

## The Spirit of the Difference Principle

The difference principle appears to justify special incentives which are to the worst off's greatest benefit. Yet Cohen famously argued that there are no such special incentives. I give a novel response to Cohen on which social benefits are to be distributed within just relations. In particular, I show that Cohen's argument does not succeed if the difference principle distributes the ability to freely earn income and wealth rather than income and wealth itself. Cohen's mistake, I suggest, was to suppose that principle to be concerned with people being benefited rather than with free and equal relations.

Incentives which are only offered to those born with greater talents pose a problem for proponents of distributive justice. These special incentives appear to make us all better off by increasing economic production. Yet since being born with greater economic talents is morally arbitrary, it is no reason to be any better off than others. So permitting the inequalities which those incentives result in looks like a failure to distribute social benefits. Special incentives are one place where efficiency and distributive justice come into tension. This is grist for the mill for those who take this idea to be but a pleasing fantasy.<sup>i</sup>

Rawls' difference principle appears to solve this problem in holding that 'social and economic inequalities are to be arranged so that they are to the greatest expected benefit of the least advantaged'.<sup>ii</sup> Only permitting those special incentives which are to the worst off's greatest benefit seems to make us better off whilst guaranteeing a certain distribution of benefits. Yet Cohen famously argued that special incentives are never to the worst off's greatest benefit, since those born with greater talents could be more productive for a normal

salary.<sup>iii</sup> This undermines the Rawlsian solution, since by that principle special incentives are then unjust.

I here bring out that solution by giving a novel response to Cohen's critique. In doing so I develop and defend a relational view of justice. I first show that existing responses neglect Cohen's appeal to the spirit of the difference principle. I then rebut his argument by suggesting that the difference principle articulates an ideal of reciprocity, and more fundamentally, of free and equal relations. Justice requires us to use our talents to earn income and wealth rather than to serve one another because we could use those talents outside of cooperative relations. Rawls' theory is a long book, not only in pages. Despite all of the ink, it seems to me that its promise has not yet been fully realised.

## **I. Cohen's Critique**

The difference principle purports to solve the problem of special incentives by reconciling efficiency considerations with those of distributive justice. Yet if justice requires a certain distribution of benefits, we need a reason to think that permitting special incentives would be just. This is particularly clear if we take an equal distribution to be the default. The more talented do not deserve a larger-than-usual income since it is morally arbitrary that they are born with greater economic talents. Those talents are determined by our genetic make-up as well as the goods and services which our society happens to demand.

The special incentives permitted by the difference principle would make the worst off better off. But the difference principle is also concerned with inequality, and these concerns seem to be in tension. To permit these special incentives is to take a concern for inequality to be excluded by a concern for the worst off. But if equality matters, how could it ever be so overridden? Why are we not required to bring such inequalities about? To permit special

incentives is to take non-efficiency-based concerns of justice such as equality to be limited in scope. But what justifies the claim that there are such limits?

Cohen developed this into an argument for distributive equality. The Rawlsian maintains that special incentives make us better off by making the more talented more productive.<sup>iv</sup> Yet it seems that the worst off would be even better off were the more talented to be more productive for a normal salary.<sup>v</sup> So it seems that special incentives are never to the worst off's greatest benefit, and hence that according to the difference principle, special incentive inequalities are unjust. Whilst that principle does not then require the more talented to be more productive, it does require them not to accept special incentives for being so.

The Rawlsian might attempt to avoid this argument by claiming that inequalities are only just if they are to the greatest benefit of the worst off *given what will be produced under a distribution*.<sup>vi</sup> This avoids Cohen's critique since we are assuming that the more talented would not use their greater talents were benefits equally distributed. We need a reason to hold the Rawlsian to the difference principle's statement. Cohen seemed to accept this in arguing against 'the lax interpretation' of the difference principle.<sup>vii</sup> These further arguments appealed to Rawlsian ideas such as fraternity, dignity and well-orderedness.

Whilst the Rawlsian is not wedded to these ideas, Cohen also offered a more powerful argument against such revisions which appealed to the difference principle's spirit.<sup>viii</sup> In adhering to a principle we must adhere to its spirit; to the idea which it articulates. Whilst Cohen never explicitly stated what he took the spirit of the difference principle to be, he frequently appealed to concern for the worst off.<sup>ix</sup> Since the worst off are affected by whether the more talented use their greater talents in exchange for special incentives, it seems that the difference principle must govern such decisions.

Cohen's key claim therefore seems to have been that the more talented would reject special incentives were they concerned for the worst off.<sup>x</sup> What makes this argument powerful is that an appeal to a principle's spirit is not mere rhetoric. Principles are plausible not only because they get the right results but also because they are based on certain ideals. The spirit of a principle represents those ideals. As well as making a principle coherent, that spirit explains why we should adhere to it.<sup>xi</sup> According to the difference principle, then, special incentives appear to be unjust.

This argument applies to any principle that attempts to reconcile special incentives with distributive justice. For it seems that any principle which requires that we distribute benefits in a certain way will continue to do so when we turn to special incentives. So Cohen's argument appears to hold even if he is mistaken about the difference principle's spirit. Moreover, justice does require us to be concerned for the worst off. If some social arrangements are more just than others, why is it just to permit incentives which are not offered to the worst off? If equality is the default, why should we depart from it?

## **II. Two Failed Solutions**

Rawlsians have offered two types of solution. Focusing on Cohen's appeal to the spirit of the difference principle shows that both are problematic. The first is that justice does not apply to special incentives in being limited in scope. This is the argument of the most prominent Rawlsian response to Cohen: the basic structure objection.<sup>xii</sup> According to this objection, Cohen's critique fails since principles of justice only apply to the basic structure; to a society's major institutions. Rawls' theory clearly affords the basic structure a prominent role. More generally, it seems that justice is particularly concerned with institutions.

