include "Incentives, Inequality, and Community," G. B. Petersen, ed., *The Tanner Lectures on Human Values, Volume Thirteen* (Salt Lake City: University of Utah Press, 1992), pp. 262–329; "The Pareto Argument for Inequality," *Social Philosophy and Policy* 12 (1995): 160–85; and "Where the Action Is: On the Site of Distributive Justice," *Philosophy & Public Affairs* 26, no. 1 (winter 1997): 3–30. The issues involved have also been explored in great depth by Joseph Carens in his important book *Equality, Moral Incentives and the Market* (Chicago: University of Chicago Press, 1981), and article "Rights and Duties in an Egalitarian Society," *Political Theory* 14 (1986): 31–49.

gues against Cohen's recent attempt to rebut the *basic structure objection* to his critique. Before elaborating that argument, two preliminary sections rehearse the critique and rebuttal.

II. COHEN'S CRITIQUE

Many suppose the difference principle evidently supports inequality-generating incentives. Cohen, however, has shown that the issue is more complex due to an ambiguity in the claim that inequalities are just when necessary to benefit the least advantaged. To be justified on a *strict* reading of that claim incentives must be necessary in a sense unconditional on the voluntary choices of talented workers: the talented must be incapable of working in ways beneficial to the least advantaged without unequal rewards. However, on a *lax* reading incentives may be necessary merely because the talented choose not to work as productively in their absence.

Cohen points out that many of the incentives supposedly justified by the Rawlsian argument are necessary only in an intention-relative sense. It is against these inequalities that he directs his critique. In pursuing it, his main strategy is to ask how the talented could justify making it the case that such inequalities are necessary to improve the condition of the least advantaged. Rawls's own discontinuous view of political and economic motivation suggests an immediate answer to Cohen's question. Though it requires political activity to be regulated by principles of justice, it permits an unlimited degree of interest-maximizing market behavior.³ Cohen, however, refuses to take such a permissive attitude for granted. In targeting the discontinuous view, he supplies various reasons to doubt that Rawls, given his other commitments, can consistently regard justice as so limited in its scope.

Cohen's main such reason challenges whether individuals who regard it as morally desirable that inequalities be arranged to benefit the least advantaged can coherently disregard such a conviction in their everyday life. Given that conviction, he argues, they should not, for example, decide to withdraw their labor in response to tax increases merely because doing so best serves their interests. Instead their market behavior should respect an *egalitarian ethos* which is shaped by the difference principle and rules out the unconstrained pursuit of one's personal in-

3. See *A Theory of Justice*, pp. 357–61.

terests.⁴ On Cohen's view then the full range of incentive-generating inequalities apparently supported by the difference principle cannot be justified within an ideally just society. For under such conditions—in which each member of society conforms with the demands of justice, including those which should be embodied in its ethos—those inequalities would be superfluous.⁵

I shall return, in Section V, to examine in more detail the ethos which Cohen relies upon. However, note for the moment two of its important features. First, the ethos is not violated if individuals who perform more arduous jobs than others receive higher wages. Since compensatory incentives do not produce any morally relevant inequalities, but rather offset *special labor burdens*, Cohen does not criticize them.⁶ Second, the ethos does not require a fully impartial attitude to one's own interests. Cohen does not deny the existence of an *agent-centered prerogative* for market behavior to be guided by self-interest to some reasonable degree.⁷ Many will find such moderation appealing when compared with a more demanding ethos. So, in showing that his critique is not reliant upon such extremism, Cohen strengthens it. However, he also limits its reach, since it is then inapplicable to efficiency-enhancing incentives which induce the performance of morally optional tasks. Nevertheless, as Cohen emphasizes, appeal to even a moderately self-denying ethos would rule out many of the inequalities that Rawls countenances as just.⁸

Having summarized the main elements of Cohen's critique, and noted a number of subtleties, I turn now to two potential objections, the second of which I discuss at length.

III. THE BASIC STRUCTURE OBJECTION

In claiming that the difference principle requires an egalitarian ethos, Cohen invites at least two types of objection. The first alleges that even if he has shown that equality and efficiency can be reconciled, he has

4. See "Incentives, Inequality, and Community," pp. 315–16.

5. See *ibid.*, p. 325.

6. See *ibid.*, p. 296.

7. Thus, Cohen states that, unlike "an extreme moral rigorist," he does not wish to deny that "*every person has a right to pursue self-interest to some reasonable extent* (even when that makes things worse than they need to be for badly off people)." See *ibid.*, p. 302, where Cohen also notes S. Scheffler's discussion of prerogatives in *The Rejection of Consequentialism* (Oxford: Clarendon Press, 1982).

8. See "Incentives, Inequality, and Community," p. 302–3.

done so by sacrificing liberty to an intolerable degree.⁹ Thus, he may have solved one problem with egalitarianism only by exacerbating another even more familiar difficulty.

Rawlsian advocates of this *liberty objection* might elaborate it by claiming that Rawls's basic liberty and equality of opportunity principles both guarantee freedom of occupational choice.¹⁰ Yet such a right, the advocates might claim, is violated by the ethos. According to Rawls, however, once a certain level of economic development is attained, those principles have lexical priority over the difference principle. Thus, contrary to Cohen's suggestion, Rawls does not betray his own principles by accepting inequality-generating incentives. He merely compromises one principle for the sake of more weighty principles, thereby balancing the competing demands of liberty, equality and efficiency in a plausible manner.

