

Responding to G.A. Cohen:  
The difference principle, fraternity, and the labor theory of (moral) value.

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## **Introduction.**

One way of viewing Rawls's project in *A Theory of Justice* is as an attempt to show the compatibility of claims to political liberty and to political equality. To do this, Rawls constructs a hypothetical situation in which representatives of all members of a society draft the constitutional essentials, constrained only by the parameters of what is commonly agreed to be rational and reasonable conditions of fair contractual agreement. This is Rawls's "original position." Rawls argues that when constructing the constitutional essentials of our society in the original position the same constraints and concerns that give rise to our demands for liberty also give rise to our demand for equality. The structure of a just constitutional regime, then, is drafted in reference to these two fundamental principles—the "liberty principle" and, Rawls's name for his principle of equality, the "difference principle." The difference principle holds that "social and economic inequalities are...to be to the greatest benefit of the least advantaged members of society."<sup>i</sup> More specifically, the difference principle requires that the only permissible deviations from equality of resource distribution are those inequalities which are to the greatest advantage of the least advantaged group when compared with all other distributions, equality included. Inequality can elevate the position of the least advantaged even higher than an equal distribution because, Rawls claims, of the motivating mechanisms of the market. The greater rewards attached to the higher-salaried positions in society will attract talented persons to those positions and motivate them to expend greater effort than they otherwise would. Rawls claims that "by varying wages and salaries, more may be produced. This is because over time the greater returns to the more advantaged serve, among other things, to cover the costs of training

and education to mark positions of responsibility and encourage persons to fill them, and to act as incentives.”<sup>ii</sup> The argument for the difference principle, Rawls admits, is strongly supported by considerations of publicity, reciprocity, and stability essential to a well-ordered society, but is not a strict deduction of “moral geometry.”

This appeal to market incentives has come under scrutiny by Marxist critics, notably G.A. Cohen. Cohen claims that the talented workers refusal to work longer and harder hours without these incentives conflicts with Rawls’s condition of a well-ordered society that, as Rawls says, “everyone accepts and knows that others likewise accept, the same first principles of right and justice,”<sup>iii</sup> and that they “in everyday life...affirm and act from [those] first principles of justice.”<sup>iv</sup> He claims that if the talented truly endorsed the egalitarian spirit of the difference principle then they would not need market incentives dependent upon inequalities in order to work longer and harder hours. Instead it would make sense that they would be motivated merely by the spirit of justice without special remuneration, raising the standard of the least advantaged while preserving strict equality of distribution. Cohen attributes this flaw in Rawls’s argument to the arbitrarily narrow restriction of the domain of application of the difference principle to the “basic structure” of society, meaning its legally coercive institutions, and not to people’s everyday choices within that structure. “The personal,” Cohen insists, “is political,” and talented members’ habit of responding to or ignoring certain incentives, is a matter of justice.

My aim in this essay is to respond to Cohen’s critique, not by refuting his arguments, but by altering Rawls’s argument. It seems to me that Cohen’s arguments are valid as they stand as an internal critique of the logic of the difference principle as Rawls

defends it. In fact, I claim that the ambiguity in Rawls's defense of the difference principle is at fault—that the ambiguities Rawls sets up in his informal argument are precisely the ambiguities Cohen exploits. In defense of the difference principle, then, I give it an alternative defense, and one derived with the “moral geometry” Rawls seeks, but admittedly lacks. To do this I borrow from Jeffrey Reiman's “labor theory of the difference principle.” Reiman defends the difference principle on a moral analogue of Marx's labor theory of value. Without reference to Marx's (now unpopular) claim that market prices are regulated by the amount of labor they distribute, Reiman claims that from a *moral point of view* the sole salient feature about economic distributions and exchanges is that they represent a claim upon another persons labor, and thus a restriction of their liberty. The difference principle, Reiman claims, identifies economic distributions in which no party has a claim on another's labor that the latter would not consent to freely. The advantage of the labor theory of the difference principle for my purposes is that it defends the difference principle as an extension of the liberty principle, and thus as a principle of moral dessert, and not as a requirement of fraternity or benevolence—the grounds that Rawls appeals to and Cohen exploits. I hope then, to give a defense of the difference principle that appeals only to normative claims of libertarian dessert.

### **I.: The Original Position and the Difference Principle.**

Rawls theory of justice is a contractarian one, and so state coercive power derives its moral claim from universal consent by its subjects. This consent cannot be just verbal or written consent, since any contract may be assented to in bad faith by those that are

coerced by the other party, or mistakenly assented to by parties uninformed about the consequences of the contract. And since each and every party who is bound to that contract must be a signatory or else become an unconsenting subject, multi-generational government structures must include among their signatories the unborn future generations. These two considerations require parties to consent to contractual obligation not as a historical fact, but as a theoretical necessity in a hypothetical situation that models these requirements of justice. Only hypothetical contracts are morally binding with respect to state coercive power. To model these conditions, Rawls asks us to imagine a theoretical contractual situation, called the “original position,” in which all subjects of state coercive power are represented, that abstracts from current historical contingencies and asks the parties to unanimously consent to principles of justice as the constitutional basis of their society. This abstraction prevents the shortcomings of historical contracts.

As a *practical* condition of consenting to a *possible* contract, the parties in the Original Position are (1) considered as rational, in the sense familiar to economic theory as capable of means-ends reasoning. As a *moral* condition of consenting to a *just* contract, the parties must consent to the contract as persons regarded as free and equal from a moral point of view. As parties regarding each other as free and equal, the parties are seen as (2) reasonable, meaning that they are able and willing to put forward, defend, consider other, and revise their own principles of justice for public consideration. To be free, the parties must (3) have sufficient information to make an informed decision, including facts of economics, psychology, sociology, the scarcity of resources, and the necessity of social cooperation to exploit those scarce resources compatibly over a period

of time. They are also (4) aware of the fact that modern societies encompass a demographic and cultural pluralism as a matter of ineliminable fact, and that this diversity can only be overcome by state or cultural oppression. To be equal, the parties must be denied access to certain information that would allow them to bias the principles of justice in favor of one group at the expense of another. Rawls calls this situating the parties “symmetrically” and to do so places the parties behind a “veil of ignorance.”

Rawls explains

The veil of ignorance removes differences in bargaining advantages, so that in this and other respects the parties are symmetrically situated. ...By situating the parties symmetrically, the original position respects the basic precept of formal equality...: those similar in all relevant respect are to be treated similarly. With this precept satisfied, the original position is fair.<sup>v</sup>

In this situation, the parties of the Original Position (5) are not aware of themselves as “belonging to this or that social class, or as possessing these or those native endowments, or this or that (comprehensive) conception of the good.”<sup>vi</sup> Finally, the Original Position cannot make any psychological presuppositions in favor of one conception of justice over another, and for that reason the parties (6) do not act benevolently toward one another but are solely self-interested. This does not mean that the parties assume that their real-world counterparts are selfish, but that the parties are concerned only to further the interests of the selves that they represent, even if these ends, of which they are unaware, turn out themselves to be communal or benevolent.

The parties in the original position do not derive the principles of justice from these conditions, but instead, simply compare historically significant principles of justice side by side and choose their preference. Given the reasonable framework of the Original

Position, rational parties are situated in such a way as to be naturally compelled to choose the principles of justice that are most reasonable. Because the dominant principle of justice at Rawls's time, both academically and popularly, was a utilitarian or sometimes restricted utilitarian theory of justice, justifying libertarian capitalism and welfare-state capitalism, respectively, these are the dominant contenders against which Rawls defends his principles of justice, though his argument does not depend necessarily on that particular comparison. I will follow Rawls in demonstrating that the parties of the Original Position would rationally endorse Rawls's two principles of "justice as fairness" against, first, the principle of utility, and then, second, the principle of restricted utility.

