

“Responsibility in Theories of Social Justice”

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I/

This paper examines differences in responsibilities for individuals and institutions in moral and political theories of social justice. These differences can be present, to a certain extent, without influencing the demands of social justice itself. This paper shows, however, that exploring differences in the scope of the responsibilities for individuals and institutions reveals substantial disagreement concerning the nature and content of social justice itself.

In the moral conception of social justice, its demands are present with or without institutions. The continuity of principles from individuals to institutions is constitutive of what is often referred to as a ‘monistic’ theory of social justice. In the moral view, social justice begins as a question of inter-personal morality, and of the responsibilities persons have towards one another as such. In this respect, institutions do not create new normative terrain, or a new subject. Instead they are seen instrumentally, as collective mechanisms to more closely realize what are ultimately pre-political principles. In the moral conception of social justice the same principles that apply to institutions come from the responsibilities of individuals, perhaps in certain relationships, to each other. According to Cohen (2008), differences in individual and institutional responsibilities for social justice strongly affect the sort and degree of inequality social justice allows.

The political conception of social justice advances a much different understanding of responsibility. In the political conception, institutionalized modes of social cooperation are a requisite for questions of social justice. This is not to deny the existence of moral responsibilities between individuals that hold in a pre-political context, but suggests only that these are not the obligations of social justice (Rawls, 1999: 93-101). Indeed, in the political conception, social justice is not a virtue of the relationship between persons per se, but of the narrower relationship between persons and institutions – the political relationship. In the political view, institutions are not the mechanisms by which prior principles are more efficaciously realized. Institutions, rather, are the subject of social justice. As a result, principles for individuals do not directly lead to principles for institutions (nor vice versa). In the discontinuous view, social justice generates a ‘dualistic’ conception of responsibilities for individuals and institutions.

It is suggested that the political conception has certain advantages when it comes to reconciling shared political principles and responsibilities with societal diversity. However, limiting the scope of justice raises motivational questions as to whether individuals will accept the responsibilities of justice in both their political and private lives. In regard to these challenges, it is argued that in both the moral and political conceptions institutional stability and egalitarian range require that individuals take on informal responsibilities in approaching their choices within an institutional framework. The political framework, and the priority of liberty, prevent enforcement of direct responsibilities for social justice, and require instead processes of institutional learning and interest-based solidarity. In principle, the moral conception permits formal enforcement of direct individual responsibilities.

Proponents such as Cohen, however, are reluctant to reject liberal limits on justicizing formal individual responsibilities, thus significantly reducing differences in institutional outcomes.

II/

In the political approach, society is theorized along the social contract model, and is conceptualized as a 'system of mutual advantage' that is regulated by the principle of equality (Rawls, 1999; Heath, 2006). Social cooperation is motivated in large part by efficiency gains, and thus rests on a general and shared range of interests. The mutually beneficial contract creates formal political responsibilities, which are accepted and frequently performed from shared interests, coupled with the informed belief that compliance is broad.

For some contractualists, enforcement of a limited and negative range of mutually beneficial responsibilities constitutes the extent of legitimate political obligation (J. Buchanan, 1975; Gauthier, 1986). This understanding is criticized for favouring the initially advantaged, understood in a broad way, which unduly allows 'baseline inequalities' to be reflected in the terms of social cooperation (Barry, 1995; A. Buchanan, 1990). Mutual advantage, and the principle of efficiency, effectively grant the initially advantaged (those who are less immune to certain risks and more able to privately manage risk) a 'veto' over a wide range of egalitarian reforms that even basic social justice requires (Sen, 1970). While there is reasonable debate as to whether the advantaged's 'feasible set' might be larger than a normally narrow construal (e.g., Heath, 2006a), straightforward mutual advantage theory leaves a rather broad range of responsibilities for claims made from positions of disadvantage beyond the egalitarian scope of social justice.

While such a system may prove stable over time (though would likely be threatened by the inequality it produces and fails to address), it lacks the egalitarian legitimacy claimed by democratic states in relation to their citizens. In the democratic state, '(j)ustice is prior to efficiency and requires some changes that are not efficient' to institutions (Rawls, 1999: 61). This is done politically by regulating institutional functioning by principles of social justice. The political-legitimacy function addresses both modes of producing cooperative benefits (burdens), as well as institutionalized patterns of the distribution of the benefits. Under an unequal status quo, or baseline, most applications of the principle of equality will require just, though inefficient, change to social classes.

Equality generates a host of political responsibilities corresponding to social justice on behalf of the state and individuals. A primary debate in the theory of social justice is thus; what comprises the range of legitimate responsibilities justice imposes on the state and individuals, beyond those grounded in efficiency? In the political approach, the responsibilities for individuals are derived from the rules for just institutions, and elicit both positive and negative performance. The responsibilities for individuals are generalized as the formal obligations of citizenship, the extent of which social justice itself establishes, particularly by the basic liberties. Politically, this mode of institutional regulation works first by ruling out certain forms of treatment by identifying unacceptable and acceptable forms and sources of inequality.

