

Incentives and Egalitarianism

1. Three Responses.

Rawls's theory of justice as fairness proceeds on two levels. Substantively, justice as fairness proposes a reconciliation of liberty and equality. Instead of treating liberty and equality as warring values, Rawls aims to give both values due consideration, particularly in the idea that maximizing the minimum worth of liberty is the aim of social justice. Methodologically, justice as fairness relies on the device of the original position. To specify the principles of justice for a democratic society of free and equal persons, Rawls proposes that we consider which principles would be selected by such persons, under a veil of ignorance designed to model the idea that persons are free and equal and social cooperation should be fair between persons thus conceived.

Critics have objected to this proposed accommodation in several ways. Let me note a few, with no pretence to completeness. Thus, libertarian critics have argued that justice as fairness does not give due weight to liberty. It does not include the full range of economic liberties in the first principle. That neglect, according to this criticism, comes in part because justice as fairness treats talents as morally irrelevant, and thus locates them behind the veil of ignorance, rather than supposing that they are part of our endowment by right.

A second line of argument—styled communitarian—argues that Rawls places too much weight on personal liberties because he relies on a model of persons that is too individualistic: that he abstracts individuals from their social context, instead of emphasizing that we are members of political communities. The communitarian argues that individuals are best understood as part of “we”, with common values, and that reasoning about justice should use those common values as the basis for argument. According to the communitarian, we cannot really make sense of Rawls's own endorsement of the difference principle, with its notion of talents as common assets, except on the assumption that individuals regard themselves as part of a community.

A third line of criticism argues that Rawls aims to do too much at the level of philosophical theory, and leaves too little to be decided by the real politics of democracies. In particular, this line of criticism urges that issues of fair distribution are so central to political debate in democracies, and that democratic self-government is so important, that it is a mistake to try to resolve the distributive disagreement at the level of philosophical theory—through a prior choice of principles in the original position—because that would deprive democratic politics of so much of its substance.

2. Incentives Argument

GA Cohen has suggested a fourth line of criticism, arguing, perhaps surprisingly, that Rawls's view is insufficiently egalitarian—and, in a closely related complaint, that the limits on its egalitarianism come from its failure to see that the personal is political. Applied to the context of distributive justice, that powerful slogan means that the principles of justice apply not only to our laws and institutions but also to the preferences and attitudes that guide our conduct within those laws and institutions. By excluding the personal from the political, treating our preferences and attitudes as given, Rawls ends up accommodating injustice within the core of his theory of fair distribution. While Cohen's criticism focuses on Rawls, and I will be concentrating on

that line of argument here, you could easily extend the argument to Dworkin, who uses a market-like auction to decide what distributive equity requires.

To appreciate the central line of criticism, I want to distinguish it from a distinct line of criticism that might also come from someone with strongly egalitarian convictions. Thus, an egalitarian might object to Rawls's view because it sets no limits on the range in the distribution of resources. So long as the less well-off group does better, inequalities are permissible: the difference principle is only concerned about the size of the minimum, and not at all about any measure of dispersion. So one kind of egalitarian might say that we should not permit large inequalities of fortune, even if they work to the material advantage of the less well-off. They might say that relative position matters as well as the absolute position of the least well-off. Now Rawls's theory actually does have a place for concerns of this kind, though not as part of the difference principle. But I want to avoid all the complexity: so I am going to assume for the sake of argument that his view is concerned only with the absolute well-being (in income and wealth) of the minimum. So the kind of egalitarian critic I have in mind thinks that some inequalities that work to the advantage of the least advantaged are nonetheless unjust, and thus thinks that to some extent justice may require "leveling down"—limiting economic inequalities, even if that means reducing everyone's absolute level of income and wealth. Plato for example thought that the ratio of top to bottom should be no greater than four-to-one.

Now I mention this line of thought only to distinguish it from GA Cohen's: he does not endorse leveling down. But then, you may wonder, how could he reject as unjust inequalities that Rawls permits: how could you reject inequalities that Rawls allows—after all they must work to the advantage of the least advantaged—but not endorse leveling down?

Rawls's idea is that justice permits inequalities of income and wealth that improve the conditions of the least well-off. In particular, justice requires (or at least permits) the use of incentives to individuals with scarce talents if the incentives motivate them to use the talents in ways that benefit the least well-off. So suppose we start with an equal distribution of (4,4), and can move to (9,5) or to (8,6). The difference principle requires that we move to (8,6), where the minimum is better. But why not (7,7)? If we really have more stuff to distribute, why not distribute it equally, and thereby raise the least well-off even more?