Though some find the liberty objection persuasive, it is not without difficulties. For example, its assumption that the egalitarian ethos violates the right to occupational choice is questionable since the ethos need not incorporate any enforceable legal requirements. Therefore, the objection is incomplete without some explanation of why the voluntary system Cohen favors threatens civil liberties. I shall not examine the liberty objection further, but mention its difficulties in order to preempt any suggestion that, since it is decisive, the basic structure objection is redundant.

The objection I shall defend denies the difference principle is compromised when talented individuals disregard it in their market behavior. No such compromise arises because the difference principle is inherently restricted. Rather than regulating all individual activity, it applies only to a society's fundamental social, political, and economic institutions, which Rawls terms its *basic structure*. Thus, when talented individuals are unmoved by justice in their everyday life, contrary to Cohen, they do not necessarily betray the difference principle.

9. In the conclusion to "The Pareto Argument for Inequality" (p. 185), Cohen anticipates the objection, according to which he "cannot have all of (1) equality, (2) pareto optimality, and (3) freedom of occupational choice," but claims it is mistaken.

10. See *Political Liberalism* (New York: Columbia University Press, 1993), p. 335, where Rawls stipulates that freedom of occupation is included within the "liberty and integrity of the person." Brian Barry adopts the alternate route of appealing to Rawls's concern with equality of opportunity in *Theories of Justice* (Berkeley: University of California Press, 1989), Appendix C.

Like the liberty objection, the present charge is implicit in both *A Theory of Justice* and Rawls's later work. Consider, for example, his remark that:

the principles of justice, in particular the difference principle, apply to the main public principles and policies that regulate social and economic inequalities. . . . The difference principle holds, for example, for income and property taxation, for fiscal and economic policy. It applies to the announced system of public law and statutes and not to particular transactions or distributions, nor to the decisions of individuals and associations, but rather to the institutional background against which these transactions and decisions take place.¹¹

Cohen recognizes the existence of such remarks, but has two main replies.

Cohen's preliminary reply alleges that Rawls's limitation on the scope of the difference principle is inconsistent with three claims he makes concerning the principle's appeal.¹² Thus, Rawls can employ the basic structure objection only if he no longer claims that in a society regulated by the difference principle individuals (i) display fraternity, (ii) can bear their economic standing with dignity, and (iii) fully realize their moral natures. Since those features are, Cohen supposes, attractive, maintaining the basic structure objection has some costs.

The apparent disparities Cohen highlights merit more detailed study, but it is not essential to pursue that task here. For Cohen himself accepts that "these inconsistencies are not decisive against Rawls."¹³ Moreover, he makes no attempt to show that relinquishing the homilies about fraternity, dignity and moral development would be intolerable. I therefore devote my attention to what Cohen regards as his fundamental, and conclusive, rebuttal of the objection.

According to that reply, those who press the basic structure objection need to explain why they regard individual market behavior as occurring within, rather than comprising part of, a society's basic structure. To provide such an explanation, however, they must remove the following unclarity which besets Rawls's conception of the basic structure. On some occasions it appears, Cohen maintains, that Rawls includes only

11. See *Political Liberalism*, pp. 282–83, cited in "Where the Action Is," p. 10, n. 14.

12. See "Where the Action Is," Sec. IV.

13. See *ibid.*, p. 17

legally coercive institutions within the basic structure.¹⁴ Yet Rawls also often claims that the basic structure extends to all *major* social institutions. Furthermore, it does so regardless of whether such institutions' operation depends upon legal coercion rather than the varieties of "convention, usage and expectation" which constitute a society's "informal structure."¹⁵ Moreover, Rawls's rationale for treating the basic structure as the *primary* subject of justice—namely because "its effects are so profound and present from the start"—also counts against the exclusively legal construal of the basic structure since obviously not only law can produce such effects.¹⁶ Having presented these two options, Cohen then constructs the following dilemma.¹⁷

On the exclusively coercive construal of the basic structure, it is evident why the legally optional behavior of market-maximizers and adherents to an egalitarian ethos is nonstructural. So construed, however, Rawls's restriction of his principles to the basic structure is quite arbitrary. Moreover, as Cohen convincingly shows, it renders his principles incapable of criticizing forms of injustice that can exist even if they are not legally instituted. Here Cohen cites examples within family life such as "a regular practice of favoring sons over daughters in the matter of providing higher education" and the presence of "sexist and unjust expectations" that "direct the woman in a family where both spouses work outside the home to carry a greater burden of domestic tasks."¹⁸

14. See *ibid.*, p. 18.

15. See *ibid.*, pp. 19–20.

16. Rawls first states the rationale on p. 7 in *A Theory of Justice*, cited by Cohen in "Where the Action Is," p. 21.

17. See "Where the Action Is," pp. 21–22, where Cohen writes that Rawls "must either admit application of the principles of justice to (legally optional) social practices, and, indeed, to patterns of personal choice that are not legally prescribed, *both* because they are the substance of those practices, *and* because they are similarly profound in effect, in which case the restriction of justice to structure, in any sense, collapses; or, if he restricts his concern to the coercive structure only, then he saddles himself with a purely arbitrary delineation of his subject matter."

18. See *ibid.*, pp. 21 and 22. Although Cohen does not elaborate why he thinks his examples involve injustice, Rawlsians have at least the following reason to share his judgment. In each case it is probable that women, despite the fact they may have similar ambitions and natural talents, will often find it far more difficult than comparable men to occupy the jobs or political offices the latter enjoy. Both examples, for that reason, involve clear threats to what Rawls calls fair equality of opportunity. It would then be highly erratic for Rawls to be unconcerned about those threats merely because they arise from legally permissible activity. For Rawls's own recent remarks on the family, see "The Idea of Public Reason Revisited," Sec. 5.2, *The University of Chicago Law Review* 64 (1997).