Cohen's reply was that special incentives must be part of the basic structure if such a limit is to be justified.<sup>xiii</sup> I take his basic point to have been that we need a reason to take principles of justice to only apply to the basic structure.<sup>xiv</sup> This becomes clear on focusing on ideals of justice. These ideals are not ultimately concerned with a society's institutions but with the situation of its citizens. This includes a concern for their being equal. This allows that a society's major institutions have a significant role in realising such ideals. Such institutions may be the primary subject of justice in being the most effective way of realising a just distribution of benefits. Yet they need not be the only way.<sup>xv</sup>

Feminists are concerned with the oppression of women by such means as sexual harassment. It would hardly be plausible to claim that an ideal of non-oppression only applies to major institutions. Sexual harassment remains a political concern even when it is not obviously institutional. Even if this concern would be partly met by reforming our institutions, we may also need to do so by reforming our practice, or by realising an ethos. Both sexual harassment and special incentives are part of our public political culture. If the basic structure is understood in some other way there is no reason to think that it excludes special incentives.

It is not clear, however, that there is any reason to take justice to only apply to a society's major institutions. A reason of justice cannot limit what it or other reasons of justice require of us. Nor could some other moral reason limit what justice requires. Since justice is a practical concern, we cannot claim that special incentives are necessary in practice. That people will not act justly does not make a failure to do so just. So it seems that the Rawlsian must claim that the demands of justice only arise within the basic structure. Since we have claims on one

another as people rather than as members of institutions, however, it is difficult to see why this should be true.<sup>xvi</sup>

The Rawlsian might rather claim that justice permits special incentives in being concerned with efficiency.<sup>xvii</sup> A distribution is pareto efficient when it is not possible to make some better off without making others worse off. This ideal would be realised were the more talented more productive in exchange for special incentives. But efficiency cannot be the only concern of a distributive principle. Such principles must also tell us something about the differences in the benefits which each person receives. Such a response therefore invokes a type of pluralism on which the spirit of the difference principle is not solely equality.

As Cohen showed, however, a distribution would also be pareto efficient were the more talented more productive for a normal salary. Since this distribution would also be equal, this response fails to justify special incentives. The Rawlsian might respond by appealing to a third ideal. She might claim that people have a prerogative to accept special incentives.<sup>xviii</sup> Alternatively, she might claim that people are free to offer and accept special incentives in exercising freedom of occupational choice.<sup>xix</sup> Permitting special incentives might seem to best realise the ideals of equality and pareto efficiency when combined with this third ideal.

Yet such appeals are not convincing. Why think we have prerogatives which entirely exclude the demands of equality? Why would these be prerogatives of justice, as opposed to permissions to depart from what justice requires of us? Why think that we have freedom of occupational choice or that it is part of Rawls' theory? Why think that freedom completely outweighs equality? Does freedom really require some people to be able to have more than others? Might we not be free to use our greater talents in exchange for special incentives even if equality requires us not to do so?

The problem with this second response is that any such ideals will be in tension with those concerned with people's relative position. This tension pushes us towards a requirement to refuse special incentives. But it also pushes us towards an interpretation of those ideals which allows for this requirement; to a conception of freedom which is consistent with a requirement to refuse special incentives, for example. Appeals to pluralism must claim these ideals to be precisely balanced so as to permit special incentives. But simply asserting this to be the case is hardly satisfactory. The flexibility of this type of pluralism makes it less convincing.

### III. Relational Benefits

Such problems motivate a different response. Cohen claimed that the worst off would be even better off were the more talented to be more productive for a normal salary. What makes this plausible is that the worst off would benefit from the additional income and wealth which would then be released. This does not show, however, that they would be better off *in the sense relevant to the difference principle*. So there is space to meet Cohen's critique by denying this.

Such a response may at first seem quite implausible. It appears that the difference principle must distribute income and wealth in focusing on economic inequalities. Rawls also identifies income and wealth as one of his primary goods.<sup>xx</sup> And income and wealth is clearly a substantive benefit. So it seems to be wrong or at least ad hoc to insist that the worst off would be no better off in Cohen's situation. This partly explains why this response has been overlooked.

We can meet these concerns by introducing the idea of a relational benefit. A relational benefit is a benefit to a person of being in some relation. You benefit in various ways in being some person's friend or colleague. You might make me laugh or show me different ways of living. You also benefit in living in the same society as other people. Such relations need not

amount to relationships. We stand in certain relations to the other members of our society even when we have never significantly interacted with them. Standing in those social relations benefits us in various ways.

It is tempting to suppose that a social benefit is simply a benefit which has some social aspect, such as being found within or arising from a society. This reduces the nature of a social benefit to that of a benefit. Such a view supposes justice to be concerned with how many benefits each person has. Income and wealth is one such benefit. On this view we must identify the currency of justice in order to measure how many benefits each person has.<sup>xxi</sup> We need not concern ourselves, however, with the nature of what is being measured.

A non-reductive view instead takes social benefits to be essentially social. To distribute relational benefits is to take those benefits to be part of our social relations. Distributing benefits is then a way of realising just social relations. The particular relation which a distribution realises will not only depend on that distribution but also on the nature of that relation. We must specify this relation in order to determine how benefits are to be distributed. To do so is not to specify the currency of justice but the nature of a social benefit.

Our concern here is with cooperative relations. These relations have two features.<sup>xxii</sup> First, they involve our producing certain benefits together by acting on and within the world around us. Nearly all of us play some role in the production of such benefits.<sup>xxiii</sup> Secondly, they involve our being benefited by such production. In being benefited, each of us ends up with certain benefits. Crucially, however, we benefit as people who cooperate with one another; who stand in this relation. An account of what these cooperative relations should be explains how these two features come together.

This makes space for our response since the benefit of standing in cooperative relations need not be income and wealth. The goods and services which income and wealth represent are produced by particular people. So the relational benefit to be distributed may be the ability to obtain income and wealth through its production. It is possible that the worst off would not be better off in the relevant sense were the more talented to use their greater talents for a normal salary. A relational account of benefits might avoid Cohen's critique.

I argued above that Cohen's challenge cannot be met by claiming justice to be limited in scope or by appealing to pluralism. The claim that justice requires us to distribute relational benefits builds on these responses. Justice is not limited to certain ways of realising a distribution, such as by realising a particular basic structure, but is rather concerned with our relations. Non-relational benefits do not fall within the spirit and hence the scope of the difference principle.<sup>xxiv</sup> And as we shall see, the various ideals which these relations realise need not be in tension.