The liberty principle rules out inequality in basic civil and political rights (1999: 57-63). It concerns formal entitlement, and while often theorized as negative rights requiring only responsibilities of restraint, equality of basic liberties imposes significant positive actions and costs (Holmes and Sunstein, 1999). This suggests the egalitarian nature, rather than the efficient nature, of justifying even formal equality. What Rawls calls the 'liberal' principle of equality requires eliminating informal opportunity inequalities, permitted by natural liberty (1999: 63). This imposes responsibilities on the state to reform the mediating effects of features of the person and of socioeconomic conditions on the life chances of individuals. *Democratic equality* (the addition of the second part of the second principle, the difference principle), builds on the idea that true equality of opportunity is impossible, and thus demands further equalization – up to the point where equality begins to worsen the condition of the worst off (65). Injustice is, then, 'simply inequalities that are not to the benefit of all' (54).

Social justice thus charges the democratic state with numerous responsibilities in avoiding and reforming a wide range of social inequalities. Individuals, however, do not have the same direct responsibilities in their daily lives. In the political conception, rather, enforced responsibilities for individuals are restricted to compliance with formal rules. Individuals thus have only indirect responsibilities with respect to realizing social justice.

One significant reason behind the firm distinction between rules for individuals and institutions is the nature of justice itself, according to which its principles are 'lexically ordered', such that the first has priority over the second, the first part of the second has priority over the second part. Priority entails that higher ordered principles restrict modes of realizing lower ordered ones. Thus, for example, Rawls thinks that basic liberties prevent substantial intrusion into the inner-cultural life of families in the name of equalizing opportunities, though it is open to basic liberties themselves. However, without directly altering the inner-motivations of families, the institutionalized effects of differences of families on opportunities can rightly be offset by policy actions such as mandatory schooling, the restriction of private provision. Similarly, the basic liberties of mobility and occupational choice restrict the range of formal responsibilities for individuals in the labour market that the difference principle can impose, while imposing no limits on the range that post-tax income can be equalized.

The political conception of social justice is thus *dualistic* with respect to responsibilities for individuals and institutions. The principles of social justice uniquely concern the responsibilities institutions have in their functioning towards persons as citizens, while leaving persons in their non-political lives to pursue non-egalitarian ends. Social justice begins with the institutions of social cooperation, and concerns the conditions of their free acceptance by those subject to their effects. Questions of social justice and injustice are largely evaluative and so require institutional experiences and inequalities.

A strong division between individual and institutional responsibilities is thought by political theorists of justice to deliver a number of related benefits for the legitimacy of social justice in diverse societies. The division has the explicit aim of reconciling the pursuit of collective egalitarian political principles with the

diversity of beliefs and identities that characterizes democratic states (Moon, 1993). By focusing on institutions, political justice sets up a fair social framework in which individuals are left to pursue their own ends; justice informs how persons can 'live together, given that (they) have different ideas about how to live' (Barry, 1995: 77). The institutional focus allows for the acceptability of social justice by a diverse range of persons, by limiting the application of political responsibility to a formally circumscribed sphere of citizenship (Nagel, 1991: 33-4). Persons do not need to agree on all matters for just institutions to be legitimate. More minimally, they need only achieve an 'overlapping consensus' on the general entitlements and corresponding responsibilities of citizens (Rawls 1999a).

With diversity, a theory of social justice cannot depend on deep societal agreement to provide stability to institutions. The political approach thus incorporates questions of stability into a theory of justice; and so according to Rawls, 'a strong point in favour of a conception of justice is that it generates its own support' (1999: 154). In the political approach this is done in large part through the focus on shared institutions and by consideration of the 'strains of commitment' in theorizing the responsibilities for individuals. Diverse persons will avoid agreement on political responsibilities 'that they can adhere to only with great difficulty' (those which require significant sacrifice of private interests), and in this respect 'the question of the burden of commitment is especially acute' (153).

According to Williams, limiting the responsibilities for individuals to formal compliance with institutional rules works towards a conception of justice that is politically legitimate because individuals can easily know the 'generality', 'requirements' of, and 'extent of required conformity' to, political rules (Williams, 1998: 234; also Rawls, 1999: 48). Responsibilities of justice should be 'public rules' pertaining to the functioning of institutions and understood as 'activit(ies) that ha(ve) realized a certain type of public norm' (Williams, 1998: 233). For an account of justice to be 'public and stable' it must be one that 'everyone knows and accepts' (244). This requires significant generality and so rules out direct individual responsibilities as they fail to satisfy the publicity principle because the effects of relevant individual actions 'are so far in the future, or so indirect' as to be unknowable to the agent at the time of action (Rawls, 1993: 266). Thus, the 'essential feature of the contractarian conception of justice is that the basic structure of society is the first subject of justice' (257); it is, 'a public system of rules (and) everyone engaged in it knows what he would know if these rules and his participation in the activity they define were the result of an agreement. A person taking part in an institution knows what the rules demand of him and others' (1999: 48)

With respect to social function, the political conception of social justice functions ideally as a normative account of legitimacy in democratic societies. It establishes requirements of eliminating inequalities, while limiting the ways in which equality, even of the desired type, can be pursued. In the political conception, justice comes to bear upon the justification of societies as rising egalitarian norms take hold. It holds that justice per se is not the aim of social cooperation but can become a condition of legitimacy (understood as acceptability by a wide range of personal perspectives) in egalitarian societies.

