

Debate:
Liberalism, Equality, and Fraternity in
Cohen's Critique of Rawls*

DAVID ESTLUND
Philosophy, Brown University

Above all, we note the fact that the so-called rights of man, the *droits de l'homme* as distinct from the *droits du citoyen*, are nothing but the rights of a member of civil society—i.e., the rights of egoistic man, of man separated from other men and from the community . . . Political emancipation is the reduction of man, on the one hand, to a member of civil society, to an egoistic, independent individual, and, on the other hand, to a citizen, a juridical person . . . Only when the real, individual man re-absorbs in himself the abstract citizen, and as an individual human being has become a species-being in his everyday life, in his particular work, and in his particular situation, only when man has recognized and organized his “own powers” as *social* powers, and, consequently, no longer separates social power from himself in the shape of *political* power, only then will human emancipation have been accomplished.—Marx, *On The Jewish Question*, 1844

I. INTRODUCTION

Marx argued that liberal politics, by insulating certain areas of life from political intervention, gave primacy to a non-political, non-communal conception of the person, and thereby condoned and encouraged egoistic behavior within the constraints of the law. If this was political emancipation, he hoped instead for an emancipation from politics, a recognition in all areas of life of the appropriate claims of one's fellows. The French Revolution could not live up to its rhetoric unless *fraternité* thoroughly informed *liberté* and *égalité*.

*This essay is a comment on a series of essays by G. A. Cohen, including: “Incentives, Inequality and Community,” *The Tanner Lectures on Human Values*, vol. 13, ed. G. Peterson (Salt Lake City: University of Utah Press, 1992) pp. 263–329 (hereafter, I shall refer to this article as “*Incentives*”); “The Pareto Argument for Inequality,” *Contemporary Political and Social Philosophy*, ed. Ellen Paul et al. (Cambridge: Cambridge University Press, 1995), pp. 160–85; and especially, “Where The Action Is: On The Site Of Distributive Justice,” *Philosophy & Public Affairs*, 26 (1997), 3–30 (hereafter I shall refer to this article as “*Action*”). I am grateful for discussion of drafts with Harry Brighouse, Jerry Cohen, Andy Levine, John Tomasi, Paul Warren and Lewis Yelin.

The politics of the “rights of man,” of course, does not need to condone egoistic behavior in any realm. More generally, the liberal tradition does not need to deny (though it also need not affirm) that the bonds of morality reach into every aspect of our agency, public and private, as Marx may well have thought. Traditional liberalism has asserted certain rights of individuals against interference by the state. Whether or not this might, in the long run, encourage egoistic behavior, it does not condone it just by forbidding legal interference with it.

G. A. Cohen mounts a new version of the Marxian charge that liberalism takes egoism as a fact of nature and condones it. Concentrating on John Rawls’s theory of justice, Cohen finds in liberalism a familiar unwillingness to reach beyond formal legal structures into the choices people make within the constraints of law, as in, for example, the family or the economic market. Rawls’s Difference Principle holds that unequal economic distribution can be justified if resulting incentives to those with especially productive abilities are necessary and sufficient to induce those “talented” people to produce more, and the result redounds to the benefit of the economically worst off. Cohen interprets Rawls to mean that so long as the talented obey the legal rules, a selfish unwillingness to produce more without extra pay does not taint the resulting unequal distribution, which counts as perfectly just. How, Cohen wonders, can such individual maximizing behavior be untainted within a conception of justice that for moral reasons channels the fruits of social cooperation to the worst off among us? If, instead, citizens were assumed to be motivated in all endeavors by the fraternity that grounds the difference principle, unequal incomes would not be required to elicit their most socially productive work. But, Cohen argues, Rawls’s requirements of social justice apply only to the basic structural features of society, and, inexplicably, not beyond that to individual choices within those structures. This “structural interpretation” of Rawls makes his view look quite inconsistent in light of his own endorsement of an ethos of fraternity in a just and well-ordered society.¹ How can the personal not be political on Rawls’s view?