#### **IV. Earnings**

In giving such a response the task is to identify the relevant relational benefits and defend the corresponding account of just relations. I shall argue that the difference principle distributes people's *earnings*. For a person to earn something is for her to obtain it by performing some action.<sup>xxv</sup> If earning is to be part of our cooperative relations, what must be earned are the benefits produced within that relation, and they must be earned by undertaking a particular productive role. The following two sections show how this claim avoids Cohen's critique. Subsequent sections defend this focus on earnings.

A person's earnings are a relational benefit in being earned by producing goods and services with other people. To do so is to occupy a particular role in the economy. The other

members of our society enable the production of a good or service. Most obviously, they provide the conditions and tools which make production possible. But they also determine whether or not there is demand for that good or service. To earn income and wealth is thus to stand in a particular relation to other people. The ability to earn income and wealth is the benefit of being in that relation.

To focus on earnings rather than income and wealth itself is to refuse to abstract from those relations. In particular, it makes clear that people produce goods and services together. This is obscured by focusing on income and wealth at the point of use. At the same time, distributing earnings allows that what is produced is of benefit to each person. People use those goods and services in various ways in living their lives. On a relational view, a distribution of earnings matters as a part of cooperative relations.

Each person performs a particular productive role by using her talents. The use we make of our talents is thus part of the relation within which benefits are to be distributed. We earn income and wealth by using our talents in certain ways. This allows the talents that we are born with to affect the distribution that certain social arrangements count as realising. Those talents may be identified with us as the people who stand in such relations. This remains the case if our being born with those talents is morally arbitrary.

This avoids Cohen's critique as follows. Our concern is with cases in which the more talented would prefer not to use their greater talents without special incentives. In these cases, the worst off would not earn the additional income and wealth which they would receive were the more talented to be more productive for a normal salary. That additional income and wealth would not be received in exchange for undertaking a productive role, but as a result

of the more talented using their greater talents against their preferences. Whilst the worst off would then be better off, they would not be so in the sense relevant to the difference principle.

This is worth spelling out. In these cases, the more talented would initially use their normal talents in exchange for a normal salary. In doing so all parties would earn the same amount of income and wealth. Yet the more talented would also use their greater talents in exchange for a special incentive. In doing so, the more talented would earn that special incentive and the worst off would earn a smaller increase in income and wealth. In holding that inequalities are to be to the greatest benefit of the worst off, then, the difference principle appears to justify an inequality in earnings.

Cohen claimed that the worst off would be even better off were the more talented to use their greater talents for a normal salary. But this is not true if the difference principle distributes earnings, since the more talented would no longer be using those talents in exchange for income and wealth. The worst off would not earn the additional income and wealth which they would then receive. To earn something is to obtain it by performing some action. In this situation, however, the worst off would instead receive that additional income and wealth as a result of the more talented going against their preferences.

Cohen claimed that we would reject special incentives if we were concerned for the worst off. But this is not the case if our concern is with earnings rather than income and wealth itself. Of course what benefits the worst off is having income and wealth. If justice is concerned with people being benefited, then, a concern for the worst off must amount to a concern for income and wealth itself. As we have seen, however, if justice is concerned with relational benefits, then it may rather be that we are to distribute people's earnings.

Rawls referred to the idea of earning throughout his work. The claim that we should distribute earnings makes sense of the difference principle's reference to *expected* benefits as well as his idea of legitimate expectations. Rawls claimed that 'the inequalities to which the difference principle applies are differences in citizens' (reasonable) expectations of primary goods over a complete life.'<sup>xxvi</sup> If each representative class is equally willing to use their talents then we can set aside the choices of its individual members in identifying the worst off.

## V. Free Earnings

I have claimed that the worst off would not earn the additional income and wealth which they would receive were the more talented to be more productive for a normal salary. This is because the worst off would not receive that additional amount in exchange for undertaking a particular productive role since the more talented would then be going against their preferences. But does this establish that the worst off would not earn this additional amount? The worst off still undertake a productive role. Why, then, would they not count as receiving that additional amount in exchange for doing so?

We can meet this objection by further specifying our account of earnings. In using their greater talents for a normal salary, what matters is not that the more talented would be going against their preferences, but rather that they would be failing to pursue their conception of the good.<sup>xxvii</sup> A conception of the good includes the use we make of our talents. What is to be distributed, then, are people's free earnings: their earnings when each pursues a conception of the good. The worst off would not then be better off were the more talented to use their greater talents for a normal salary in this more specific sense.

This revision might seem to do too much. The conception of the good of the worst off would be furthered to a greater extent were the more talented to use their greater talents for

a normal salary. So it might seem that the more talented would not earn the benefits which they would receive were they to use their greater talents in exchange for special incentives. Special incentive inequalities then remain unjustified. Why should the conception of the good of the more talented be any more important than that of the worst off?

This further objection overlooks the distinction between a person *pursuing* the good and that good being *furthered*. Were the more talented to accept special incentives, the worst off would continue to pursue their conception of the good in using their talents to obtain income and wealth. That the worst off's good would be furthered were they offered additional income and wealth is irrelevant. Whilst the more talented would fail to pursue the good in using their greater talents for a normal salary, not doing so would not prevent the worst off from pursuing the good.

It would be unjust for more talented people to demand special incentives if their conception of the good would be best met when offered a normal salary by using their greater talents.<sup>xxviii</sup> Special incentives would be unnecessary were people's conceptions of the good always thus and so. Yet it is not always easy or even possible to change one's conception of the good in this way. More importantly, on the view of distributive justice which we are developing there is no requirement to do so. It is up to us to determine our conception of the good as those who stand in just relations.

Free earnings remain a relational benefit. The claim that we are to distribute this benefit simply shifts our focus to a cooperative relation in which each pursues her own conception of the good. In earning something a person is typically attempting to obtain it. This helps to explain why it is up to us which of our talents we use in the cooperative relation. Using our talents in a particular way is one way in which we pursue our conception of the good.