Rawls first compares his principles of justice to unrestricted utility, which considers the distribution of social goods and wealth most just when it maximizes the aggregate happiness, or wealth considered economically, of the society as a whole compared with all other alternative distributions. The parties, Rawls claims, would favor his own principles of justice based on the preferability of his first principle, the "liberty principle," to the utilitarian theory of justice. The liberty principle states that "each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value."<sup>vii</sup> The reason the parties would prefer the liberty principle to the principle of utility is because, Rawls claims, the Original Position is constructed in such a way as to make it subjects risk averse—that they are cautious in their choices and avoid gambling the odds in hopes of greater rewards. This is because, deprived of any information that would allow them to choose risks that favor the advantage of their representative group over another, they

have no way of knowing that the particular risk they are taking has any likelihood of working in their favor instead of against them. So, for example, deprived of information about their race, the parties in the Original Position will not risk a constitutional regime that maximizes aggregate happiness by enslaving a small racial minority to a large majority, because the parties have no reason to believe they are not members of the minority. Also, because the parties in the Original Position choose the principles of justice that they must adhere to for a lifetime, they are risk averse because they recognize that these are choices in which, if they make mistakes, they cannot recover from. They only have one life to live. Just as it is considered unwise for children to place all their chips on the bet of becoming a rock star when they grow up, given they have only one life to live, and wise for them to pursue a career path that guarantees a baseline of security even in unfortunate circumstances, it would be irrational for parties in the Original Position to focus on the desirability of the best possible outcome rather than the tolerability of the worst possible outcome for them when the veil is lifted. Given this risk adversity, the parties in the Original Position seek to maximize the standard of living of the worst-off possible position they can occupy after the veil is lifted, rather than seek to maximize the best-off possible position. For this reason, the parties are favorable to an unconditional set of constitutional liberties that safeguard the life prospects of the worst-off members of society even at the expense of deflated expectations for the average or best-off members of society, who could otherwise have gained at the expense of the liberties of the worst-off. The parties would thus choose Rawls's principles of justice over a principle of unrestricted utility, because they favor the security of the liberty principle.



But suppose the parties split the difference, and advocate the principle of utility with the caveat that a certain standard minimum life standard must be met for everyone. This is called the principle of *restricted* utility. Would this satisfy the parties? Rawls's second task is to demonstrate that the parties would prefer his two principles of justice to the principle of restricted utility. This time, he claims, the parties would prefer justice as fairness to restricted utility by virtue of Rawls's second principle of justice, the "difference principle." The difference principle holds that "social and economic inequalities are to...be to the greatest benefit of the least-advantaged members of society." Unlike the principle of restricted utility, which holds that any inequalities are permissible provided that the least advantaged meet some basic standard of living, the difference principle holds that the *only* permissible deviations from an equality of distribution are the ones that maximally benefit the least advantaged members of society. In other words, the only way to justify increased resources for some is to show that those increased resources to the more advantaged are *necessary* to increase the standard of living of the least advantaged. Further, an inequality is only justified if it maximally benefits the standard of living of the least advantaged *compared to all other possible inequalities*. The principle of restricted utility, though it does raise the standard of living compared to both unrestricted utility and (perhaps) liberty alone without utility, does not satisfy the difference principle, because a smaller inequality which raises standard of the least advantaged is still possible. The difference principle thus holds that the only morally justifiable use of the productivity of a free market is as a means to produce greater standards for the least advantaged. The more advantaged can only gain if the less

advantaged gain with them. For this reason, Rawls calls the difference principle a principle of “mutual advantage.”

The parties in the Original Position favor the difference principle to the principle of restricted utility on grounds of publicity, reciprocity, and stability. First, Rawls claims that if citizens are to be regarded as free and equal in a well-ordered society, the grounds upon which the principles of justice are justified should be publicly known and consented to by all parties subject to them. This is the *publicity* requirement. Rawls explains “the hope is that a well-ordered society in which the full publicity condition is satisfied...is a society without ideology (understood in Marx’s sense of false consciousness).”<sup>viii</sup> Rawls’s claim is that the difference principle will be readily accepted and espoused by members of society on its own grounds, because no individuals’ life prospects are sacrificed at another’s expense as with restricted utility. Members of society would fully understand and endorse the normative rationale for the difference principle, as opposed to the grounds of restricted utility, the grounds of which Sidgwick says must be reserved for “an enlightened few.”<sup>ix</sup>

The difference principle is also favored to the principle of restricted utility on grounds of *reciprocity*. That is, unlike restricted utility which allows inequalities to worsen the comparative standing of the worst off provided they meet a social minimum, in the difference principle “those who are better off at any point are not better off to the detriment of those who are worse off at that point.”<sup>x</sup> Rawls explains that the parties in the Original Position “take equal division of income and wealth as their starting point. They then ask: are there good reasons for departing from equal division, and if so, which inequalities arising in what ways are acceptable?”<sup>xi</sup> The parties reason that the only

permissible inequalities are those that are motivated by reciprocal advantage, which respect the parties mutual status as free and equal without using another's worse off position to their advantage. Rawls claims that "the parties would accept the inequalities in income and wealth when these work effectively to improve everyone's situation starting from equal division. This suggests the difference principle: taking equal division as the benchmark, those who gain more are to do so on terms acceptable to those who gain less, and in particular to those who gain the least."<sup>xii</sup> Since the idea of a well-ordered society of free and equal persons requires that no advantage be gained to the detriment of others—that all advantage be reciprocal—the difference principle is preferable to the principle of restricted utility because the difference principle is motivated "by taking equal division as the starting point, together with an idea of reciprocity."<sup>xiii</sup>

The third defense Rawls gives of the difference principle against the principle of restricted utility appeals to grounds of *stability*. Rawls claims that a society can only be stable if its members can maintain a sense of self-respect, and feel that the society respects their worth and well being as an end in itself, rather than as a means to be exploited. Because of the reciprocity condition outlined above, the least advantaged have the requisite grounds of self-respect. It is to the more-advantaged that Rawls must address his argument that others are not gaining at their expense, fully respecting the more advantaged, and deterring them from social cooperation. First, Rawls claims that "the educational role of a public political conception"<sup>xiv</sup> will teach the more advantaged to value the reciprocity inherent in social cooperation outlined above, and so to habitually outweigh their self-serving acquisitions past what is allowed by the difference principle. They further come to morally value the work of the difference principle of exploiting the

contingencies of social class, native endowments, and good luck “only in ways that are to everyone’s advantage.” Because of their respect for this prohibition “mutual trust and the cooperative virtues are further encouraged.”<sup>xv</sup> The difference principle operates under a fraternal spirit. Out of fraternity, the more advantaged feel a sense of moral responsibility to restrain their acquisitions out of respect for the less advantaged, and a desire to gain only in ways that help those with whom they have a fraternal bond. Rawls’s claims that the parties in the Original Position will recognize the value of this fraternal unity for the self-respect of members of society, and thus for the stability of justice as fairness. Given these considerations of publicity, reciprocity and stability together, Rawls claims that the parties of the Original Position will see “the balance of reason as favoring the difference principle,” though it lacks the “moral geometry” of the argument in favor of the liberty principle.<sup>xvi</sup>

### III. Cohen’s Incentives Critique.

“Justice as fairness is not at the mercy, so to speak, of existing wants and interests.”  
 -John Rawls, *A Theory of Justice: Original Edition*, 261.

*Well-off*: “Look here, fellow citizen, I’ll work hard and make both you and me better off, provided I get a bigger share than you.”

*Worse-off*: “Well, that’s rather good; but I thought you were agreeing that justice requires equality.”

*Well-off*: “Yes, but that’s only as a benchmark you see. To do still better, both of us, you understand, may require differential incentive payments to people like me.”

*Worse-off*: “Oh. Well, what makes them necessary?”

*Well-off*: “What makes them necessary is that I won’t work as hard if I don’t get more than you.”

*Worse-off*: “Well, why not?”

*Well-off*: “I dunno...I guess that’s just the way I’m built.”

*Worse-off*: “Meaning, you don’t really care all that much about justice, eh?”

*Well-off*: “Er, no, I guess not.”

-Jan Narveson, “Rawls on Equal Distribution of Wealth.”

As we have seen, the difference principle holds that the only permissible deviations from an equal distribution of incomes in society are those in which the inequality produced raises the standard of the least advantaged persons in that inequality. What is more, that inequality must be to the greatest benefit to the least advantaged in comparison with all other possible distributions. It is possible for inequalities to raise the share for the least advantaged because the talented will produce more in an unequal distribution that rewards their talented behavior than in an equal distribution. This is because, Rawls claims, “by varying wages and salaries, more may be produced. This is because over time the greater returns to the more advantaged serve, among other things, to cover the costs of training and education to mark positions of responsibility and encourage persons to fill them, and to act as incentives.”<sup>xvii</sup> The less advantaged can reap the benefits of the extra output produced by the motivated talented persons placed in advantageous situations, either by redistribution or by a “trickle down” of the extra output, and for this reason the inequality is ultimate in the less advantaged group’s interest.

