

Equality, Coercion, Culture, and Social Norms*

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Against Robert Nozick, this essay argues that coercion of individuals to achieve equality (as a means to further moral goals) can be morally acceptable. If such coercion were unnecessary, refraining from it would obviously be preferable, so the question arises, how to integrate social norms into principles of justice. I propose a consequentialist integration of social norms into the theory of justice, and defend this understanding against G. A. Cohen's nonconsequentialist egalitarianism and against liberal criticisms of that egalitarianism that target both consequentialist and nonconsequentialist versions of the doctrine.

NOZICK VERSUS PATTERNS

In *Anarchy, State, and Utopia*, Robert Nozick shrewdly observes that by his lights the maintenance of a favored pattern of distribution of goods among individuals would require continuous massive wrongful invasions of liberty.¹ Left to their own devices, individuals will choose to make deals and spend their resources in ways that will deviate from any nontrivial pattern initially established. To sustain the pattern, coercion would be necessary to prevent these many exercise of individual liberty. But on its face, this coercion is clearly morally illegitimate—so says Nozick. He illustrates the point by imagining that an initial distribution, assumed to be fair, is perturbed by a large number of free and

voluntary choices by individuals to pay extra money to attend professional basketball games in which a particular superstar participates. After some time, many people are a bit poorer, and the basketball player is enormously richer, but so what? The deals that produce this result are transparently fair. Nobody is bilked, and no nonconsenting third parties are forced to endure violations of their Lockean rights as a side effect of the deals. The argument may be stated as follows:

1. Distribution D1 is just (assumption).
2. Starting from D1, people freely and voluntarily transfer resources they own (violating no rights of third parties) to produce D2.
3. Any distribution that arises from a fair starting point by free and voluntary individual choices (violating no rights of third parties) is just.
4. D2 is just.
5. A distribution that does not exhibit the just pattern is unjust.
6. D1 uniquely exhibits the just pattern.
7. D1 differs from D2.
8. D2 is unjust.

Statement 4 contradicts statement 8, so something must give. Nozick suggests that the best way to eliminate the inconsistency is to reject premise 5, which insists that justice requires the maintenance of some pattern of distribution. Insistence on 5 leads to *reductio ad absurdum*.

The argument has attracted many critics. The most straightforward response is to reject 3. Is one then committed to what is intuitively way too much freedom-restricting coercion? A first step toward removing the sting from this question is to observe that a favored distributive pattern might be loose, that is, capable of being exemplified by many different distributions, so maintaining a loose rather than a tight pattern might require correspondingly less, and possibly less onerous, restriction of individual freedom to act as one chooses.

The next observation is that a restriction of individual liberty can be well worth its cost from the perspective of every affected individual. Consider the loose pattern that consists of every member of a large nation paying a fair portion of her income in taxes to support a national defense establishment that protects every member from the menace of unjust aggression by foreign armies. Coercion is onerous, no doubt, but sometimes its cost is outweighed by the gains it secures, and in fact we do not tend to experience as oppressive or unduly onerous coercion that manifestly secures more than corresponding benefits by a scheme that distributes costs and benefits fairly.² But as Nozick intends premise 3, it rules out coercion to secure the public good provision scheme just described. This suffices to show that premise 3 deserves rejection.

Nozick's argument, if it were successful, would defeat any coercive scheme to supply public goods. Even public goods such as national defense that most people regard as unproblematically the proper business of the state are swept aside by Nozick's broad broom. Consider an initial situation in which all

members of a society pay a certain amount per year to fund an army that defends against aggressive attack. Let the amount that individuals pay be fair according to your favorite conception of fairness. Absent coercion, left to their own free choice, people will choose to spend their money in ways that deviate from this initial distribution, assumed to be fair. Instead of contributing to national defense they do other things with their money. They make exchanges with other persons that are mutually agreeable, and some people make gifts to others. We end up at a new distribution of resources, in which the scheme to provide national defense is no longer funded, because people have freely chosen to use their money in other ways that preclude paying their share of the cost of the scheme. At this new distribution, the scheme to supply national defense disappears. But since the initial distribution *ex hypothesi* was fair, and the movement from the initial distribution to the new distribution came about entirely by individuals choosing to use resources they own in ways they see fit and that are voluntary on the part of all participants, there is no basis for objection to the new distribution, according to Nozick's argument.

This argument remains unaffected by the observation that it might well be the case that everyone might be better off if the public good of national defense is coercively supplied by the state and funded by a fair tax scheme than would be the case if no such coercive scheme is in place and national defense is not provided.

Another example that illustrates the justificatory power of the premise that any distribution is fair if it arises by free and voluntary choices of individuals from an initially fair starting point is provided by racial discrimination. From an initial status quo in which no one acts from racial hatred or hostility, a series of free and voluntary choices by individuals (that violate no one's Lockean libertarian rights) can lead to a state of affairs in which no white-skinned employer is willing to hire any black-skinned person for other than menial jobs and no white-skinned workers are willing to accept black-skinned persons as fellow employees unless the blacks are occupying the lowest rung of the skill hierarchy.³ I suppose a stalwart Lockean libertarian might view this result as a surprising and hitherto unnoticed but powerful demonstration that racist discrimination can be fair. The rest of us will reason backward from the evident incorrectness of the conclusion and conclude that one or more of the premises that imply this conclusion must be faulty.⁴ My suggestion is that the culprit is the premise already identified as troublesome, that whatever arises by free and voluntary choice from a fair starting point is fair.

For anyone not committed in advance to a Lockean libertarian position that holds that coercively taking away from any individual property she legitimately owns without securing her consent is wrong, the force of the Nozickian argument amounts to nothing more than a reminder that the institution of coercive schemes to supply public goods is a bad idea when the overall moral costs of the scheme exceed the moral benefits.

FROM PARETO TO PRIORITY—TWO STEPS FORWARD, A HALF-STEP
BACK

It has to be said at this point that any claim to have won a victory over Nozick's theory of justice would be premature. Nozick asserts that no patterned conception of distributive justice matches the appeal of his libertarian historical entitlement conception. I have not proposed a patterned principle in response to this challenge. The idea that coercion to secure valuable public goods can be fair invokes an etiolated notion of a pattern. According to Nozick, a patterned conception of justice holds that the amount of resources (or some other measure of benefit) that each individual possesses should be proportional to the extent to which each individual possesses or achieves some trait deemed significant for justice (moral desert, effort expended for good causes, intelligence, good character, skin color, height, or whatever). I tend to share Nozick's suspicion that no trait is so morally important that it plausibly fills this role, and if no trait does, no patterned conception should be acceptable.

But of course premise 3 in Nozick's argument does not undercut patterned principles of justice alone. If 3 is accepted, what Nozick calls "end-result" principles of distributive justice must also be rejected. State action to secure equality or any norm of egalitarian justice must then be unacceptable.

Let us use the example of coercion to secure valuable public goods as the edge of a wedge to press against Nozick's position. The principle implicit in this sort of example is the norm that a state of affairs is unfair if it could be altered

by making everyone better off and any principle that implies it is morally acceptable to bring about and sustain such a state of affairs is itself unfair. This principle should be uncontroversial, as should a stronger formulation: A state of affairs is unfair if it could be altered by making some better off without making anyone else worse off and any moral principle that implies it is morally acceptable to bring about and sustain such a state of affairs is itself unfair.