Confronted with these implausible implications, Cohen asks his critic to consider instead the second construal of the basic structure according to which it encompasses all major social institutions that produce profound effects. If that construal is adopted, then the basic structure objection faces a distinct though no less powerful threat. It arises since the behavior of market-maximizers, and the permissive view which sustains it, clearly do have a profound impact on individuals' prospects. Such behavior cannot then be described merely as taking part within the basic structure.¹⁹ It must instead be regarded as an informal part of that very structure and so liable to assessment by the difference principle. Thus, even if the scope of Rawls's principles is limited to the basic structure, that restriction does not undermine Cohen's critique.

IV. RESTATING THE OBJECTION

If Cohen is correct, critics who claim he forgets the restricted scope of Rawlsian principles face an unpalatable choice. They may construe the basic structure narrowly and uphold a restriction which, though genuine, is arbitrary and implausible. Or they may construe the basic structure so broadly that their restriction collapses, thereby fatally disabling their objection. I shall now argue that this dilemma is avoidable since the options involved are non-exhaustive. Cohen overlooks a further account of the basic structure, which supports a more robust objection to his critique.

To understand that account, note the basic structure can be defined either by reference to what it does, or how it does whatever it does.²⁰ The first type of definition refers to what I shall term its *dispositional* properties, whilst the latter refers to its *intrinsic* properties. The two possibilities explored in Cohen's dilemma illustrate this distinction. The first horn mentions an intrinsic property, the structure's legally coercive nature. The second mentions the structure's most obvious dispositional property, its tendency to affect individual lives so profoundly. Thus un-

19. As Cohen explains, "once the line is crossed, from coercive ordering to the non-coercive ordering of society by rules and conventions of accepted practice, then the ambit of justice can no longer exclude chosen behavior, since the usages which constitute informal structure (think, again, of the family) are bound up with the customary actions of people." See "Where the Action Is," p. 20.

20. Cf. Jon Elster's remarks on the definition of the state in *Making Sense of Marx* (Cambridge: Cambridge University Press, 1985), p. 399.

derstood, Cohen's argument proceeds from the inadequacy of one intrinsic account of the basic structure and supposes no superior one exists. It then turns to a purely dispositional account, which fails to threaten his critique for a different reason.

Since Cohen's argument takes this form, we should bear in mind that it is limited in the following way. Though it demonstrates convincingly that two accounts of the basic structure, which focus exclusively on either its intrinsic or its dispositional properties, undermine the basic structure objection, the argument fails to show that no further more suitable account is possible. Instead Cohen shows only that any such account must satisfy two conditions. First, it must refer to at least one dispositional property, namely the basic structure's tendency to produce profound and unavoidable effects. Such a feature, as Cohen rightly stresses, must be definitive of the basic structure, given Rawls's explanation that it is "the primary subject of justice because its effects are so profound and present from the start."²¹ Second, the account cannot regard one particular intrinsic property—legal coerciveness—as a defining feature of the basic structure. For that restriction would leave the basic structure objection vulnerable to the first horn of Cohen's dilemma.

These two conditions, however, can be satisfied by a mixed account of the basic structure that defines it not only by means of its tendency to produce profound effects but also some further intrinsic feature other than legal coerciveness. Since Cohen does not disprove the possibility of such an account, his argument does not show that the basic structure objection is doomed to failure. The argument rather challenges those who advocate the objection to state it in a more plausible form. I shall now suggest one way in which they might do so.

My suggestion appeals to the fact that, as Cohen himself observes, the "basic structure, the primary subject of justice, is always said by Rawls to be a set of institutions."²² Such remarks about the institutional nature of the basic structure are less innocuous than they appear. They indicate that the basic structure possesses an overlooked intrinsic property which, I shall argue, explains why it does not encompass the chosen behavior of market-maximizers. To understand the argument, it is vital to note that Rawls attaches a special sense to the notion of an institu-

21. See *A Theory of Justice*, p. 7.

22. See "Where the Action Is," p. 18.

tion. Having insisted that “the principles of justice for institutions must not be confused with the principles which apply to individuals and their actions,” he explains that sense as follows:

by an institution I shall understand a *public system of rules*, which defines offices and positions with their rights and duties, powers and immunities, and the like. These rules specify certain forms of action as permissible, others as forbidden; and they provide for certain penalties and defenses, and so on, when violations occur.²³

Rawls’s clarificatory remarks suggest he does not regard all norm-governed activity as institutional. Instead he reserves the term for activity that realizes a certain type of norm, which is, in some sense, public. So, to clarify further Rawls’s conception of an institution, and thus the basic structure, we need a firmer grasp on the distinguishing marks of public rules.

Since Rawls’s formulations of his conception of publicity are complicated and various, I will not attempt a full account. The discussion of institutional publicity in *A Theory of Justice*, however, provides sufficient guidance for our purposes. There Rawls appears to regard institutions’ constitutive rules as public in three respects. Thus, individuals are able to attain common knowledge of the rules’ (i) general applicability, (ii) their particular requirements, and (iii) the extent to which individuals conform with those requirements.²⁴ Given such conditions, it is clear

23. See *A Theory of Justice*, p. 55 (italics added). He also adds a further clarification, which is necessary because an institution “may be thought of in two ways: first as an abstract object, that is, as a possible form of conduct expressed by a system of rules; and second, as the realization in the thought and conduct of certain persons at a certain time and place of the actions specified by these rules.” Thus, Rawls explains, “There is an ambiguity, then, as to which is just or unjust, the institution as realized or the institution as an abstract object. It seems best to say that it is the institution as realized and effectively and impartially administered which is just or unjust. The institution as an abstract object is just or unjust in the sense that any realization of it would be just or unjust.”