In “Where the Action is,” “Incentives, Inequality and Community,” and *Rescuing Justice and Equality*, G.A. Cohen takes issue with the particular inequalities that this description of the difference principle sanctions as just. “I accept the difference principle,” Cohen explains, “but I question its application in defense of special money incentives to talented people.”<sup>xviii</sup> From within the Rawlsian architectonic, Cohen identifies an “underlying tension between a *bargaining* conception and a *community* conception of social relationships.”<sup>xix</sup> This is because in his argument for the difference

principle and in his description of a well-ordered society Rawls emphasizes the *fraternal* and *justificatory ethos* indicative of substantive communal relations between society's members, but in his application of that principle to permissible deviations from equality based on incentives motivating the more talented groups to more advantaged positions, Rawls assumes that the talented individuals are motivated not by that fraternal, communal ethos, but by mutually disinterested prerogatives of self-interest indicative of a bargaining conception of social relations.

Cohen claims that the weight of Rawls's text is committed to the community conception. For example, the difference principle is described by Rawls, and indeed argued for, as expressing "the idea of not wanting to have greater advantages unless this is to the benefit of others who are less well-off...Members of a family commonly do not wish to gain unless they can do so in ways that further the interests of the rest. Now wanting to act on the difference principle has precisely this consequence."<sup>xx</sup> Also, Rawls describes the members of a well-ordered society as tied by bonds of "civic friendship," that they "in everyday life...affirm and act from the principles of justice,"<sup>xxi</sup> and that they seek "a public basis in the light of which [they] can justify to one another their common institutions."<sup>xxii</sup> Implicit in this idea, Cohen claims, is the idea of a "justificatory community," which is "a set of people among whom there prevails a norm (which need not always be satisfied) of comprehensive justification."<sup>xxiii</sup> By "comprehensive justification" Cohen means justification that satisfies what he calls the "interpersonal test." Ordinary justificatory claims find policy arguments to be satisfactory if their arguments are valid when presented from a third person point of view, that is, when the person stating the argument is a neutral observer and not one of the parties mentioned in

the premises of the argument. Call this the “impersonal test.” By contrast, the interpersonal test “tests how robust a policy argument is by subjecting it to variation with respect to who is speaking and/or who is listening when the argument is presented. ...If, *because* of who is presenting it, and/or to whom it is presented, the argument cannot serve as a justification of the policy, then whether or not it passes under other dialogical conditions, it fails (*tout court*) to provide a comprehensive justification of that policy.”<sup>xxiv</sup> Cohen claims, by way of example, that the interpersonal test identifies morally salient features of a policy that are not identified by the impersonal test, but are already implicit in our common moral understanding. Suppose a third-person observer of a kidnapping argues:

“Children should be with their parents.

Unless they pay him, the kidnappers will not return this child to its parents.

So this child’s parents should pay this kidnaper.”<sup>xxv</sup>

A condition of this argument’s soundness is that the speaker of the argument is not responsible for making the minor factual premise true. Compare the same argument now, to its form when presented by the kidnapper herself to the child’s parents:

“Children should be with their parents.

Unless you pay me, I shall not return your child.

You should pay me.”<sup>xxvi</sup>

In this case, the soundness of the argument is compromised by the fact that the kidnapper herself is responsible for making the minor, factual premise true. The kidnapper cannot appeal simultaneously to the major normative premise and the minor factual premise since the kidnappers responsibility for making the minor premise true stands as evidence

against the kidnappers true endorsement of the major normative premise. The argument is not sound, then, because the speaker has given us reason to believe that the major or minor premise is not true. One of the two premises must be false. This example demonstrates that the impersonal presentation of an argument for a moral imperative is not a definitive expression of the imperative's moral weight. Instead

the test of interpersonal presentation makes vivid that the justification of policy characteristically depends on circumstances that are not exogenous with respect to human agency...An argument changes its aspect when its presenter is the person, or one of the people, whose choice, or choices, makes one or more of the arguments premises true. By contrast with other presenters of the same argument, a person who makes, or helps to make one of its premises true can be asked to justify the fact that it is true.<sup>xxvii</sup>

We can say, then, that a policy lacks the requirements for justificatory community, implicit in Rawls text and shown to be morally salient by common moral sense through the kidnappers example, if it fails the test of interpersonal presentation. It follows then, that if a policy is to satisfy the conditions for justificatory community, all parties who wield the argument can be expected to justify why its factual premises are true, just as much as they can be asked to demonstrate why they value the normative premise.

Cohen claims that the incentives case of the difference principle does not pass the interpersonal test, and so lacks justificatory community. Specifically, the argument

- 1) The only permissible deviations from equality are those that are of the greatest benefit to the least advantaged members of society.
- 2) Because the greater rewards of advantageous position act as incentives for the more talented parties to work longer and harder hours, the talented will produce more on an



unequal distribution of income than on an equal distribution of income, raising the output available to distribute to the least advantaged, raising their share.

3) The community should offer incentives to talented parties on an unequal distribution of resources.

fails the interpersonal test when considered as an argument voiced by the talented to the untalented parties:

1) The only permissible deviations from equality are those that are of the greatest benefit to the least advantaged members of society.

2) Because the greater rewards of advantageous position act as incentives for us to work longer and harder hours, we will produce more on an unequal distribution of income than on an equal distribution of income, raising the output available to distribute to the you, raising your share.

3) You should offer incentives to us on an unequal distribution of resources.

This argument fails the interpersonal because the talented cannot justify making the minor premise true in light of their endorsement of the major premise. This is because a distribution could be conceived that was of greater benefit to the least advantaged party, namely, a distribution in which the more advantaged worked the requisite longer and harder hours to benefit the least advantaged without inegalitarian incentives. The most advantaged groups unwillingness to do the work without the incentives demonstrates that they do not endorse the difference principle.

This would, indeed, only be true if the talented were truly responsible for *making* the minor premise true, that is, if incentives motivation were a contingent and not a fixed coordinate of human psychology, or if it were not a necessary fact that “the rich cannot work hard unless they consume things that cost a great deal of money. ...that the allure of

big bucks sustains, and is needed to sustain, the motivational drive required for heavy effort.”<sup>xxviii</sup> Cohen claims that the fixity of this fact is just an illusion, that a historically contingent fact has been taken as a given of human psychology. Cohen claims that the apparent inability for the talented to work hard when the incentives are removed is just the ossification of a specific cultural habit. We can think of many societies throughout history in which the talented felt stronger (or weaker) bonds of benevolence and fraternity toward the downtrodden and thus worked longer and harder hours (or did not) from a sense of compassion rather than from self-seeking incentives. In fact, it seems to me obvious in our own society that the less advantaged groups’ ability to work long and hard hours without special remuneration without a sense of outrage and an expectation of greater rewards is evidence to the fact that these incentives are learned and not inborn. Incentive motivation is just a habit, for Cohen, and “habits can change [footnote: If not always at the at the level of the individual, then certainly at the social level, through reformed structures of education] and they are therefore beside the point in a fundamental inquiry.”<sup>xxix</sup> Thus incentives to the more talented, Cohen claims, are not fixed empirical facts but facts that the talented parties make true, and thus are called upon to justify in a community of comprehensive justification, which they cannot do. A society that offers incentives to the talented on the rationale of the difference principle cannot be said to be fully just, because it cannot be said to exhibit the justificatory community that Rawls espouses, and claims is embodied in the difference principle.

### **III. Cohen’s Basic Structure Critique.**

*“Only when the real, individual man reabsorbs 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.”*

*-Karl Marx, On The Jewish Question, 1844.*

A defender of Rawls might object to the incentives critique by claiming, as Rawls does, that “the principles of justice apply to the basic structure,”<sup>xxx</sup> and not to people’s quotidian choices, meaning the permissible choices members make within the basic structure. It would then be inappropriate to claim that the talented must apply the difference principle to their quotidian choices in order to demonstrate a genuine endorsement of the difference principle. After all, Rawls says that the difference principle “applies to the announced system of public law and statutes and not to particular transactions or distributions. Not to the decisions of individuals and associations, but rather to the institutional background against which these transactions and decisions take place.”<sup>xxxi</sup> The advantage of this approach is that “the distribution of material means is left to take care of itself in accordance with the idea of pure procedural justice.”<sup>xxxii</sup> Members of a fully just society can then go about their daily lives confident in the fact that background institutions are taking care of the demands of justice for them.