There are different versions of this Pareto norm that correspond to different interpretations of what makes someone better off or worse off. The best interpretation is that a person is better off when her life as a whole goes better for her, or in other words, when her well-being or welfare is higher. In turn the best construal of well-being holds that one gains more well-being, the more over the course of one's life one gains objectively valuable goods weighted by their importance. There is as it were an Objective List of such goods, and one's life goes better for one, the more one gains the entries on this list.⁵ For purposes of this essay, it is not necessary to decide between competing accounts of human well-being. But I am going to help myself to the assumption that at least in principle, cardinal interpersonal comparisons of well-being are possible.

If interpersonal comparisons of well-being can be made, and the Pareto norm is accepted, and one accepts the idea that no individual is morally special and that one person's well-being gains and losses are just as important from the moral standpoint as anyone else's, then a stronger norm than Pareto should be acceptable.

Suppose we are dealing with a fixed population of individuals. We can either accept or reject a policy that changes the status quo distribution of well-being to individuals and produces another. Well-being Pareto recommends the change if under it someone is made better off and no one worse off in well-being. Now consider a policy that does not effect this sort of Pareto improvement. It induces a change that makes someone worse off. But that description of the change is compatible with another: suppose it happens that (1) for every individual in the initial status quo, one can pair that individual with a counterpart who is at least as well off under the proposed change as the individual in the status quo, and furthermore (2) at least one counterpart is better off than the individual to whom she is paired, and (3) in this matching exercise each individual is paired with just one counterpart (no individual or counterpart is paired more than once and every individual in the initial status quo is matched to a counterpart individual in the new status quo). When these conditions obtain, let's say that extended Pareto, a principle first formulated by Patrick Suppes, holds that fairness requires that the policy be adopted that induces the extended-Pareto-superior outcome.⁶ After all, if a change is extended-Pareto-superior, then anyone who is made worse off by the change is now no worse off than someone else was in the initial status quo, and that someone else is at least as well off after the change as the loser was in the initial status quo. Given that gains and losses for me have no special moral status

compared to gains and losses for anyone else, if I am a loser, I have no moral ground for objecting to a change that qualifies as extended-Pareto-superior.

It is but a short but controversial step from acceptance of extended Pareto to acceptance of straight aggregative utilitarianism (with utility identified with well-being). Suppose that with fixed population, a change is proposed that would not satisfy extended Pareto, but has another property that might be thought morally desirable: The sum of the well-being enjoyed by all individuals is increased in the move from the initial status quo to the new state of affairs. For example, it might be that you lose two units of well-being, but this is offset by the fact that this same change induces three individuals to gain one unit of well-being each, yielding a net gain.

But the thought that a net gain in the overall sum of well-being enjoyed by a collection of people is always morally desirable is distinctly resistible. In the example above, initially you might have been living a squalid, horrible life, and then the change makes your life even worse by two units. The three individuals who each gain one unit of well-being might have been living lives at an incredibly high level of well-being in the initial status quo, and then each of them gains an additional unit—an extra Prado outfit or the like.

The short step from extended Pareto to utilitarianism is controversial because one has reason to accept the move only if one believes that the distribution of well-being across persons has no intrinsic moral significance except insofar as the distribution might cause the long-run aggregate total to

increase or decrease. If it is reasonable to hold that distribution matters, then the case for utilitarianism is not compelling.

Many theories of distributive justice give weight both to getting more rather than less aggregate well-being and to distributing well-being across persons fairly. For purposes of this essay I will simply pick one of these and write as though it had been shown to be correct. The norm I am picking is prioritarianism, which I happen to find promising but cannot support with any knock-down argument. Prioritarianism holds that one should always act and set policy so as to maximize moral value. Moral value is a function of benefits to persons. Getting a benefit for a person (or avoiding a loss) is more valuable, the larger the benefit, and more valuable, the lower the person's lifetime well-being would be absent this benefit (and *mutatis mutandis* for losses).⁷

Prioritarianism offers a straightforward response to Nozick's sensible suspicion that egalitarian justice is likely misguided because it is hard to believe that equality *per se* has any value.

A good part of the rhetorical appeal of Nozick's Wilt Chamberlain example and argument derives from the moral unattractiveness of equality of distribution regarded as an intrinsically morally important component of social justice. Why should it be thought to be morally valuable that everyone has the same?

Equality might be cast in a more attractive light if it is regarded not as morally important for its own sake but as instrumentally valuable for the achievement of some less problematic and controversial moral goal. For

example, the pursuit of equality in the kind of circumstances that the Wilt story exemplifies might be necessary in order to bring about the greatest feasible degree of fulfillment of the prioritarian ideal. In order to maximize priority-weighted well-being over the long run, we need to keep inequality of possessions within certain bounds, or else the rich will cause production to be steered toward the creation of luxury goods rather than basic goods that the poorest must have if they are to have minimally decent life prospects. (Across the board economic expansion that results in greater production of both luxuries and necessities than would have occurred at the specified restricted level of inequality is ruled out by ecological constraints, let us assume.)

SOCIAL NORMS

Once we have decided that it would be morally acceptable to restrict people's liberty coercively in order to bring about some genuinely desirable pattern of distribution that is worth its costs, a possibly superior alternative emerges into view. Suppose that instead of bringing into play the bulky and costly machinery of legal compulsion, we can instead establish an informal social norm to the same effect. Rather than tax income and wealth to prevent the appropriate measure of inequality from rising above some threshold level deemed significant, we bring about the same result by training people into an egalitarian ethos that leads them to act in ways that keep inequality below the threshold.

Let us stipulate that a social norm exists among a group of people when (1) there is a regularity in their behavior (2) that is dictated by a rule that people internalize and (3) this rule is enforced by informal sanctions such as expressions of approval and disapproval.⁸ A social norm might operate in tandem with a legal rule or be free-standing. One supposes that an ongoing functioning social norm gives rise to lower costs of administration and enforcement than a corresponding legal rule. If I have internalized a social norm against tax evasion that corresponds to a legal rule to the same effect, I will be motivated to some extent to avoid tax evasion even when circumstances render it the case that I could violate the law by cheating on my taxes without incurring any significant risk of being caught and penalized. Social norms in this guise are a cheap substitute for police, the law courts, and prisons.

Free-standing social norms could in principle regulate matters that are unsuited to legal regulation. To some extent, this occurs. But social norms appear to sprout up like weeds and are difficult to control. Initiation of a social norm is not generally one of the options that is available to a social planner confronting some social problem. The norm against being a tattle-tale arises almost spontaneously in settings where children are supervised by adults. To some extent the norm operates as a shield for bullies; to some extent it protects a sphere of children's privacy. On balance I would guess it probably works for ill rather than good in most contexts, but there may not be any feasible way for

adults to extirpate it. Imperviousness to social design and shaping may characterize many social norms.

On the other hand, governments can influence the development of norms over time in direct and indirect ways. A social norm of racial discrimination can lose its hold on people when the behavior the norm dictates is legally prohibited. A government might award prizes for public politeness and in other ways subsidize and encourage civility in public behavior with a view to encouraging the growth of norms against rude and discourteous public conduct. In this essay I sometimes write as though a social planner could select among a menu of possible norms. It would be more realistic to think of social planning influencing trends in the evolution of norms. Also, quite aside from any possibility of deliberate adoption of policies that shape the formation of norms over time, one might simply inquire, of the prevalent social norms in a society at a time, to what degree they work in conjunction with other aspects of institutions to satisfy moral standards and goals.

