

Justice and the Egalitarian Ethos

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Abstract. In this paper I would like to present Cohen's attack to one of the crucial features of Rawls's theory (the idea that principles of justice ought to be limited to the basic structure) and to consider Andrew Williams's answer to such critique, according to which publicity can explain basic structure restriction (just public institutions ought to be regulated by the principles of justice) and show that Cohen's conception of justice is ambiguous and incoherent. First of all, I will try to present Cohen's argument against Rawls's justice as fairness and to explain the role the idea of an egalitarian ethos plays within it. I then explain why the idea of publicity can help us justify the basic structure restriction and why it is a requirement that Cohen's conception of justice ought to satisfy. Finally I will present Williams's attacks to Cohen's conception of justice and I will try to sketch some possible solutions.

1 Introduction

In his 1997 article 'Where the Action Is: On the site of Distributive Justice', G.A. Cohen developed one of the most important attacks to Rawls's conception of justice, by claiming that «principles of distributive justice... apply to the choices that people make within the legally coercive structure to which principles of justice (also) apply» (Cohen 1997: 3). Such critique is addressed to one of the crucial features of Rawls's theory: his dualistic¹ conception of justice, that is the idea that principles of justice ought to apply to the society's basic structure alone.

In Cohen's opinion such restriction would be incoherent with the basic structure's main property (its effects on the lives of people are deep and present from the start) and with Rawls's normative premises (egalitarian conception of justice and preinstitutional desert's ban). Therefore Cohen's monistic conception of justice would follow from Rawls's own assumptions (internal criticism).

In this paper I would like to consider Andrew Williams's answers to Cohen's challenge, according to which Cohen's conception of justice, cannot be considered a genuine and internal critique of justice as fairness because it misunderstands the role of the basic structure. According to Williams, it is possible coherently to limit the scope of justice to the basic structure, by reference to the specifically the public role of the

¹ Rawls's theory of justice is called dualistic by Liam Murphy who defines monistic his position and Cohen's critique; not everyone agrees on such definition (i.e. Scheffler and Estlund are particularly critic on such point) but, for brief's sake, I will use these terms, by meaning with dualism a conception of justice which develops two different principles in order to regulate institutions and individual actions (preferences, intentions...) which, according to monism, ought to be regulate by the same principle(s).

institutions that belong to it. Since Cohen's egalitarian ethos cannot be «regarded as realizing public rules» (Williams 1998: 235) and his conception of justice ought to satisfy a publicity's requirement, it seems to become more problematic than Rawls's justice as fairness. In sum, Williams's argument is at the same time a defense of Rawls's dualism and an objection to Cohen's conception of justice.

First of all, I will try to present Cohen's argument against Rawls's justice as fairness and to explain the role the idea of an egalitarian ethos plays within it. I then explain why the idea of publicity can help us justify the basic structure restriction and why it is a requirement that Cohen's conception of justice ought to satisfy. Finally I will consider whether Williams is right and I will argue that Cohen's ethos, given some constraints, can be an element of a public conception of justice.

2 Cohen's Challenge

Cohen's critique focused on two benchmarks of Rawls's conception of justice:

- Principles of justice ought to be limited to the society's basic structure («the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation» (Rawls 1971 :7))
- Lexically subordinated to the fulfillment of the basic liberty principle, the distribution of social goods should be governed in accordance with the Difference Principle: inequalities ought to be considered just if and only if they are necessary to improve the conditions of the worst off. In fact «if certain inequalities of wealth and organizational powers would make everyone better off»(Rawls 1971: 546) it would be irrational not to accept them in favour of strict equality among people.

Cohen agrees with Rawls that the only inequalities that an egalitarian conception of justice can (and ought to) justify are those necessary to improve the lives of the worst off, but he thinks that Rawls's justification for this claim is ambiguous: such an ambiguity, Cohen further argues, can be solved by enlarging the scope of the principles of justice.

In Cohen's view there can be two different readings of the Difference Principle: «in its strict reading, it counts inequalities as necessary only when they are strictly necessary, that is, apart from people's chosen intentions. In its lax reading, it countenances intention-relative necessities as well. So, for example, if an inequality is needed to the badly off better off but only given that talented producers operate as self-interested maximizers, then the inequality is endorsed by the lax, but not by the strict, reading of the difference principle » (G.A. Cohen 1992: 311).