The problem with this approach, Cohen contends, arises when we ask – what exactly *is* the basic structure? In most places, Rawls treats the basic structure as the legally coercive structure of a society. He claims that he chooses the legally coercive structure as his subject “because its effects are so profound and present from the start.”<sup>xxxiii</sup> Later in his career, however, Rawls admits the family into the basic structure, which, though just as “profound and present from the start,” is not a legally coercive

institution, but a set of habitual practices. This is problematic for Rawls because, as Cohen explains,

once the line is crossed, from coercive ordering to the noncoercive ordering of society by rules and conventions of accepted practice, then the ambit of justice can no longer exclude chosen behavior, since, at least in certain cases, the prescriptions that constitute informal structure (think, again, of the family) are bound up with the choices that people customarily make.<sup>xxxiv</sup>

In other words, the addition of the family to the basic structure does not simply revise the laundry list of institutions that comprise the basic structure, but seriously challenges the criterion that counts any institution as part of the basic structure. This is because the inclusion of the family demonstrates that legally coercive institutions are not coextensive with what is “profound and present from the start,” and that habitual practices cannot be excluded from the basic structure. Given this relaxation of the criterion, there is no reason, *ex hypothesi*, to distinguish between legally coercive economic structures and the habitual culture of the free market when defining the basic structure, since both are equally “profound and present from the start,” and, as the family demonstrates, legally coercive structures have no automatic precedence over habitual cultural practices. The economic culture of a society must be let into the basic structure along with the family, lest Rawls “land himself with an arbitrarily narrow definition of his subject matter.”<sup>xxxv</sup>

What is unique about these two new institutions admitted to the basic structure, the family and the economic culture, is that unlike the legally coercive structure one cannot distinguish between the inaugural legislative acts that create those structures and the everyday permissible choices that occur within that structure. So, for example, though the legislation of a particular property law can be distinguished as an act from the

everyday adherence to that law by citizens, the creation and practice of a misogynistic culture, for example, cannot be distinguished. Having admitted the family and the market culture into the basic structure, we, then, cannot say in the spirit of “pure procedural justice” that habitual practices within that structure can be excluded from assessment by the difference principle. This includes, importantly, the cultural expectations of motivating incentives for harder, longer work hours. In a fully just society the principles of justice apply to the habitual, extra-legal culture of expectations of a society just as much as to the legal coercive structure. In the spirit of the Marx quote with which I opened this section, “the personal,” Cohen insists, “is political.”

This is not the claim that states should be permitted to paternalistically enforce habitual practices of justice on its constituents, it is the claim that the domain of justice reaches *beyond* the realm of permissible coercive state power. Cohen distinguishes between a “just distribution,” in which the difference principle obtains *in spite* of the unjust incentives of the more advantaged *as if the incentives were fixed facts*, and a “just society,” which obtains when the terms of the difference principle apply not

simply just as coercive *rules*, but also as an *ethos* of justice that informs individual choices. ... And what is required is indeed an ethos, a structure of response lodged in the motivations that inform everyday life, not only because it is impossible to design rules of egalitarian economic choice conformity which can always be checked, but also because it would severely compromise liberty if people were required forever to consult such rules.<sup>xxxvi</sup>

A “just distribution” can obtain in the absence of a “just society.” This occurs when, legally coercive policy conforms to the difference principle, but is limited by an ethos of

justice that permits inegalitarian incentive expectations, putting the least advantaged group in a worse position than otherwise possible under a full ethos of justice.

In fact, because a just distribution can obtain in an unjust society, Cohen calls the difference principle, “not a principle of justice but a principle for handling people’s injustice.”<sup>xxxvii</sup> Though justice in society requires an ethos of justice that renders incentives unnecessary, “according to an ancient Marxist wisdom, justice is not the first virtue of institutions in conditions of scarcity. Under those conditions a just distribution may be impossible to achieve, since powerful people will block it. In that case, striving for justice may make everyone worse off, and unjust laws and institutions should not be “reformed or abolished.”<sup>xxxviii</sup> The difference principle, then, only permits inequalities in expectation if a background of unjust incentive expectations is either treated as given, or is, for the time, unlikely to change.

As an extension of his argument that the difference principle only tolerates incentive-motivating inequalities against a background of unjust incentive expectations, Cohen also admits that the difference principle countenances inequalities as “a principle for handling people’s injustice” when past unjust ethoses have produced unjust social structures in the present. This is, in effect, the extension of the empirical application of the incentives critique over time. According to Cohen, then, the difference principle only sanctions inequalities “when we take as given unequal *structures* and/or inequality-endorsing *attitudes* that no one who affirms the difference principle should unprotestingly accept.”<sup>xxxix</sup>

#### **IV. Liberty, Equality, and Fraternity: The Benevolence Theory of the Difference**

##### **Principle.**

Rawls's argument for the difference principle is unsatisfactory, and I claim that it is precisely this shortcoming of the Rawls's argument that allows Cohen to make his critique. Rawls himself admitted dissatisfaction with the argument, claiming that "while I view the balance of reasons as favoring the difference principle, the outcome is certainly less clear and decisive than [for the liberty principle]," and that the "reasoning is highly intuitive and falls short of the ideal" of "a kind of moral geometry."<sup>xl</sup> In arguing for the difference principle against the principle of restricted utility, Rawls focuses on giving grounds for the more advantaged group to restrict their acquisitions, by allowing a considerable portion of the fruits of their labor to be distributed to the less advantaged. Rawls goes about this by defending the difference principle as a reciprocal principle of mutual advantage, in which parties "do not gain at one another's expense."<sup>xli</sup> The reciprocity argument, I claim, is the basis of the publicity and stability arguments, since the parties would only publicly endorse on informed reflection a principle of mutual advantage, and that the self-respect inherent in mutual advantage is what allows the difference principle to lend stability to society. In favor of reciprocity, Rawls claims that it is "one of the fixed points of our considered moral judgments that no one deserves his place in the distribution of native endowments,"<sup>xlii</sup> the talented can make no claim to deserve the fruits of their talented labor. The talented person's output is thus considered a common asset, and the talented "cannot say that he deserves and therefore has a right to a scheme of cooperation in which he is permitted to acquire benefits in ways that do not contribute to the welfare of others."<sup>xliii</sup> The difference principle is acceptable to both the

more advantaged and the least advantaged as a principle of “reciprocal advantage,” because the talents of the more advantaged are treated as common assets used to the betterment of those worst off in society.

This is a non-sequitur. Even if, what is a controversial claim, it is commonly accepted that “no one deserves his place in the distribution of native endowments,” and thus that his talents are not his in the sense of moral desert, it does not follow that they are a common asset, or more specifically that they really ought to belong to the least advantaged more than to the more advantaged. By analogy, it does not follow from the fact that the money I find on the sidewalk is not mine in the sense of moral desert that it is any more *ours* as a society or *yours* as the least advantaged person in the room. Even still, if it could be established that native endowments are not morally deserved, and if it could be further established that they are a common asset, it does not follow that the more advantaged are only entitled to use their talents in ways that *maximize* the standing of the least advantaged, only in ways that do not harm them. This is the non-sequitur that another critic of Rawls’s handling of the difference principle, Micahel Sandel, identifies in Rawls’s argument.

This leads us to the issue of justification and the question of how the argument from the original position serves to justify the principles that result. If society’s claim to the distribution of natural assets can be shown to be a product of the original agreement rather than its premise, then Rawls will have resolved the stand-off in favor of the difference principles without having to attribute an antecedent claim of desert to society as a whole. If, on the other hand, the notion of common assets should turn out to be a presupposition of the original agreement, then Rawls will have overcome the standoff only by implicit reliance on a claim of social desert, and hence reliance on a wider subject of possession, presumably the community, held to own the assets we individually bear. Once again an intersubjective dimension would intrude on Rawls’ individualistic project.



Although such a result would do considerable damage to the deontological ethic Rawls seeks to defend, I shall try to show that his version of contract theory *cannot avoid it*.<sup>xliv</sup>

Sandel's mischaracterization of Rawls's project as "individualistic" aside, the criticism of the argument for the difference principle here is valid. If the non-sequitur from individual non-ownership to common ownership of native endowments is to be made a valid inference, an additional normative premise affirming the betterment of other members of one's society must be established. This additional premise could either be an agreement of the parties in the original position or a premise external to the original position. Since the parties are assumed to be self-interested in the original position, they are eclipsed, it seems, from crafting together a claim of moral obligation to the least advantaged members of society, or to society as a whole. It is then not constructed by the parties in the Original Position. It follows, then, that this additional normative premise is assumed by Rawls. Rawls implicitly assumes that the more advantaged group has a *positive duty of benevolence* toward the less advantaged, that they have a *fraternal bond of substantive concern* for one another. Only then can Rawls's defense of the deep equality of the difference principle be valid. In Rawls's hands, then, the claims of *liberty* can only be compatible with the difference principle's *equality*, if we assume a common bond of *fraternity*.