Cohen’s interpretation of Rawls is strained, as an interpretation, by the inconsistency that it implies, and I believe the interpretation should be rejected. Marx might have asked, How can all the rhetoric about virtue that decorates the ideology of the Rights of Man be reconciled with the idea that private behavior answers to no external social or moral standard? The answer to Marx would have been that the liberal conception of politics he was considering *did not (need to) hold* that private behavior was beyond evaluation. The answer to Cohen’s parallel question² is that the liberal theory of justice he discusses *need not hold*

¹*Action*, at pp. 8 and 16ff. cites several passages from Rawls suggesting the ethos of fraternity in a well-ordered society.

²See *Action*, p. 17: “How can [people, according to Rawls] without a redolence of hypocrisy, celebrate the full realization of their natures as moral persons, when they know that they are out for the most that they can get in the market?”

that private economic decisions are beyond the moral reach of fraternity. Let the liberal theory of justice grant that egoism cannot be condoned. It is still possible to hold that many talented and just people would be able but unwilling to exercise their most socially productive talents without payment that would lead to inequality. If this is to be justified, these people must give the value of social justice its due, and not ignore the social good in favor of their own interests. If Cohen only wishes to argue that there must be an ethos of justice that condemns unbridled egoism and any inequality that is its result, I believe this is correct. But it is no fundamental challenge to Rawls's theory unless, as Cohen also argues, that would remove the applicability of the incentive argument for inequality. I will contend that this is not so, since inequality producing incentives will still be required by many conscientious citizens exercising certain prerogatives that Cohen must allow.

Cohen grants one prerogative from the putative requirements of social justice, and would, I think, be hard pressed to deny three more. By considering them in some detail, we will see that there is a wide variety of *non-tainting but potentially inegalitarian motives* available to citizens in a society well ordered by Rawls's principles of justice. By a non-tainting motive I mean one whose presence does not itself damage the justice of the resulting distribution.³ The ethos behind the Difference Principle that Cohen properly regards as present in a just Rawlsian society is not, I think, as egalitarian in effect as Cohen believes.

II. HOW PREROGATIVES UPSET PATTERNS

Just as Cohen mainly limits his discussion to the internal commitments of Rawls's theory, without endorsing them, I shall explore some commitments of Cohen's that tend to undermine his critique of Rawls, without endorsing those commitments. Given Cohen's acceptance of a prerogative that limits the claims of justice, allowing some room for the pursuit of self-interest, he ought to recognize a range of related prerogatives.

First, as noted, Cohen does not wish to reject the principle that every person has a right to pursue self-interest to some reasonable extent, even when that makes things worse than they need be for badly off people.⁴ Thus, he does not mean to insist that self-interest must be smothered by the constant demands of social justice. Having granted this, he must grant even more readily that there is some moral scope for pursuit of the interests of one's family, loved ones and friends even where these interests are of little or no moral significance. I do not mean the case where the agent's own good is bound up with certain others, but rather a concern for certain others for their own sake, but without any pretense

³The prerogatives spoken of here are only considered as prerogatives from the putative demands of social justice. The question whether there are similar prerogatives from the putative demands of morality more generally is left aside.

⁴*Incentives*, p. 302. See also p. 314.

of moral impartiality. Call this the motive of *affection*. This motive is not egoistic, but it will compete with the demands of social justice in a similar way. This is, Cohen must apparently grant, a second source of permissible deviation in individual deliberation from what social justice would require considered alone. Distributions arising from this motive, within its proper bounds, are not damaged from the standpoint of distributive justice.

A third non-tainting but potentially inegalitarian category of motivation comprises all considerations (if any) that morally outweigh the moral reasons to promote the interests of the least well off in society. A simple example (I will give more below): Suppose I negligently drive over my wealthy neighbor's prize garden. The least I owe my neighbor, if he wants it, is to work hard to repair the garden. I could work extra hours at my job producing, say, free educational software, but my neighbor is entitled to have me spend some of my available time fixing his garden instead, and I would be wrong to refuse. On this view, the interests of the least well off have a finite weight in morally proper deliberation. So there is a third category of non-tainting but potentially inegalitarian motivations, namely *inequality producing moral requirements*.