Cohen notices that this ambiguity is very problematic because it is not clear which and how many inequalities ought to be justified and then considered just² by Rawls's theory. Examining the case of the incentive structure in a just society, Cohen argues:

«It is commonly thought, for example by Rawls, that the difference principle licenses an argument for inequality which centers on the device of material incentives. The idea is that talented people will produce more than they otherwise do if, and only if, they are paid more than an ordinary wage, and some of extra which they will then produce can be recruited on behalf of the worst off. The inequality consequent on

² The main risk is obviously that Rawls's theory of justice makes an ideological work by justifying inequalities which are not necessary and then unjust. Incentives can be, in Cohen's view, a good example of that.

differential material incentives is said to be justified within the terms of the difference principle, for, so it is said, that inequality benefits the worst off people: the inequality is necessary for them to be positioned as well as they are» (G.A. Cohen 1997: 6).

Hence in Rawls's view, incentives are just inequalities because they are mandatory; they are necessary to improve the lives of the least disadvantaged. Cohen shows that this claim can take different meanings depending on which reading of the Difference Principle one adopts (henceforth DP).

According to the strict version of the DP, talented people can legitimately require incentives if and only if they are unable to produce w^3 without some incentives (necessity implies inability to do otherwise).

According to the lax reading of the DP they are justified to be incentivized to produce w even if they can produce w without incentives but they lack the will to produce (necessity implies unwillingness).

It is important, as sustained by Cohen, to understand which of these two is the legitimate interpretation of the difference principle and which demands for incentives can be justified within a just society, where public policy ought to be publicly discussed. In order to pursue such an aim Cohen develops a justificatory device: the interpersonal test of justification which «tests how robust a policy is, by subjecting it to variation with respect who is speaking and/or who is listening when the argument is presented. The test asks whether the argument could serve as a justification of a mooted policy when uttered by any member of a society to any other member. So, to carry put the test, we hypothesize an utterance of the argument by a special individual, or by a member of a specified group, to another individual, or to a member of another, or the same, group. If because of who is presenting it, and or to whom it is presented, the argument cannot serve as a justification of the policy, then whether or not it passes as such under dialogical conditions, it fails (tout court) to provide a comprehensive justification of the policy»(G.A. Cohen 1992: 280). Moreover since, in Cohen's view, it is usual to justify a policy by appealing to the behaviours of people when the policy is in force, then Cohen claims that a comprehensive justification of a policy can be obtained only if such behaviours are also justified⁴. Imagine, for example, a policy which enhances the tax pressure for the top salaries in order to obtain more resources to be distributed to the least advantaged. Someone might hold that this kind of policy does not achieve its aim because, once the tax pressure is enhanced, talented people will produce fewer resources (they are not incentivized to produce as much as before) and the least advantaged will be worse off. This argument is correct; it is reasonable that to presume that talented people will no longer produce as much, once taxes are higher; but the point, in Cohen's view, is whether this is just; if they can have good reasons to behave in such way. Cohen believes that in a just and egalitarian society, where talented people claim to fully comply with Rawlsian principles of justice, it is implausible to think that they could legitimately ask for unnecessary incentives without referring to morally banned concepts (such as desert) or blackmailing the least advantaged ('if you raise the taxes I will produce fewer resources'). Once we look at people's intentions and not only at policies, Cohen

³ w is the amount of resources talented people produce when they are incentivized

⁴ «If what certain people are disposed to do when a policy is in force is part of the justification of that policy, it is considered appropriate to ask them to justify the relevant behaviour, and it detracts from justificatory community when they cannot do so»(G.A. Cohen 1992: 280)

seems to suggest, it is easy to see that only the strict version of the DP can be considered compatible with the egalitarian background of a Rawlsian conception of justice. The unwillingness to produce w , which justified by the lax version of the DP, cannot be considered as a good reason to requires incentives because it depends on:

- Social and individual habits of desert and entitlement which are unjust and clearly incompatible with an egalitarian conception of justice
- The influence that talented people can exercise on the least advantaged by claiming that if they do not receive incentives they will reduce their productivity and hence the amount of resources to be distributed. This sounds as blackmail and not as a good reason.

After showing that an egalitarian conception of justice is only compatible with the strict version of the DP, Cohen suggests that to fully realize it, it is necessary to extend the principles' scope beyond coercive institutions (or the basic structure of society) since, as illustrated by incentives' case, justice is a function of institutions *and* of the choices made by people within institutions.