Assuming such deep bonds of benevolence or fraternity is in conflict with the fundamental bases of Rawls's project. Rawls claims as his starting point the "fact of reasonable pluralism,"<sup>xlv</sup> or the fact that members of a society hold irreducibly different conceptions of the good life, including fundamentally different moral doctrines, and that because of this a political society cannot be a community, meaning a group "united in affirming one and the same comprehensive doctrine."<sup>xlvi</sup> Given this prohibition, the

guiding question of Rawls's inquiry asks how it is possible "that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical and moral doctrines?"<sup>xlvii</sup> The benevolence implicit in the difference principle threatens to override this pluralism by demanding substantive fraternal ties between the members of society.

The difference principle, then, in Rawls's hands, is *not* a principle of mutual advantage but a unidirectional principle of benevolence that the more advantaged hold for the less advantaged. Given that endorsing the difference principle means, for the more advantaged group, being tied by bonds of fraternal benevolence to the least advantaged, and not by ties of mutual advantage, it follows that endorsing the difference principle means for them displaying a concern for the least advantaged *independent of what they receive in return*. Only on this interpretation can one ask, as Cohen does, if the more advantaged are so concerned about the least advantaged, why they do not simply work for the welfare of the least advantaged *without benefit to themselves through inequality producing incentives*? In other words, claiming that a factual premise that affirms unwillingness to work for the least advantaged without incentives is incompatible with the difference principle as a normative premise *presupposes* that the difference principle is a principle of benevolence. If, on the other hand, the difference principle were truly defended as a principle of mutual advantage, the talented might have grounds for refusing to work harder without incentives if they received no advantage in reciprocation. This would be an interpretation of the difference principle in which affirming inequality-producing incentives *would* be consistent with a full endorsement of the difference principle. What is needed, then, is a defense of the difference principle that does not

make the mistake of implying that the difference principle is a principle operating a positive duty of fraternal benevolence on the part of the more advantaged. I turn, now, to such a defense.

## **V. The Labor Theory of the Difference Principle.**

“Part of the appeal of the difference principle is that it is the source of justifications which you can offer to *anyone* without embarrassment.”

-Christine Korsgaard.<sup>xlvi</sup>

In his “The Labor Theory of the Difference Principle,” Jeffrey Reiman gives an alternative defense of the difference principle based on a *moral analogue* of Marx’s labor theory of value (which, importantly, does not presuppose the economic validity of the labor theory of value). On Reiman’s defense, the obligation that the more advantaged groups have to restrict their income to that which to the maximal benefit of the worst off is not argued on implicit grounds of benevolence, but, I claim, as an extension of the liberty principle to the mechanisms of the market. That is, given the fact that property ownership constitutes a claim on someone else’s consensual or coerced labor, the difference principle necessitates that distribution of resources in which *both* the less *and* the more advantaged groups are free from unwanted coercion. This is because any gains on the part of the more advantaged beyond what is permitted by the difference principle constitutes a claim on the labor of the less advantaged that they would not, on informed reflection, endorse. On Reiman’s approach the difference principle is justified as a means to maximize the liberty of the members of society. As an extension of the liberty principle, the labor theory of the difference principle assumes the parties of the Original Position, and the more advantaged group, are motivated by only one normative

principle—the maximization of freedom from unwanted coercion for all—and not from the benevolence of fraternity. On Reiman’s defense, then, when asked why they would not work longer and harder hours for the benefit of the least advantaged with no motivating incentives in return, the more advantaged members of society could respond that to do so would be to constrain their freedom by giving the least advantaged a claim on their labor that they could not, on informed reflection, endorse. This would be to defend the greater share of the more advantaged on the same grounds that the maximized share of the least advantaged is defended on the labor theory of the difference principle: that any smaller share *for either party* would represent a constraint on the labor *of either party* that they could not, on informed reflection, endorse.

The labor theory of the difference principle (LTDP) differs from Rawls’s theory of the difference principle in terms of what each assumes to be the unit of distribution in the difference principle. For Rawls, economic distributions are interpreted as distributions of money or material goods, and so as *objects* that a person can own. For the LTDP, “for the purpose of assessing the justice of economic systems, it is appropriate to think of economic distributions as distributions of labor rather than of goods or money.”<sup>xlix</sup> Goods are valuable because they have been produced using other people’s labor, and money is valuable because it represents a claim on someone else’s labor. The value in property at base, then, represents the labor of another person, and property relations are in fact relations between people, namely, claims on other people’s labor. For the purpose of moral analysis, it is appropriate to consider distributions of labor relations the salient feature of economic distributions. This is because

if we consider the batch of goods that make up the social product, it is clear that the cost to individuals of that batch is either goods that they already own (for example, raw materials that

have gone into production) or the labor that they have contributed to producing those goods (including the labor of obtaining raw materials, and so forth). Since moral philosophical considerations rule out thinking of individuals as already owning some goods, we are left with the recognition that what it costs individuals to produce the social product is their labor. Counting this cost is legitimate in or out of the original position because, even if people own nothing, they know that they have bodies and finite lifespans and thus that, as a matter of fact, the goods in the social product will cost them some quantity of their irreplaceable time and energy, that is, their labor.<sup>1</sup>

Taking, then, coercive labor claims as the morally salient feature of property claims, the LTDP takes as its unit of distribution *time labored* and *effort expended* by those on whom I have a claim of labor. These factors do not include talent exhibited; labor done for the same amount of time at the same intensity is considered no more morally worthy if it is considered by that society to be talented labor. This is because, as Rawls claims, the chance distribution of talents among people is no grounds, or at least controversial grounds, for moral desert. However, because time labored and effort expended are literally the expenditure of a person's finite lifetime and life energy, something they can undeniably be said not to come upon simply by chance but to actually rightfully possess, "the amount of time a person labors for others is the result of her own life choices and actions and thus unquestionably a ground of desert."<sup>li</sup> Importantly, whereas Rawls's theory did not defend the difference principle on grounds of moral desert, the LTDP holds that a distribution is just when the parties *deserve* what they receive in a just distribution—no more and no less.<sup>1</sup>

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<sup>1</sup> This is an interpretation of the difference principle that both Rawls and Cohen reject. Rawls says that "There is a tendency for common sense to suppose that income and wealth, and the good things in life generally, should be distributed according to moral desert. ...[J]ustice as fairness rejects such a conception. Such a principle would not be chosen in the original position. There seems to be no way of defining the requisite criterion in that situation...The principles of justice that regulate the basic structure and specify the duties and obligations of individuals do not mention moral desert, and there is no tendency for distributive shares to correspond to it." Cohen takes advantage of this fact, as he recognizes that claims of

By claiming that the LTDP is grounded on a theory of moral desert, namely, that all people are entitled to their time labored and effort expended (hereafter “labor”), Reiman has, in effect, interpreted the difference principle as an extension of the liberty principle. If “each person has an equal claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme for all,” among which is included a liberty from unwanted coercion, and if all people can be said to deserve their labor, then it follows that any distribution which coerces labor from some party violates their liberty, violating the first principle. A distribution is just, then, when all parties would perform the labor required of them by that distribution willingly on informed reflection. The difference principle, Reiman shows, demands just such a distribution, by limiting the labor relations to those in which all parties gain from all labor they perform.

The just baseline from which the LTDP judges distributions is not an equality of money or goods, as it is for Rawls, but instead an equality of labor exchange rates. That is, a distribution demonstrates equality with respect to labor distributions if “the goods or money each person receives represents an amount of time labored by others that is equal to the amount of time she has labored herself.”<sup>lii</sup> Reiman claims that “we shall naturally judge” this baseline distribution as fully just because no exchange at this rate represents a gain or a loss of time labored or effort expended for any party. In the form of goods or money, each party gets from an exchange exactly what they put into it. Each party can be said to *deserve* that share of labor equal to their own time and effort labored. They

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morally deserve one’s labor could be the grounds of inequalities: “Entitlement or desert might justify vast differences between rich or poor: no limit to the inequality they might endorse is inscribed in them. This is particularly clear in the case of the entitlement principle that *I am absolute owner of my labor power*. When my power to produce is conceived as fully private property, I may do with it as I will and demand what I may for its use. [emphasis added]” Cohen’s worries, however, are unnecessary, since, by showing that property relations are relations between people, Reiman demonstrates that claims that “I am absolute owner of my labor power” are precisely the grounds on which we may object to “vast differences between rich and poor,” and to demanding “what I may” for labor.

deserve no more and no less. Notably, for the LTDP this baseline of equal exchange, even when fully realized, can tolerate inequality of wealth provided that the share of each party corresponds to precisely the amount of labor and effort they have expended.