## VI. Reciprocity

If we do not earn income and wealth then we must come to have it in some other way. Since goods and services must still be produced this is not merely a matter of being allocated income and wealth. To produce goods and services regardless of whether other people do so is to serve one other; to use our talents in order that other people are benefited. This is an alternative account of just cooperative relations on which we are to produce goods and services so that each person has a certain amount of income and wealth. On this account special incentive inequalities will be unjust.

This is not a relational view of justice if our sole concern is with people being benefited. But serving one another might be claimed to be good in itself; to realise a good community, or be a way of responding to each person's value. Cohen can allow that our serving one another should be conditional on certain actions. He can also allow that we do not owe people income and wealth which they fail to earn. He need only maintain that since each person has some claim to be benefited, the more talented should serve the worst off to the extent that they are less able to earn income and wealth.

In responding to Cohen it is enough to defend the claim that we should use our talents to earn income and wealth rather than to serve one another. The obvious objection is that we fail to benefit the worst off in permitting special incentives which result in their being worse off than the more talented. Such relations may seem to be unjust in failing to fully value each person's interests. In Rawlsian terms, distributing earnings may seem not to fully value each person's pursuit of the good.

We can meet this objection by showing that our account is underpinned by an ideal of reciprocity. Rawls argued that this ideal supports the difference principle over a principle

which maximises average utility whilst guaranteeing a social minimum.<sup>xxix</sup> This led him to claim that ‘the difference principle is essentially a principle of reciprocity’, that this principle ‘involves reciprocity at the deepest level’, that it is ‘a form of reciprocity’, that ‘it is crucial that the difference principle involves an idea of reciprocity’, that ‘we get that principle by taking equal division as a starting point, together with an idea of reciprocity’, and so on.<sup>xxx</sup>

In reciprocating each person pursues her own interests in a way that values the pursuit of others. In taking it in turns to buy each other drinks we neither serve one another nor disregard each other’s interests. You do not serve me since you would not buy me drinks if I never bought drinks for you. At the same time, you value my interests since you would buy me drinks even if I would buy them for you were you not to do so. This shows that we can value other people’s interests without acting in order to meet them.

We would also reciprocate in earning income and wealth. You would not be serving me since you would not produce goods and services on my behalf were I not to produce goods and services on yours. I must obtain income and wealth by producing goods and services. But you would also value my interests since you would produce goods and services on my behalf even if I would produce goods and services on yours were you not to do so. We are to distribute earnings rather than getting as much as we can. Our account therefore allows that each person’s pursuit of the good is valuable.

We can draw on Kamm’s distinction here between acting *in order* to realise some effect and *because* some effect will be realised.<sup>xxxi</sup> If you will only throw a party if your friends help you clear up then you throw it because rather than in order that they will do so. Similarly, in reciprocating, you benefit people because rather than in order that they benefit you. You do not benefit them in order that they benefit you if they would benefit you regardless. You do

benefit them because they benefit you, however, if you would not benefit them otherwise. You thus pursue your own good whilst valuing theirs.

Cohen might object that in reciprocating we fail to fully value each person's interests. In particular, he may claim that we must serve one another if we are to be impartial. Yet the Rawlsian can allow that we should be impartial in reciprocating. Justice does not permit us to only reciprocate with some people, or to prioritise the development of particular people's talents. The Rawlsian holds only that we are to use our talents to pursue our own conception of the good rather than advance the pursuits of others. To do is not to be partial but rather to be a particular person with a particular life to live.

We can bring this out by noting that to pursue a conception of the good is not to value it more than that of others but rather to take it to be of a distinctive value. Whilst each person is to pursue her own conception of the good, she is to sustain the pursuit of others. We sustain that pursuit in distributing earnings; in benefiting others because they benefit us. The worst off are also to pursue a conception of the good. The pursuit of the more talented only matters more on this view if our social arrangements are to be assessed from an impersonal viewpoint. But we need a reason to understand impartiality in this way.

The Rawlsian rejects this viewpoint in taking people to be separate. Each person is not only to pursue her own conception of the good but to value her pursuit differently to that of other people. This includes valuing her talents as a means of pursuing her conception of the good rather than advancing the pursuit of others. Whilst she will also value the talents of other people as such a means, she is to accept that they are to be used by those people in pursuing their conceptions of the good. She is therefore to use her talents in a way that reflects this difference; to earn income and wealth rather than to serve other people.

So our account is at least defensible. Nonetheless, the idea of an impartial spectator is likely to remain alluring. So it is worth further explaining why the Rawlsian holds it should be rejected. In particular it is worth explaining the political problem with a requirement to serve one another. Moreover, the claim that we are to earn income and wealth appears to result in significant inequalities. So it may seem that equality favours a requirement to serve one another. The Rawlsian may attempt to meet this charge by claiming that we treat one another as equals in reciprocating. Yet such a claim at least needs making out.

The remaining sections take up these tasks by showing that we must distribute free earnings in order to realise free and equal relations. I first show that a requirement to use our talents to serve each other is inconsistent with our cooperative relations being free. I then show that our earning income and wealth is consistent with those relations being equal. This strengthens our response. The spirit of the difference principle, I suggest, is not a concern for people being benefited but rather for free and equal relations.

## **VII. Free Relations**

I assume a broadly liberal conception on which freedom consists in the absence of constraints.<sup>xxxii</sup> Roughly speaking, for a person to be unfree is for someone else to determine how her life goes. The Rawlsian is concerned with constraints on a person's pursuit of a conception of the good. This is to ascribe a particular significance to a person living a life. As we have seen, the Rawlsian takes people to be separate in pursuing their own conception of the good.<sup>xxxiii</sup> It is this pursuit which freedom is to protect. We are not concerned with ways of acting which do not significantly bear on a person's pursuit of the good, or with unreasonable conceptions of the good.<sup>xxxiv</sup>

A relational view of justice takes freedom to be a property of social relations. A social relation is not free if a person is constrained in standing in it. Whether she is so constrained depends on how she could or would have lived were there no such relation.<sup>xxxv</sup> We can determine this by conceiving of people outside of social relations; by considering how life could or would be in the state of nature.<sup>xxxvi</sup> In doing so we can abstract from many of the details of this counterfactual situation. The question is not what we did or would agree to in this situation but rather how our lives could or would then be.