MILL ON SOCIAL NORMS

J.S. Mill cautions against the dark side of social norms in the opening chapter of *On Liberty*. He there contrasts two forms of tyranny of the majority—political and social. Social tyranny is tyranny that is not exercised through the laws and acts of political officials. Mill does not say much by way of positive characterization of the phenomenon he labels “social tyranny.” He evidently has in mind norms of conduct endorsed by a majority of members of society and

enforced through informal nonlegal sanctions. Expressions of disapproval, shaming and blaming, withdrawal of cooperation, shunning and ostracism are some of the ways in which those who violate social norms may be punished. In principle the penalties could be more severe. Provided the political authorities will look the other way, and ignore illegal acts that are aimed at punishing violators of social norms, the sanctions could include beatings, lynchings, and other acts of violence. Mill observes that social tyranny might be "more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself."⁹

By enslavement of the soul I suppose Mill has in mind internalization of the social norm.¹⁰ One comes to accept that the wrongful social intrusion into liberty is in fact justified and morally right. Of course, whether this counts as enslavement or enlightenment depends on whether or not one's beliefs are being manipulated by a bullying social process or are altering because one comes to recognize the force of the good and sufficient reasons that justify the norm. In principle, a norm can become accepted by an agent through a nonrational process such as cognitive dissonance reduction rather than by a process of evaluating reasons for and against the norm on their merits whether the norm is in fact justifiable or not.

Mill as a utilitarian should on balance be pleased if a social norm against (for example) violent and coercive sexual assault is supported in part by

internalization of the norm brought about by nonrational means—enslavement of the soul—if the gains from the extra attachment to the norm brought about by unreason outweigh in the long run any losses brought about by lessened disposition on the part of norm enforcers to supply and on the part of members of society to demand good reasons for the norms society enforces. Mill's liberalism rests to a considerable extent on his hunch that the latter sort of losses will tend to be large.

Mill has a famously spare view of the proper boundary line between conduct that should be regulated by society and conduct that should be let alone. Norms of equality lie on the wrong side of the line, he explicitly notes. He reports that it is said that in the U.S., where sentiments of democratic equality are strong, the "feeling of the majority" is that "any appearance of a more showy or costly style of living than they can hope to rival" is "disagreeable."¹¹ He proceeds to speculate that if socialist opinions were to become widespread in society "it may become infamous in the eyes of the majority to possess more property than some very small amount, or any income not earned by manual labour."¹² For Mill, the enforcement of social norms to this effect would amount to social tyranny, gross violation of the liberty principle.

Anyone who does not share Mill's strong empirical conviction that the social decision to countenance violations of his liberty principle will always fail to be utility-maximizing in the long run will have reason to reject his conviction that social norms that constrain inequality will always fail to be utility-maximizing in

the long run. Mill's empirical hunch about egalitarian social norms might still be correct, but so far as I can see he suggests no particular reason to accept it. The puriticanical egalitarian norms he cites do not look to be very promising devices for boosting human happiness, but maybe there are better examples. Moreover, even if violations of Mill's liberty principle were never utility-maximizing, that would settle the issue only if one were committed to utilitarianism. Some violations might maximize priority-weighted utility; if so, the prioritarian and Mill part company at that point.¹³

It is interesting to note that the Nozickian libertarian, who holds that no one should violate anyone's Lockean individual rights, will not find the establishment and maintenance of socially norms morally problematic so long as the acts that sustain the norm do not violate individual rights.¹⁴ The Lockean libertarian will then take a dim view of moral principles that recommend government action to shape social norms if the government violates rights by the shaping actions or has no valid libertarian title to the resources it would use to carry out the shaping actions. But just as the legitimate exercise by everyone of their individual Lockean rights might yield very onerous outcomes for some individuals without triggering Lockean unease, the legitimate exercise by everyone of their individual rights might involve compliance with entrenched social norms and yield very onerous outcomes for some individuals disfavored by those norms. Moral concern about the quality of outcomes of such processes that involve no individual rights violations according to the libertarian can never

justify (what would otherwise be) violations of individual rights to ameliorate the bad outcomes.

A simple example will serve to show that Lockean libertarianism is indifferent to the prospect of oppressive egalitarian outcomes. We might imagine an oppressive grey on grey egalitarian society, in which no one has any Ayn Rand individualist spirit and collectivist conformity prevails. A portrait of Stalin hangs in the shabby living room of every home. This state of affairs might have been produced by the violation of Lockean individual rights by some individuals—in this case, the libertarian condemns the rights violations. In an alternative scenario, the collectivist pressure to equality at the level of a poor quality of life for all might have arisen by the slow formation and eventual hardening of egalitarian social norms enforced only by expressions of approval and disapproval and withdrawal of cooperation that violate no one's Lockean individual rights—in this case, the libertarian finds nothing on which to vent moral condemnation.¹⁵

NORMS AND OBLIGATIONS

The egalitarian (prioritarian) I am imagining is a consequentialist. On this view, social norms, like anything else, should be set to maximize desirable outcomes. Rewards and penalties, praise and blame, are means to this goal. In *Utilitarianism* Mill links the idea of sanctions to the ideas of right and wrong action. He writes, "We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law,

by the opinion of his fellow creatures; if not by opinion, by the reproaches of his own conscience."¹⁶ But there is a distinction and there very likely is a difference between the acts that a well trained conscience even in an ideal consequentialist society would condemn and the acts that fail to be singled out by consequentialist principle as the best that can be done in the agent's circumstances. Let's say that acts that would be condemned by a conscience perfectly trained by consequentialist standards violate *moral obligation*. We reserve the notion of *wrong* acts for those that are not selected as best or tied for best by consequentialist principles applied to the circumstances of the agent. (Some wrong acts then might not be violations of moral obligation and some violations of moral obligation might not be wrong.)

According to the conception I have elaborated, egalitarian social justice dictates several layers of obligation. Legal rules coercively enforced by the state specify legal obligations with penalties for noncompliance. Informal social norms place individuals under social obligations that are enforced by informal sanctions such as expressions of disapproval, withdrawal of cooperation, exclusion from group activities. Personal moral norms operate through individual conscience. The individual is socialized to accept the norm and if properly socialized will suffer pangs of conscience in case of noncompliance. The layers of obligation partially overlap. Personal moral norms and social norms normally buttress legal obligations, and personal moral norms support some social norms. Some social obligations stand apart from legal codes, and some also do not interlock with

personal moral norms. Some personal moral norms are free-standing; this means they are not linked either to legal norms or social norms. In a society that is ideal from the standpoint of egalitarian justice, this edifice of norms generating obligations would be constructed and arranged to maximize the degree to which the egalitarian justice aim is achieved.¹⁷

The project I am sketching adopts a particular idealization. One as it were imagines a social planner who can institute whatever laws, norms, and morals would be best in the society being considered—best in the sense of leading to best consequences as assessed by the social justice standard, with humans as we know them except that they are assumed to be socialized into these ideal practices. In this exercise it won't do to suppose that people can be induced by socialization to internalize norms of any degree of stringency and demandingness that is contemplated. Human nature is somewhat resistant to being shaped by norms and rules, and more resistant, within some range, as norms are imagined to be more stringent and demanding. The ideally best norms, laws, and obligation-generating morals are those that interact with this recalcitrant human nature so that social justice is maximized given this constraint.

This idealization is partial. If we imagine men and women as better than they in fact are and better than they could become under feasible socialization regimes, justice would be still better served. What I am calling the ideally just

regime of obligations is less than fully just as viewed from the still more ideal standpoint of laws and people as they ought to be.