We might accept to some degree, then, that the institutional focus is advantageous towards the goal of accommodating diversity and disagreement on the nature of justice, and much else, in the extension of egalitarian principles to institutions. However, the dualism of the political conception of social justice raises significant questions as to the prospects of just institutions in political communities that lack pre-political foundations of justice (solidarity rooted in shared identity, agreement on the good, etc), that provide broadly shared reasons for accepting the responsibilities that come with sustaining just institutions. The large space for personal prerogative to exercise the partial perspective, within the bounds of formal compliance, challenges the prospects of realizing social justice in a range of related ways.

First, it can work against the shared perspective necessary for considering and reaching agreement on the demands of justice (Caney, 1999: 22-3). In *Political Liberalism* (1993), Rawls replaces the deeper agreement and motivation found in the notion of a well-ordered society, with the thinner responsibilities of the idea of an overlapping consensus (Van Parijs, 2003: 228; Cohen, 2008: 131). While allowing for an increased scope for the personal perspective, he nevertheless believes that political agreement can still be reached on social justice. For example, he maintains that primary goods are sufficiently neutral to be the agreed upon as all-purpose social resources necessary for a well-going life, regardless of its ends (Kymlicka, 1989). Thus, the overlapping consensus supposes that justice can be realized amongst deep private disagreement through agreement on the mutual concerns of citizenship (Rawls, 1999a).

However, accommodating disagreement and partiality through broad spaces of freedom might limit the likelihood of one being egalitarian in democratic life, even when nominally accepting a shared conception of the demands of justice. Why politically, as privately, should we not act in our interests, as we see them? And democratically, even if we are motivated by concerns of justice and accept the responsibility of public reason, this still leaves considerable indeterminacy in institutional forms. Acting democratically from justice leaves open significant disagreement as to institutional mechanisms and policy design. Libertarians can genuinely believe that enabling the market mechanism across society is the best way to realize equality.

Further, accepting, endorsing and working towards egalitarian principles and institutions still leaves us free to work against their goals in our private lives, from concern with our partial ends. Advantaged persons may endorse equal basic liberties while topping up their own security through private services. Similarly, parents can work against their political endorsement of equal opportunity by showing too much, too little, or bizarre forms of attention to their children's chances. And, in the case of the difference principle (Cohen's primary concern), persons are left free to undermine their endorsement of its goal of equality by exploiting its incentive mechanism, when they possess unique or scarce market capacities.

In the political conception of social justice, while the range of permissible state action in the name of equality is very large, the responsibilities for individuals are restricted to formal compliance with just rules. And, as discussed, this is for a number of what are essentially liberal reasons connected to accepting the priority of basic liberties. While working towards the accommodation of diversity of identities and ends, the institutional division of responsibility raises significant questions concerning the prospects of social justice in democratic societies.

III/

The idea of a moral conception of social justice refers to the approach that takes it as part of a more general moral theory that is prior to, and beyond, the distinction between personal and political moral spheres. Rather than being taken as they are, and treated as the subject of social justice, institutions are theorized instrumentally, as mechanisms to realize pre-political, moral responsibilities between persons, and not necessarily absolving them at the personal level. Does understanding the principles of social justice expansively give rise to different legitimate political responsibilities for individuals, than allowed in the political conception?

Under the moral conception, since social justice is a part of general, not political, morality, it might be thought that politically individuals should have direct responsibility for justice in their own lives, perhaps running up against the largely diversity-related reasons political liberals maintain a strict institutional focus. Most moral theorists of social justice reply that understanding its principles expansively does not need to undermine accommodation of diversity in shared political institutions (Cohen, 2008: 218-222; Murphy, 1998). Instead, it is argued, the moral conception of social justice can maintain, though for less principled reasons, the sort of institutional division of responsibilities that characterizes the political approach. According to Murphy, while social justice does not rest on 'separate normative first principles' it is 'overwhelmingly preferable that justice be promoted through institutional reform rather than through uncoordinated efforts of individuals' (Murphy, 1998: 252). With any relevant moral principle the division may or may not arise; if it does, however, it is an instrumental move of convenience, and a political decision meant to 'minimize the costs people must sustain to secure justice' (258). In this view, we effectively transfer our responsibilities for social justice to the state, creating a set of institutional mechanisms designed to realize egalitarian goals. We might set up the institutional division of responsibility for reasons of efficacy, as well as ease. Transferring our moral responsibilities surrounding social justice to institutions, allows us to lead 'freer and better lives', in which we can tend to our 'own affairs' without taking into account 'levels of well-being or degrees of social inequality' (258). So despite the shift in providence of political principles we are quickly returned to a 'limited set of negative duties' for individuals in a just society.