This allow that a person can also be constrained outside of social relations. We may stand in social relations partly to avoid the constraints which would arise in the state of nature. The claim is only that we should be concerned with whether or not our social relations are free. We can also allow that a person's pursuit of the good in that state would be much less successful. A social relation can constrain a person even if she would be better off in many or all other ways within it.<sup>xxxvii</sup> This remains the case even if she chooses to be in that relation.

In responding to Cohen our concern is with people in cooperative relations being compelled to use their talents in particular ways. Each person is born with certain talents with which she can produce things. In pursuing a conception of the good we will attempt to use those talents in a certain way. That conception will include a concern for which goods and services we produce and the way in which we do so. Developing certain talents may also prove valuable in other ways in undertaking a pursuit. Were there no cooperative relations, we would each be able to determine how to use those talents.

Cooperating risks our constraining the use of one another's talents because it involves our benefiting each other. In pursuing a conception of the good each person has the end of benefiting more rather than less. This is part of what makes us a particular person. We would

benefit more if people used their talents in certain ways. This creates a conflict between us as to how we use our talents. For there is no reason to think that in pursuing a conception of the good you would always use your talents in the way that would benefit other people the most.

We can now see why a requirement to serve one another would go against our freedom. For such a requirement to be implemented would be for us to constrain people in pursuing a conception of the good. In particular, it would be for us to compel the more talented to refuse special incentives; to use their greater talents for a normal salary, or at least not to use them in exchange for an additional payment. Without such constraints that requirement could not be realised. Yet they would be inconsistent with our freedom.<sup>xxxviii</sup>

In replying to the freedom of occupational choice objection Cohen suggested that we can hold that there is such a requirement whilst denying that it must be implemented. This overlooks that we begin with conflict as to how we are to use our talents. If such a requirement were not implemented then people would still attempt to constrain one another in pursuing their own conceptions of the good. This is not to claim that an unimplemented requirement would not be realised. Political requirements must be enforced because they must resolve ongoing conflicts.

Cohen would likely insist that the more talented could be morally inspired to reject special incentives. An ethos of rejecting special incentives would not constrain us were it to arise naturally.<sup>xxxix</sup> But it is not unreasonable for people to offer and accept special incentives or to refuse to use their greater talents without them. There are all sorts of reasons to use our talents in particular ways or to want to have more income and wealth. These reasons may include the well-being of friends and family as well as promoting recognisably moral projects. Whilst such actions may prioritise the interests of a self they need not be selfish.

So in pressing this reply Cohen would have to hold that justice requires people to go against their conception of the good. But this reply simply denies a basic premise of the Rawlsian position. We may well doubt the feasibility of realising an ethos on which the more talented fail to live their own life. More importantly, however, the Rawlsian denies that justice could require this of them. The claim that each person does and should pursue a conception of the good is fundamental to her theory.

To require the more talented to reject special incentives would be to fail to treat them as free. As we have seen, for a person to be free is for no-one else to determine how her life goes. That freedom would not be of any value were a person not to live her life; were she not to pursue a conception of the good. This is not to say that a person is not free if she fails to exercise that freedom; if she fails to meet her true or genuine interests. We need only claim that whilst freedom consists in the absence of constraints, its value lies in its exercise.<sup>x1</sup>

So whilst a requirement to go against one's conception of the good would not make us unfree, it would be inconsistent with the value of our freedom and therefore with the spirit of the difference principle. This remains the case if the more talented endorse this requirement. Even if we desire that which we endorse, the Rawlsian does not take freedom to be a matter of meeting our desires. So even if it were feasible for the more talented to go against their conception of the good, it would not be just for them to be required to do so.

This problem does not arise if we distribute free earnings. If a person earns the income and wealth which she receives, then in using her talents to produce income and wealth she pursues her own conception of the good. She determines how she uses those talents in order to obtain the goods and services which further that pursuit. There is therefore no requirement

to go against her conception of the good. In distributing earnings, then, we would be distributing benefits within a free cooperative relation.

It might be objected that this argument proves too much. In particular, it might seem to permit the more talented to hold out for additional income even when they would prefer to use their greater talents without it. In the state of nature, however, we would be unable to coordinate the use of our talents so as to produce goods and services. So cooperative relations would not constrain people were such behaviour to be prohibited. Redistribution and taxation need not constrain us since such bargaining would not be possible were we not to stand in cooperative relations.<sup>xli</sup>

Yet the worst off are not unfree simply because they could be better off. Cooperative relations cannot constrain a person in benefiting her, since were there no such relations there would be no goods and services to benefit from. The worst off would not freely earn the additional income and wealth which they would receive in Cohen's situation. To prohibit special incentives is to prohibit offers of additional income and wealth. A person is not unfree simply because she receives no such offers. The worst off can still determine whether to make and accept offers in cooperating with those who happen to be born with greater talents.<sup>xlii</sup>

The claim that just cooperative relations are free therefore supports distributing free earnings. A requirement to serve one another would be inconsistent with freedom. Our interests in how we use our talents and in being benefited by other people will sometimes be in conflict. Whilst we would have to implement that requirement in order to resolve this conflict, doing so would be inconsistent with the freedom of the more talented. This problem is not avoided by requiring the more talented to go against their pursuit of the good.

The core idea here is that each person is to pursue a conception of the good. I suggested above that this explains why the Rawlsian rejects the viewpoint of the impartial spectator. Connecting this idea to that of freedom brings out the political nature of this rejection. The claim that justice requires us to take up an impersonal viewpoint mistakenly supposes that we are to be spectators rather than pursuing a conception of the good. The Rawlsian takes the value of our freedom to lie in our undertaking such a pursuit.

### **VIII. Equal Relations**

Yet to permit special incentives would be to permit departures from an equal distribution of benefits. So it might seem that equality requires that we use our talents to serve one another rather than to earn income and wealth. The spirit of the difference principle clearly includes a concern for equality. Moreover, the idea of free and equal citizens is fundamental to Rawls' theory. Why think that freedom trumps equality? Why should freedom completely override a requirement to realise an equal distribution?