24. For evidence of the first two requirements consider the following passage, in *A Theory of Justice*, pp. 55–56, where Rawls writes, “In saying that an institution, and therefore the basic structure of society, is a public system of rules, I mean then that everyone engaged in it knows what he would know if these rules and his participation in the activity they define were the result of an agreement [cf. (i)]. A person taking part in an institution knows what the rules demand of him and of the others [cf. (ii)]. He also knows that the others know this and that they know that he knows this, and so on. . . . The publicity of the rules of an institution insures that those engaged in it know what limitations on conduct to expect of one another and what kinds of action are permissible. There is a common

that not all norms qualify as public in Rawls's sense. For example, self-effacing moral principles, the success of which depends upon some being ignorant of their applicability, are clearly disqualified. So too are those norms which are so informationally demanding that individuals are incapable of mutually verifying the status of their conduct.

From these observations about the essentially institutional, and thus public, character of the basic structure, I conclude the basic structure should indeed be specified by means of both its intrinsic and dispositional properties. So construed, the structure comprises those actions which realize public rules in a way that exerts profound and unavoidable influence on individuals' access to social primary goods. The basic structure objection should, I suggest, be restated as follows.

Rawlsian principles apply to the selection of institutional means to secure basic liberties, fair equality of opportunity, and the maximinimization of income and wealth. They demand the establishment and maintenance of those institutions that are most effective in achieving such goals, and they condemn institutions that frustrate their achievement. However, those principles are inapplicable to certain types of decision. For some choices, although they may be profoundly influential, cannot be regarded as according with, or violating, public rules. Consequently the nonpublic strategies and maxims that individuals employ in making those choices need not be assessed as just or unjust by means of Rawlsian principles.²⁵ Moreover, amongst such noninstitutional choices is the decision to become a market-maximizer rather than extend egalitarian conviction to one's economic activity. Cohen's opposition to incentives therefore is flawed since it mistakenly assumes those particular choices should be regulated by Rawlsian principles.

basis for determining mutual expectations." For evidence of the third requirement consider *A Theory of Justice*, p. 55, where Rawls describes a parliamentary institution, which "exists in a certain time and place when certain people perform the appropriate activities in the required way, with a reciprocal recognition of one another's understanding that their conduct accords with the rules they are to comply with." See also the account of publicity's "first level" in *Political Liberalism*, p. 66.

25. In referring to "strategies and maxims" I follow Rawls's distinction "between the constitutive rules of an institution, which establish its various rights and duties, and so on, and the strategies and maxims for how best to take advantage of the institution for particular purposes." The latter types of consideration, he explains, "are based upon an analysis of which permissible actions individuals will decide upon in view of their interests, beliefs, and conjectures about one another's plans . . . [and] are not themselves part of the institution." See *A Theory of Justice*, p. 56.

V. THE EGALITARIAN ETHOS

My remaining remarks attempt to dispel any suspicion that the previous restatement still leaves the basic structure objection vulnerable to Cohen's dilemma. I shall first explain how the restated objection escapes the disability charge, according to which restricting the difference principle to the basic structure does not make it inapplicable to market-maximizing activity. Assuming the basic structure realizes a set of public rules, I shall argue that such activity is nonstructural. Since my argument depends on the premise that Cohen's egalitarian ethos cannot be regarded as realizing public rules, I need to describe in more detail the requirements which characterize that ethos.

Pursuing that task, it is useful to distinguish two forms such an ethos might take. A *narrow ethos* comprises only what I shall term distributive requirements, which place limits upon talented individuals receiving unequally large rewards. Any inequalities must, as mentioned, either (i) compensate for special labor burdens, (ii) motivate productive labor which cannot be summoned at will, or (iii) fall within a reasonable agent-centered prerogative. In contrast, a *wide ethos* contains additional productive requirements, which are relevant when deciding which training or jobs to pursue. A wide ethos therefore governs career choice as well as wage negotiation. For illustration, consider how the communist dictum "From each according to his ability, to each according to his needs!" when read as a moral imperative, incorporates productive and distributive requirements.²⁶

The wide ethos is more informationally demanding than the narrow ethos, and thus even less likely to be part of the basic structure. So, in assessing whether Cohen's egalitarian ethos satisfies Rawls's publicity conditions, it is important to know which form it takes. The textual evidence is inconclusive since Cohen neither explicitly endorses nor disavows productive requirements.²⁷

26. For a persuasive alternative reading, see G. A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), pp. 126–27.

27. Cohen does, however, express admiration for the way in which Carens's *Equality, Moral Incentives and the Market* reconciles markets with equality by means of an "ethic of mutual service." Such reconciliation depends upon individuals being moved by a productive requirement to maximize their pretax income, which is then taxed and distributed equally. See *Self-Ownership, Freedom, and Equality*, p. 264.

However, there are good reasons to believe that he should favor the more extensive ethos. To understand those reasons, recall that the ethos is meant to serve an analogous role to material incentives in ensuring that human productive potential is employed efficiently. The following example suggests that role is best fulfilled by a wide ethos. Consider Sophie, who must decide her career and stance in subsequent wage negotiations. In the latter, she could either behave as a market-maximizer or abide by egalitarian distributive requirements. Suppose she has been convinced of the applicability of the difference principle to her economic activity. Furthermore, unequal rewards are not strictly necessary to motivate her, and she has a modest view of the level of inequality justifiable by means of her agent-centered prerogative. So, even if her skills are in scarce supply, Sophie will not request substantially inegalitarian levels of reward. Regardless of whether she upholds the ethos in its narrow or wide form, she will exercise moral restraint in any negotiations.

