

Jerry Cohen versus John Rawls Note for Theories of Justice

According to Jerry Cohen, justice requires equal access to advantage for all people. Equal access to advantage is a strong version of equality of opportunity. When it obtains, either everyone enjoys the same advantage level or those who enjoy less than others could have made choices that would have been reasonable for them to make and that would have resulted in their enjoying the same advantage level as others. **For short, according to Cohen, justice is equality.**

The ideal of justice as equality can be seen in application when friends go on a camping trip. The friends are committed to a good time for all. For the duration of the trip, possessions are shared on a basis of common-sense equality. If Tom is especially susceptible to rain, he gets the best rain protection, and if Tom is a lot bigger and hungrier than Sally, he maybe gets two cheeseburgers to her one. The burdens of camp life such as chores are shared on the same roughly egalitarian basis. Windfalls (suppose Katrina goes fishing and happens to catch a bunch very quickly) are shared with all group members. The camping trip as Cohen envisages it fulfils the ideal of equal access to advantage, and a just political economy would operate according to the same principle.

Justice requires equality, but according to Cohen justice is not necessarily what we ought to bring about all things considered. For example, maybe if the distribution of goods and resources is kept equal, we will all be worse off than if we allow the distribution to become unequal. In these circumstances, all things considered we should opt for inequality, but here justice (equality) conflicts with benefit for all and we should compromise the pursuit of justice to secure other values. Justice is important, but only one of many things we reasonably value. Only a fanatic would insist on maintaining justice come what may, says Cohen.

Perhaps justice as equality is not sustainable because people tend to be mean or selfish. According to Cohen this fact, if it's a fact, would not impugn the ideal, but rather would be a defect in us. But he thinks history has given us no verdict yet on the feasibility of justice as equality. Experiments that would provide decisive evidence have yet to be tried.

Justice obtains when the distribution of benefits and burdens across persons is fair. (To reiterate: according to Cohen, fairness equals equality.) The shape and character of institutions in a society affect the distribution of benefits and burdens, so affect whether justice obtains. But how individuals behave also affects this distribution and so the degree to which justice obtains. Example: A society could be unjust insofar as women are put at a disadvantage merely for being women, and lack access to good education and jobs that men get. This situation might come about even though the laws and coercive institutions of society are even-handed in their treatment of men and women. Inside families, parents discourage the ambition of their daughters and encourage the ambition of their sons, and provide resources to their sons that their daughters are denied, and in this way, injustice is perpetrated. Since injustice is a political problem, this imagined scenario illustrates the slogan, "the personal is political," Cohen thinks.

The same point applies to the choices that people make within economic institutions. Cohen imagines that people accept John Rawls's theory of justice and are motivated to conform to it. They support a basic structure of institutions that acts over time to bring it about that Rawls's principles are satisfied to the greatest degree that the arrangement of the basic structure can facilitate. Now suppose that talented individuals make choices regarding their careers and jobs that result in their getting increased remuneration for the economic tasks they perform. Suppose that CEOs of corporations hold out for high salaries and get high salaries. For concreteness, imagine a medical doctors' strike. The doctors work in emergency rooms in hospitals; their services are useful to the poor. The doctors already have desirable jobs and get high pay, but they make the following proposal: "If you increase our pay by twenty per cent, we will continue to work, and if you don't, we won't." Suppose the pay raise as described satisfies the Rawlsian

difference principle: the worst off are better off if the doctors get higher pay and work than if they get lower pay and don't work (as much).

Cohen objects that from the perspective of the Rawlsian theory of justice, something is wrong here. If the individuals accept Rawlsian principles of justice, they are committed to the difference principle. But if from the standpoint of the difference principle, that the doctors work at their present job and pay is worse than their working at a more productive employment for higher pay, there is a third alternative that the doctors have it in their power to bring about: they work at the more productive employment without demanding higher pay. If the third alternative is not in fact available, that is because the doctors by their will make it unavailable. But if they are committed to Rawlsian justice, they will be committed to acting in their daily lives so that the Rawlsian principles are fulfilled to a greater rather than a lesser extent, and if they are committed to this, they will voluntarily choose alternative #3. The example generalizes. **Whenever incentive pay given to already highly paid talented persons would seem to be justified from the standpoint of the difference principle, there is a superior alternative: let the talented work at this productive employment without demanding or receiving the incentive pay.** Incentives are not needed in a society in which all members of society internalize Rawls's principles, so the difference principle in these circumstances would not justify inequalities via incentives. In a just society, the difference principle would not justify incentive-based inequalities. So says Cohen.