Furthermore, anyone who allows a self-interest prerogative into the structure of the requirements of justice must admit a prerogative for attending to considerations of a moral nature even though their moral weight is not greater than the ostensible requirements supporting the least well off. These are not acts that are *required* under the circumstances, but they are of moral importance rather than merely matters of self-interest or affection. Call these *weak moral factors*. As an illustration, Peter Singer defends a moral duty to prevent great harms (at least) when we can do so without sacrificing anything of comparable moral significance.⁵ This grants (in Singer's case, only for the sake of argument), a limited prerogative or dispensation from the imperative to prevent great bads. Even if no other moral consideration is weightier than the great bad that could be prevented, agents would be morally free to attend to other moral considerations so long as they rise to a certain level—or in a more permissive version Singer also considers, so long as they are indeed of any moral significance. Since Cohen does not think that the claims of social justice always override the claims of self-interest, he would be hard put to deny a prerogative to pursue, within limits, other morally significant purposes whether they morally outweigh the importance of economic equality or not. Notice that even if Cohen finds reason to abandon the self-interest prerogative, he would need reasons at least as strong for rejecting any or all of the other three. Of course fewer prerogatives would have less inegalitarian potential and so he would not need to deny them all

⁵Peter Singer, "Famine, Affluence and Morality," *Philosophy and Public Affairs*, 1 (1972), 229–43.

in order to establish his conclusion. I will assume that he is committed to them all in light of his commitment to the most liberal one.⁶

How much inequality could be produced by these motives and prerogatives which, Cohen should allow, do not damage the justice of the result? Cohen only considers the self-interest prerogative, and says that it is too limited to permit a result of great inequality.⁷ Grant this for the sake of argument. There remain the other three categories of motives to contend with. How much inequality could they jointly yield?

We must look at some examples in which someone declines to exercise his most socially productive capacities unless he is paid a certain amount, an amount which would turn out (though we assume this is not his goal) to make him better off than many others.

Consider:

Paul and his brother Peter. They have continued as adults to live in their family home, in order to keep the cherished place in the family. Paul's abilities are more marketable than Peter's, and so while Paul earns about \$30,000 a year running a small restaurant (work he enjoys), Peter runs the household (work he finds tolerable but burdensome). Paul, already reasonably satisfied, has always dreamed of being a doctor in a poor area. He does not care to make more money, except for the fact it would take quite a bit more money to allow him to become a doctor and to allow Peter to better fulfill his aspirations to be a musician while continuing to manage the household. With this in mind he is not willing to become a doctor for less than \$100,000 per year. This amount is much more than is required to maintain the present quality of life of him and his brother when he is a doctor (which would have its burdens), but nothing less would allow Peter to pursue his project too. Given Paul's motives, the least well off will not benefit from his talents unless he is paid \$100,000, and this would lead to economic inequality.

Do Paul's motives taint the inegalitarian result of his getting \$100,000 a year to become a doctor? Even if Paul were simply pursuing his own interests, Cohen grants that doing so is permitted within certain bounds. But Paul's motives have little to do with his own narrow self-interest. He would be happy to doctor for about \$30,000 per year if it were not for considerations about Peter. Is it a motive of affection, his concern for the good of Peter that drives Paul's price up? That may be a large part of it, but Paul's reasons are even stronger than that. There would be a palpable unfairness if Paul, who is already happy in his work, pursued an even higher dream without furthering the dreams of Peter, whose work has

⁶I do not know whether to count this as a second sense of the term "liberal." The connection between "liberal morality," which grants certain prerogatives, and liberal political philosophy, which (among other things) allows certain deviations from economic equality, is not accidental. This is an important lesson of Cohen's argument.

⁷He writes that "it seems unlikely to justify the existing contrast of luxury and want" (*Incentives*, p. 303). This is the wrong comparison. The question is whether in a society where a distribution is just under the Difference Principle a self-interest prerogative would allow as much inequality as would be allowed if the interest of the least well-off could, without injustice, be entirely ignored in market behavior (the latter is what Cohen thinks Rawls's theory allows). Presently existing inequalities are probably irrelevant to this question.

long benefited them both, who is already not as happy in his work as Paul, and who is his brother. This is a moral consideration (though it might or might not be more important morally than the interest of the least well off). It is an issue of fraternity.