Nonetheless, Sophie's understanding of the ethos will be highly relevant to her prior career choice. For convenience, suppose she has to choose between the life of a successful commercial designer and that of an unrecognized conceptual artist. Suppose also that Sophie's talent for design is in scarce supply, and far more productive than her rather limited artistic ability: if she chose to exercise that rare talent, it would yield much more of whatever egalitarians should be concerned to distribute equally. Unfortunately, however, were Sophie to decide her career only on the basis of her personal values she would strongly prefer art.²⁸ The eventual outcome of her decision, I shall now explain, will depend upon the particular form of ethos she accepts.

If Sophie acts according to the wide ethos, she will sacrifice the satisfaction of her artistic desires and instead choose a more productive career in design. She may behave quite differently, however, if she accepts

28. Despite the greater productivity of design, such a preference is quite intelligible. Sophie will gain no more than a per capita share of the increase in social product her commercial work would create. But, because of the many other individuals with whom that increase must be shared, it is possible that her contribution will have only a small positive effect on her quality of life. Nevertheless, we can realistically suppose that, because of her antipathy to design, it will have a substantial negative effect. Furthermore, we can add that the mere fact that she disprefers design will not qualify her for sufficiently large compensatory payments to overcome that antipathy. Indeed, egalitarians might, for a number of reasons, consider her *actual* welfare level irrelevant in conceiving her level of advantage; for example, they might regard her as responsible for acquiring her artistic ambitions, or favor some nonwelfarist standard of interpersonal comparison.

the narrow ethos. Then she might reason as follows. Admittedly art is less productive than design, but I am not required by equality to pursue any particular career. I shall instead exercise my permission to choose on the basis of my own interests. Though my interest in art is quite strong, if design was sufficiently well-paid my personal interests would favor abandoning it. However, because of equality's distributive requirements, I cannot accept so high a level of remuneration. I have no better alternative than to base my decision on an estimate of the intrinsic rewards of the two careers, and so will choose the life of an artist.

As Sophie's case illustrates, individuals may act differently depending on whether they are guided by a wide or narrow ethos. The wide ethos results in Sophie working more productively as a designer at an equality-preserving wage, in which case each individual enjoys a high level of advantage, let's say a^w . The result of the narrow ethos is that she works less productively, though still at an equality-preserving wage, resulting in other individuals enjoying a lower level of advantage, a^n . The importance of this discrepancy becomes apparent when we compare these states of affairs (S1 and S2, respectively) to a third (S3), which could arise if Sophie were unconstrained by egalitarian distributive requirements. Suppose Sophie, thus unconstrained, negotiates a wage sufficiently high for her to prefer design solely on an interest-maximizing basis, thereby compromising equality. But also suppose that the consequent gain in productivity is sufficiently high that the worst-off members of her now unequal society enjoy a level of advantage, a^m , which is higher than a^n though lower than a^w .

Now note how S1 and S2 perform quite differently when compared to S3. In S1 individuals' level of advantage is higher than in S3 since a^w exceeds a^m . Sophie's interests, however, are better served by S3 than S1, for otherwise she would not have chosen design over art. In contrast, S2 fares worse than S3 in *both* dimensions, advantage and interest. Since a^m exceeds a^n , S2 yields a lower level of advantage than S3. Moreover, S2 is also worse than S3 in serving Sophie's interests.

It appears then that the narrow ethos, from which S2 originates, is vulnerable to the criticism that it produces an unhappy marriage of moral and interest-maximizing behavior: had Sophie been motivated differently either (i) individual advantage or (ii) both advantage and her own interests would have been better served. Thus, had no moral requirements applied to Sophie, others' level of advantage and her inter-

ests would have been better promoted, though admittedly at the price of sacrificing equality. Alternatively, had both distributive and productive requirements applied, her personal ambitions would have been frustrated but the general level of advantage would have not only been higher still but also equal. Since Cohen's concern is to realize both equality and efficiency, I conclude that there are reasons for him to view the ethos broadly. I shall now attempt to show why the ethos, so viewed, cannot be part of a society's basic structure.

VI. AVOIDING DISABILITY

According to the disability objection, the difference principle, even if applicable only to the basic structure, condemns many inequality-generating incentives. The principle does so, Cohen argues, because it requires an egalitarian ethos that would render such inequalities superfluous. Now suppose, as I have argued, that a society's basic structure comprises a set of institutions which embody public rules. If so, the success of the disability objection depends upon establishing that the egalitarian ethos can satisfy the relevant publicity conditions. This section outlines some reasons to doubt whether the distributive and productive requirements which that ethos should embody are public. It tentatively concludes that Cohen's reconciliation of equality with efficiency cannot be institutionalized. Assuming that conclusion is sound, Cohen's defense of the disability objection fails.

To establish whether an individual of above average income has discharged her distributive duties, we need, *inter alia*, to check whether her additional income compensates for her special labor burdens or is legitimized by an agent-centered prerogative. Both tasks are, for familiar reasons, difficult to accomplish. Consider initially labor burdens, characterized according to the pluralist view of egalitarian interpersonal comparison that Cohen has endorsed elsewhere.²⁹ On that view an individual's occupation might entitle her to compensation because of its impact on her *access to welfare* or (what Amartya Sen calls) her *capabilities* and *functionings*.