Is there reason to question the capacity of the moral conception of social justice to coherently sustain the institutional division of responsibility? Murphy argues that social justice is the pursuit of a general moral goal 'within the constraints imposed by whichever rights we recognize' (263). However, since it is general moral principles that produce the requirements of social justice, why should

persons not have further and direct responsibility for its realization, rather than being able to so easily cast off responsibility for it?

According to the monistic conception of social justice, institutions are the 'means that people employ the better to achieve their collective political/moral goals' (263). The issue of seeing justice as a goal informs the strong criticism made by Pogge of the potential 'totalitarian implications' of the goal conception of justice that characterizes monism, and that it is largely inconsistent with liberal restrictions on enforcement of direct individual responsibilities, beyond formal compliance (2000, 163). In monism (i.e., if we are to understand principles of justice 'expansively at all'), Pogge argues, the basic goal must move beyond 'inspirational' and motivational functions in setting up and formally supporting just institutions. Rather, given its basic standing the goal of social justice should be seen as 'performative' and will trump the sort of side-constraints on enforcing direct individual responsibilities that characterize the liberal institutional division.

While a strong proponent of the moral conception of social justice, Cohen argues against the implication that a goal-based understanding of social justice in the moral conception demands political enforcement of direct individual responsibilities beyond the 'liberal' range of formal compliance, and be enforced 'Stalinistically' (2008: 186). Nevertheless, in some way the scope of individual responsibilities when acting within institutions is significantly broader than in the political focus.

Cohen's particular focus is the type of inequality that Rawls's difference principle permits. According to Cohen, unequalizing reforms that contribute to the level of well-being of the worst off (e.g. 1,2 - 2,6) may be efficient but are not just (2008: 97-106). The difference principle, alternately, would consider such changes just (however, within strong limits to be discussed below). The difference principle allows for the legitimacy of incentives that increase overall utility, and the utility of the worst off specifically. However, according to Cohen, it is inconsistent for persons to endorse equality politically, while in their everyday lives cut against equality by requiring incentives to produce socially valuable functions. In ruling out incentive inequality as just, the moral conception of social justice develops significant responsibilities for individuals functioning within the labour market. While Cohen is clear that the responsibilities for individuals in his account of justice are greater than in the political conception, the nature of their expansion requires exploration.

IV/

Two general conceptions are offered by Cohen in the form of criticisms of Rawls's stance on a principled distinction between political and individual responsibilities.

First, is the requirement for an egalitarian ethos (2008: 129). In a just society, individuals have the responsibility to act with an egalitarian spirit in approaching their choices. For individuals to accept significant equalization of post-tax income, justice must include an ethos that influences individuals away from self-seeking market behaviour. This is necessary because the difference principle is taken to be quite open-ended, in the sense that those with advantages in the labour market may hold out for significant remuneration to perform socially valuable

functions, producing quite unequal situations that Rawlsian justice must nevertheless find just.

To combat the formally countenanced role of self-interest, social justice must go beyond the regulation of institutions and include 'personal justice and injustice' (2008: 127). In the 'ethos' conception of individual responsibility, it modestly includes the exercise and promotion of the egalitarian perspective at the level of individual inspiration (influences choice). It does not expand the ambit of formal responsibilities of citizenship to include individual decisions in labour markets. Without an egalitarian ethos in place guiding personal choice political justice permits, according to Cohen, significant inequalities.

The unlimited extent of inequality permitted by selfish behaviour under the difference principle is rather overstated. Significant reasons exist in the political conception that work against the deep inequality that Cohen thinks self-interest could cause under the difference principle. The permission of incentive inequality is the final principle in Rawls's prioritized list. Incentives cannot justify inequality in the basic liberties, understood in their formal and informal dimensions; nor do incentives allow for significant departures from equality of opportunity. Following this, it is only money incomes that can vary in acting as incentives. Once the prior two principles are in place most significant disadvantage would be eliminated and differences in money income would have little effect on a broader notion of a real income (the larger basket of social resources and market capacities) (Marshall, 1964). Remaining differences in money incomes would reflect less disadvantage and vulnerability than personal choices. Indeed, less desirable, more burdensome forms of work would likely be more highly remunerated in the form of incentivizing its performance; whereas with equal opportunity it is largely under-remunerated and filled by those without real opportunities and choice. Permissible inequality would also be lessened by the prior principle of equality in the social bases of self-respect.