Rawlsians could try to rebut Cohen's critique to Rawls's dualistic stance by claiming that: «Cohen's focus on the postures of the talented people in daily economic life is inappropriate, since their behaviours occur within, and does not determine, the basic structure of society and it is only to the latter that the difference principle applies»(G.A. Cohen 1997: 11). In Cohen's view, such answer does not work since the definition of the basic structure is deeply ambiguous; «it is in fact unclear which kind of institutions are supposed to qualify as part of a basic structure. Sometimes it appears that coercive (in legal term) institutions exhaust it»(Ivi: 18). But the basic structure, Cohen underlines, is not always defined in coercive terms; sometimes Rawls speaks about major social institutions, such as the family, «whose structuring can depend far less on law than on usage, convention, and expectation»(Ivi: 19). Moreover, it is important to remember that the basic structure is the primary subject of justice because its effects are so profound and present from the start, and, according to Cohen, it is «false that only the coercive structure causes profound effects, as the example of the family once again remind us» (Ivi: 21).

Rawls is in a dilemma, because «he must either admit application of the principles of justice to (legally optional) social practices and, indeed, to patterns of personal choices that are not legally prescribed, both because they are substance of those practice, and because they are similarly profound in effect, in which case the restriction of justice to structure, in any sense, collapses; or, if he restricts his concern to the coercive structure only» (Ivi: 22) a lot of injustices fall outside the scope of his theory.

Therefore, according to Cohen, it is necessary to go beyond the basic structure and include the people's choices and an the ethos which regulates such choices within the scope of principles of justice. As said Joshua Cohen «on the lax interpretation, we hold the preferences as given and maximize the advantage of the least advantaged relative to existing preferences. On the strict interpretation, we maximize the well-being of the least advantaged without taking preferences as given but treating the preferences instead as assemble by our norms of justice»(J. Cohen 2002: 368).

Williams develops his objection against such point by claiming that the basic structure restriction is coherent with Rawls's conception of justice, which is constitutively public, and that Cohen's monistic solution cannot satisfy a publicity requirement.

3 Institutions and Publicity

In order to criticize the basic structure restriction Cohen claims that, given basic structure's tendency to produce profound and unavoidable effects (dispositional property), it is not possible to limit that to legal coercive institutions (intrinsic property). Williams believes that this is a correct definition of the basic structure, but not the best one. It would be possible to use the same dispositional property (deep influence on people's lives) but «some further intrinsic property other than legal coerciveness» (Williams 1998: 232) by looking at the fact that the basic structure «is always said by Rawls to be a set of institutions»(Ibidem). An institution, in Rawls's view, is «a *public system of rules* which defines offices and positions with their rights and duties, powers and immunity and the like. These rules specify certain forms of actions as permissible, others as forbidden; and they provide for certain penalties and defences, and so on, when violations occur»(Ivi: 233). According to Williams «Rawls's classificatory remarks suggest he does not regard all norm-governed activity as institutional. Instead he reserves the term for activity that realizes a certain type of norm, which is, in some sense, public. So, to clarify Rawls's conception of the basic structure, we need a firmer grasp on the distinguishing marks of public rules»(Ibidem). Publicity is a constitutive element of institutions and concerns individuals' capacity to attain common knowledge of the rules' «(i) general applicability, (ii) their particular requirements, and (iii) the extent to which individuals conform with those requirements» (Ibidem). It is clear, in Williams' opinion, that not «all norms qualify as public in Rawls's sense»(Ibidem), for example norms which are so informationally demanding (individuals cannot verify their applicability). Given such limitations, Williams claims that the basic structure «comprises those actions which realizes public rules in way that exerts profound and unavoidable influence on individuals' access to social primary goods»(Ibidem) and they cannot concern choices which, in spite of having deep effects on people's lives, violate public rules. «Consequently the non public strategies and maxims that individuals employ in making those choices need not be assessed as just or unjust by means of Rawlsian principles[...]among such non institutional choices is the decision to become a market-maximizer rather than extend egalitarian conviction to ones economic activity»(Ibidem). Hence Cohen's criticism to the basic structure restriction is flawed, since there is a rationale to limit the scope of justice; moreover his strong critique of incentives is, according to Williams, incoherent with a Rawlsian overall outlook and problematic as a conception of justice on its own terms, because the egalitarian ethos cannot be regarded as realizing public rules. As I said earlier, Williams also develops a defence to Rawls's dualism and a criticism to Cohen's perspective. In order to analyze them I now turn to show why publicity ought to be so important for Cohen's theory of justice too.

4 Cohen and Publicity

Williams's objection to Cohen's conception of justice seems to me particularly effective; publicity, in fact, ought to be considered an important element of Cohen's analysis for two main reasons:

- Cohen always underlined that he developed a critique within a Rawlsian background. Since Williams showed that publicity is a constitutive element of justice

as fairness, it seems very strange that Cohen can achieve his aim (Rawls's internal criticism) without fulfilling publicity requirement.

