



The Permissibility of Prerogative Grounded Incentives in Liberal Egalitarianism

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This paper evaluates a criticism of the claim that within a fully just liberal egalitarian society it would be permissible to pay special incentives to its more productive members. The envisaged basis for these payments is that the incentives are grounded on reasonable, agent-centred, ethical prerogatives on the part of the agents concerned as defended in Scheffler's hybrid ethical theory. [Scheffler, 1994]

This paper picks up one thread of G. A. Cohen's complex and multifaceted critique of the apparent permissibility, within a fully just Rawlsian society, of such incentives. [Cohen, 1995a; 1995b; 1997; 2001] One very popular and plausible line of response to Cohen's critique is that it is internally inconsistent precisely because it is put forward alongside an acknowledgement of the possibility of an agent-centred prerogative that offers a rationale for incentive payments. [Estlund, 1998; Williams, 1998; Daniels, 2003; Tan, 2004] Cohen's argument has, therefore, been subject to a slippery slope objection: if he concedes the existence of some incentive payments grounded on the reasonable, agent-centred, prerogatives of individuals, then he must, his critics argue, concede the full range required to justify special incentives even within a fully just society. It seems to me that Cohen's strongest line of response to this purported slippery slope argument is that there is an ambiguity in the idea of the determination of the scope of a prerogative. I will try and develop this line of argument on his behalf before ultimately finding fault with it.

1 WHAT IS THE PROBLEM?

The controversy over whether liberal egalitarianism is compatible with the payment of special incentives to the better off has focused on Rawls's difference principle. In a much discussed series of papers, Cohen has argued that while this principle is an acceptable justification of inequality, it has to be supplemented by an egalitarian ethos if it is not to sanction incentives that motivate in "the wrong way". He argues that those who are sincerely committed to the difference principle would not need such incentives, whereas those who need such incentives are not genuinely committed to the difference principle. Incentives are motivationally redundant.

At this point it is easy to misunderstand Cohen's objection. Some have taken his view to be a critique of "the rich" having the temerity to offer a moral justification for driving a hard bargain when confronted by the demands of "the poor". To see why that is a mistake, here is the correct version of the argument, given by Joshua Cohen:

In the case of genuine incentive demands, people would genuinely prefer not to deploy their scarce, productive talents unless they are compensated at a level that turns out to be higher than the average compensation of others. Consider a doctor who is perfectly able to doctor for the median wage of (say) \$30, 000, and would live at least as well as everyone else if she did, but really values writing literary fiction and is therefore unwilling to doctor for less than \$100, 000. Contrast this case with the doctor with scarce surgical talents who would fully willingly use them for \$30, 000 if she thought she could not get more for doctoring, but knows that others are willing to pay more than that, and bargains to capture more than the reservation wage for which she would be entirely willing to work. The latter case seems very important in the world, but the former presents the philosophical problem that occupies me here. [J Cohen, 2001, p.4]

The issue is *not* the opportunity for those who are talented and effortful to drive the hardest bargain. That would make no sense as a critique of Rawls. It would represent the better off as public Rawlsian contractualists and private Hobbesian contractarians, professing high egalitarian Rawlsian ideals in public while secretly trying to drive as hard a bargain as possible in the marketing of their labour. But in Rawls's view, it is the position of the worst off that has to be maximised and anyone better off is permitted to do better if that does not worsen the position of the worst off. [Williams, 1995; Van Parijs, 2003] "Genuine incentive demands", as Joshua Cohen calls them, involve the marketing of scarce talent at above average compensation, not the maximising of compensation.

2 PURISM, RIGORISM AND PREROGATIVE BASED INCENTIVES

Jerry Cohen's argument is open to some unwelcome interpretations, unwelcome to everyone, including Cohen himself. It seems to leave no room for special incentives grounded on reasonable ethical prerogatives. The *purist* interpretation of the argument implies that those with scarce talents and a capacity for effort do not require any further incentive at all. Simply being talented and effortful is reward in itself and one's proper attitude is gratitude that one is able to do more for the collectivity (and thereby do more for the worst off) by being able to make a larger contribution than others. This reading of Cohen's argument points to what looks like the discounting of "special incentives" *entirely* in some formulations of his argument.¹