Consider a person who kidnaps your child and then demands ransom. Given the alternatives of paying the ransom and getting your child back unharmed or not paying the ransom and your child being seriously harmed, the better alternative is the first, and maybe, in these circumstances, all things considered, that is what you morally ought to do. But there would be something weird, if not exactly false, if the kidnapper were to say to you, "Look, morality demands that you pay the ransom, for the sake of your child. What is more important, money or the safety of your child?" What is weird is that only the will of the kidnapper makes it the case that you face these two alternatives—pay and save your child or don't pay and see your child injured—rather than a third—the kidnapper returns the child to safety without demanding any ransom. The third alternative is morally preferred. Given the circumstances including the kidnapper's demand for ransom, the morally best outcome may be that in which ransom is paid, but the situation is still defective from the standpoint of morality. According to Cohen, the situation is in a key respect the same, when talented individuals by their will force us to choose between offering incentive pay and having the talented work productively or not offering incentive pay and having the talented not work productively. There is always a morally preferred third alternative.

Qualification: What if the extra work the talented are asked to do is very onerous, so that if they do not get higher pay, they end up worse off than others? According to Cohen, measuring people's condition just by their primary social goods holdings is not adequate. If people have equal primary social goods, but some work at incredibly difficult and unpleasant jobs and other work at incredibly easy and pleasant jobs, equality in the relevant sense does not obtain. In these circumstances, higher pay that compensates for arduous unpleasant work is equalizing.

Qualification: In Cohen's vision of a just society, must everyone be forever sacrificing her personal interest for the common good? No. Cohen does not agree with Peter Singer on this score. Cohen thinks each person has a personal prerogative to live her own life and pursue her own interests to some extent, rather than to be working for the impersonal good and right all the time. Cohen thinks that someone committed to Rawlsian justice is seek to make the worst off as well off as possible within the limit of the personal prerogative. His claim is that one's political principles must make a difference to one's everyday choices about how to live.

An egalitarian ethos. Cohen suggests that a society in which there is a social norm that one should make career and work choices with an eye to egalitarian values, and in which the norm is internalized by most people and followed, will be more just in virtue of individuals' ethos-guided choices than would be the case if people felt themselves free to pursue their own interests as

they see them within legal limits. The issue of the egalitarian ethos falls through the cracks in Rawls's official view, which distinguishes the principles of justice that apply to the basic structure of society and the requirements of justice for individuals. The latter according to Rawls mainly involve supporting just institutions if they are in place and cooperating with others, when one can do so safely and at reasonable cost, to bring about just institutions when they do not.

Consider the ideal of a society that overcomes racism. This is not merely a society with legal rules enforced that forbid racial discrimination. Rather it is a society in which the hearts and minds of men and women are committed to equal treatment of all regardless of skin color or supposed race. A nonracist society is one in which people internalize norms of racial equality and are disposed to act accordingly. Cohen thinks that an economically egalitarian society would involve changes in the hearts and minds of men and women, not just a particular structure of legal rules.

Objection: Rawls might respond to Cohen by insisting that the principles of justice including the difference principle are to regulate the basic structure, not the individual choices of individuals acting in their daily lives. Cohen responds in "Where the Action Is." Roughly, he says that a problem emerges for Rawls if we ask, what is the basic structure. If the answer is to identify the basic structure with the coercive rules society enforces, then Rawls cannot say that the basic structure is the primary subject of justice because it distributes fundamental life prospects. The ensemble of people's noncoerced choices within and between institutions also affects fundamental life prospects massively. So EITHER Rawls interprets the basic structure idea narrowly and has no warrant for saying justice is concerned fundamentally with the choice of principles that regulate the basic structure, OR he expands the idea so the basic structure includes people's choices within institutions. If he goes the later route, he agrees with Cohen.

Objection: Rawls is articulating a public conception of justice. Rules are public when everyone is able to attain knowledge (and knowledge that others know as well) of the rules' general applicability, their particular requirements, and the extent to which individuals conform to these requirements. But consider the Cohenite egalitarian ethos. What are its requirements? They are vague and unclear. Note that the ethos cannot simply regulate people's choices in whatever job they have; the ethos to be effective would have to regulate people's choices of job bad career as well. (If someone who would be a great corporation manager but is a bad poet chooses to make a career of poetry in a society with egalitarian wages, that's not good.) What then must one do, to be following the difference principle in one's daily life choices? It's unclear. Moreover, even if we could fashion a clear Cohen type ethos, it would be impossible for individuals in society to learn to what degree others are conforming to the norm. In fact it would be impossible for an individual examining his own soul to know whether he is conforming to the egalitarian ethos or not. So any such ethos is unsuited for inclusion in Rawls's public conception of justice. (The objection is due to Andrew Williams.)

Cohen's reply to objection: Publicity as interpreted here is not such a big deal from the moral standpoint. Consider the informal norm that people who venture into the wilderness should pack out their trash to keep the wilderness beautiful. There is no effective enforcement of the norm, and no way to tell whether any given individual who goes into the wilderness abides by the norm or not. Yet we are surely better off that we have such a norm in effect, and its failure to satisfy publicity fully does not discredit it. Another example: the norm that friends should be specially nice to their friends is vague and loose in its requirements, and people probably don't agree about its interpretation, but a vague loose norm can still be morally right, helpful, and when generally (vaguely and loosely) followed, make our lives go better than they would in its absence.