From this baseline of equal labor exchange, it would be rational for parties to engage in laboring relations in which the returns for all parties exceeded the returns on equal distribution, and so each party would upon informed reflection, enter into the exchange freely. Assuming that by chance A is positioned by talent or social standing to make more productive use of B's labor than B is by chance able to,

it will be reasonable for B to contribute  $t + n$  hours of labor to A in return for A's  $t$  hours of labor, if the result is to increase output in a way that makes B better off than he was when he was giving and receiving  $t$  hours. ...Presumably this could happen where giving B's  $t + n$  to A worked as an incentive to bring out A's greater talents in a way that would be rational for A and B to exchange  $t$  hours of A's labor for  $t + n$  hours of B's, whenever the increment of  $n$  hours to A is sufficient to encourage her to devote her talents to the cooperative venture in a way that results in an increment to B of  $m$  goods.<sup>liii</sup>

Though the exchange rate deviates from a 1:1 or  $t:t$  exchange of labor of the equal baseline, it is in a way that benefits both parties involved, as in the new exchange rate,  $t+n:t+m$  (where  $n > m$ ), the returns of each party represents an amount of time labored by the party equal to *or greater than* the amount of time each party labored itself. Since both gain labor time and effort in the exchange, neither can be said to have their time labored or effort expended taken from them. They have not lost any labor that they morally *deserve*.

If however, party B works more than  $t+n$  hours for A, where  $n$  is the sufficient surplus of labor necessary to maximize incentive-motivated output for A, that labor in addition to  $t+n$ , call it  $p$ , represents units of labor for A that were not compensated by

additions of labor to B's reward  $m$ . The labor of  $p$  thus represents uncompensated labor, or labor that was exchanged below the  $t:t$  rate. In other words, it comprises units of B's net labor that is transferred to A without equal exchange. There is a threshold set above  $t+n$  where exchanges are not of mutual advantage since B loses shares of her labor that she deserves, that would not be endorsed by B on informed reflection for that reason, and thus, if this exchange were to occur, represents coerced labor, a violation of B's liberty. Increases in the wealth of the more advantaged that are not to greatest benefit of the least advantaged are made up of units of labor that are taken from the least advantaged without equal or greater exchange. The difference principle does not ask the more advantaged to give up their wealth to the least advantaged, it refuses to let the less advantaged labor for the more advantaged without compensation.

Reiman's interpretation of the difference principle, unlike Rawls's, does not command the benevolence of the more advantaged by commanding them to give up their property to the less advantaged from a feeling of fraternity. The illusion that economic distributions are distributions of money and goods alone and not distributions of labor relations, what Reiman calls the "money illusion," is responsible for the illusion that the difference principle requires a positive duty of fraternal benevolence rather than a negative duty to refrain from coercing others' labor. This is because the LTDP does not tell the more advantaged what they must do with *their* money or goods, but what they *cannot* do with *other people's* labor. In other words, "limiting this share is not imposing a sacrifice on the best off; it is making sure that those whose labor constitutes this share receive compensation in return and give no extra labor that does not receive such compensation,"<sup>liv</sup> or, in the terms of our example, "the difference principle is not



confiscating...from A. It is prohibiting A from obtaining additional labor from B without benefiting B in return. B's labor beyond the...hours necessary to produce  $[t+n]$  *results in no additional benefit for B.*'<sup>lv</sup>

Without the “money illusion” and the corresponding illusion of benevolence, the LTDP allows us to take advantage of the productive power of motivating incentives to the more advantaged where the Rawls's defense could not, for two reasons. First, because the LTDP is defended as a principle of mutual advantage, and not as a principle of benevolence, then, just as the least advantaged are protected by the difference principle from laboring for the more advantaged without compensation, *so too, are the more advantaged, protected by the difference principle from laboring for the least advantaged without compensation.* As a principle of “mutual advantage,” all terms of the difference principle must be reversible. Consider, again, our example. Recall that it was said that “the difference principle is not confiscating...from A. It is prohibiting A from obtaining additional labor from B without benefiting B in return. B's labor beyond the...hours necessary to produce  $[t+n]$  *results in no additional benefit for B.*” Now imagine that a critic of the difference principle, like Cohen, suggested that the difference principle required A to labor  $m$  without being incentivized by B's extra labor  $n$ . In any case, A's producing  $m$  requires additional time and effort than it would be required to produce  $t$ —that is why A needed incentives in the first place. To ask A to labor  $t+m$  and to distribute  $m$  to B, leaving only  $t$  compensation for A, is to ask A to labor for B  $m$  units without compensation. Just as the LTDP protected the least advantaged from uncompensated labor, it also protects the most advantaged from uncompensated labor. In other words, because it is a principle of mutual advantage, the claim protecting the least advantaged

from uncompensated labor must be reversible: in denying that A need to work  $m$  hours without compensation out of benevolence, “the difference principle is not confiscating...from [B]. It is prohibiting [B] from obtaining additional labor from [A] without benefiting [A] in return. [A]’s labor beyond the...hours necessary to produce  $[t+m]$  *results in no additional benefit for [A].*” What is true from the perspective of the least advantaged is also true from the perspective of the more advantaged: restricting the reach of mandatory benevolence, and thus the share of the least advantaged “is not imposing a sacrifice on the [worst] off; it is making sure that those whose labor constitutes this share receive compensation in return and give no extra labor that does not receive such compensation,” The same reversibility criterion cannot be satisfied by the benevolence defense of the difference principle; the least advantaged are given no mandate to be benevolent toward the more advantaged in return—how *could* such grounds be given? This protection of the more advantaged group’s labor by the difference principle truly embodies the criterion of reversibility implicit in the claims to “mutual advantage,” where Rawls’s benevolence defense could not.

Second, because the LTDP is not defended by an (implicit) appeal to the benevolence of the more advantaged, but on a prohibition of coerced labor and the rational appeal of mutual advantage, *the more advantaged are not assumed to have a deep bond of fraternal benevolence to the least advantaged.* As I have shown, Rawls’s defense of the difference principle depends upon an assumption that the more advantaged have a deep sense of fraternal benevolence toward the least advantaged. One could then ask, as Cohen does, why the most advantaged do not simply *give up* their labor to the less advantaged to satisfy these bonds of fraternal benevolence. On the LTDP, the more

advantaged can be assumed to have no more of a concern for the least advantaged than a desire not to violate their liberty as a condition of social cooperation, and need not be asked why their benevolence does not eclipse their habit of expecting inequality-producing incentives. This, I claim, is more consistent with Rawls's overall project than the benevolence defense of the difference principle. Rawls claims as his starting point the "fact of reasonable pluralism," and that because of this a political society cannot be a community, or a group "united in affirming one and the same comprehensive doctrine." The guiding question of Rawls's inquiry asks how it is possible "that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical and moral doctrines?" By implicitly appealing to grounds of benevolence so deep that they inspire the more advantaged to sacrifice substantial life prospects for the benefit of the less advantaged, Rawls risks overriding this profound division of comprehensive doctrines and violating the fact of reasonable pluralism. By defending the difference principle as an extension of the liberty principle, the LTDP is defended as a reasonable restraint against unwanted coercion among cooperating people, rather than as an expression of substantive communal ties between them. Without these ties of benevolence, the labor without compensation that Cohen asks of the more advantaged becomes a supererogatory duty contingent upon the demands of their own comprehensive doctrine, and not a demand of justice itself.