If Cohen denies either that there is such a prerogative or, at any rate, that it covers Paul and Peter, he must conclude that the result is tainted unless Peter settles into his domestic chores so that Paul can serve the poor for little extra pay. Quite literally, this would threaten to devalue fraternity. More generally, it sets the moral demands of economic equality higher than will be plausible even to many egalitarians. Committing Rawlsian justice to an ethos of fraternity can hardly be used to preclude the possibility of a citizen like Paul who chooses not to benefit further unless his brother does too, even if so benefiting would benefit the worst off in society. Some will think that the appropriate ethos to assume in a just society will be a strict impartiality among all citizens, or all people. That would be to endorse a pseudofraternity⁸ based on a *critique* of literally construed fraternity, a critique to which Rawlsian liberalism is not, so far as I can see, committed.

A revised example exposes another tension within Cohen's view.

Paul and Pauline are married with two children. He earns \$30,000 per year happily running a restaurant. Pauline earns about the same working as an accountant. She does not hate her work, but she wants very much to go to design school and to produce her own line of fashionable children's clothing. She is very talented at both business and design, and would likely succeed. Paul, who is already very happy in his work, dreams of being a doctor in a poor area, something he is well capable of. He does not care to make more money than now, except for the fact it would take quite a bit more money to allow him to become a doctor *and* to allow Pauline to become a clothing maker. With this in mind he is not willing (or, better, he and Pauline are not willing for him) to become a doctor for less than \$100,000 per year. This amount is much more than is required to maintain the present quality of life of him and his family when he is a doctor (which would have its burdens), but nothing less would allow Pauline to pursue her project too.

Unless Cohen allows a prerogative that condones Paul's motives in this case, he must conclude that the inegalitarian result is tainted unless Pauline settles into her accounting job so that Paul can serve the poor for little extra pay. Some will say Pauline's project is not permitted owing to its effect on the least well-off. In that case either she must accept her relatively unfulfilled life compared to her husband when he is a doctor, or he must redress this inequality within the family by altogether abstaining from the satisfactions of doctoring. The first option would sit uneasily with Cohen's feminist enthusiasm for the importance of justice within the family.⁹ Either way, it sets the moral demands of economic equality higher than will be plausible even to many egalitarians.

⁸"Pseudo-" often has a pejorative meaning that I do not intend here.

⁹For example, *Action*, p. 22.

The example of Paul and Pauline may seem to exploit the reader's presumption that women are disproportionately required to sacrifice their interests in ways that violate Rawlsian justice of the basic structure of society. If this were not systematically the case—and it would not be so in a just society—we would be less uncomfortable expecting Pauline to sacrifice her greater fulfillment for the common good. It might be thought, then, that the example only has its intended effect by violating the background assumption that we are discussing a just society.

One question, then, is whether the example produces pressure to grant a prerogative even without assuming anything about systematic gender roles. This is well tested by considering the earlier case of Peter and Paul (or, alternatively, a homosexual couple), and I believe the case for a prerogative is very strong, in the interest of fraternity, or justice within the family, or the household, at least for anyone who grants the self-interest prerogative accepted by Cohen.

The case of Paul and Pauline adds pressure if systematic gender roles or patterns might be present even in a just society, as I believe they might. Consider the case of freely chosen gender patterns, where one gender happens, even in the absence of objectionable gender-based pressures, to identify with more activities that would benefit the least well-off. Suppose, for example, that even without objectionable pressures women come disproportionately to identify with roles and occupations whose value is most strongly felt domestically or locally rather than globally. Suppose, for example, that for no objectionable reason, women were inspired by certain female exemplars whose achievements had this character. How could we confidently deny this possibility?¹⁰ In that case, on Cohen's view, women would disproportionately be asked to settle for less than, for example, their husbands, whose self-fulfillment is more closely tied to the common good. The idea that the common good trumps equity as between spouses, even if this systematically favors one gender, will be thought by many feminists of egalitarian spirit unjustifiably to privilege global over local justice. Of course the view in question would deny that *justice* is anywhere being sacrificed. But, in terms all sides can accept, it would not grant any prerogative to refrain from benefiting the worst off in society even in order to avoid benefiting in ways that are not shared with one's brother, spouse, neighbor or friend.