Isn't the answer entirely straightforward? Given the preferences of the better off, the reduced compensation will kill the incentives. So (7,7) is not possible: we have to pick the best from the possible, not whine about the possible. The person who is better off will not be prepared to take the job (or will reduce effort in the job), and that will reduce the benefits to the least advantaged. So *given the preferences of the better off* (i.e., of the person with the scarce and productive talent), equalization at the higher level of output is not possible. Holding preferences fixed—treating the personal, so to speak, as given to the political domain—the inequality is necessary to improving the conditions of the least advantaged.

To clarify the point of the argument, we need to distinguish two ways in which it might be true that the incentives in question need to be paid in order to generate the higher level of output. In the first case, the person who has the scarce talent is perfectly willing to do the productive work for a reward of 7. But others don't know this. He knows

he can get more by insisting on it, and threatening to refuse to do it. Because others don't know that he would do it for 7, the threat is credible, and he is able to get the additional reward. In the second case, the person really would not do the work for less than 8. Let's say that the work is being a surgeon, and the person would prefer to be a poet. With sufficiently large reward, he will be a surgeon, but with lower levels of reward, he will refuse.

Whatever we wish to say in the first case, where the inequality results from incomplete information, it seems clear that Rawls thinks that justice permits the incentives in the second case. The idea is that we, as just citizens—who are moved in our political decisions by a sense of justice—vote for a tax/transfer system that ensures the maximum benefit to the least advantaged: in the political arena, we make decisions based on our sense of justice. As economic actors, in the marketplace, we pursue our own interests and advantage, perhaps in a selfish way, or perhaps in a way that will benefit our group or cause, but in any case not with an eye to achieving justice. So we have a kind of bifurcation of motives. When we decide as citizens on the level of taxes and benefits, we do so on the assumption that, as economic actors, we may well have a different, and more narrowly focused set of personal motives and principles.

3. Egalitarian Objection

Cohen objects to this line of thought. One way to state the objection—but this will ultimately not be the best way—is that the inequalities in the (8,6) scheme are not consistent with the difference principle, properly understood. For the difference principle says that justice only permits inequalities that are *necessary* for improving the conditions of the least advantaged. But the (8,6) inequality is not really *necessary* to improving the advantage of the least advantaged, because the person with the scarce talent *could* (at least this will sometimes be the case) do the work for less reward. The problem is that the person is not *willing* to do it for a smaller reward. The surgeon would prefer being a poet to be a surgeon, and is willing to be a surgeon only if the reward is high enough. But the surgeon is perfectly able to be a surgeon without getting the extra reward: anyway, that will be true in some cases. So the inequalities permitted by the difference principle are not really necessary, but only necessary given the preferences of the talented. To apply the difference principle with preferences held fixed is to rely on what Cohen calls a “lax” interpretation of the difference principle.

Now you might respond to this by saying that, while it is true that the inequalities are not *absolutely necessary*, it is nevertheless permissible for the surgeon to insist on the additional reward. And if it is permissible, then the inequalities are necessary in the only relevant sense: namely, necessary, relative to what citizens can permissibly demand. But here, Cohen adds that if people were really committed to the difference principle—and Rawls supposes that in a just society, people are committed to the principles of justice—then they would not demand the extra reward. After all, as the example indicates, the least advantaged would be even better off if the surgeon did not demand the additional reward. So suppose people in a society were *really committed* to the principle that inequalities are permissible only if they are necessary for improving the conditions of the least advantaged. Then they would not insist on the reward. So there is an injustice: a violation of the difference principle, caused by incentive demands.

4. Basic Structure Reply

Now Rawls has an obvious reply to this objection, and some Rawlsians have pursued it. The reply points out that the difference principle and other principles of justice apply to what Rawls calls the “basic structure of society”—to the legal and institutional rules, and not to the choices of individuals within the rules. More precisely, individuals comply with the principles of justice by supporting just laws and policies and acting within the rules of a just society, which is a society whose laws and institutions conform to the principles. So if I am committed to the difference principle, I express that commitment by supporting and upholding laws and policies that improve the conditions of the least advantaged, and by condemning laws and policies that permit inequalities beyond those necessary to improve the conditions of the least well-off. But because the difference principle, as stated, is a principle that applies to society’s basic structure—a principle that we use in our capacity as citizens of a democratic society, with final authority over our laws and institutions—it is simply wrong to say that if we are really committed to *it*, we would not insist on the incentives. Because the principle itself does not say anything about the level of incentives that persons can permissibly demand: it is only a guide to the conduct of citizens, deciding on laws and institutions.