To claim that the parties are not tied by bonds of fraternity is not, however, to claim that they are not tied by bonds of what Cohen calls "justificatory community." Rawls makes two claims of fraternity that are exploited by Cohen. The stronger claims that ground the difference principle I have replaced with the claims of desert in the

LTDP. The weaker claim that reasonable parties in a well-ordered society give reasons to each other for policy decisions remains. When making arguments for the application of the difference principle, parties are still required to justify factual premises of that argument that they make true. This is, in effect, to concede to Cohen that “the personal is political” by claiming that people’s quotidian choices must be responsive to the principles of justice as the legally coercive structures must be. However, by divorcing our defense of the difference principle from comprehensive claims of benevolence, we have relaxed the demands of the difference principle upon the personal. The parties are not required to show that their choices are in accordance with the comprehensive demands of benevolence, but only that those premises are reasonable, and thus do not violate the liberty principle. Against Cohen, David Estlund identifies a set of reasonable, non-tainting but potentially inegalitarian motives that might serve as factual premises limiting the more advantaged group’s work without extra remuneration. By non-tainting, I mean a motive that does not, in and of itself, tarnish the justice of the resulting distribution. Estlund distinguishes between

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. ...But a concern for justice in the family [for example] 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 the standards of social justice into conduct of certain more local relationships and endeavors.<sup>lvi</sup>

In an exchange with Samuel Scheffler, Cohen concedes that, though his incentives critique condemns unrestrained egoistic market-maximizing behavior, his critique does

“not aim to impugn the integrity of a conception of justice which allows the agent a certain self-regarding prerogative,”<sup>lvii</sup> suggesting he holds the latter interpretation of the relationship between the personal and the political. Given this allowance, Estlund identifies two other non-tainting but potentially inequalitarian motives that Cohen must, by extension, allow. Since it is more benevolent and less egoistic than a “self-regarding prerogative,” Estlund claims that Cohen must allow motives of affection as a non-tainting but potentially inequalitarian motive. For example, a wife may work a relaxed job as a receptionist, and refuse to utilize her talent as a potential medical professional unless the effort expended developing these talents is compensated sufficiently to allow her to support her husband to stay at home raising their child. To do so would be to refuse to expend effort that would be to the benefit of the least advantaged out of an inequality-producing incentive, but since this motive is less egoistic than the “self-regarding prerogative,” that Cohen allows for, Cohen must allow for it as well. Also, if certain local moral demands outweigh the demands of justice, then Cohen ought to, by extension, allow them. For example, if I have, by accident, deleted the only draft of an upcoming book off of a colleague’s computer, my local moral demand to spend long and rigorous hours helping that colleague recreate the draft outweighs the demands for the same hours to be spent maximizing the position of the least advantaged group. These self-regarding, affectionate, and moral prerogatives are not exhaustive, but they begin to show how personal considerations may, more often than not, outweigh the demands of justice in personal decisions. Estlund images that

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

vocation. Sara will do it only if it would financially allow her to visit her distant friend as often as he visits her.<sup>lviii</sup>

And so on. As Cohen's argument shows, these allowances could not be made on the benevolence defense of the difference principle, since if the personal is indeed political, the fraternal ethos of benevolence requires that it be political all the way down, allowing for no self-regarding incentives. If however, we take Cohen's basic structure critique to be valid, but limit the extent to which the personal is political, claiming that quotidian choices must be justified as *reasonable* to all parties affected, then a these self-regarding incentives retain a buffer (though not a barrier) against the full intrusion of the principles of justice. Of course, to claim that quotidian choices are moderately protected by a buffer, but not a barrier, to regulation by the principles of justice is ambiguous. However, the ambiguity may be viewed as a historical and empirical contingency rather than a theoretical ambiguity when we notice the following feature of the LTDP.

Recall that Cohen criticized the difference principle for being "not a basic principle of justice but a principle for handling people's injustice," meaning that the difference principle can only countenance inequalities when an unjust ethos of expectations or past injustices are taken as given. The LTDP differs from Rawls's interpretation of the difference principle, and avoids this critique, in that Reiman, unlike Rawls, interprets the difference principle as a purely *historical* principle, meaning that in different material conditions throughout a society's history the principle endorses different degrees of inequality. This contrasts with the dominant interpretation of the difference principle. Samuel Freeman, for example, imagines the difference principle as selecting certain economic systems as just independent of their material conditions:

Imagine the difference principle applied by legislators to choose from among a range of economic systems, starting from libertarian *laissez-faire* capitalism on the right, through classical liberalism, then a variety of mixed economies, all the way to Soviet-style command economy on the left. ...Rawls conjectures that the preferred system will be either a property-owning democracy or market socialism.<sup>lix</sup>

In contrast, Reiman claims that “the difference principle is neutral as to capitalist, socialist, and communist systems of distribution. Which system is just, according to the principle, depends strictly on empirical conditions.”<sup>lx</sup> This is because the difference principle is a *hypothetical* principle. An equivalent way of wording the principle is “*if and only if* there are inequalities which are to the maximal benefit of the least advantaged, *then* they are permissible.” It follows, then, that in material conditions where inequalities are not to the benefit of the least advantaged, no inequalities are permitted. This would occur in cases of material and technological abundance, in which the goods and labor needed to incentivize all talented parties could be provided without the labor of other parties. Prior to that abundance, the difference principle endorses inequalities which, through incentives, stimulate the productive output of that society by motivating the talented. Capitalism (defined by free market exchange) socialism, and communism, (defined by the Marxist slogans from *The Critique of the Gotha Program*, “to each according to his time labored,” and “from each according to his ability, to each according to his need,” respectively) are not, *a priori* favored or condemned by the difference principle, but

all three turn out to be “cases” of the difference principle: The difference principle requires socialism over capitalism when historical conditions are such that incentives are no longer necessary to maximize the share of the worst off, and it requires communism over socialism when

historical conditions are such that it is no longer necessary to tie consumption to production and measure each by a common standard.<sup>lxi</sup>

This interpretation of the difference principle *absorbs* Cohen's critique that the difference principle is "not a basic principle of justice but a principle for handling people's injustice." Cohen's critique only carries weight if the difference principle is seen as statically endorsing, *a priori*, one economic system over another.<sup>2</sup>

By interpreting the difference principle as a historical principle, Reiman has cast the difference principle as a principle for handling *nature's* injustice, that is, the original scarcity of resources that gives rise to interpersonal conflict. That injustice is handled by allowing for productive inequalities that all would consent to until the productive inequality is no longer to the benefit of all. Only then would inequalities not be permissible, because nature's and people's injustice would have been handled, meaning the scarcity of resources that required a productive inequality would be overcome.<sup>3</sup>

Justifying greater inequalities now in the hopes of producing greater equalities in the future is not an idea external to Rawls's system. Given that the parties in the original position represent not just current citizens but also future generations subject to the same constitutional essentials, Rawls claims that the egalitarian demands of the difference principle are restricted by a "just savings principle." This principle states that "the

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<sup>2</sup> There is textual evidence that Cohen reads the difference principle as favoring particular economic systems independent of material conditions, for example, "the fact that the argument [for the difference principle] undergoes this devaluation when it occurs in the interpersonal setting should affect our assessment of the nature of the society *that the incentive justification by implication recommends*. [emphasis added]"

<sup>3</sup> My argument, I imagine, would not satisfy Cohen, because his writings often suggest that he rejects that interpersonal conflict is an inevitable reaction, and a necessary solution, to natural scarcity. For example: "the further back one goes, temporally and causally, in the construction of the feasible set [of possible economic distributions here and now], the more one encounters open possibilities that were closed by human choice, and the harder it is to identify inequalities that do not harm the badly off." From this perspective, there is no natural injustice to be overcome, and thus inequalities are never necessary. Though I cannot defend the claim here, I find Cohen's historical account fairly unlikely.



appropriate expectation in applying the difference principle is that of the long-term prospects of the least favored *extending over future generations*.<sup>lxii</sup> This principle is applied when the parties ask themselves

how much they would be willing to save at each stage of advance on the assumption that all other generations have saved, or will save, in accordance with the same criterion. They are to consider their willingness to save at any given phase of civilization with the understanding that the rates they propose are to regulate the whole span of accumulation.<sup>lxiii</sup>

Thus the parties are to constrain the difference principle's push toward contemporary equality by the demands of future justice. This is precisely the logic by which the LTDP justifying inegalitarian motivational incentives under a capitalist economic distribution. By recognizing that these inequalities are more productive than strict equality, and thus increase the amount available to the least advantaged in future generations, the members of society tolerate a modest inequality in the present for the sake of a more just distribution in the future. Reiman's historical reading of the LTDP is not external to Rawls's system then, but an exaggeration of the importance of the just savings principle.

As I said, this historical treatment resolves the apparent ambiguity in saying that self-regarding prerogatives are protected by a buffer, but not a barrier, to the principles of justice. Reasonable self-seeking prerogatives are only in conflict with the demands of the principles of justice in conditions of material scarcity. For example, I must choose between devoting my time and money to the Philosophy Honors Society and to philanthropy for the least advantaged only when there is not enough time and money for both. As the productive inequalities permitted by the difference principle raise the wealth of a particular society, the conflict between these two commitments relax, and simultaneously the buffer between self-regarding prerogatives and the demands of justice

relax. When the communist economic distribution obtains, the buffer between self-regarding prerogatives and the demands of justice dissolves, just as the range of permissible inequalities collapses. Then we can say, with Marx that “only when the real, individual man reabsorbs in himself the abstract citizen... will human emancipation have been accomplished.” However, this would be a state of affairs fully in accord with the difference principle.