Cohen concedes that this purism is unreasonably demanding and says the same for what I will call the rigorist interpretation. The rigorist interpretation takes Cohen's argument to be that everyone's personal decisions to market his or her labour should aim *directly* at the benefit of the worst off group of people. People have no discretion in their economic decisions to market their labour. They must willingly accept the "strains of commitment" involved in always aiming directly at improving the situation of the worst off group in any distribution. The objection to such rigorism is that it is not only unreasonably demanding; it may also be economically inefficient and reduce the aggregate resources available for distribution.² Rawls claims, on the contrary, that his understanding of the difference principle factors in economic efficiency. [Williams, 1995, 1998; Van Parijs, 2003] However, in making this concession does Cohen fatally undermine his own view?

3 ARE COHEN'S ARGUMENTS INCONSISTENT?

The difficulty for Cohen is that he can see the problems with the purist and rigorist interpretations and explicitly argues that he wants to permit reasonable ethical incentives so as to avoid them. [Cohen, 1995b, pp.302-303, p.314] But this, so his critics argue, leads to the internal collapse of Cohen's argument.³ [Estlund, 1998; Williams, 1998; Daniels, 2003;

¹ As a representative passage, see Cohen 1995b, pp. 336-337. This interpretation remains compatible with Cohen's concession that incentives may be necessary to reward work that is particularly difficult, dangerous or lacks intrinsic rewards of its own. Such "compensatory incentives" fall outside the scope of Cohen's critique while special incentives remain compromised.

² An anonymous referee for *Ethics and Economics* asked why this view is unreasonably demanding "if the fulfilment of the demand could not result in anyone's becoming any worse off than those worst-off individuals whose position is maximised?" A good question, but I take it the answer rests on the empirical argument that this form of rigorism is inefficient. It thereby reduces the overall level of resources and so worsens everyone's absolute position including that of the relatively worst off.

³ The referee for this journal was concerned about this issue of attribution, questioning whether Estlund et al. were correct to attribute this view to Cohen. Actually, what one finds in Cohen is an acceptance that the Estlund argument is a good argument (so a tacit admission that it has picked up on a genuine aspect of Cohen's own view?) combined with a denial that Estlund is merely expounding a

Tan, 2004] They make two critical points: that once Cohen has conceded the existence of agent-centred prerogatives, they can be used to ground special incentives. The second objection is that in order to block this inference from permissible prerogatives to special incentives, Cohen needs to implement his egalitarianism via invasive detailed information about individual motivation. In summary, his argument is both impracticable and ignores an important requirement of publicity on a conception of justice.⁴ I will consider these arguments in more detail.

David Estlund argues that once Cohen has conceded the existence of reasonably grounded ethical prerogatives, it is difficult to see where one draws the line. [Estlund, 1998] Cohen, after all, permits a limited degree of ethically grounded “self interest” or self-regarding behaviour. If so, then how can he object to a person not working for more than average compensation to respect the ethical demands of friends, partners, children and siblings? Or to that person not working directly to secure the maximal position of the worst off because he or she owes some particular person a duty of reparation after having wronged him or her? If these ethically grounded agent-centred prerogatives make incentive payments ethically unobjectionable, where does one draw the line between such incentives and those to which Cohen morally objects? We can reasonably predict that it will be unclear exactly which incentives are morally tainted and which are not given the complexity of the ethical prerogatives that underlie them.

Andrew Williams concurs, but adds a further consideration that the relevant class of choices, like detailed motivations in wage bargaining, are simply unfeasible from an informational point of view for the purposes of a theory of justice. [Williams, 1998] Accurate and detailed information about such choices is difficult to obtain (and I would add intrusive and likely to violate a liberal right to privacy).⁵ That is why such decisions have to fall outside the basic structure, whereas rules implementing a conception of justice, as Williams points out, have to be public in Rawls’s sense of being based on verifiable facts and commonly known.