Paradox and inconsistency may seem to lurk in these formulations. How can the ideally just society be one in which people, myself among them, don't always do what they ought to do according to the principles of justice? R. M. Hare has provided instructions as to how to say what needs to be said in this connection while avoiding inconsistency.¹⁸ What one morally ought to do in given circumstances is what there is most moral reason to do in those circumstances. This need not coincide with what is required according to prevailing legal, social, or obligation-generating moral norms even if these requirements are all ideally set so as to bring about maximal fulfillment of the social justice ideal. What one will feel obligated to do depends on the norms and codes one has been socialized to internalize and that have been reinforced by social pressure so that thinking of oneself as noncompliant triggers pangs of guilt and remorse.

COHEN AGAINST RAWLS—EGALITARIANISM AGAINST LIBERALISM

The two-level view sketched here gives the social justice theorist a natural and plausible answer to interesting concerns articulated by G.A. Cohen in a series of essays.¹⁹ Cohen focuses his discussion on a criticism of John Rawls's theory of justice, but the problem he raises seems to me to be more general. Accordingly my formulation of the problem does not attempt to characterize with any care his dispute with Rawls.

Rawls had proposed that the primary subject of justice is the basic structure of society, the way that major institutions of a society interact to affect the life prospects of the members of the society.²⁰ Part of what this means is that the principles of justice primarily regulate the basic structure. According to this view, a society is just if and only if its basic structure conforms to the principles of justice. The principles of justice give rise to secondary requirements that apply to individual members of society. These requirements specify that if just institutions exist, individuals should support them and conform to their rules, and if just institutions do not exist, individuals should strive to bring them into existence if this can be done (or significant progress made) at reasonably small cost to themselves. The difficulty is that the principles of justice specify that certain moral goals should be achieved, and within a set of institutions that qualifies as just, these moral goals will be fulfilled to a greater or lesser extent depending on how individuals conduct their lives within these institutions. But there is no moral requirement in this scheme that dictates that individuals should do what they can or indeed do anything to see to it that the justice goals are fulfilled to a greater rather than a lesser extent. But there is a question as to whether this can make sense from the first-person standpoint of an individual living under just institutions who sees that she could do more to bring about the degree to which the society achieves the justice goals. On the view being considered, justice does not assign her any responsibility in this regard except the duty to support just institutions. But if she believes the justice goals are

justice goals, morally compelling, how can she be committed to them wholeheartedly without being committed thereby to regulating her personal life at least to some extent so that these morally compelling goals are fulfilled to a greater extent?

Consider prioritarianism. In the role of social justice standard, prioritarianism urges the maximization of human well-being weighted so that gains for a person count for more, the worse off in well-being the person is. Suppose institutions are set to maximize this goal. A member of society whose condition is still extremely bad would seem to have a complaint against better off members of society who could do more to bring it about that the prioritarian goal is fulfilled to a greater degree, but do not. There they are, lazing at the beach, and frequenting expensive restaurants, and in other ways consuming resources that would do far more to advance weighted well-being if transferred to worse-off members of society. If it is claimed that the primary subject of justice is the basic structure of society, there is a split between justice as a standard for institutions and justice as a standard for individual conduct. But what justifies the split in responsibility? On its face, the complaint of the worse off has merit.

But if we stipulate that the prioritarian society has set legal, social, and personal moral codes in a way and at a level that maximizes the achievement of prioritarian goals, there is a response to the complainant. If it were attempted to ratchet up the obligations of individuals, so that the complainant is made better off, the result would be that others are made worse off, who together

have a stronger moral claim than the complainant (what the losers lose morally outweighs what the gainers gain). Given that the complainant is no more special than anyone else, there is no moral case from the standpoint of maximizing the fulfillment of justice goals for any ratcheting up of obligation. This simply follows from the fact that the level is already stipulated to be optimally set. What then of the less than wholehearted pursuit of prioritarian goals in private life by the better off? This is simply morally wrong, as assessed from a prioritarian act consequentialist standpoint. These individuals are not doing what they have most moral reason to do. However, no imposition of sanctions is called for to punish behavior of this type. Ex hypothesi society has done the best it can to achieve justice goals without fighting against human nature to no good purpose.²¹

Suppose one adopts the standpoint of the better off individual who does not act to benefit the worse off when according to prioritarian principle he ought to do so. If the society has set the standard of prioritarian obligation optimally, and obligation does not reach to cover this sort of case, then in these circumstances one will not feel obligated to do the act that benefits the worse off. One might well be aware that by prioritarian principle one ought to do so, but one is not motivated to do so, and very likely, one will not, and neither pangs of conscience nor social disapproval will sanction this wrong action.

My remarks here might prompt the objection that nothing I am saying amounts to a reason for denying what Cohen asserts. He holds that the moral

quality of individual choices as well as the moral quality of the institutions that constitute the basic structure of society should enter into the determination of the justice or injustice of a society. An individual's choice such as the choice of a better off person whether to aid the worse off or pursue her own self-interest to the maximum allowed under the law can be wrong, unjustified, unjust. To this I add the observation that if the society is successfully ruled by prioritarian principles, the institutions, laws, policies, and social norms are all set optimally, to maximize the fulfillment of prioritarian goals, so if this is the case, no further attempt to alter these features of society would be justified. So what? All of this is fully compatible with its being the case that individuals deciding how to live their lives make morally wrong decisions that lessen the degree to which prioritarian justice is achieved in the society in question. After all, in the society in which laws, institutions, social practices, social norms, and moral obligations are all optimally set, it will still happen that someone will violate the law unjustifiably, for example, by committing a murder. We are assuming that the criminal justice system is arranged so that any changes in it intended to reduce the incidence of murders and other wrongful crimes would be counterproductive. In this sense the rate of crime is optimal. None of this even begins to imply that the person who murders does not act wrongly and unjustly and that the society would be more just if such acts did not occur.

This is correct, but yet the prioritarian (more broadly, consequentialist) egalitarian and the Cohen egalitarian significantly disagree. Further exploration is needed.²²

JUST SOCIETY, JUST INDIVIDUALS, AND THE ORIENTATION OF ONE'S WILL TOWARD JUSTICE

One possibility is that the disagreement concerns the specification of the justice goal. There is disagreement on this dimension. But it turns out the more basic disagreement lies elsewhere.

I believe that Cohen would regard the prioritarian just society as seriously flawed from the standpoint of fundamental justice. Justice according to Cohen requires that institutions and practice be arranged and that people should conduct themselves so that a strong principle of equality of opportunity is fully achieved.²³ The principle is satisfied just in case no disadvantage is suffered by one person compared to others except via the fault or choice of the individual who gets the short end of the stick. Justice requires the elimination of unchosen disadvantage.²⁴ Justice so characterized will conflict with the requirements of prioritarian morality, which implies that unchosen disadvantage should be imposed on people when and only when doing so maximizes priority-weighted well-being. (Whether this conflict shows that Cohen opposes the dictates of prioritarianism all things considered is not so far clear, because Cohen holds that justice is part of morality not the whole of it. A policy that conflicts with the equality of opportunity required by justice might carry with it compensating

moral advantages so that it is morally right all things considered even though strictly speaking unjust.)

However, one further moral principle that Cohen regards as of great importance would seem likely to generate further conflict with prioritarianism not a rapprochement with it. The additional principle that Cohen espouses is communal reciprocity.²⁵ This principle is satisfied when each person aims to serve other people for the sake of the others and not in order to elicit some action on their part that serves him, and in addition each person wants to be served by others in this same spirit and correctly expects that this mutual service will be forthcoming. This principle is contrasted with another which Cohen calls "market reciprocity." This principle governs the conduct of one who serves others only in order to secure reciprocal benefit for himself and values serving others only instrumentally, as a means to increasing his own benefits.