## **VI. Conclusion.**

As I have shown, Rawls’s argument for the difference principle depends implicitly on an unspoken normative premise that the more advantaged groups in society have a positive obligation from a deep sense of fraternity to maximize the life prospects of the less advantaged. This implicit normative premise conflicts, however, with the cases which constitute fully just applications of the difference principle on Rawls’s terms, since these cases, by depending on the need for inequality-producing incentives to the more advantaged members of society, assume that the more advantaged are not principally motivated by concern for the least advantaged, but are instead self-interested. Cohen’s incentives critique exploits this ambiguity in Rawls’s argument. Cohen reasons that, if the personal is indeed political, then the more advantaged should be just as compelled to demonstrate fraternal benevolence to the more advantaged in their quotidian choices as they do to the legally coercive structure of society. If this is the case the difference principle cannot endorse any substantive economic inequalities. I claim, however, that this is not the case. Not only does Rawls’s argument for the difference principle lack a “moral geometry,” but its implicit fraternal premise threatens to override the fact of

reasonable pluralism upon which Rawls's project is based. As an alternative, Reiman's "labor theory of the difference principle" allows us to defend the difference principle as an extension of the liberty principle, given the nature of property relations. Thus, rather than supplementing *liberty* with *equality* by way of deep *fraternity*, the difference principle is simply an elaboration of the liberty principle. In this way, even if we concede to Cohen that "the personal is political," we are able to defend the shares allotted to the more advantaged on grounds of desert – specifically that they are entitled to their time labored and effort expended or its equivalent in exchange. Allowing for this inequality allows us to retain the egalitarian spirit of the difference principle while still allowing members of society the freedom of certain self-regarding prerogatives. Further, it allows us to harness the productive power of these inequalities in ways that will allow for more egalitarian distributions in the future, and thus an eventual harmonizing the demands of the personal and the political.

## Works Cited

- Cohen, G. A. "Incentives, Inequality, and Community," in G.B. Peterson (ed.) *The Tanner Lectures of Human Values*, vol. 13. Salt Lake City, UT: University of Utah Press. (1992)
- Cohen, G. A. *Rescuing Justice and Equality*. Cambridge, Mass.: Harvard UP, 2008. Print.
- Cohen, Gerald A. "Where the Action Is: On the Site of Distributive Justice." *Philosophy and Public Affairs* 26.1 (1997): 3-30.
- Estlund, David. "Liberalism, Equality and Fraternity in Cohen's Critique of Rawls." *Liberalism: Critical Concepts in Political Theory*. Ed. G.W. Smith. Routledge. 2002. 411-427.
- Freeman, Samuel. *Rawls* (Routledge Philosophers). New York: Routledge, 2007.
- Rawls, John. *A Theory of Justice: Revised Edition*. New York: Belknap P, 1999.
- Rawls, John. *Justice as Fairness: A Restatement*. Grand Rapids: Universal Law Co Ltd, 2004.
- Rawls, John. *Political Liberalism* (Columbia Classics in Philosophy). New York: Columbia UP, 2005.
- Reiman, Jeffrey H. "The Labor Theory of the Difference Principle." *Critical Moral Liberalism: Theory and Practice*. Lanham, Md.: Rowman & Littlefield, 1997. 95-123. Print.
- Sandel, Michael J. *Liberalism and the Limits of Justice*. Cambridge, UK: Cambridge UP, 1998. Print.
- Scheffler, Samuel. "Is the Basic Structure Basic?" *The Egalitarian Conscience: Essays in Honour of G.A. Cohen*. Ed. Christine Sypnowich. New York: Oxford UP, 2006. 102-30. Print.

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- <sup>i</sup> Rawls, *A Theory of Justice*, 65.
- <sup>ii</sup> Rawls, *Justice as Fairness: A Restatement*, 63.
- <sup>iii</sup> Qtd. in Cohen, *Rescuing Justice and Equality*, 74.
- <sup>iv</sup> *Ibid.*, 121.
- <sup>v</sup> Rawls, *Justice as Fairness: A Restatement*, 87.
- <sup>vi</sup> *Ibid.*, 82.
- <sup>vii</sup> Rawls, *Political Liberalism*, 5.
- <sup>viii</sup> Rawls, *Justice as Fairness: A Restatement*, 121.
- <sup>ix</sup> Qtd. in Freeman, *Rawls*, 163.
- <sup>x</sup> Rawls, *Justice as Fairness: A Restatement*, 124.
- <sup>xi</sup> *Ibid.*, 123.
- <sup>xii</sup> *Ibid.*
- <sup>xiii</sup> *Ibid.*, 123.
- <sup>xiv</sup> *Ibid.*, 146.
- <sup>xv</sup> *Ibid.*
- <sup>xvi</sup> *Ibid.*, 133.
- <sup>xvii</sup> Rawls, *Justice as Fairness: A Restatement*, 63.
- <sup>xviii</sup> Cohen, *Rescuing Justice and Equality*, 32.
- <sup>xix</sup> *Ibid.*, 82.
- <sup>xx</sup> Rawls, *A Theory of Justice*, 105.
- <sup>xxi</sup> *Ibid.*, 497.
- <sup>xxii</sup> Qtd. in Cohen, *Rescuing Justice and Equality*, 45.
- <sup>xxiii</sup> *Ibid.*, 43.
- <sup>xxiv</sup> *Ibid.*, 42.
- <sup>xxv</sup> *Ibid.*, 39.
- <sup>xxvi</sup> *Ibid.*
- <sup>xxvii</sup> *Ibid.*, 38.
- <sup>xxviii</sup> *Ibid.*, 49.
- <sup>xxix</sup> *Ibid.*, 50.
- <sup>xxx</sup> Rawls, *Justice as Fairness: A Restatement*, 39.
- <sup>xxxi</sup> Rawls, *Political Liberalism*, 283.
- <sup>xxxii</sup> Rawls, *A Theory of Justice*, 478.
- <sup>xxxiii</sup> *Ibid.*, 7.
- <sup>xxxiv</sup> Cohen, *Rescuing Justice and Equality*, 134.
- <sup>xxxv</sup> *Ibid.*, 136.
- <sup>xxxvi</sup> *Ibid.*, 123.
- <sup>xxxvii</sup> *Ibid.*, 84.
- <sup>xxxviii</sup> *Ibid.*
- <sup>xxxix</sup> *Ibid.*, 33.
- <sup>xl</sup> Rawls, *Justice as Fairness: A Restatement*, 133.
- <sup>xli</sup> Rawls, *A Theory of Justice*, 104.
- <sup>xlii</sup> *Ibid.*, 89.
- <sup>xliii</sup> *Ibid.*, 104.
- <sup>xliv</sup> Sandel, *Liberalism and the Limits of Justice*, 102.
- <sup>xlvi</sup> Rawls, *Justice as Fairness: A Restatement*: 84.
- <sup>xlvi</sup> *Ibid.*, 34.
- <sup>xlvi</sup> Rawls, *Political Liberalism*, xviii.
- <sup>xlvi</sup> Korsgaard, *Creating the Kingdom of Ends*, 310.
- <sup>xlix</sup> Reiman, "The Labor Theory of the Difference Principle," 97.
- <sup>l</sup> *Ibid.*, 100.
- <sup>li</sup> *Ibid.*, 104.
- <sup>lii</sup> *Ibid.*, 103.
- <sup>liii</sup> *Ibid.*, 104.
- <sup>liv</sup> *Ibid.*, 110.
- <sup>lv</sup> *Ibid.*, 109.

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- <sup>lvi</sup> Estlund, “Liberalism, Equality and Fraternity in Cohen’s Critique of Rawls,” 417.  
<sup>lvii</sup> Cohen, *Rescuing Justice and Equality*, 71.  
<sup>lviii</sup> Estlund, “Liberalism, Equality and Fraternity in Cohen’s Critique of Rawls,” 418.  
<sup>lix</sup> Freeman, *Rawls*, 105.  
<sup>lx</sup> Reiman, “The Labor Theory of the Difference Principle,” 113.  
<sup>lxi</sup> *Ibid.*, 117.  
<sup>lxii</sup> Rawls, *A Theory of Justice*, 252.  
<sup>lxiii</sup> *Ibid.*, 255.