- Cohen's critique to incentives is founded on the necessity to require that talented people justify not only the background (institutions) against which they make choices but also their choices and intentions within such a background. This seems to me to intensify Rawls's criteria of publicity rather than abandon them.

Williams, trying to defend his main that «Cohen's egalitarian ethos cannot be regarded as realizing public rules» (Williams 1998: 235), shows an ambiguity in the definition of such ethos. It would be possible to draw from Cohen's analysis two different kinds of ethos: a «*narrow ethos* which places limits upon talented individuals receiving unequally large rewards. Any inequalities must either (i) compensate for special labor burdens, (ii) motivate productive labor which cannot be summoned at will, or (iii) fall within a reasonable agent centred prerogative. In contrast a *wide ethos* contains additional productive requirements, which are relevant when deciding which training or jobs to pursue»(Ibidem).

Williams says that even if «Cohen neither explicitly endorses nor disavows productive requirements [...] there are good reasons to believe that he should favour the more extensive ethos»(Ivi 235-36). In order to explain this point Williams presents the case of Sophie, a young girl with rare artistic talent; she can become a successful commercial designer or an unrecognized conceptual artist. The former job is clearly more productive but, since incentives are banned, it does not have any consequences (the amount of resources she can have is the same) on Sophie's life who will choose according to her preferences for artistic career. This decision has, instead, a deep effect on the well-being of the least advantaged who, paradoxically, may have fewer resources in this fair society than in the one where Sophie would be incentivized to become a designer. Narrow ethos, without incentives, seems to produce sub-optimal effects for the least advantaged and hence Cohen (his aim is to maximize worst off condition) seems to be obliged to prefer the wide ethos, which is clearly very demanding. As claimed by Pogge in fact, according to such ethos, «all person should seek the most productive work each is capable of performing, no matter how hateful they may personally find such work; and all should accept no more than unit pay for their work and should use the rest toward enhancing the lowest income»(Pogge 2000: 152).

It seems to me that such request cannot be considered as fair quite so easily; it maximizes the position of the worst off but at a high cost: talented people, who lose what they are doing, are treated as means to produce resources. It is clear that Williams can show how this position is not compatible with a Rawlsian outlook⁵ and he can easily demonstrate that it cannot be regarded as part of a public system of rules (too informationally demanding⁶, for example). I believe, moreover, that such request

⁵ Rawls wants to guarantee freedom of occupational choice and he cannot accept to scarify people's freedoms in order to guarantee worst off's opportunities.

⁶ «Furthermore, it is especially difficult to verify the extent to which individuals are employing their talent to pursue the common good rather than their own occupational ambitions. Consider a group of young adults who, like Sophie, face various career choices in which equality and occupational ambition pull in different directions. Under realistic conditions, they will have only incomplete information about their own productive potential. Owing to search and communication costs, asymmetric information about each other's potential will also be the norm. Those informational problems are further exac-

cannot be considered part of a conception of justice unless we accept to speak about justice from a rigorist perspective, and Cohen always claims he does not want to use such point of view⁷.

However, even if I agree with Williams that there is considerable evidence showing that Cohen ought to accept such demanding perspective, it seems to me that it is not in line with the incentives critique, according to which:

1. talented people are privileged and they do not need incentives (which are privileges); they are, even without them, objectively better off than anyone else since «they would still have not only higher income but also more fulfilling jobs than ordinary people enjoy» (G.A. Cohen 1992: 297)
2. the request to talented people to produce as if they were incentivized is not supererogatory rather than a duty of people who comply with egalitarian principles of justice
3. «when we compare people's material resources we must take into account not only the income they get but also what they have to do to get it [...] where working is particularly arduous or stressful (special burden case) higher remuneration is a counterbalancing equalizer, on a sensible view of how to judge whether or not things are equal [...] Think of those harried and haggard Yuppies, or overlooked surgeons, who really would lead a miserable life if the massive amount of work that they do were not compensated by the massive amount of income that leads them to choose to work that hard» (Ivi: 296)

Now let us look at the lives of the talented people under the wide ethos: they do not have any choices (they have to choose the most productive job and produce at the best of their possibilities); they have to live in order to improve the lives of the worst off so their own life is reduced to a production/redistribution matter. They do not seem to have neither higher income nor more fulfilling jobs than anyone; they are not privileged but alienated, they are means of production without an authentic life (contra 1).

