

Avoiding the Original Position

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G. A. Cohen presents an interesting argument against Rawls' difference principle in the paper "Incentives, Inequality, and Community."¹ His attacks on Rawls are based mainly on Rawls' incentive argument, where people who are more talented are given incentives to work harder if their doing so will benefit the people who are the least well off. Cohen argues that this type of inequality is not just, that people should be willing to work without incentives in order to benefit people who aren't well off. I believe that Cohen's arguments, while interesting, do not succeed in showing that Rawls' argument for inequality-generating incentives is indefensible. In this paper I intend to outline a few of Cohen's arguments against the incentives argument, focusing on his argument for a community feeling, and show how he fails to demonstrate that Rawls is indefensible.

Cohen begins (and I should begin) by outlining the incentive argument in terms of a situation experienced in Britain in the 1980's. The top rate of income tax in Britain was brought down from 60 to 40 percent. According to the incentive argument, inequalities are justified when they help the least advantaged people to live as well as is possible—so this tax cut would be justified if it would help those people in the society who are the least advantaged. Such a high level of income would, presumably, inspire talented people to produce more than they normally would. If the most talented people are producing more, there will be more goods to go around. If there are more goods to go around, the lives of the least advantaged would be improved. So through a tax cut for the talented rich people, the lives of the least advantaged would be improved due to increased

¹ Cohen, G. A., "Incentives, Inequality, and Community," Tanner Lectures on Human Values Vol. XIII, ed. Grethe B. Peterson

production from the talented people. The question now is whether or not the top rate of tax should be set back up to 60 percent.

The incentive argument, formulated in terms of this situation, has two premises. The first premise, dubbed the major premise by Cohen, states that inequalities of economic status are justified when they make the least advantaged people materially better off. The second, the minor premise, states that when the top rate of tax is at 40 percent, two things obtain. First, the talented rich produce more than they do when the top rate of tax is 60 percent due to increased incentives (if the tax rate were hiked the talented would not receive as much from their work, and thus they would be less likely to work as hard since they are well off already), and second, the least advantaged people are, as a result of this harder work, materially better off. The conclusion of this formulation of the incentive argument is that the top tax should not be raised from 40 percent to 60 percent.²

Cohen feels that when the incentive argument is considered outside of references to desert or entitlement, it "generates an argument for inequality that requires a model of society in breach of an elementary condition of community."³ He claims that the difference principle can only justify paying incentives that produce inequality when the talented people have an attitude that is unacceptable from one who is in a community. Cohen says that if the talented were committed to the difference principle, they would not need incentives to work harder in order to raise the welfare of the worst off. Thus Cohen's argument is going to take the form of criticism based on the attitude that certain people must take when uttering the incentive argument and the fact that when they adopt

² Cohen, 271

³ Cohen, 268

this attitude, their actions and words are not what one would expect or require from one who is living in a community.

When the incentive argument is uttered in an impersonal form, it seems to be an innocent statement and a valid argument, “The talented will not work as hard when the tax rate is increased to 60 percent as they do now with the tax rate at 40 percent.” When a member of the least advantaged utters the argument to another member of the least advantaged, she would say “The talented will not work as hard at 60 percent tax, and so we would not benefit as much as we do now.” The same person speaking to a talented person would say “I would not benefit as much if the top tax were 60 percent, because you would work less.” The talented person must say to the least advantaged one, “I will not work as hard at 60 percent tax despite the fact that it would make you better off.” When a talented person utters it to a person who is one of the worst off, Cohen says that we attach discredit to the talented person because of the attitude that they seem to take in uttering the argument. And we attach this discredit because of the apparent relationship (or lack of relationship) that the person has with the community. Indeed, when worded this way it seems that we would attach some sort of discredit to the talented person who would utter this argument to his less talented peer.

Cohen says that in a community, policies should be put through the interpersonal test in which a person from every group in the community could state the policy to a person from any other group in the community, as I have simulated above. If, during each utterance of the policy, the policy seems to be justified, then the policy is justified. As we have seen, Cohen claims that the incentive argument fails this sort of test when uttered by the talented rich, since when they utter the argument we attach some sort of discredit to them. He says that after the rich have uttered this argument they will

inevitably be asked why they wouldn't work as hard with a higher income tax. When the talented people are asked this question by the least advantaged people, the attitude that is reflected on the talented people is one that does not go well with our conception of a community. Cohen says that this bodes very ill for the talented people (in terms of their being in a community) unless they are able to answer the question with a response that for whatever reason, physical, mental, whatever, they absolutely *can not work without those incentives*. Cohen says that no member of a community should need to be placated, as it seems we would be doing for the talented people if they are not physically unable to work without those incentives.