Note first that, even granted the conceptual possibility of meaningful comparison, the former welfare effects will be especially difficult to ver-

29. See "On the Currency of Egalitarian Justice," *Ethics* 99 (1989): 906-44.

ify. In a large society, it is extremely unlikely that individuals could obtain reliable information about each others' relative levels of job satisfaction, the extent to which their past decisions render them responsible for inequalities in those levels, and the appropriate amount of financial compensation for any remaining unchosen disadvantages. Note also those who advocate the extension of egalitarian conviction to market behavior themselves concede such difficulties. Carens argues persuasively that because of the difficulty in distinguishing the impact of working conditions from other determinants of individual welfare, and the tendency for self-deception to corrupt the application of subjective standards of comparison, the ideal of occupational compensation cannot be institutionalized.³⁰ Even if an exclusive reliance upon Sen's more objective measure might reduce such difficulties, Cohen himself denies that they can be completely overcome. Conjecturing on the basis for Rawls's "non-commitment on the matter of whether leisure should be included among the primary goods," Cohen notes that "labor is a burden (and, sometimes, benefit!) of social cooperation . . . that *fails the test of public checkability* (see *A Theory of Justice*, p. 95) laid down for primary goods."³¹

Occupational compensation, I conclude, resists institutionalization for epistemic reasons. The prerogative, however, does so because of deficiencies that are not merely epistemic. They arise because the "right to pursue self-interest to some reasonable extent" is not only so vague but also admits of many natural extensions. Regarding the first difficulty, note that it is unclear whether individuals, when identifying their moral options, may apply their own conception of self-interest or must

30. See "Compensatory Justice and Social Institutions," *Economics and Philosophy* 1 (1985): 39–67, especially Section VI. Note also that even if Carens's model of an egalitarian market economy escapes some of the problems which beset compensatory proposals, he does not explain why compliance with the model's requirements would be sufficiently verifiable for it to be institutionalized. Given the difficulty of identifying individuals' differing maximum pre-tax income levels and the "potential conflict between the moral incentives inducing people to earn pre-tax income and other factors such as laziness, or a preference for non-productive activities" (p. 62), his objection to compensation might readily be generalized to his own model. However, for the basis of a reply, see his remarks in *Equality, Morality Incentives and the Market*, pp. 124–27.

31. I thank M. Otsuka for reminding me of Cohen's remark, which occurs in "The Pareto Argument for Inequality," p. 170, n. 34 (italics added). P. Van Parijs also claims that compensation for special labor burdens "arguably violates the publicity requirement which Rawls and others want any just institutional setup to meet." See "Rawlsians, Christians and Patriots," *European Journal of Philosophy* 1 (1993): 318.

instead adopt a common conception. In the former case, the extent to which individuals are permitted higher incomes will vary from person to person. Other things being equal, one for whom a pilgrimage to Lourdes enormously enhances his well-being will be permitted to demand a higher salary to finance it than a mere tourist. Such variations, as well as striking some as unfair, raise the same verification difficulties as welfareist conceptions of labor burden.

However, even if those difficulties could be overcome by adopting a common conception, Cohen gives no indication of how to specify, even roughly, when it becomes unreasonable to care more about benefits to one's self than the achievement of an equal distribution. The failure to do so is not in itself objectionable. There may well be no neat way of integrating partial and impartial values. Instead distinguishing between morally reasonable and unreasonable forms of partiality may depend on detailed knowledge of individuals' partial concerns and their context. It is precisely for that reason one might think the prerogative's vagueness is ineliminable, and thus conclude that any ethos containing it could not be regarded as realizing public rules.

Such a conclusion becomes even more plausible when one bears in mind that if options to pursue self-interest are necessary to escape moral rigorism, then other personal projects should also receive protection.³² Granted the implausibility of a restricted prerogative, individuals can defend their refusal to pursue equality by appeal to a wide range of agent-relative reasons. These might include obligations to family and friends, as well as either secular or religious personal ideals. The prerogative therefore quite naturally extends in ways that make it even more difficult to state clearly, and multiply the problems previously mentioned. So, though Cohen may be correct that we can verify excessive self-seeking by those who benefit most from the present income distribution, it is quite possible that, in typical cases, we will lack a sufficiently precise public standard by which to justify, or criticize, each other's self-serving behavior.

Similar problems recur when turning from distributive to productive duties. The extent to which it is reasonable to pursue self-interest in career choice is perhaps greater than wage negotiation, though once

32. For good illustration, see D. Estlund, "Liberalism, Equality and Fraternity in Cohen's Critique of Rawls," Sec. II, *Journal of Political Philosophy* 6 (1998): 101-7.

again resists clear statement. Furthermore, it is especially difficult to verify the extent to which individuals are employing their talents to pursue the common good rather than their own occupational ambitions. Consider a group of young adults who, like Sophie, face various career choices in which equality and occupational ambition pull in different directions. Under realistic conditions, they will have only incomplete information about their own productive potential.³³ Owing to search and communication costs, asymmetric information about each other's potential will also be the norm. Those informational problems are further exacerbated when we recall that the ethos permits inequalities which are strictly necessary to motivate individuals to use their productive potential efficiently. The need to distinguish such inequalities from those which are merely necessary in an intention-relative sense, renders the ethos even more informationally demanding.