We can meet this final objection by distinguishing between an equal distribution of benefits and our standing in equal relations. The idea of social equality remains somewhat unclear.<sup>xliii</sup> The nature and identity of the relations which comprise society is far from obvious. Nor is it immediately apparent what it is for those relations to be equal. Moreover, insofar as they are clear, the distributive implications of such an ideal may seem to be unacceptably permissive.<sup>xliv</sup> I shall therefore begin with a brief account of this idea.

Our interest here is in social relations. To stand in a social relation is to occupy a particular position within it. Businesses contain employers and employees. Heterosexual marriages are comprised of a husband and a wife. Some of these positions may be better or worse than others.<sup>xlv</sup> In a marriage or partnership it may be better to be the one who makes major

decisions. In societies such as our own, it is often better to be an employer than an employee, or a husband than a wife. An equal relation consists of equal positions.

This view distinguishes a position in a relation from the person occupying that position. Even if some positions can only be occupied by certain people, we can conceive of each person as occupying each position. One position is better than another if it would be better for anyone in that relation to be in that position. Different positions are equal if no-one would be better off in any of those positions.<sup>xlvi</sup> For people to stand in equal relations, then, is for there to be no-one for whom it would be better to be in a different position.

Cooperative relations consist of people both producing benefits together and being benefited. Positions in these relations are to be defined in terms of productive roles undertaken and amount of socially produced benefits received. These relations are equal if no position is better than any other.<sup>xlvii</sup> The Rawlsian holds that we are to evaluate these positions with respect to people's pursuit of the good. A person's productive role and the income and wealth which she receives are both clearly relevant to this pursuit.

In considering special incentives we can set aside the direct impact of a person's productive role on her pursuit of the good. The obvious claim is that to be in a better position with respect to the goods and services produced by social cooperation is to have more of those goods and service. This answer sustains Cohen's critique. In distinguishing the positions in a relation from the people occupying them, however, we need not take positions to be defined by the amount of goods and services received in them.

We can show social equality to be consistent with special incentive inequalities by appealing to the idea of an individual or non-social difference. This is a feature of each person which is different outside of our social relations. The relevant feature here is a person's natural

talents. People would have different talents outside of a society. Special incentives are consistent with social equality if we identify these differences with a person rather than her social position. This avoids Cohen's critique since social positions cannot then be unequal in virtue of distributive inequalities arising from those differences.

We can spell this out as follows. If a person's natural talents are identified with her rather than her social position then they do not bear on the goodness of that position. Since a person's natural talents are not part of her position, permitting special incentives could not make that position better off than other positions. A person would have the same natural talents regardless of her position. It follows that permitting special incentives could not make social positions unequal.

Of course permitting special incentives will affect the people who occupy those positions. In particular, it will result in social positions being better for the more talented than for the worst off. Yet this is consistent with realising equal social positions. This brings out the significance of focusing on social equality. A non-social difference need not be a social inequality. Of course there may well be some sense in which it is better to be a more talented person. But on this view this is simply irrelevant from the point of view of justice.

The Rawlsian defends social equality by appealing to our basic moral equality.<sup>xlviii</sup> It might be objected that certain individual differences are grounds for social inequality. The principle of formal equality tells us to treat like cases as like. This suggests that such differences might permit or even require unequal social positions. Whilst differences in our race or sexuality are irrelevant to our standing in cooperative relations, the same is not obviously true of differences in our natural talents.

The Rawlsian rejects this view on the grounds that being born with greater talents is morally arbitrary. We saw above that this helps give rise to the initial challenge to justify special incentive inequalities. This claim might also seem to show that those talents are to be identified with a person's social position rather than her person. In particular, it might seem that an account of justice must prevent such differences resulting in inequalities in order to be non-arbitrary. We can defend our response to Cohen by showing that this is not the case.

As Scanlon notes, all that immediately follows from the moral arbitrariness of our talents is that differences in these talents provide no justification for distributive inequalities.<sup>xlix</sup> This allows that there might be some other reason to permit those differences to result in such inequalities. Nonetheless, there will be some reason to eliminate such inequalities so long as our basic moral equality creates some presumption in favour of equality.<sup>1</sup> We need some reason to permit such inequalities. As we have seen, however, such a reason is not forthcoming.

The Rawlsian can avoid this line of argument by claiming that such differences fall outside the scope of justice in falling outside of our social relations. On this view, basic moral equality does not create a presumption in favour of eliminating those differences. We are rather to accept those differences as obtaining independently of our social relations and hence of the demands of justice. We are therefore to identify them with people rather than the social positions which they occupy.

The Rawlsian holds that we should accept rather than eliminate these differences precisely because they would obtain were there no social relations. This suggests that they should be identified with the people who these relations are between rather than with those relations. Social equality is to obtain between people who are separate in having certain differences. As

we saw above, the Rawlsian takes each person to be separate in pursuing a conception of the good. In particular, she takes the use a person makes of her natural talents to be part of this pursuit.

The Rawlsian is concerned with equal social positions because she holds that we are to relate to one another as equals. Our individual differences make this a difficult task. Differences in our natural talents are one such case. Assigning these differences to a person rather than her position allows us to set them aside in standing in social relations. In taking these differences to fall outside of the scope of justice we take them to be irrelevant in considering ourselves as equals.

Eliminating non-social differences might seem to guarantee equality. But this view requires social positions to be defined on the basis that some people are born with lesser talents. This risks treating those people as naturally inferior. We do not relate to one another as equals in compensating people for such differences.<sup>11</sup> It matters how people are, not just how we could be. This worry is avoided if our natural talents are rather part of our person. We then relate to one another as equals in accepting such differences.

Nonetheless, the ideal of equal cooperative relations creates significant distributive requirements. In particular, it does not permit the more talented to hold out for more income and wealth. If using your greater talents would already most advance your conception of the good then it is not the case that these natural differences happen to result in a distributive inequality. To hold out for special incentives is to exploit one's greater talents to improve one's social position. This is to make those talents part of one's position.

Social equality therefore permit the distribution of free earnings. Contrary to what Cohen suggests, equality does not need to be rescued from the difference principle. Cohen's appeal

to the spirit of that principle does not succeed if that spirit is a concern for equal social positions. A concern for the worst off is a concern for those positions. Special incentive inequalities are just if our aim is to realise equal relations between people with different talents. On this view special incentives and equality are not in tension.