What Cohen has proposed is that the talented people cannot justify the fact that the minor premise of the incentive argument is true. Since they cannot justify this truth, they cannot use the incentive argument to justify inequalities, and thus it cannot be used as a justification within a community. If it cannot be used as a justification within a community, then people who use it are at odds with the community. And if the people are at odds with a community, Cohen believes that there is some problem with the system of justice that is embodied therein.

I do not believe that Cohen has shown Rawls' position to be indefensible. In fact, I believe that Cohen has misrepresented Rawls' argument and has also presented his own example in a biased fashion, especially in the example of an interpersonal test.

In this example of the interpersonal test, the rich person will explain the incentive argument by saying to the poor person, "I will not work as hard at 60 percent tax as I do at 40 percent tax—despite the fact that you would be better off—because I will be getting less money for the time that I work." This is supposed to make us feel that the talented people have an attitude that is at variance with a community supposedly based on

equality, and indeed it may induce that feeling in us. I propose to voice the argument in a different way. I propose that the rich people say, “I will not work as hard at 60 percent tax as I do at 40 percent tax—despite the fact that you would be better off—because it will be like a punishment for my being talented.” In this case it doesn’t seem to be the case that the talented are at variance with the community. Instead it appears to be the case that the talented are being exploited for their work.

It seems, then, that we may attribute different attitudes to the talented people depending on how we have them phrase the incentive argument. We can imagine the talented stating the incentive argument in a manner that seems to draw discredit on themselves, and in addition seems quite rude to the less talented people it is uttered to. We can also imagine a community where the talented will phrase the incentive argument in my fashion, there will be no discredit attached to them, and thus the incentive argument will pass the interpersonal test. By this simple strategy of reformulating the statement, Rawls’ argument is defensible. It seems that Cohen’s phrasing of the incentive argument in his interpersonal test was less than charitable.

There is another way in which I feel Rawls is easily defended from Cohen’s attacks, and this way relies on Rawls’ most basic idea—the original position. According to this idea, in order to come up with a just system for society, we must consider a position outside of class differences, before we realize what class we will be “born” into. From that viewpoint, it looks like we can all agree on certain things, and these things will be considered just according to Rawls because we chose them from a position behind the veil of ignorance.

From the original position, acting as self-interested rational persons, Rawls argues that we would choose the difference principle as one of our general principles of justice.

This means that according to Rawls, we derive the difference principle (and thus the incentive argument) outside of any notion of community and without taking into account any attitude that a person in any class might have toward the argument in a specific case, instead considering the attitude that a person from each class would have toward the argument in a general case. Behind the veil of ignorance we do not know if we will be in the least advantaged group or in the most advantaged group. In our own self-interest, then, we imagine what it would be like to be in the least advantaged group. I imagine that if I were in the least advantaged group, I would want to be made better off, even if it meant that the more talented people would also become better off. I also imagine that if I were in the talented, advantaged group, I would want for my efforts to improve the lives of the least advantaged to be rewarded in some way. This is how we would derive the incentive argument from the original position.

Cohen's challenge, then, does not seem to render Rawls' argument indefensible at all. While Cohen says that we must look at individual cases (such as his proposed example from Britain), Rawls feels that we must examine the choices that people would make from the original position, prior to individual cases. It seems that Cohen is not arguing within Rawls' framework. By including the idea of community in our situation, it is possible to manipulate our feelings into believing that a system that was set up outside of community in a fashion that everyone would agree on is now unjust. Once everyone has agreed on just principles, it is not important for people within the community to act in the 'spirit' of the community. It is important for them to follow those principles that are just, for it is by those principles that everyone in the community has agreed to be judged upon.

G. A. Cohen bases his arguments on the idea of a community feeling in a specific case where the incentive argument appears to have been used. He succeeds in showing a situation where it could appear that the talented are unwilling to work at a higher rate of tax in order to help out the least advantaged in the community, and thus, while acting under the umbrella of the incentive argument and the difference principle, they do not have the interests of the community in mind. Cohen says that this is not a good use of the incentive argument since in this situation the incentive argument will not pass the interpersonal test, and thus will not be justified in the community.

Rawls is easily defended against Cohen's claims in this case. It is possible to restate the incentive argument in Cohen's situation so the talented do not seem to have the anti-communal attitude that Cohen attributes to them. It is also important that under Rawls' theory, an attitude that forwards the ideals of a community is unimportant since the system that the community would function under is derived from a position where there is no idea of community. Since we do not decide in the original position that everyone in society should have an attitude that is consistent with the difference principle, it is possible to dismiss Cohen's claim that this attitude is important. Instead, we decide from the original position that everyone should act in a fashion that is consistent with the difference principle.

If Cohen wishes to attack Rawls, he must work within the framework that Rawls has provided—the original position behind the veil of ignorance. Instead, Cohen has moved outside the framework of the original position and chosen to attack Rawls based on an individual case. This means that in order to defend himself, Rawls need merely retreat behind his veil of ignorance, where he can safely avoid challenges based on individual situations.