There are two ways in which the personal might be political. First, the personal might be thoroughly under the auspices of principles or laws that govern at the level of the larger community, say, principles of economic justice. This is the sense that Cohen primarily has in mind, and it resonates with the opening quotation from Marx: the principles of social justice ought to pervade the motives of citizens even in many of those parts of their lives usually regarded as

¹⁰I discuss Susan Okin's view of these matters in "Shaping and Sex: Commentary on Parts I and II," *Sex, Preference and Family*, ed. D. Estlund and M. Nussbaum (New York: Oxford University Press, 1997), pp. 155–9. See also her *Justice, Gender and the Family* (New York: Basic Books, 1989).

private or personal. But a concern for justice in the family can insist on an incompatible way in which the personal is political: there are standards of justice applying to personal relationships such as marriage, family and others, standards that are not subordinated to society-wide or world-wide principles of justice. This would serve as a buffer (though not a barrier) to the intrusion of standards of social justice into the conduct of certain more local¹¹ relationships and endeavors. The plausibility of such a buffer depends on bearing in mind that egoism is not being condoned. There may well be (as even Cohen grants) a prerogative that allows one to pursue self-interest to some extent even at the expense of society-wide economic equality. But there are also prerogatives for affection and weak and strong moral factors such as fraternity, love, and friendship. Unless it recognizes a range of prerogatives, Cohen's radicalized Rawlsianism would, to a notable degree, subordinate the concern for one's brother, sister or spouse to the concern for one's very badly off fellow citizen, whomever it might be. If the denial of a self-interest prerogative is an unsavory moral rigorism, as Cohen seems to believe, then so is this.¹²

Robert Nozick writes, "We should note in passing the ambivalent position of radicals toward the family. Its loving relationships are seen as a model to be emulated and extended across the whole society, at the same time that it is denounced as a suffocating institution to be broken and condemned as a focus of parochial concerns that interfere with achieving radical goals."¹³ There is no evidence that Cohen takes this view of the family, even though he joins all informed opinion in criticizing the gender domination that has long characterized marriage. Still, there is something of a dilemma for Cohen marked by Nozick's remark. In order to avoid celebrating the brotherhood of man at the expense of fraternity literally construed, Cohen must apparently stand firm in his acceptance of a self-interest prerogative with respect to social justice, and so also accept the range of prerogatives I have discussed. Having accepted them it will be hard to maintain his thesis that no inequality-producing incentives would be necessary to elicit the most socially productive work from citizens who give due weight to the moral claims of society's least well-off. For he must admit that the remedial claims of the least well-off are not all controlling, not even in the deliberation of citizens with an ethos of fraternity leading them to support the Difference Principle as the second principle of social justice. Certainly that ethos finds its way into many actions often regarded as private, since the prerogatives are not unlimited. For example, there is no reason to think that unbridled advancement of the interests of oneself or one's loved ones is condoned in any interpersonal context by a Rawlsian view. But beyond that it is difficult to say how permissive

¹¹"Local" should not be thought to denote physical proximity. Love affairs and family life can be conducted at any distance, at least with a sufficiently fast modem.

¹²"Incentives," p. 302.

¹³*Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 167.

the prerogatives are. As their scope is narrowed by a concern for society-wide economic equality, the shoes of Nozick's radical begin to look like they might fit.

If this is correct, then it is crucial for Cohen's case that the four categories of non-tainting but potentially inegalitarian motives should not cover enough choices to produce very much economic inequality. Leaving aside for the moment how much is very much, they seem at least capable of producing much, at least on a moderate construal of the weight of economic inequality in moral deliberation. Many reasons for demanding higher pay will indeed be precluded by the ethos of fraternity. But many will not. Mary requires extra pay so she can send her children to college. Carl will do the more productive work only if it would allow him to keep his aging mother in her home, with paid care, rather than a less expensive but lonely group home. Larry will do it only if it would support his expensive artistic avocation. Sara will do it only if it would financially allow her to visit her distant friend as often as he visits her. Which of these people is giving undue weight to the moral value of economic equality? If some of them are not, then how inegalitarian might the result be?

III. JUSTICE: UNCOMPROMISING, NOT ALL CONTROLLING

Cohen's argument sensitizes us to these difficult questions. But their difficulty undermines his critique of Rawlsian liberalism. For it is difficult to say how different the resulting inequality would be from the inequality produced by shameless self-interested market behavior. Let us assume that it would not be more unequal than that, that utterly selfish motives produce as much inequality in a Difference Principle governed distribution as any set of motives. The problem is that this does not set any level of inequality that could not have been produced by non-tainting motives, such as those within the prerogatives discussed. Without that, justice's condemnation of selfish market maximizing yields no conclusions about how much inequality could be justly produced.