Cohen clearly espouses communal reciprocity as morally valuable intrinsically, not merely for the sake of benefits its satisfaction might bring about as assessed by some other moral principle such as prioritarianism.

Cohen views the principle of communal reciprocity as requiring at least to some extent movement toward equality of outcome, and hence as tending toward a type of equality that justice as strong equality of opportunity does not per se require.

He illustrates the attraction of the principles of strong equality of opportunity and communal reciprocity by describing a camping trip among

friends in which all participants adopt a one for all and all for one attitude and eschew any claims to rights of private ownership in material possessions or in unearned talents or to the fruits of brute good luck that falls on some and not others. The camping trip as he describes it is carried out in a manner that satisfies the principles of strong equality of opportunity and communal reciprocity. Seen in this light, the camping trip is definitely morally attractive, he asserts. The serious question is not whether camping trip justice is really justice, but to what extent we can design and implement institutions and rules that would achieve camping trip justice on the large scale of an entire society, or ultimately on a world scale.

It may be that I am corrupted by prioritarian sympathy and bourgeois leanings, but I do not see that the principles that suffuse the ideal camping trip as he describes it are necessarily morally desirable. On camping trips I enjoy, some property may be regarded as collective but some important items of gear emphatically are the private property and personal responsibility of individuals. It can be that lunches, snacks, insect repellent, hiking boots, climbing shoes, warm clothing and sleeping bags, and so on are better regarded as the personal responsibility of each participant to bring (of a quality and quantity that she chooses) for herself and herself alone. Given that a climbing rope can be severely damaged by careless use in ways that are sometimes hard to detect by subsequent inspection, I would not lend my rope to another and I would not climb with a partner who made a practice of lending his rope to others—that

would indicate a degree of imprudence that would rule out trusting partnership. On some ventures, weaker members of the party may reasonably be left behind, even though their weakness is bad brute luck and no fault or choice of their own, because the gains to the stronger members from continuing alone outweigh the losses to the weaker. In other situations, stronger members might reasonably be required to make sacrifices for the sake of weaker members that definitely lower the stronger members below the level of expected benefit that Cohen's equal opportunity for advantage principle demands.

On a joint venture in which individual and collective decisions on matters from the trivial to the most momentous nearly always involve costs and benefits spilling over onto all group members, one wants each member of the party always to be making these decisions with a rough eye to the conclusion for action that a properly morally weighted cost and benefit calculation would yield. The disposition to communal reciprocity that Cohen espouses can be imagined sometimes to be a cause of mutual benefit and sometimes to induce busybody intrusiveness that has a killjoy quality. In my view the disposition should be valued for its good effects, to the extent it produces them, not for its supposed inherent moral desirability. The same goes for the principle of strong equality of opportunity. In some cases insistence on it would render everyone worse off, and in other cases it would lessen priority-weighted benefit levels. In such cases we should without any regret let the principle go by the board. It should be

viewed as an instrument, valuable insofar as it guides us toward conduct that improves the quality of people's lives.

We are now in a position to understand the perspective from which Cohen might be expected to find morally unsatisfactory the state of affairs in which institutions, practices, norms, and obligations are set optimally from the prioritarian standpoint, and in which I assert that an individual who is badly off and whose condition might be improved if better off individuals acted as they ought to act (according to act consequentialism with prioritarianism setting the standard of good consequences) has no valid moral complaint. This world would be in a sense ideal from the prioritarian standpoint, though we might still wish that circumstances were different, so that the prioritarian goal might be still further advanced, and in particular we might regret that human nature is what it is, rather than cognitively and affectively superior. If it becomes possible in future genetically to redesign humans so prioritarian goals are better met, we ought to do so.

But the world that is—circumstances and human nature taken for granted—ideal from the prioritarian standpoint might well egregiously violate strong equality of opportunity and communal reciprocity.²⁶ Although Cohen might be prepared to tolerate deviation from communal reciprocity if the consequences of not tolerating deviation were sufficiently bad, to give this principle significant moral weight and to regard communal reciprocity as intrinsically morally desirable would be to hold that significant sacrifice of

priority-weighted human well-being would be worthwhile if needed to achieve better motivation as rated by the communal reciprocity norm.

In a prior essay, Cohen introduced the idea of a *justificatory community*.²⁷ This is a set of people among whom there prevails a norm of *comprehensive justification*. This is a term for which Cohen invents a definition. An argument for a policy that includes an appeal to the fact that people will behave or tend to behave in a certain way under the policy counts as a comprehensive justification of the policy only if the behavior in question is itself justified. Given these notions, it is straightforward that if a policy is justified in part by the fact that it is a device that copes reasonably with some people's tendency to a certain type of unjustified behavior, then that policy lacks a comprehensive justification. A society in which a criminal justice system aims to contain criminal behavior is pursuing a criminal justice aim that lacks a comprehensive justification.

Comprehensive justification can fail to obtain intrapersonally as well as interpersonally. Consider the hour-long time slices of myself over the course of a day. Let us say I could walk home via a scenic route adjacent to the ocean or via a nondescript inland route past used car lots and warehouses and strip malls. I choose the nonscenic and less pleasureable route on the ground that if I chose the scenic route I would end up at sunset in the neighborhood of a tempting bar and would then enter it and proceed to become drunk. The costs of drunkenness outweigh the gains from scenic beauty so overall it is prudent to walk home by the inland route. If we imagine my time-slices discussing what I

should do, the sunset time slice might observe to the late afternoon time slice that "if you choose to savor the pleasure of the scenic walk I will then choose to get drunk, so to avoid this bad outcome you ought to refrain from indulging in scenic walk pleasure." In this scenario my time slices fail to maximize justificatory community, and my prudent commuter policy fails the comprehensive justification test. No doubt it would be better in the abstract if I did not have to avoid the near occasions of sin, but things being as they are, the prudent policy produces the best feasible outcome given the human materials at hand.

Comprehensive justification and justificatory community do not qualify as intrinsically valuable on a prioritarian reckoning. If they happen to work to boost priority-weighted well-being totals, fine; but if not, also fine.

Cohen criticizes Rawls, and liberal theories of justice that are Rawlsian in the respect he criticizes, on the grounds that (1) for Rawls whether a society is just depends on the character of its basic structure not its social norms and prevalent personal ideals and (2) for Rawls a society can be fully just even though individuals in the conduct of their lives do not orient their wills toward achievement of the social justice goal (aim at the fulfillment of the social justice goal in their choice of actions). For Rawls, justice requires each person only to support just institutions; beyond that, justice sets no constraints on how the person chooses to live her life. The prioritarian and more generally the consequentialist goes part-way with Cohen, agreeing with (1) but not (2). In this

section I have represented Cohen as espousing social justice goals other than priority, but the fundamental dispute is a bit deeper. For Cohen, in a just society each person is strongly motivated to act justly, strongly disposed to act as she supposes justice requires. For the prioritarian, this need not be so. The point is familiar. The prioritarian treats the disposition to act justly as just another instrument for achieving justice goals, to be assessed according to its instrumental success. In principle it could be the case that people act better, by prioritarian standards, if their wills are not, or not steadily, directed toward doing what is just.

A simple example shows the disagreement. Perhaps by nature most people are affectively inclined toward self-interested action. That being so, it might be that if their wills were oriented perfectly toward conscientious action, doing always what they take to be just, their affections would distort their calculations, and result in doing actions that are selfishly skewed. On the whole and on the average, people might do better, come close to achieving prioritarian maximization by their actions, if they ignored justice and aimed to be self-abnegating. Their self-conscious attempts to be self-abnegating (we are imagining) would balance their subterranean tendency to selfishness so their acts would end up better as judged by impartial justice.