Further, Rawls explicitly endorses the view that individual motivation is central to social justice. As mentioned above, the effective abandonment of a well-ordered society in favour of the overlapping consensus in the political conception of justice represents a significant tuning down of individual responsibility. Nevertheless, it is too far to say, as Cohen does that the political move 'means that the ideals of dignity, fraternity, and full realization of people's moral natures can no longer be said to be delivered by Rawlsian justice' (2008: 131-2)

Under political liberalism Rawls maintains that principled social solidarity is significant and required for the stability of just institutions. The political shift however means that its 'delivery' must be political in nature. A 'free-standing' conception of justice requires that a just institutional structure rely 'upon generating its own support in a suitable way' (Rawls, 1999a: 488). The focus of political justice is legitimacy and the 'kind of stability and the nature of the forces that secure it' (486). In a diverse society, the stability of just institutions cannot rely upon general agreement at the personal level on the ends of life and society, and of the demands of justice.

Contrary to the comprehensive view of the well-ordered society, in the political view individuals are not predominantly expected to 'act from' egalitarian principles in the development of their 'nature as moral persons'. What is required

amongst diversity of ends and motivations is a sense of justice that enhances the salience of responsibilities to support just institutions. The acceptance of justice itself as the condition of legitimacy and the political recognition of others as citizens indicates such willingness. According to Rawls, 'the sense of justice of citizens...is strong enough to resist the normal tendencies to injustice' (487). Citizenship, in the political conception, is constituted by shared institutions and rights. The condition of citizenship largely influences the prospects of politics, and thus 'those who grow up under basic institutions that are just...(can be expected to) acquire a reasoned and informed allegiance to those institutions' (487).

For Rawls, then, a sense of justice is the anticipated result of citizenship in a just society. But there are converse effects of life under unjust institutions; in general, 'an economic regime...is not only an institutional scheme for satisfying existing desires and aspirations but a way of fashioning them in the future' (1999: 229). Institutions are expected to reproduce their basic norms, advancing the societal 'tendency' towards its justifying principles. But this remains a political allegiance and does not replace, instead limits, the shaping and pursuing of private ends. Cultural facts about institutional outcomes and social learning should sit along side consideration of other aims in egalitarian institutional design (Anderson, 1999; Wolff, 1998). Political egalitarians must proceed with what Van Parijs calls 'motivation-conscious institutional engineering' (2003: 230). However, with its lack of formal enforcement, the 'ethos' critique, limited to non-coercive implementation, does not fundamentally challenge the political idea that institutions are the first subject of social justice.

The political account of institution-based solidarity is promising both in principle with respect to the reconciliation of social unity with diversity, and politically its likelihood and effectiveness seem grounded in historical experience (e.g., Rothstein, 1998). In practice, progressive change frequently results from interest-based solidarity, and once in place, just institutions are able to successfully alter the normative terrain and individual motivation (Baldwin, 1990; Esping-Andersen, 1991). However, the problem of motivation in the political conception of justice remains; and the moral conception faces similar challenges. While constituting an effective 'rear-guard defence' once in place, the solidarity of the political conception does not provide a descriptive account of how the ethos might come to be, in addition to the prescriptive suggestion that such is a requirement of a just society.

Cohen, though, advances a further, and what he calls more fundamental, argument against the institutional focus of the political conception. He argues that the formal scope of social justice should be expanded beyond regulating the basic institutional structure, and should include individual decisions relevant to justice. This has the effect of extending the range of responsibilities for individuals in a theory of justice (2008: 132). Moreover, Cohen believes the political account requires such expansion, and thus the institutional focus cannot be maintained.

For Rawls, one of the reasons the institutional structure of society is the subject of social justice is because of its 'profound' impact on the life prospects of persons that are 'present from the start'. Cohen uses the same reason behind the political identification of the basic institutional structure as the subject of justice to

argue for expanding the 'ambit of justice' – its 'fatefulness' (2000, 142). Since the decisions made by persons in private life, including self-maximizing market behaviour, influence outcomes of concern to social justice (namely, how much equality the difference principle produces such choices are the properly within the scope of its regulation).

Cohen seeks to apply the 'form' of Okin's argument against Rawls's lack of clarity on the status of the family, and his waffling on its inclusion in the basic structure (Okin, 1989). This argument is distinct from the ethos argument upon which, it was suggested above, there is significant overlap between Rawls's political and Cohen's moral views under consideration. The second, expansionist, argument concerning social justice, in which direct individual responsibilities are justicized moves closer in the direction of the institutional focus of the political approach. In creating new types of formal responsibilities, the expansionist argument is open to the sort of institutional analysis that occurs in the application of a political conception of justice. It theorizes the rise of the personal to the political, and works against the accumulated effects of patterns of choice and behaviour. In working against these effects, it creates new enforceable obligations. The legitimacy of these new rules, like all rules, is weighed by referencing the principles of justice.

Cohen denies this conflation, and maintain the distinction between the personal and the institutional, while expanding similar responsibilities across both. That is, he wants to include individual choice and motivation as a first subject of justice, while denying that individual choices are part of the basic structure. Cohen interprets the basic institutional structure in the political framework as including only formal/coercive institutions. And, of course, this definition leaves significant distributive causes (including informal institutions like the family) largely untouched by principles of social justice. Okin's central critique of Rawls is that the family produces a 'major justice crisis' (6). Her larger aim though is to expand the Rawlsian basic structure framework to bring the family into the political sphere, a move made largely against communitarian critics of its imposition on personal relationships.