One project this suggests is to do the moral philosophy required to determine just what the relative strengths of the various values and prerogatives are. Another is to determine how much inequality could be produced even if no one transgressed the resulting requirements. In the meantime, can nothing be said about the limits placed on inequality by the ideal of justice? We can say this much: even without inquiring into the agents' motives, the Difference Principle might still be violated. So we might say, first, even apart from the quality of people's motives, inequality is only justified if it benefits the least well-off. It will be useful to assume egoism for this purpose, since at this first stage we are not criticizing motives. Then, in addition, there are limits placed by the ethos of fraternity (as part of the sense of justice) on the legitimate pursuit of goals other than the improvement of the condition of the least well-off. This is apparently what Rawls's theory says. The theory cannot be shorn of the rhetoric about an

ethos of fraternity, as Cohen is led to do.¹⁴ The heuristic assumption of general market egoism does not condone market egoism, and the ideal of fraternity that supports the Difference Principle itself condemns it. But due concern for the worst off does not obviously generate egalitarian distributions. We do not know how close to the egoistic case distributions could get without being tainted, but that case is, we assume, an upper bound. This has considerable critical bite even if it is not radically egalitarian.

Is our inability to say more only temporary, awaiting progress in moral philosophy? The rich variety of considerations of prudence, affection and morality implies an even richer variety of their possible combinations in the context of any given choice. The task of theoretically sorting out what is morally permitted (or at least non-tainting) in all or most real situations is daunting. Is the lesson that the Rawlsian liberal theory of justice is not yet complete, and may never be? That conclusion assumes something we should question—that if a philosophically and (social) scientifically adequate theory could answer the remaining questions it should be attached to the liberal theory of justice. This depends on what kind of theory of justice we have in mind. For the truth about justice, like the truth about salvation, may not be suitable for inclusion in a public conception of justice that seeks to justify the coercive exercise of collective political power. The possible obstacle is that there may be, among reasonable citizens (roughly, those who are morally decent enough (and in the right way) to be owed reasons for exercises of that power that they can accept as reasons in light of all their beliefs and convictions) some who nonetheless cannot agree about how much inequality (short of the egoistic limiting case) might be produced by untainted motives. If so, it follows that no position on that question could count as a justifying reason for all of them. If reasonable disagreement of this sort is likely in the kind of pluralistic society well-ordered by the conception of justice in question, then Rawls's conception of justice is not incomplete for failing to answer those remaining questions.¹⁵ They would, of course, remain deeply important issues for each citizen, issues which a liberal theory of justice can lead many people confusedly to neglect (just as traditional liberalism leads many confusedly to condone all sorts of bad behavior under cover of the right not to be legally interfered with in those respects).

Cohen is not only concerned with what we should think about these matters, but also (even mainly) with what Rawls's theory is committed to, be it plausible or not. He argues that Rawls's ideal of a society-wide sense of fraternity in a just society requires him to assume that the talented would be willing to exercise their

¹⁴*Action*, pp. 16–17.

¹⁵See the “liberal principle of legitimacy,” in Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 137 (hereafter PL). On the constraints placed by the theory of legitimacy on the availability of the truth in a political conception of justice, see David Estlund, “The Insularity of the Reasonable: Why Political Liberalism Must Admit the Truth,” *Ethics*, 108 (1998), forthcoming.

socially useful talents even without the incentive of inequality-producing extra pay. I have argued, first, that—at least to anyone who accepts a self-interest prerogative limiting the demands of social justice—this would be an implausibly demanding theory of social justice, one that subordinates not only self-interest but also affection and personal justice to the standards of society-wide equality. But, second, this is not an adequate interpretation of Rawls. Rawls's theory of justification seems to require that the public conception of justice prescind from taking a position on the stringency of the demand for economic equality in the face of possible prerogatives for self-interest, affection or moral matters. I grant that the appeal to reasonable disagreement can be unsatisfying when the fate of the downtrodden hangs in the balance. We should not declare too easily that the disagreement about this is reasonable in the requisite way. For this reason I have gone beyond the claim of reasonable disagreement to suggest that a stringent requirement to benefit the worst off without prerogatives subordinates local ties and commitments to global ones in a way that Cohen's position on prerogatives cannot allow. The question at the moment, though, is Rawls's view, and there is little reason to think his theory has the shape Cohen sees. Rawls wrote in *A Theory of Justice*:

It may be thought that once the principles of justice are given precedence, then there is a dominant end that organizes our life after all. Yet this idea is based on a misunderstanding . . . [A]n ideal conception of the social order is set up which is to regulate the direction of change and the efforts of reform. But it is the principles of individual duty and obligation that define the claim of this ideal upon persons and these *do not make it all controlling*.¹⁶

Rawls's view seems to be not just that some reasonable people might think that political justice is not all controlling, but that, in truth, it is not all controlling.¹⁷ There seems little reason to regard this as inconsistent with the possibility of an ethos of society-wide fraternity that helps to ground allegiance to the Difference Principle.

Here is some irony. Almost as if to rebut Rawls's egalitarian detractors, Cohen's conclusion is that Rawls's theory, when made consistent with its deepest commitments, is far more egalitarian than Rawls and many others believe.¹⁸ I believe this is mistaken and, indeed, that Cohen inadvertently helps us to see that the Difference Principle strand of the theory is not, as it is often described, *very* egalitarian, at least if it is not combined with a kind of moral rigorism. Arguably Rawls's theory of justice saved the respectability of liberalism by defending it against mounting criticism that it could not supply a principled criticism of even

¹⁶*A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), p. 565, emphasis added.

¹⁷As his view has developed, this must now be seen as a judgment unavailable to a public conception of justice, since there is probably reasonable disagreement about it.

¹⁸Of course Cohen thinks this fundamentally changes the nature of the theory, and this makes it less ironic.

great social and economic inequalities. I do not believe that the Difference Principle can sustain this new life for liberalism, because even in the context of Rawls's subtle conception of a society well-ordered by a public conception of justice, with an ethos of fraternity and all, that principle cannot condemn inequalities that an adequate conception of justice should condemn. But I am not inclined to give up on liberalism, or even on Rawlsian liberalism, since, as Rawls himself suggests and others have amplified,¹⁹ the requirements of his (distinctively liberal) first principle of justice may require more economic equality than the difference principle can account for. That principle requires equal basic liberties including political liberties that reflect each citizen's equal share in political sovereignty, such as universal adult suffrage, rights to hold office and vote, and strong rights of freedom of expression and association. In addition, these are guaranteed not just formally, but also, in reply to a standard criticism of liberalism at least since Marx,²⁰ substantively. The first principle guarantees what Rawls calls the "fair value of the political liberties," which requires that political influence be "roughly equal."²¹ Economic inequality has the potential to undermine real political equality even while formal legal political equality is protected since, for example, the greater value to a wealthy person of the freedom of expression (consider the owner of a television station) crowds out some of the value of that politically important liberty for the less wealthy, destroying the morally required degree of political equality. Thus, the first principle may place its own limits on economic inequality, and they may be more severe than the Difference Principle's limits. If so, then even inequalities that benefited the worse off would be unjust if the resulting inequality were incompatible with the fair value of the political liberties.

Much needs to be done to see how much economic equality political equality requires. A clear and specific theory of substantive political equality is plainly called for, but not supplied, by Rawls's political theory. It is hard at the moment to say how radically egalitarian a substantial guarantee of political equality is. For example, should the value of the political liberties be equal even if (as may well be the case) equality could only be achieved at a very low level of individual influence? In any case, liberal political theory will lose favor again if it is complacent in the face of the cruel social, economic and political inequality in many existing liberal democracies and the Difference Principle alone is unlikely to be egalitarian enough. As for such inequality as is consistent with the Difference Principle, whether what is cruel about it can be adequately captured by a demanding theory of political equality remains, I believe, to be seen. On the other hand, if some or all prerogatives limiting the demands of the Difference Principle should be rejected, and if this rejection is legitimately available in

¹⁹PL, pp. 328ff.

²⁰See, for example, *Critique of the Gotha Program*.

²¹PL, p. 358.

political justification, the Difference Principle would lead in a highly egalitarian direction in its own right. Beyond arguing that this "strictarian" (as we might call anti-prerogatives positions) option is not open to Cohen, I have taken no position on its merits.