Given all these complexities, I conclude that it is highly improbable that Cohen's favored ethos could be represented as an institution embodying public rules or supply what Rawls calls "a common basis for determining mutual expectations." Instead the ethos appears to lie outside the basic structure. Assuming Rawls's principles apply only to that structure, they do not require any commitment to uphold the ethos. Thus, the disability objection dissolves. Nevertheless, I should immediately add that my argument has relied to some extent upon my earlier reconstruction of the egalitarian ethos. Some such reconstruction is essential since Cohen's positive vision of the norms regulating a just economic system is not stated as explicitly as that of Carens, the other leading advocate of moral incentives. Perhaps, however, my particular reconstruction is mistaken. Or, even if not mistaken, Cohen might provide an improved account of the ethos, which serves the same critical

33. Note that informational problems arise even if individuals do not try to deceive each other about their potential. Such problems might stem from the tendency for *self*-deception, which Carens describes, or more obviously from the inherent difficulty of acquiring the relevant information. As Dworkin remarks, when criticizing hypothetical insurance schemes that make premiums and payments dependent on potential income, "even honest people cannot know what they might earn at a given occupation without trying, and in the case of some professions, trying is impossible without half a lifetime of preparation. So a battery of new tests to discover latent talent would be necessary, and these would be vulnerable to many sorts of mistakes." See "What Is Equality? Part 2: Equality of Resources," *Philosophy & Public Affairs* 10, no. 4 (fall 1981): 324.

function whilst also satisfying the relevant publicity conditions. I have not disproved the existence of such an account. Indeed the search for it may be a promising avenue for future inquiry. I hope, nevertheless, to have cast serious doubt on Cohen's current defense of the disability objection.

VII. IMPLAUSIBILITY AND ARBITRARINESS

Suppose the restated basic structure restriction is not disabled by the discovery of a suitably public egalitarian ethos. Cohen might still insist upon the implausibility and arbitrariness of that restriction. In this section I shall explain why such claims are much less persuasive when the restriction is formulated by reference to public, rather than legally coercive, rules.

Consider initially Cohen's counterexamples to the plausibility of any restriction involving a legally coercive account of the basic structure. I share his opposition to the educational discrimination and sexist expectations involved in the examples: such practices and attitudes are unjust regardless of whether they violate legal rules. Furthermore, even having accepted conclusive arguments against legal sanctions, my opposition would remain. Thus, I agree that the examples show that justice applies beyond the legal realm. I doubt, however, that the examples provide a similarly decisive objection to the view that justice is restricted to public rules. For even if a public market ethos is unattainable, it may be possible to devise a domestic ethos which provides a public basis to condemn the relevant forms of gender injustice.

For example, the informational problems of the market ethos are far greater than any that beset the requirements violated by parents who discriminate and partners who shirk. Those requirements can be stated quite clearly; indeed, the force of Cohen's examples derives partly from the manifest injustice they involve. Furthermore, any serious failure to conform with those requirements is readily apparent to the victims of injustice, and likely to be exposed even more widely. Thus, although a market ethos resists being institutionalized, it still may be feasible, perhaps through educational campaigns in schools and the media, to institute a domestic ethos that prohibits the types of gender injustice Cohen opposes. One can, therefore, consistently restrict principles of justice to

institutions whilst sharing Cohen's opposition to domestic injustice. I conclude then that his counterexamples do not, at least in their present form, undermine the restated basic structure objection.

Nevertheless, Cohen's most basic challenge to any version of that objection remains unanswered. He forcefully states the challenge as follows:

why should we *care* so disproportionately about the coercive basic structure, when the major reason for caring about it, its impact on people's lives, is *also* a reason for caring about informal structure and patterns of personal choice? To the extent that we care about coercive structure because it is fateful with regard to benefits and burdens, we must care equally about the ethi that sustain gender inequality, and inequalitarian incentives. And the similarity of our reasons for caring about these matters will make it lame to say: ah, but only the caring about coercive structure is a caring about *justice*, in a certain distinguishable sense. That thought is, I submit, incapable of coherent elaboration.³⁴

Though this particular statement is directed against a purely coercive specification of the basic structure, Cohen's question is no less relevant if the principles of justice are restricted to the basic structure understood as a system of public rules. In both cases, advocates of restriction need to explain why their asymmetric attitude to two sources of inequality rests upon a defensible, rather than dangling, distinction.

To understand the explanation I shall employ, it is worth recalling Rawls's view that our evaluation of competing conceptions of justice should proceed along a number of dimensions. Thus, Rawls supposes that when we address the question of how to assign rights and duties and to distribute benefits and burdens, we should keep in mind further important questions, such as how to achieve efficiency, coordination and stability.³⁵ We should do so, he claims, because the adequacy of a

34. See "Where the Action Is," p. 23.

35. See *A Theory of Justice*, p. 6, where Rawls writes that "while the distinctive role of conceptions of justice is to specify basic rights and duties and to determine the appropriate distributive shares, the way in which a conception does this is bound to affect the problems of efficiency, coordination, and stability. We cannot, in general, assess a conception of justice by its distributive role alone, however useful this may be in identifying the concept of justice. We must take into account its wider connections."

conception of justice depends on its capacity to secure such related values. By appealing to one such value, I shall argue that a coherent response to Cohen's challenge is available.

The response assumes that a conception of justice should not only treat individuals as free and equal, but also enable them to realize an ideal of social unity, which Rawls terms *well-ordered social cooperation*. According to that ideal, very briefly stated, a society is well-ordered only if regulated by a conception of justice that is both *public* and *stable*.³⁶ Under such conditions, as partly explained, everyone accepts and knows that others accept the same conception, and everyone knows that conception is satisfied. Furthermore, everyone willingly complies with the conception because, having witnessed others' readiness to act justly, they have internalized its requirements, which in turn are congruent with their other values.