According to Cohen, Okin fails to see that her argument for including the family in justice cannot leave its subject in its institutional definition. According to Cohen, including informal institutions in the basic structure necessarily expands direct individual responsibilities of justice. This is so because informal institution have the,

...character (they do) only because of the choices that (individuals) routinely make. The constraints and pressures that sustain the non-coercive structure reside in the dispositions of agents which are actualized as and when those agents choose to act in a constraining or pressuring way. With respect to coercive structure, one may fairly readily distinguish the choices which institute and sustain a structure from the choices that occur within it. But with respect to informal structure, that distinction though conceptually intelligible, collapses extensionally (1997: 20)

As a result, the political conception of justice is left in a significant bind. It either accepts the formal/coercive understanding of the subject of justice (which is totally insufficient given the profundity of informal/non-coercive institutions on individual life prospects); or, it includes informal/non-coercive institutions, but therefore must

also include the choices made by individuals, since these are constitutive of informal institutions. Thus, i/ the basic structure is coercive and exhaustive of the subject of social justice, or, ii/ the basic structure is coercive but not exhaustive of the subject of social justice. Since i/ does not accord with the standard for being subject to principles justice of having 'profound impact on life prospects', social justice must include direct individual responsibilities for its realization.

The standard of profundity (on the distribution of life prospects), however, gives further reason behind the possibility of distinguishing between informal institutions and individual behaviour. Once patterns of behaviour and choice rise to the level of profundity they can be understood as having been effectively institutionalized, functioning, as they are, as recognizable and reproduced structures, that certain groups of person encounter, and which cause objective inequalities in life prospects. The egalitarian state has the responsibility of diminishing social structures of inequality, opening room for a third understanding of the subject of social justice; iii/ the basic structure includes both formal and informal institutions, and is the subject of social justice.

Okin takes this route, treating 'gender' in institutional terms, and theorizing it as a 'social factor' that overdetermines distributive outcomes, producing injustices experienced 'by women as women' (6). As an institution, it is structured 'both by custom and still in some respects by law' (91). But this distinction is largely insignificant, and persons in the original position with knowledge of basic facts of social organization would know that 'different family structures, and different distributions of rights and duties within families affect prospects' (92). The regulatory reach of justice would be extended to the family to diminish the distributive role of gender – to put it out of business as an institution as such (Okin 170; also Fraser, 1997).

Applying justice to the family this way entails entering the domain of public policy, and sorting between possible options and judging them by their potential efficacy and fairness. Okin proposes a full range of responsibilities for the state, and formalized ones for individuals, including, enforcement of financial responsibilities, subsidized child care, flexi-hours, generous leave and redistribution of paid and unpaid work (144-176). Policies of this sort lessen the extent of inequality produced by the family, while recognizing that the family is not designed to realize justice, nor is justice its primary end or virtue. Political justice makes the more modest claim, that justice is the first virtue of institutions that have profound impact on individual prospects. Justice is the primary virtue of social institutions, though not the highest virtue, but rather the most basic (Okin: 30).

A similar continuation between formal and informal institutions, based on their determination of life prospects, can occur with respect to economic institutions, specifically the market. Cohen suggests that the different levels of inequality in the US and other industrial democracies largely reflects the ethos and choices made by their respective advantaged citizens, or the extent to which they have taken on the responsibility for furthering social justice (1997: 27). Americans suitable to be CEOs demand more remuneration for the exercise of their rare capacities than do similar persons elsewhere. But this is surely not the best

explanation. CEO types are likely to always favour more than less compensation. What is of more significance is political-institutional factors that prevent counter-vailing forces from imposing more just wage rates. What the experience of more egalitarian societies shows the US is that incentives of such enormity are not required to draw out sufficient numbers of able CEOs, and that the resulting inequalities are unnecessary and so unjust. It would be permitted, and encouraged, under the political conception to impose significantly more post-tax income equality through the taxation system.

This institutional change tracks quite closely with what seems to follow from finding incentive inequalities unjust whatsoever – their elimination. Rawlsian justice permits this, but also includes the allowance, though not the unbridled requirement, that some incentive inequalities are permitted, should they function to improve the condition of the worst off, beyond equality of basic liberties and opportunities. If a society has achieved real equality of opportunity, as discussed above, burdensome jobs would not be poorly enumerated and largely occupied by the vulnerable. Without equal opportunities, the advantaged can use the possession of scarce capacities to demand higher remuneration. When capacities, or access to them, are more equally distributed, the bargaining advantage is highly diminished.