The Rawlsian idea of the basic structure of society figures centrally in Cohen's argument, and I would like to conclude by making a few points about it. Cohen supposes that Rawlsian theory faces a dilemma. Rawls proposes principles of justice only for the basic structure of society, not smaller, or larger, or other different contexts in which the context of justice might well apply. Either the institutions of the market and the family are part of the basic structure or they are not, and either way Cohen sees a problem for Rawls.²² If they are part of the basic structure, then the principles of justice must apply to their conduct, leading to Cohen's more egalitarian conclusions. If they are not part of the basic structure, then it is hard to see why the interests of the least well-off ought to be considered there at all, at least as a matter of social justice. In the latter case, it may seem hard to say, as I do, that the theory of justice does not condone egoism in market behavior. Then Cohen's challenge to Rawls would be to ask for an explanation why these institutions should not count as part of the basic structure even though their effects on the distribution of benefits and burdens in society is profound. In this way, Cohen sees the main Rawlsian route of escape from strict egalitarian conclusions as the "basic structure objection," the denial that certain institutions such as the market and the family fall under the authority of the ethos of fraternity since they are not part of the basic structure of society.²³

The reply I have offered, however, is not a version of the basic structure objection. I have not denied that the market or the family are part of the basic structure, nor that the choices in question fall under the principles of justice. Even if the family, for example, is part of the basic structure, this would not immediately inject the principles of justice into the proper motives of participants in family life. If the family is part of the basic structure all this means, at first, is that it is part of the network of social systems that ought to be set up so as to satisfy the two principles of justice. That does not speak to what a participant's motives should be like in the domestic sphere. However, when citizens are operating on the basic structure (as distinct from operating either *inside* or *outside* of it) they ought to shape it so as to meet the two principles of justice. As Rawls defines a well-ordered society, citizens desire to conform institutions to the principles in this way, even in their daily lives; this is included in the "sense of justice."²⁴ So I grant, for the sake of argument, that citizens in a well-ordered society would be motivated, even in their domestic and market choices, by the interests of the least well-off in society as a principle of social justice. My point is

²²*Action*, pp. 21–2.

²³*Action*, pp. 10–11.

²⁴TJ, p. 454.

that this is only one part of their motivation, and it is not always determinative even in a well-ordered society. There may also be prerogatives of self-interest, morality and affection, as Cohen seems bound to agree.

This suggests a partial structure of motives that Rawlsian theory can accept: individuals ought to concern themselves with the justice of the basic structure, with this requirement qualified by certain prerogatives. Deviations from the two principles are never just, even if they were caused by exercises of genuine prerogatives (as in cases where one has at the same time operated on and within the basic structure, by exercising a prerogative). Rather, institutions ought to be set up to meet the principles of justice even when individuals permissibly exercise the prerogatives it is reasonable for them to recognize. In this way social justice is *uncompromising*: no deviation, in the basic structure, from the two principles can be condoned as just. And yet, in Rawls's words, it is "*not all controlling*:" individuals are not required always to do whatever promotes the basic structure's conformity to the principles of justice even when their acts affect the basic structure. Still, with an ethos of fraternity (as a part of the sense of justice), a well-ordered society will not contain unbridled egoism in any context that affects the basic structure (granting for the sake of argument that this includes domestic and market institutions). A good citizen's motives, even in the economic market, will be some mix of self-interest, affection, weak and strong moral factors, and the promotion of social justice. Not just any mix of these will be compatible with the ethos of fraternity, but nor is a society-wide fraternity necessarily the morally controlling motive. The result of the prerogatives is that even in the well-ordered society some socially productive work will only be performed if there are inequality producing incentives.

I have argued that Cohen is wrong to think that a consistent Rawlsian theory must promote the ethos of fraternity to the status of an all-controlling motive in a well ordered society. He is nevertheless correct in his implication that, in Rawlsian theory, the needs of the least well-off assert themselves well beyond the relatively rare contexts in which a citizen is deliberating about how to design or adjust the basic structure of society. Cohen highlights the important fact that we are often working on the basic structure of society just by working within it, and so a Rawlsian sense of justice would bring a great proportion of our behavior under the authority, limited though it is, of the principles of social justice.