Even if not as immediately forceful as the ideals of freedom and equality, Rawls's ideal of social unity may, on reflection, have considerable appeal. Publicity and stability appear to be instrumentally valuable insofar as they enhance the long-term probability of a society conforming with its conception of justice. The capacity of a conception to secure well-ordered cooperation has also been defended as valuable in itself, for various more or less individualistic reasons. For example, some regard that capacity as necessary for the achievement of autonomy, understood as involving a willing identification with the social constraints to which one is subject.³⁷ Others regard well-ordered cooperation as an intrinsically valuable form of community, because of the common pursuit of shared ends it involves.³⁸

Suppose then we accept that the relative merit of competing conceptions of justice depends, in part, on their capacity to play the same social

36. For further explanation of Rawls's conceptions of well-orderedness, publicity, and stability, see *Political Liberalism*, pp. 35–40, 66–71, and 140–44.

37. See Joshua Cohen, "Reflections on Rousseau: Autonomy and Democracy," *Philosophy & Public Affairs* 15, no. 3 (summer 1986): 274–88, and "A More Democratic Liberalism," *University of Michigan Law Review* 92, no. 6 (1994): 1516–17.

38. See *Political Liberalism*, p. 204, where Rawls defends the good of a well-ordered society as follows: "whenever there is a shared final end, an end that requires the cooperation of many to achieve, the good realized is social: it is realized through citizens' joint activity in mutual dependence on the appropriate actions being taken by others. Thus, establishing and successfully conducting reasonably just . . . democratic institutions over a long period of time . . . is a great social good and appreciated as such."

role as a well-ordered society's conception of justice. If so, then certain background facts possess a moral significance they might otherwise lack. This consequence is most clearly illustrated by political liberalism's response to the *fact of reasonable pluralism*, or the deep disagreements about comprehensive ethical and philosophical doctrines that accompany the protection of civil liberties.³⁹ Given the relevant concern for social unity, the fact of reasonable pluralism has more than merely strategic importance. It favors *political* conceptions of justice that have a noncomprehensive content, and so may gain the allegiance of individuals who profoundly disagree about other issues. A parallel argument, I suggest, supports restricting the scope of conceptions of justice, and so treating various sources of inequality asymmetrically. The argument appeals to the assumption that so much economic information is not publicly available. For example, for reasons I have already explained, it is often impossible to acquire common knowledge about the extent to which individuals suffer unchosen labor burdens, or achieve their full productive potential. How does this collective cognitive limitation, which I shall term *the fact of limited information*, bear on the evaluation of competing conceptions of justice?

If, as we have supposed, such conceptions should facilitate well-ordered social cooperation, we have reason to reject conceptions of justice which, given the fact of limited information, are too epistemically demanding to be public and stable. We should, like Rawls, favor conceptions whose scope is restricted to publicly accessible phenomena. Doing so, however, requires us to regard various sources of inequality quite differently. For our major reason for caring about such sources is not simply their differential impact upon individuals' lives. Insofar as we care about them for reasons of justice, we do so because they produce inequalities in ways that can be regulated by public rules. Thus, when faced with sources of inequality incapable of such regulation, we can support our denial that they involve injustice. There is then a coherent reply to the charge that it is arbitrary to evaluate unjust fiscal policy and self-seeking market behavior differently when both generate significant inequalities. Since our conception of justice is designed to harmonize the pursuit of equality and social unity, we care about fiscal policy be-

39. See *Political Liberalism*, pp. 36–37.

cause of its distributive impact combined with its public character. Assuming my previous claims about the difficulty of regulating labor markets by equality-preserving public rules are sound, we do not have the same reason to care about market behavior. Therefore, we need not treat the two sources of inequality similarly.

I conclude that my restatement of the basic structure objection does not rest upon an arbitrary restriction. The charge fails because the difference principle's restricted scope coheres with a more basic concern for the achievement of well-ordered social cooperation. Since that concern is central to *A Theory of Justice* as well as *Political Liberalism*, I also conclude that Cohen has not produced a purely internal critique of the Rawlsian defense of inequality-generating incentives. The impression that he has done so depends, I think, upon overlooking the fundamental role that the ideal of a well-ordered society plays within Rawls's thought. Even after correcting that oversight, some might regard the ideal as either unsound or irrelevant to the choice between competing conceptions of *justice*.⁴⁰ They will infer that my restatement, even if not arbitrary, is still implausible. I have not attempted to refute such skepticism, though I hope to have shown that it requires defense. Nor, worrisomely, have I proved that it is impossible to design a public egalitarian ethos or to devise further counterexamples against restricting the ambit of justice to public rules. All these issues merit further discussion. Until they receive it, however, I shall persist in trusting in tax rather than moralized markets as the instrument of egalitarian justice.

VIII. CONCLUSION

Cohen sums up his critique by appropriating the feminist slogan: the personal is political. I have claimed the critique, though not the slogan, faces serious difficulties. Another slogan expresses the basis for my claim: justice must be seen in order to be done. For that reason, I have argued that some aspects of the personal cannot be viewed as political.

40. Cohen's comment on the information necessary to apply Nozick's historical entitlement theory suggests he might pursue the latter criticism. Thus, he writes that "Information of the required kind is, of course, to a large extent inaccessible, and this makes it hard to derive policy implications from Nozick's theory, but it is not obvious that this weakens the theory itself, since it might belong to the nature of justice that it is typically very hard to tell whether or not an existing distribution of property is just." See *Self-Ownership, Freedom, and Equality*, p. 74, n. 13.

Since those aspects include various types of individual economic activity, any attempt to revive the traditional socialist opposition to self-seeking market motivation by appeal to Rawls's theory of justice is unlikely to succeed.⁴¹ Leftists should neither be depressed by that conclusion nor turn away from the theory. There are even more urgent moral problems which deserve their attention, and which Rawls's work will continue to illuminate for the foreseeable future.

41. Cohen himself voices such opposition in *Self-Ownership, Freedom, and Equality*, p. 262.