However, with equality of opportunity of some real degree, incentives may be thought required to fill necessary, though unappealing, burdensome, and tiring occupations (that help everyone, though more so those who couldn't afford to privately purchase the various services). These incentives under the difference principle would be considered just, and would give rise to inequality based on the choices of some to accept, or forego, more highly enumerated types of incentivized work.

This sort of idealized incentives is ruled out as just by Cohen, and is done so in two ways. The first is conceptual and does not involve a distinctly expanded conception of responsibility for individuals, while the second suggests a fuller working out of the type of responsibilities for individuals that come from an expansive understanding of political principles.

First, higher remuneration for unappealing forms of work is permitted by justice, however not as an incentive but as compensation for the hardship, in order to promote rough equality in the distribution of the benefits and burdens of work (income, satisfaction, esteem, hardship) (Cohen, 2008 200-1; also Jacobs, 2004: 68). These would still have a very incentive-like function, especially under Cohen's preference for welfare over resources as the metric of justice. The extra remuneration would only go to those who actually find the work burdensome; those who for some reason find what is widely-considered lousy work enjoyable aren't entitled to the extra cash. As choice expands with equalized opportunities, the compensation conception loses coherence. If, through circumstances (rather than to responding to incentives), one is forced into an unappealing vocation causing significant welfare loss, justice indicates towards compensatory remuneration (incentives will be unneeded with broad disadvantage and exploitable vulnerability). When the compulsion of disadvantaged circumstance is diminished, individuals will not be forced into burdensome work – they will have the resources

to hold out for 'better' job conditions, including pay. It is not clear why increased remuneration for the same position is unjust when allowed as the exercise of labour market bargaining with enhanced freedoms and capacities in a situation of equal opportunity; but just as a form of compensation for undesirable circumstances and welfare loses, when the labour relation is less voluntary from unequal circumstances.

V/

The second reason for ruling out incentives, even in a somewhat idealized context of equal opportunity comes from a further type of individual responsibility that comes from an expansive view of principles of social justice, particularly the difference principle. Persons are not just to refrain from demanding incentives to make unpleasing contributions through labour – we are not just to refrain from 'high-flying marketeering'. In addition we have more positive responsibilities to perform in the labour market. Indeed, the difference principle, concerned as it is with improvements in well-being, requires market-maximizing behaviour of certain forms. Productive behaviour however will not be motivated by self-interest but by commitment to the difference principle.

Such behaviour and motivation characterizes the 'utopian' system of individuals driven to maximize their pre-tax income, for the purpose of reconciling post-tax equality with efficiency developed by Carens (1981). According to Carens' such a system is utopian because it requires a 'new type of human being' (165). Rather than being motivated in the market by self-interest, the new human being 'will be motivated by a desire to serve others' (165). This is the full set of responsibilities for individuals in directly promoting the difference principle in daily life – to produce up to capacity (or 'from each according to ability') without seeking remuneration above the egalitarian baseline for contributing unique or burdensome functions ('to each according to need').

Justicizing the full responsibility requires more principled justification than does eliminating incentive structures (which in the political framework will be evaluated consequentially). Fully justicizing the responsibilities of the difference principle, particularly the productive duty, runs into problems with the priority of the basic liberties, and particularly the principle of freedom of occupational choice, which Rawls describes as a 'constitutional essential' (1993: 228). One individual may have preference for an austere life of ecologically-minded leisure and low-intensity production. This choice however would work against the responsibility individuals have under the expansive conception of the difference principle, which requires some level of productive maximization. How, if at all, should this responsibility be enforced at the level of formal compliance?

It is clear that under the Rawlsian framework, the productive responsibility would be ruled out by the priority of the basic liberties. In reply to 'liberal' criticisms of his book along this line (Moon, 1983), Carens, in a later article, attempts to reconcile the productive duty with respect for the liberal principle of 'individual freedom and self-realization in the productive sphere' (Carens, 1986: 34). He begins by backing away from the 'maximalist' conception of the social duty (from liberty concerns), and advances a partial responsibility for individuals to 'work more or less full time and to make good use of their talents and skills' (35).

By good use, Carens means that when assessing the range of useful applications of their market capacities, individuals are to choose the usage that promotes more rather than less benefits to society, but are not required to choose the maximalist application, which is 'supererogatory'. Persons are given further latitude in fulfilling the responsibility in determining what in fact constitutes their best contribution, which is independent from market indicators. The stipulation is acting in good faith; an artistically inclined person can judge her art is more 'valuable' than the production of widely used widgets; however, the person who chooses to 'lie in bed all day and drink beer all night' is not making a good-faith effort in living up to the responsibility to employ talents.

Carens argues that the liberal principle of equal freedoms leads to and justifies the moderated productive responsibility. He notes that liberalism endorses a wide-range of 'restrictions' in order to equalize freedoms. The justification of restrictions on individual action in order to secure equal negative freedoms was, over time, extended to the 'economic sphere', from the view that equal freedoms requires roughly equal resources. The responsibility to contribute in good faith without incentive is justified because, minus inegalitarian incentives, general affluence is diminished, reducing overall freedom. Thus, the productive duty is required to overcome scarcity, justifying certain restrictions on individual choice. In this case, Carens makes an analogy between taxation and the responsibility to produce - '(t)he freedom to choose how to allocate one's time is constrained to some extent by the social duty to make good use of one's talents, just as the freedom to spend money as one likes is constrained by taxes' (1986: 44).