## **IX. Concluding Remarks**

We saw at the outset that special incentives pose a problem for the proponents of distributive justice. We have now seen that the difference principle solves this problem if it distributes free earnings. Special incentives are to be permitted when they enable the worst off to earn more income and wealth. Such a distribution is just in allowing the worst off to be as well off as possible given their lesser talents. Distributing free earnings upholds an ideal of reciprocity. And whilst prohibiting those incentives would be inconsistent with our freedom to use our talents in pursuit of the good, permitting them is consistent with social equality given our individual differences.

In responding to Cohen we have developed a relational view of justice. As we have seen, there is no single argument for this view. Reciprocity, freedom and equality cohere with one another in specifying an ideal of just cooperative relations. This fits with Rawls' appeal to reflective equilibrium.<sup>liii</sup> Whilst there will be other accounts of justice, this makes this view resilient in the face of further objections. There is no reason to think that this view contains internal inconsistencies. Taken together, these ideals are enough to show that Cohen's argument is not successful. It is at least plausible that we should use our talents to earn income and wealth rather than to serve one another.

Our core claim has been that each person has certain natural talents outside of cooperative relations with which to pursue a conception of the good. I have suggested that Cohen instead takes justice to be concerned with people being benefited. Cohen later claimed that

‘The big background issue in my disagreement with Rawls and the Rawlsians is the nonliberal socialist/anarchist conviction that Karl Marx expressed so powerfully in his essay “On the Jewish Question” when he said that “human emancipation” would be “complete” “only when the actual individual man... has recognised and organised his own powers as social powers so that social force is no longer separated from him as a political power”; thus, only when he “has taken back into himself the abstract citizen” so that freedom and equality are expressed in “his everyday life, his individual work, and his individual relationships.”’<sup>liii</sup>

That each person’s powers are ultimately social powers suggests that it is irrelevant that she would have certain talents outside of a society. On the view we have developed, what matters is standing in free and equal social relations. If we are fundamentally social beings, however, then this fails to exclude any aspect of our lives from the scope of justice.

Liberals consider people outside of social relations in conceiving of them as individuals. The Rawlsian holds that each individual is separate in that her pursuit of a conception of the good is distinct. Considering people outside of social relations reflects that those relations and society more generally are no part of those pursuits. Whilst those relations may further a person’s pursuit of the good, they are not part of the pursuit itself. Nor need they be part of a person’s conception of the good. On this view, to ask how our society should be is to ask about relations between people who undertake distinct pursuits of the good.

So in considering how our cooperative relations should be we are not considering how people should be as such. Rather, we are considering what it would be for those relations to be free and equal given the talents which each of us happens to be born with. In doing so we are 'taking men as they are and laws as they might be.'<sup>liv</sup> More precisely, we are asking what it would be to be free and equal citizens; to be free and equal as people who stand in social relations. Those relations are to appropriately value our distinct features, including our different natural talents. This is not merely a piece of ideology but a central component of a liberal viewpoint.

The Marxian instead holds that people are part of a society. On this view, to ask how society should be is to ask how people should be. This is to take those relations to be part of those people rather than to hold between people with separate lives to live. To claim that those relations should be a particular way is to claim that people should realise some social essence. The liberal rejects this on the basis that each person is to pursue a conception of the good. Each person must determine her own life in pursuing a conception of the good. And we must accept individual or non-social differences because those pursuits are separate.

I have argued that the use which a person makes of her natural talents must be understood as part of her pursuit of the good. A follower of Cohen might deny this whilst accepting that there is some important sense in which people are separate. As we have seen, however, the alternative is to take the use which people make of their natural talents to be part of our social relations. Since each person has those natural talents outside of our cooperative relations, this is to take that use to be part of some social essence. As we have seen, the liberal rejects this claim in holding that each person is to pursue a conception of the good.

I have not considered how Cohen might solve the problem of special incentives. The lack of a plausible solution would be a further reason to prefer our position. Regardless, we might still ask why justice should be understood as a concern for free and equal relations. We might also further consider how our response fits with Rawls' theory. I hope, however, to have shown that the position here developed is worth taking seriously. That it avoids Cohen's critique and solves the problem of special incentives speaks in its favour, both as a reading of Rawls and an account of justice more generally.

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<sup>i</sup> See, for example, F. A. Hayek, *Law, Legislation and Liberty* (Oxford: Routledge, 1982), vol. 2.

<sup>ii</sup> John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1999), p.72. Henceforth *ToJ*.

<sup>iii</sup> G. A. Cohen, *Rescuing Justice and Equality* (Cambridge: Cambridge University Press, 2008). Henceforth *RJE*.

<sup>iv</sup> *ToJ*, p.68, and John Rawls, *Justice as Fairness, A Restatement* (Cambridge, Harvard University Press, ed. E. Kelly, 2001), pp.63–4. Henceforth *JaF*.

<sup>v</sup> *RJE*, pp.32–4. I here assume that this is possible. Why should it not be, at least in some cases? *RJE*, pp.48–54.

<sup>vi</sup> Or more strictly, given what will be produced under a distribution when we set aside the incentives that will be offered as a result of what we intend to produce. This avoids people 'holding out' for the offer of a special incentive when they would prefer to use their greater talents for a normal salary. A distribution need not specify the benefits which are to be produced.

<sup>vii</sup> *RJE*, pp.68–9.

<sup>viii</sup> *RJE*, p.32, 69.

<sup>ix</sup> *RJE*, ch.1.

<sup>x</sup> We need not also claim that they would use their greater talents for a normal salary. That concern may be for the worst off's relative rather than absolute position.

<sup>xi</sup> Shiffrin argues against special incentives by appealing to Rawls' commitment to public justification. Whilst this is consistent with my reconstruction of Cohen's argument, I am not certain that such an appeal is unnecessary. It seems to me enough to note that there is no reason to take the spirit of a principle to be limited to a particular domain. This is one advantage of appealing to the spirit of a principle rather than its justification. Seana Shiffrin, 'Incentives, Motives, and Talents,' *Philosophy and Public Affairs*, 2 (2010): 111–142.