The core issue here about prerogatives is a slippery slope argument: once Cohen has conceded some ethical prerogatives, his critics claim that there is no natural stopping point. That general charge seems to me unfair. I think Cohen raises interesting issues about how we limit the scope of prerogatives in general that offer him a (limited) means of rebutting this criticism. While I will ultimately find reason to disagree even with this revised argument, I do think Cohen’s position is subtler than his opponents have hitherto taken it to be.

position found in Rawls. “I believe that I would accede to some, if not all, of Estlund’s criticism ... I am, however, fairly confident that the interesting position he develops is not, as he thinks it, entirely consistent with Rawls’s view, but a substantial revision of it, a kind of halfway house between Rawls’s view and my own.”, Cohen, 2000 p.213, note 36. (So “Rawlslund” can join “Kripkenstein” as a Meinongian subsistent entity.)

⁴ I would note in passing that the practical and moral difficulties of establishing such fine grained information about individual choices is my concern about the distinction between endogenous and exogenous comparative advantage in the interesting arguments of Peter Dietsch, 2005, this journal.

⁵ Andrew Williams focuses on the practicality of violating the publicity constraint in his well known “basic structure” response to Cohen in Williams, 1998; in Thomas, unpublished, 2005b, I focus on the violation of the liberal right to privacy involved in rejecting the publicity constraint.

4 THE LIMITATION ON THE EXERCISE OF PREROGATIVES ARGUMENT

The best way, it seems to me, of avoiding Estlund's and Williams's criticisms is by blocking the claim that conceding *any* prerogative is going to lead to a rationale for all incentives. I think the best response available to Cohen is as follows: those committed to the difference principle and to paying incentives to those who would like to market their scarce talents at above the average market rate are committed to subsidising the cost of that free choice.⁶ They are also committed to subsidising, at some cost to the overall level of resources, various agent-centred prerogatives with an ethical basis. But an agent's discretion in exercising this prerogative must *itself* be tempered.

The idea, then, is this: a person's agent-centred prerogative gives him or her a certain discretion to give undue weight to his or her own interests in the determination of outcomes and actions. However, the exercise of this prerogative ought to be tempered by the comparative distance between the better off and the worst off.⁷ Those who are much better off than the worst off have increasingly less of a case for incentivising payment as the gap between the two parties widens. Thus, while the difference principle permits the payment of incentives, the degree of justification that it offers is variable. In particular, the greater the relative gap between a worst off person and a better off person, the less justification the better off person has in fully exercising his or her prerogative. A person's discretion ought to be tempered by a background commitment to an egalitarian ethos. Discretion can be more or less tempered in its operation.

Therefore, if the gap between a representative well off person and a representative badly off person is comparatively small then the former has more of a reasonable claim to incentivising payment than if the gap is comparatively large. As the gap widens so the claim that incentivising payments are reasonable decreases. This proposal would, I submit, pass the test of feasibility as it is most likely that in a fully just Rawlsian society the difference principle would be implemented by a minimum wage payable to those who meet the description that is true of the representative worst off person, and that wage would be commonly known by all such that the better off could hardly deny that they know exactly how much better off they would be in the envisaged outcome. [Schaller, 1998; Van Parijs, 2003]

⁶ A focus on "freedom of occupation protected by the liberty principle" is central to Alex Voorhoeve's paper in this journal, Voorhoeve, 2005 and is also assumed by MacLeod, 2005, this journal, on grounds of autonomy.

⁷ As Roger Crisp pointed out to me, this would make Cohen's position similar to certain kinds of prioritism. For one possible rationale for this view of internally qualified prerogatives, one could cite Colin MacLeod's observation that "although differences in individual choices can justify economic inequalities, the magnitude of the inequalities generated via differences in individual choices should be roughly commensurate with reasonable assessments of the relative significance of different choices.", MacLeod, 2005, this journal.

5 THE LIMITATIONS ON PREROGATIVES ARGUMENT EVALUATED

How successful is this new argument that I have attributed to Cohen? He explicitly states an analogy between his view and a hybrid ethical theory, but in fact it seems to me that he is even worse off than a hybrid theorist in qualifying the “strains of commitment”. To see why, one has to focus on the ambiguity that Cohen exploits in how one determines the scope of prerogative. In the case of ethics Scheffler offers a person a choice: one is always permitted to bring about the best outcome impartially considered. But one is also permitted to bring about the outcome judged best from the standpoint of one who exercises a prerogative in a way that reflects the pervasive importance of the personal point of view. [Scheffler, 1994] That prerogative is weighted: it operates within the ratio determined by contrasting the two evaluations and their disproportion, namely, the difference between the evaluation of the outcome from the “objective” and “subjective” points of view.⁸ [Scheffler, 1994]