Here is another example to the same effect. It might be the case that children roughly perceive the extent to which their parents are disposed to care for them. Children might benefit from recognizing their parents' disposition to

favor them even when the favoritism would be unjust. The existence of the disposition then has two effects, the bad effect of leading parents to bad favoritism when the disposition is triggered, and the good effect of providing blanket reassurance to children. If the second effect outweighs the first, by prioritarian standards, the prioritarian favors the cultivation of the disposition.²⁸

The point is simply that the ideal society, the ideally just society by prioritarian standards, the society in which priority is maximized, might be a society in which people's wills are not oriented toward justice, but toward the satisfaction of desires disapproved by justice.

LIBERALISM VERSUS PRIORITY

On the view I have sketched, the extent to which a society is just depends on the extent to which laws, institutions, practices, informal social norms, and moral obligations enforced only by pangs of conscience interact to affect the quality of individual lives. The just society is one that gives rise to outcomes that maximize the fulfillment of the social justice goal. The prioritarian interprets that goal as requiring the maximization of priority-weighted well-being. When these manipulable aspects of social life are set so that the prioritarian goal is maximally satisfied, the society qualifies as just. In this case the mechanisms that hold individuals accountable have done all that can be done to achieve justice goals. The prioritarian acknowledges that in the society she is calling "just," individuals might yet not be behaving as they ought, by prioritarian standards. So the just society might be still more just, if behavior were to shift for the better. The

standard that ranks the ensemble of social practices broadly understood as just or unjust indirectly incorporates the effects of individual behavior, insofar as changes in laws, institutions, practices, informal social norms, and moral obligations might produce better outcomes by changing expectable individual behavior under this regime of practices.

This way of conceiving of social justice has drawn the objection that it is deeply illiberal. The thought is that a liberal theory of justice describes an ideal for the institutions that constitute the basic structure of society. The basic structure is the way that major institutions interact to affect individual life prospects. The principles of justice set standards that fix how basic structural institutions should be arranged. The requirement that the theory of justice imposes on individuals is that they support just institutions that exist and that they work to establish just institutions (so long as this can be done at reasonable cost to the individual) if they do not exist. Within such a regime of just institutions individuals are morally free to conduct their lives as they choose so long as they obey the rules of just institutions. In particular, the principles of justice that regulate institutions do not apply to individual conduct. The informal social norms and moral obligations that must conform to the prioritarian norm in the just society—given this conception of social justice—lie outside the domain to which the principles of justice apply according to the liberal conception of social justice.

To illustrate the disagreement between the liberal conception of justice and its prioritarian (more broadly, consequentialist) rival, consider the market economy as it might be expected to generate inequalities in the ownership of material resources over time. The liberal theory of justice recommends contract law policies and tax law policies and the like that would reduce the extent of inequality (if reduction of equality in these circumstances would advance the liberal justice goal). But with institutions ideally set to achieve liberal justice, the self-interested behavior of individual market agents might still operate as a powerful force pressing for greater inequality. Liberal justice recommends setting the basic structure rules and practices with an eye to reducing self-interested market behavior if that would maximize the fulfillment of the liberal justice goal. But beyond the sphere of public enforceable institutional rules, further informal devices such as social norms are deemed to lie in the private domain, and are not to be viewed as legitimate tools for the furthering of social justice aims.

The prioritarian view would hold that society is not just if these informal socializing agents are not set to maximize the priority goal. To revert to Mill's examples, it might be that a social norm that condemns profit-maximizing behavior on the part of people whose condition is already better than average and urges reasonable devotion to the common good would, if inculcated in members of society, operate over time to improve the extent to which the priority goal is fulfilled. In that case, the inculcation of this social norm would be

required by justice. In contrast, the liberal theory of justice condemns such intrusion into the private sphere.

Imagine that the government is considering raising the income tax rates faced by top earners. For the liberal, the tax rate should be set to maximize the justice goal, given the expected responses of the top earners to the various possible tax rates that might be imposed. For the prioritarian, one needs to consider the possibility that bringing about a change in social norms might increase the degree to which top earners would be willing to work at socially productive activities without requiring additional compensation. One should also consider the possibility that it is feasible to induce a change in prevalent philanthropy norms, such that lower tax rates for top earners would yield and expected more than compensating increase in philanthropical spending, so that in the end benefits that improve the quality of life of worse off persons would rise higher with lower taxes and more stringent norms of charitable giving. The prioritarian calculation takes into account strategies for achieving justice goals that the liberal theory excludes from consideration on a principled basis.

To focus attention on the point of disagreement, suppose that the liberal and her opponent agree that the correct specification of the social justice goal is prioritarianism. The disagreement concerns what falls under the primary subject of justice. The liberal insists on a private zone of individual conduct. This is as it were a morally free zone, in the sense that it is not directly regulated by the principles of justice that regulates institutions and social practices. Social norms

and personal ideals fall in this private zone, and this placement is principled, not merely pragmatic.

But why tolerate lesser achievement of the agreed social justice goal? This way of phrasing the question may be misleading, because for the liberal, the split between private and public is itself an aspect of social justice.

As the prioritarian sees it, the social justice goal is an all-encompassing moral goal. This goal encompasses all morally worthy aims and weights them at their correct value. From this standpoint, it will not do to insist that individual liberty is morally significant, and the moral division of responsibility between institutions and individual agents that the liberal theory dictates reflects the value of individual liberty. Individual liberty as a value that is achieved in the course of individual lives is an element, perhaps an important element, in human well-being. The value of liberty is taken into account at its correct value in the correct conception of individual well-being, some function of which is to be maximized according to prioritarian justice. (So if inducing a rise in the stringency of social norms would lessen individual freedom to a degree that is morally excessive, this would show up in the prioritarian calculation, and priority-weighted well-being would be decreased not increased by ratcheting up the social norm in that case.)

As so far stated, the conflict between the liberal and the consequentialist as I have described it might seem exaggerated.²⁹ For the liberal, the primary subject of justice is the basic structure of society--the way major institutions

interlock to affect life prospects. The justice requirement on individuals is that they support the institutions of a just or nearly just society if it exists and work to bring it about if the existing society they inhabit is unjust. But nothing said so far rules it out that the choice of a just basic structure should take into account the impact on the basic structure on social norms. Suppose we could choose basic structure #1, which includes low taxes and thereby brings about strongly egalitarian social norms, or basic structure #2, which is otherwise the same except its tax rate is higher and its tax rate somehow brings about less strongly egalitarian social norms. The justice goal is better fulfilled if basic structure #1 is chosen, so #1 is the more just basic structure. On this construal, people's legal behavior within just institutions is neither just nor unjust, but the basic structure, if just, merits that assessment in part because of the effects of the basic institutions on the formation and spread of social norms and thereby its effect on behavior.

If this line of thought is correct, the conflict between the consequentialist and the liberal diminishes in scope. Here's a residual possible conflict. Suppose the basic structure is optimally set from the standpoint of maximizing the satisfaction of the principle of justice. But the social norms thereby induced are not optimal. People let us say could act in concert in ways that would ratchet up the norms without lessening compliance to an offsetting extent. Then they should act in those ways, and the social norms are not yet optimal. The practical

policy implications of this residual difference might be slight, though this does not reduce the interest of the theoretical disagreement.