There are, however, important differences between taxation and the productive responsibility. First, no constitutional democracy (or egalitarian theory of justice) protects 'the freedom to spend money as one likes', so there are no liberty issues at stake in general taxation. Second, while moderating the productive responsibility to include agent discretion satisfies some of the obvious liberty issues involved in the 'maximalist' conception, certain concerns of justification remain. Moving beyond market indicators of value to include agent-centered considerations of value brings significant perfectionist considerations into official consideration and ranking of the value of contributions and modes of living. One is harmed when told one's heartfelt belief on value is in fact wrong (e.g., being told that your poetry is of little value and that you will making widgets instead). Both outright enforcement of productive responsibilities and 'merely' enforcing good faith efforts impedes liberties in a way that gains salience in diverse societies. Taxation, on the other hand, does not include these sorts of judgments (with the exception of 'sin taxes'), and thus the justificatory analogy is limited.

Cohen is ultimately unwilling to 'take the Stalinist plunge' and 'conscript' persons into the jobs they may be best suited for but are unwilling to take on. The refusal to enforce a direct individual productivist responsibility does not mean, however, that the person in question does not behave unjustly by not taking direct responsibility for principles of justice (2008: 218). He offers two practical reasons against 'frog-marching' persons into suitable jobs (counter-productive deterrence and epistemic reasons) and advances two further principled (though not of justice) reasons that rule it out even if the implementation problems could be overcome

(doing right things for right reasons and not using persons as means) (218-222). In making this argument, Cohen defends the normative distinction between coerced taxation and forced labour contributions. Forced labour contributions, unlike enforcement of a general system of progressive taxation, involve direct 'control over your behaviour that exercises a knowledge of the intimacies of your personality' (221). Coercion that operates at the level of structure, rather than the individual, is 'manifestly less repugnant...from the point of view of the value of freedom' (222). Like in the political conception, individual motivation and solidarity come in as concerns of individual acceptance of formal responsibilities.

Institutionally, Cohen's approach ends up at the same place Rawls does in pursuing social justice by allowing progressive taxation to work towards equality while not enforcing direct individual responsibility for institutional principles. Rawlsian justice rules the individual responsibility in question out at the level of justice. The legitimacy of justicizing responsibility goes a long way in informing what justice itself requires or permits. For Cohen it is nevertheless a requirement of justice but is weighed against by other, non-prioritized, principles. That the productivist principle violates significant freedom concerns does not mean that the responsibility itself is not a requirement of justice. That there are 'repugnant' implications only means that we have good non-justice related reasons to not enforce it. For Cohen, justice is one of numerous principles (including freedom and efficiency) that institutions pursue. The content of the principles themselves are determined independently from issues of their implementation. Consideration of questions of the latter sort informs 'how much' of a principle we should go for (2008: 155). For Rawls, the content of principles and of their political implementation are more closely connected, and the demands of justice are shaped by political questions. Enforcing the direct individual responsibility – the direct individual contributory principle – is not required by social justice because its enforcement in this particular form is unjust.

Cohen rejects 'both Stalinist force and Rawlsian inducement, in favour of an ethos of justice' (2008: 221). But institutionally this leaves little difference, and as suggested Rawls believes that social justice requires, and can depend on, institutionally-created solidarity. Where the difference ultimately comes in is at the level of labeling societies as just or unjust – in the moral view a just society requires a justice related ethos in place in a more fundamental way than a theory of solidarity in political justice. Even still, it can reasonably be thought that the presence and stability of just institutions indicates a related level of ethos to account for their democratic legitimacy.

VI/

This paper has identified differences in responsibilities for individuals and institutions that characterize major fault lines in theorizing social justice. It was maintained that the political conception can answer the major charges levied against it by the moral conception, including possessing an insufficient scope and permitting unlimited inequality as just. While the political conception seems able to reconcile broad endorsement of collective egalitarian principles with diversity and disagreement over the end and good of life, it faces the ongoing practical challenge of securing sufficient motivation and solidarity to stabilize and expand just

institutions. In the end, the political view (like the moral view, when enforcing direct individual responsibilities is ruled out) must rest its hopes on the capacity of institutions to affect individual willingness to take on significant formal responsibilities in supporting social justice. In doing so, it need not be committed to a fixed view of a self-maximizing human nature. Rather, it can depend on significant political experience that shows that institutions have profound impact on the interests and motivations of individuals. Institutional design is thus central to egalitarian political theory. Just institutions should not only be theorized as the ends of an egalitarian politics, but also as important means for constructing the type of solidaristic political community in which individuals can come to see less conflict between the political and personal perspectives.

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