However, while Scheffler explains how to limit the *scope* of an agent’s prerogative he does not limit its *exercise*. He sets upper and lower limits to one’s discretion but does not constrain its exercise within those limits.⁹ The view I have attributed to Cohen does precisely that. It limits not only the scope of a prerogative but also its exercise. This shifts the whole argument on to the new and interesting issue of the acceptability of such an internal qualification to the exercise of a prerogative. Clearly influenced by Cohen, Thomas Nagel’s sceptical verdict on the feasibility of Rawlsian egalitarianism settles for a second best solution that is ethos based, and seems to appeal to a similar internally qualified self-restraint on the part of the better off:

Those who hope for something more in the long run must consider the second option – a psychological and institutional transformation which would permit innovation and co-operative production without generating substantial inequalities of reward the change of attitude that suggests itself, one that would be far more egalitarian and more in line with the traditional ideals of socialism, is a development of a general reluctance on the part of members of the society to be conspicuously better off than others and a corresponding disapproval of those who try to make themselves better off.... [Nagel, 1991 p.165]¹⁰

⁸ This general view of how one determines such a prerogative is criticised in Thomas, 2003, pp. 267 - 271 and Thomas, 2005a, pp. 9 - 10.

⁹ I don’t have the scope to defend this interpretation here, but it seems to follow directly from the thought that the scope of a prerogative is fixed by the disproportion between two distinct evaluations. These two evaluations will, of course, co-incide if the agent concerned is an ideally consequentialist agent whose personal point of view consists in the view that she ought to be “objective” and set aside her personal point of view. But I take it this limiting case is not, in fact, the kind of case that gives hybrid theory its rationale.

¹⁰ Nagel describes this envisaged transformation as “highly unlikely”, Nagel, 1991 p. 165.

The envisaged restraint here is clearly based on a social ethos; it seems to me that there is scope for reasonable disagreement here as to whether this proposal could work. I am not convinced that we can understand agent-centred prerogatives in the way that Cohen invites us to do so. The interpretation of Cohen's argument that I have set out involves giving a person a prerogative and then tempering its exercise. However, it does so in a way inimical to the very idea of a prerogative. It seems to me that discretion on a sliding scale is not discretion at all. Prerogatives, I would argue, are of their very nature unfettered in their scope and in their exercise. If one does not have an absolute discretion, but a discretion marked off in degrees weighted by considerations of one's distance from the resources of the worst off, then the better off might reasonably protest that moral rigorism was back, but in a particularly subtle form. In exercising that which is allegedly his or her prerogative based discretion a better off person must constantly bear in mind the relative distance between herself and the worst off. While this is a feasible proposal it still seems to me unreasonably demanding and a resurrection of a subtle moral rigorism "of second order".

CONCLUSION

In my view there is a hidden subtlety in Cohen's discussion of incentives that allows him to avoid the charge that his defence of those incentives sustained by reasonable agent-centred prerogatives undermines his whole critique of special incentives. He can avoid the slippery slope objection. Ultimately, however, I conclude that this interpretation of Cohen's argument collapses back into the rigorist argument it tried to avoid. Nevertheless, it does seem to me that Cohen has raised an important issue here about which reasonable people may disagree: to what extent is a limitation on the exercise of an internally qualified prerogative too demanding? I have offered one response to that question, but it seems to me that the real case for Cohen's critique of special incentives will contest precisely this point and that this further argument has yet to be made.¹¹

¹¹This paper is excerpted from a longer paper, a work in progress, whose provisional title is 'Cohen's Critique of Rawls: A Double Counting Objection', listed as Thomas 2005b above. For detailed comments on the longer paper that have indirectly benefited this excerpted version, I am grateful to Kathryn Brown, Roger Crisp, Peter Dietsch and Helen Frowe. For helpful questions about this excerpted paper I am grateful to the anonymous referee for this journal. I am grateful to Peter for his invitation to contribute to this symposium and to Walter Schaller and Kok-Chor Tan for the trouble they took in kindly sending me offprints of their papers.

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