The liberal position as now interpreted does not support the robust boundary between public and private and the wide liberty to act as one chooses within the private sphere that I had initially associated with contemporary liberal doctrine. But perhaps that doctrine with its insistence on a robust private sphere is nevertheless defensible on other grounds. The best attempt to articulate such grounds of which I am aware appeals to the Rawlsian ideal of well-ordered social cooperation.³⁰ Andrew Williams makes such an appeal: In a well-ordered society, each member embraces the same public conception of justice, and complies with its requirements, and these facts are common knowledge among the members of society. The conception is public in that its content is available for anyone to inspect. The conception is public in a further sense. It is a norm that regulates public institutional rules—rules that are known or knowable by all and that state requirements that are clear and unambiguous. Moreover, the degree to which people comply with these public rules is also known or knowable by all.

This publicity requirement cannot be satisfied by social norms and personal ideals (that fix the individual's sense of moral obligation) as envisaged by the prioritarian consequentialist. These may well be vague and ambiguous in their requirements. Also, the degree to which people comply may be difficult to discern and impossible to gauge with any accuracy. Moreover, the norms and

ideals may well function best from a prioritarian standpoint if they have these features that violate publicity.

One might also mention that the burden of compliance with social norms and personal ideals may fall very capriciously and arbitrarily. By luck some people will find themselves deferring to a peer group that has lax attitudes to prevailing social norms, and some people find that their close associates are stern enforcers of these same norms. Social norms and personal ideals will obviously bear more heavily on people who are conscientious and scrupulous than on people whose consciences are happy go lucky. These expectable features of the prioritarian just society violate the ideal of the well-ordered society.

Still, why should well-orderedness trump the goal of maximizing priority-weighted well-being? The conflict between the liberal and the prioritarian consequentialist only arises when one must choose between a society that is more well-ordered but affords people a better quality of life (weighted by the prioritarian distributive standard). Indeed, why should one accept any trade-off at all between these goals? In many cases the fact that a society is manifestly ruled by rules that people agree are fair will boost the degree to which priority-weighted well-being can be achieved. But when this is not the case, I fail to see why well-orderedness should be thought to have independent weight. Suppose that we could arrange society to achieve one of two outcomes. In one, two babies who otherwise would die premature deaths are enabled to live normal

lives. In the other, the society is slightly more well-ordered. The rules regulating social practices include fewer that are vague in their requirements. But except for these stated differences, in all other respects the two societies are identical. I for one would unquestioningly opt for the society where the babies avoid premature death. One might say the liberal attaches intrinsic moral importance to the achievement of procedural values.

Other things being equal, it is surely better that a social rule be drafted so that whether individuals comply or not and hence whether they should incur sanctions or not can be verified. But other things are often not equal. For example, a norm against littering in remote wilderness areas of national parks is fairly clear in what it requires, but monitoring and policing would be too costly to be feasible. Suppose the norm is effective; most people do not litter; the beauty of the wilderness areas is maintained. I deny that infeasibility of enforcement necessarily means that it is bad that the norm should exist or bad for the government to promote it.

The ideal of publicity reveals a further aspect not yet mentioned.³¹ According to the liberal, a truly just society pursues only policies that reasonable persons accept. In a diverse modern society with civil liberties, reasonable people will diverge widely in their ways of life and comprehensive conceptions of morality and value. Hence the liberal seeks a political conception of justice, a conception of fair social cooperation that all reasonable people will converge in accepting despite their many disagreements. In the attempt to fashion a political

conception that can attract the endorsement of all reasonable members of society, the scope of justice should be limited. The more matters that justice principles regulate, the greater the chances that some reasonable people will view these matters from very different perspectives and fail to agree on principles appropriate for their regulation. A division between public and private with significant aspects of social life set on the private side of the line is a useful strategy for delimiting a political conception of justice that can provide a basis of social unity in a diverse society. Just as a political conception of justice must shed controversial norms that some reasonable people will reject, it must confine itself to norms that regulate a system of public institutional rules. After all, reasonable people reasoning from diverse standpoints would be sure to arrive at different and opposed assessments of vague and ambiguous norms regulating behavior in ways that preclude reliably ascertaining who is complying with the norms and to what degree.

In response: In this argument for political liberalism, the issue turns on what is meant by "reasonable." If the reasonable person makes no cognitive errors and reasons correctly to correct moral conclusions, then what reasonable persons reject should not be enforced in the name of morality and justice. But then the issue seems wide open as to whether it might not in the end be reasonable to incorporate social norms and personal moral ideals that do not meet the publicity standard within the scope of justice. If on the other hand a person may be "reasonable" while making cognitive errors and arriving at

incorrect moral conclusions, then what reasonable people can reject should not be a constraint on what can legitimately be imposed in the name of justice. Social norms can be controversial among reasonable persons (in the weaker sense of reasonable), yet these social norms may be instruments to maximizing the achievement of justice goals rightly conceived. What is controversial among weakly reasonable people may yet be uncontroversially acceptable among persons espousing correct principles of justice.

There are further issues that divide the prioritarian and the liberal. For one thing, they are involved in a subtle disagreement concerning what is the best level of abstraction at which to do political philosophy. But the problems that stem from the liberal's wobbling about reasonable disagreement strike me as decisive no matter how the residue of disagreements is adjudicated.³²

* I thank Jonathan Riley and Jeremy XXX for helpful comments..

¹ . Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), ch. 7; see pp. 160-164.

² . The best libertarian response to this argument of which I am aware is made by David Schmidtz in *The Limits of Government: An Essay on the Public Good Argument* (Boulder: Westview Press, 1991).

³ . For an argument that the possibility noted in the text is not empirically likely to occur, see Richard Epstein, *Forbidden Grounds: The Case Against Employment Discrimination Laws* (Cambridge: Harvard University Press, 1992).

⁴ . Objection: The consequentialism that I affirm does not regard racial discrimination as per se immoral any more than does the Lockean rights position. (In fact the Lockean can condemn racial discrimination as per se immoral so long as she notes that coercion to prevent it would be unjustified when the coercion would violate Lockean rights.) So the ax I am trying to swing against the Lockean bounces back to hit me. Response: I would insist that when human well-being is given a plausible interpretation, so that sadistic pleasure and glee at the dominance of “us” over “them” are not seen as contributing to well-being, prioritarian consequentialism can give a plausible account that explains when and why racial discrimination is wrong, and the parallel Lockean story rings false. On the place of equal opportunity in the theory of justice, see Arneson, “Against Rawlsian Equality of Opportunity,” *Philosophical Studies* vol. 93 (January, 1999), pp. 77-112. Further response: Whether or not good arguments support any form of consequentialism that does not treat racial discrimination as per se a wrong that can justify coercion, the Lockean treatment of this issue strikes me as seriously problematic.

⁵ . On the Objective List account, see Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984), pp.; also Richard Arneson, “Human Flourishing versus Desire Satisfaction,” *Social Philosophy and Policy*, vol. 16 (Winter, 1999), pp. 113-142.

⁶ . Patrick Suppes, “Some Formal Models of Grading Principles,” *Synthese* 16 (December 1966): pp. 284-306.

⁷ . On prioritarianism, see Paul Weirich, "Utility Tempered with Equality," *Nous*, vol. 17 (September, 1983), pp. 423-439; Derek Parfit, *Equality or Priority?*, The Lindley lecture (Lawrence, KS: Department of Philosophy, University of Kansas, 1995); Parfit, "Equality and Priority," *Ratio*, vol. 10 (December, 1997), pp. 202-221. and Dennis McKerlie, "Equality and Priority," *Utilitas* vol. 6 (May, 1994), pp. 25-42.