<sup>xii</sup> See A. J. Julius, "The Basic Structure and the Value of Equality," *Philosophy and Public Affairs* 31 (2003): 321–355, C. M. Melenovsky, "Incentives, Conventionalism, and Constructivism," *Ethics* 126 (2016): 549–574, Andrew Williams, "Incentives, Equality and Publicity," *Philosophy and Public Affairs* 27 (1998): 225–247.

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- <sup>xiii</sup> *RJE*, ch. 3.
- <sup>xiv</sup> Cohen also appeals to Rawls' claim that 'the basic structure is the primary subject of justice because its effects are so profound and present from the start'. *ToJ*, p.7. Once again, since the Rawlsian may drop or modify this claim this is not his strongest argument.
- <sup>xv</sup> See Samuel Scheffler, "Is the Basic Structure Basic?," in Christine Sypnowich, *The Egalitarian Conscience: essays in honour of G. A. Cohen* (Oxford: Oxford University Press, 2006).
- <sup>xvi</sup> Julius and Melonovsky go some way to address this point. Whilst I am unconvinced by these arguments, for reasons of space I do not discuss this here.
- <sup>xvii</sup> *RJE*, ch. 2.
- <sup>xviii</sup> *RJE*, p.181.
- <sup>xix</sup> *RJE*, ch.5.
- <sup>xx</sup> *ToJ*, 54–5, *JaF*, 57–9.
- <sup>xxi</sup> G. A. Cohen, *On the Currency of Egalitarian Justice* (Oxford: Princeton University Press, 2011).
- <sup>xxii</sup> Rawls takes the idea of society as a fair system of social cooperation to be the most fundamental idea to his theory. *JaF*, p.5.
- <sup>xxiii</sup> I shall not here discuss the so called problem of marginal cases.
- <sup>xxiv</sup> This is not a version of the basic structure objection since relations are distinct from institutions.
- <sup>xxv</sup> More broadly, it is for her to stand in some relation to that thing as a result of doing so.
- <sup>xxvi</sup> *JaF*, p.59.
- <sup>xxvii</sup> *ToJ*, p.11, *JaF*, p.19.
- <sup>xxviii</sup> Cohen calls this the 'bad' case. *RJE*, p.57, p.122, p.181.
- <sup>xxix</sup> *JaF*, §36.
- <sup>xxx</sup> *JaF*, pp.64, 49, 60, 76, 123.
- <sup>xxxi</sup> Frances Kamm, *Intricate Ethics* 2006.
- <sup>xxxii</sup> The classic statement is in Berlin. Isaiah Berlin, 'Two Concepts of Liberty', *Four Essays in Liberty* (London: Oxford University Press, 1969).
- <sup>xxxiii</sup> *ToJ*, pp.19–24.
- <sup>xxxiv</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), pp.58–66.
- <sup>xxxv</sup> Exactly how to put this will depend on the nature of a constraint.
- <sup>xxxvi</sup> *ToJ*, pp.10–11.
- <sup>xxxvii</sup> As Rousseau makes clear. Jean-Jacques Rousseau, *The Social Contract* (London: Penguin, 1968), pp.59–60.
- <sup>xxxviii</sup> Thus Rawls claims that 'the priority of liberty means that we cannot be forced to engage in work that is highly productive in terms of material goods.' *JaF*, p. 64.
- <sup>xxxix</sup> Cohen assumes that this objection would be part of a trilemma which also appeals to equality and pareto efficiency. As should be clear, our response does not appeal to pareto efficiency.
- <sup>xl</sup> Whilst a person may be required to exercise her freedom, it does not follow that a person should be made to do so, not least because we cannot force a person to pursue a conception of the good. This is why the value of freedom only requires other people to ensure the absence of constraints.
- <sup>xli</sup> The classic denial of this is in Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974).
- <sup>xlii</sup> This allows that the worst off may be unfree as a result of commonly available resources such as land and water no longer being available. See G. A. Cohen, 'Capitalism, Freedom, and the Proletariat' in David Miller, *The Liberty Reader* (Edinburgh: Edinburgh University Press, 2006).
- <sup>xliii</sup> See Fourie, Schuppert and Wallimann-Helmer, *Social Equality* (Oxford: Oxford University Press, 2015).
- Ed Lamb—*UCLA Colloquium Draft*

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<sup>xliv</sup> I plan to discuss these issues at greater length elsewhere.

<sup>xlv</sup> I leave open the possibility of positions being unequal in ways other than being better or worse than one another.

<sup>xlvi</sup> It might be objected that position A may be better than position B for person X without being better for person Y. This seems to show that one position may be neither better than nor equal to another. Whether such cases obtain, however, depends on what the relevant positions are and how we conceive of a person in evaluating them in those positions. The positions within a relation can deliberately be specified so as to avoid such cases. Doing so is not ad hoc if we hold that justice requires us to realise equal relations.

<sup>xlvii</sup> Other relations may also bear on how we should distribute income and wealth. See Thomas Scanlon, *Why Does Inequality Matter* (Oxford: Oxford University Press, 2018).

<sup>xlviii</sup> I shall not attempt to identify the argument here.

<sup>xlix</sup> *Why Does Inequality Matter*.

<sup>i</sup> I take this to be part of what Shiffrin has in mind in appealing to our higher-order capacity to develop and pursue a conception of the good. ‘Incentives, Motives, and Talents’, p.124.

<sup>ii</sup> I take this to underpin some of the recent powerful criticisms of luck egalitarianism. Elizabeth Anderson, ‘What is the Point of Equality?’, *Ethics* 109 (1999): 287–337, and Samuel Scheffler, ‘What is Egalitarianism?’, *Philosophy and Public Affairs* 31 (2003): 5–39 and ‘Choice, Circumstance and the Value of Equality’, *Politics, Philosophy and Economics* 4 (2005): 5–28.

<sup>iii</sup> *JaF*, pp.29–32.

<sup>iiii</sup> *RJE*, p.1 “On the Jewish Question”, p.241, emphases in original.

<sup>liv</sup> *The Social Contract*, p.49.