So the real objection is not that a commitment to the difference principle is on its face inconsistent with incentive-demanding behavior: on its face, that principle does not say “only permit inequalities that are maximally advantageous to the least advantaged,” but instead (roughly): “institutions should be so arranged that inequalities work to the maximal advantage of the least advantaged. Once we have done what we can to ensure that institutions are so arranged, we have done all that the principle demands of us. Incentive-demanding behavior simply falls outside its scope.

5. Egalitarian Response

But the debate is not over. Cohen’s objection might once more be restored: not by neglecting to see that the principles of justice, as stated, apply only to the basic structure, but by resisting this “limitation” of the principles to the basic structure. And this resistance might be pursued in either of two ways.

First, it might be said that the *reason* for wanting to be sure that institutions permit only inequalities that work to the maximal advantage of the least advantaged is that justice itself permits only such inequalities—that justice tells us, quite generally, to give priority to the interests of the least advantaged—and that Rawls’s theory simply applies this general principle to laws and institutions. But, Cohen might say, we have no good reason for confining the principle to institutions: if the cultural ethos of a society—the attitudes that people bring to the economy—allows incentive-demanding behavior, and that behavior permits unnecessary inequalities, then justice should condemn the ethos. What matters for justice is that we only have inequalities that improve the well-being of the least well-off; the difference between legal-institutional and other ways of creating such inequalities is secondary.

Second, it might be said—more deeply—that the very same line of reasoning that lead us to the difference principle as an institutional principle should also lead us to endorse it as a more comprehensive principle, that applies to the personal as well as the political. Thus, one important consideration is that we think that we are troubled by

inequalities that reflect the arbitrariness of nature: the bare fact that some people have scarce talents that other people lack. The original position aims to correct for that arbitrariness by putting differences in natural endowments behind the veil of ignorance.

But now suppose we come across a case of incentive-demanding behavior, within a basic structure that is just by Rawlsian lights. The person who gets the incentive will end up doing better than others because he or she happens to be endowed with a scarce talent that others lack. Moreover, that person typically could do the work for which they demand the incentive (say, being a surgeon) without getting the incentive. So why shouldn't this be condemned as an effort to take advantage of the arbitrariness of nature to get a benefit to oneself, when it is perfectly possible to acknowledge that arbitrariness and make the socially constructive contribution in a way that confers maximal benefits on the least advantaged? And suppose one refuses to do that, and demands the incentive: why isn't the incentive-demanding person using his or her undeserved good fortune as a counter in the quest for personal advantage: precisely the thing that Rawls's principles are designed to resist.

To be sure, the best thing to do in the circumstances is to pay the incentive, and get the work done. But the best thing is to hand your wallet to the thief with the gun. But, Cohen says, we should not in either case confuse this sound practical advice with justice's command.

6. How Deep a Divide?

I think there are three things to be said in connection with this egalitarian objection. First, Rawls supposes (rightly or wrongly) that in a society in which people are moved by principles of justice, in which people regard one another as equals, we should not expect to see the most extreme forms of incentive-demanding behavior. So while people may demand special rewards, the commitment to justice and to regarding others as equals will eliminate cases in which these demands are of an exorbitant or intolerable kind: e.g., intolerable demands of incentives for doing things that are beneficial to minority ethnic groups. If that broadly empirical thesis is wrong, then there would be some need to reconsider the shape of the theory.

Second, Cohen himself reduces the distance between his view and Rawls's when he acknowledges that there are some cases in which incentive demands are permissible. In the case of the surgeon who values above all being a poet, it is not unreasonable (it is permissible) for the person to insist that if he is going to shift the central activity of his life away from his true devotion, he should be given some additional reward for it. It would be too "rigoristic"—too morally demanding—to insist that everyone take the aim of contributing to the advantage of others as their first principle.

Third, suppose we live in a society in which the social ethos permits incentive demands. But suppose also that this ethos would change if we were to change our institutions. Then it is true that the institutions—because of the ethos they encourage—permit inequalities that are not maximally advantageous to the least advantaged, and therefore are unjust and ought to be changed. So again, the divide may not be as deep as Cohen suggests. Still, the concern remains: that a democratic society—a society of equals—should not have even the kinds of inequalities that Rawlsian justice permits.

Once we see that Cohen has perhaps overstated the depth of the disagreement, and that he allows some incentive inequalities himself, it is, I think, hard to see how forceful the objection really is without considering the kinds of incentive demands that might exist in a Rawlsian just society. What cannot be excluded is that those incentive demands might be so great as to cast doubt on Rawls's idea that we can develop an account of justice for the basic structure of society without applying the theory to the preferences and attitudes of individuals.