⁸ . On social norms, see Robert Cooter, "Normative Failure Theory of the Law," *Cornell Law Review* 82 (July 1997): pp. 447-979; Cooter, "Expressive Law and Economics," *Journal of Legal Studies* 27 (June 1998): pp. 585-608; Richard McAdams, "Cooperation and Conflict: The Economics of Group Status Production and Race Discrimination," *Harvard Law Review* 102 (March 1995): pp. 1003-1084; McAdams, "The Origin, Development, and Regulation of Norms," *Michigan Law Review* 96 (November 1997): 338-433; and Eric Posner, *Law and Social Norms* (Cambridge: Harvard University Press, 2000). Posner's view is skeptical: what we describe as a norm is an equilibrium in a signalling game in which players aim at reputation and status. What counts as signalling that one is a good type of person, a worthy potential partner in cooperative pursuits, is often a matter of arbitrary convention.

⁹ . J. S. Mill, *On Liberty*, in Mill, *Collected Works*, vol. 18, ed. J.M. Robson (Toronto: University of Toronto Press, 1977), p.220.

¹⁰ . There are other possibilities. Mill might be thinking that a norm of indeterminate requirements such as "Be virtuous!" or "Be patriotic!" enforced by

severe informal penalties might very severely limit people's liberty, as they must refrain from a broad array of types of behavior to avoid incurring the penalties.

¹¹ . Mill, *On Liberty*, p. 286.

¹² . Mill, *On Liberty*, p. 287.

¹³ . This theme is explored in Richard Arneson, "Paternalism, Utility, and Fairness," reprinted in *Mill's 'On Liberty': Critical Essays*, ed. Gerald Dworkin (Lanham, MD: Rowman and Littlefield, 1997).

¹⁴ . Caveat: The view stated in the text applies only to libertarians who, like Nozick, postulate as morally fundamental certain individual rights that are never to be violated. Another view takes the imperative of conforming to libertarian individual rights to be morally desirable because it is a good means to achieving some more basic moral aim. This instrumental stance toward libertarian rights is asserted by Richard Epstein in his *Simple Rules for a Complex World* (Cambridge, Harvard University Press, 1995).

¹⁵ . The libertarian is free to espouse secondary norms that disapprove of some choices that people make that violate no rights. But for the libertarian, rights must take strict priority: No violation of rights is ever justified by secondary norm considerations.

¹⁶ . J.S. Mill, *Utilitarianism*, in his *Collected Works*, vol. 10, ed. J.M. Robson (Toronto: University of Toronto Press, 1969), pp. 203-259; see p. 246.

¹⁷ . It might be the case that the ideal prioritarian social norms and moral obligations would set different standards for people of different types. For example, suppose that people could be usefully classified as phlegmatic, or

sanguine, and so on. What the best social norms would imply one should do and what the best standards of moral obligation imply one should do may then vary depending on one's type.

¹⁸ . R.M. Hare, *Moral Thinking* (Oxford: Oxford University Press, 1981).

¹⁹ . G. A. Cohen, "Incentives, Inequality, and Community," in Grethe Peterson, ed., *The Tanner Lectures on Human Values*, vol. 13 (Salt Lake City: University of Utah Press, 1992), pp. 263-329; Cohen, "The Pareto Argument for Inequality," *Social Philosophy and Policy*, vol. 12 (Winter, 1995), pp. 160-85; Cohen, *If You're an Egalitarian, How Come You're So Rich* (Cambridge: Harvard University Press, 2000), pp. 117-148.

²⁰ . See John Rawls, *Political Liberalism*, revised edition (New York: Columbia University Press, 1996).

²¹ . Perhaps the question is too narrowly framed in the text. I have been speaking of social norms, construed as informal moral obligations. A wider social ethos, including beliefs about what is valuable in life and about appropriate (but not specifically morally appropriate) behavior, entrenched in a society, will also affect the degree to which the society fulfills the social justice goal.

²² . For helpful explorations, see Liam Murphy, "Institutions and the Demands of Justice," *Philosophy and Public Affairs*, vol. 27 (Fall, 1999), pp. 251-291; also Thomas Pogge, "On the Site of Distributive Justice: Reflections on Cohen and Murphy," *Philosophy and Public Affairs*, vol. 29 (Spring, 2000), pp. 137-169.

²³ . A clear succinct statement of the strong equality of opportunity principle espoused by Cohen is in Cohen, "Why Not Socialism?", in Edward Broadbent,

ed., *Democratic Equality: What Went Wrong?* (Toronto: University of Toronto Press, 2001), pp. 58-78.

²⁴ . This principle may not be fulfillable even in principle in all circumstances.

Consider a three-person society with members A, B, and C. A explicitly chooses to be worse off than B--gives her some money, for example. B and C have an opportunity to gain an advantage; C prudently takes advantage of this opportunity and B does not, so B is worse off than C. But A is worse off than C through no fault or choice of her own. If one then redistributes so as to equalize A and C, one must render A better off than B, which would violate the stated equality norm. If one instead leaves A worse off than B, one then perpetuates inequality between A and C that violates the norm.

²⁵ . Cohen, "Why Not Socialism?", pp. 65-67.

²⁶ . I have considerable sympathy with some of Cohen's doubts about prioritarianism as so far characterized. The issue is whether the moral value of getting a benefit for a person varies with the person's level of responsibility or deservingness as well as the person's prior well-being level. On this issue, see Arneson, "Equality and Equal Opportunity for Welfare," *Philosophical Studies*, vol. 56 (May, 1989), pp. 77-93; Arneson, "Rawls, Responsibility, and Distributive Justice," forthcoming in *Justice, Political Liberalism and Utilitarianism*, ed. by Maurice Salles and John Weymark (Cambridge: Cambridge University Press); Arneson, "Egalitarianism and Responsibility," *Journal of Ethics*, vol. 3 (1999), pp. 225-247; Arneson, "Equal Opportunity for Welfare Defended and Recanted," *Journal of Political Philosophy*, vol. 7 (December, 1999), pp. 488-497; Arneson,

“Luck Egalitarianism and Prioritarianism,” *Ethics*, vol. 110 (January, 2000), pp. 339-349; Arneson, “Luck and Equality,” *Proceedings of the Aristotelian Society*, supp. vol. (2001), pp. 73-90. This issue is orthogonal to the concerns of this essay.

²⁷ . Cohen, “Incentives, Inequality, and Community,” pp. 279-285.

²⁸ . For sensible reflection on the puzzles generated by consequentialist assessment of dispositions to bad behavior, see Gregory Kavka, “Some Paradoxes of Deterrence,” in Kavka, *Moral Paradoxes of Nuclear Deterrence* (Cambridge: Cambridge University Press, 1987), pp. 15-32.

²⁹ . The point asserted in this paragraph is drawn from Pogge, “On the Site of Distributive Justice: Reflections on Cohen and Murphy,” p. 165.

³⁰ . This point is made effectively by Andrew Williams in “Incentives, Inequality, and Publicity,” *Philosophy and Public Affairs*, vol. 27, no. 3 (Summer, 1998), pp. 225-247; see pp. 242-246.

³¹ . See David Estlund, “Liberalism, Equality, and Fraternity in Cohen’s Critique of Rawls,” *Journal of Political Philosophy*, vol. 6 (1998), pp. 99-112; Pogge, “On the Site of Distributive Justice: Reflections on Cohen and Murphy.”

³² . For more on this issue, see Arneson, “Rawls versus Utilitarianism in the Light of *Political Liberalism*,” in *The Idea of a Political Liberalism*, ed. Clark Wolf and Victoria Davion (Lanham, MD: Rowman and Littlefield, 2000).