Moreover I do not believe that their duties (choose the most productive job and produce at the best of their possibilities) are so easy and obvious, rather than supererogatory since they imply abnegation which cannot be considered basic even in an egalitarian society (contra 2).

In light of the above, it seems to me that talented people under the guidance of the wide ethos are exploited; they are oppressed and they, according to Cohen's labor burden case, may deserve some compensations in order to be fairly treated.

If my analysis is correct Cohen cannot sustain that talented people under the guidance of the wide ethos are privileged and egoistic persons who do not need incentives

erbatated when we recall that the ethos permits inequality which are strictly necessary to motivate individuals to use their productive potential efficiency. The need to distinguish such inequalities from those which are merely necessary in an intention-relative sense, renders the ethos even more informationally demanding" (Williams 1998: 241)

⁷ Such perspective, who reduces everything to strict egalitarian distribution, clearly contradicts the legitimate right to pursue personal interest guaranteed by Cohen's conception of justice and his claim according to which distributive justice and equality are only some of the values that a just society ought to fulfill.

rather than that they are unlucky people who deserve a compensation for their oppressive existence.

Hence, I find it difficult to sustain that this kind of ethos and the maximization principle can fit the incentives critique; it will be necessary now to consider whether, as claimed by Williams, the narrow ethos too cannot be considered part of a public system of rules.

5 Justification and Ethos

Williams's publicity objections are developed against wide ethos (which I hope to have shown is not fully in line with Cohen's own perspective). However, I think that they can also be applied to the narrow ethos which «places limits upon talented individuals receiving unequally large rewards. Any inequalities must either (i) compensate for special labor burdens, (ii) motivate productive labor which cannot be summoned at will, or (iii) fall within a reasonable agent centred prerogative, according to which people have a right to pursue self interest to some reasonable extent (even when that makes things worse than they need to be for badly off people)» (Williams: 235). In Williams's opinion this prerogative is very problematic because «the right to pursue self-interest to some reasonable extent is not only so vague but also admits many natural extensions[...]it is unclear whether individuals, when indentifying their moral options, may apply their own conception of self-interest or must instead adopt a common conception. In the former case, the extent to which individuals are permitted higher incomes will vary from person to person[...]However, even if these difficulties can be overcome by adopting a common conception, Cohen gives no indication of how to specify, even roughly, when it becomes unreasonable to care more about benefits to one's self than the achievement of an equal distribution[...]the prerogative's vagueness is ineliminable, and thus conclude that any ethos containing it could not be regarded as realizing public rules»(Williams 1998: 239-40).

It seems to me that Williams's critique is very effective because it focuses on a problematic point of Cohen's analysis: the lack of a criterion in order to define, even roughly, the content of the ethos. It is important to remember that Cohen presented the ethos as a way to implement the strict reading of the DP and hence to reduce the unnecessary inequalities caused by the choices made by people within the basic structure. Moreover since Cohen wants to avoid a rigorist perspective, according to which every action ought to be regulated by the ethos, he claims that just the relevant choices would fall within the ethos' scope. Unfortunately he does not develop a criterion to identify which kind of choices ought to be considered relevant and how it would be possible to regulate them guaranteeing people's right to pursue self-interested goals. In the *Tanner Lectures*, for example, Cohen claims that whether a doctor, whose just wage would be £ 10.000, is paid £ 25.000 ought to give to the least advantaged £ 15.000. Even if I can judge this action particularly worthy, it does not seem to concern social justice, according to Cohen's conception too, because this kind of choices seem to fall within the scope of the prerogative. The doctor may in fact, as claimed by Williams, «defend his refusal to pursue equality by appealing to a wide range of agent-relative reasons. These might include obligations to family and friends, as well as either secular or religious personal ideals. The prerogative therefore quite naturally extends in ways that make it even more difficult to state clearly, and multiply the problems[...]So, tough Cohen may be correct that we can verify exces-

sive self-seeking by those who benefit most from the present income distribution, it is quite possible that, in typical case [as the doctor one], we will lack a sufficiently precise public standard by which to justify, or criticize, each-other's self-serving behavior»(Williams 1998: 240).

I agree with Williams that Cohen's ethos cannot coherently respect agent-centered prerogative and satisfy a publicity requirement because he did not develop any criteria to define the limits between what concerns justice and what regards personal interest.

Since it seems to me not only that Cohen's objection to the basic structure restriction is flawed (there is a rationale to limit the scope of principles of justice to the basic structure), but also that his conception of justice cannot be coherently sustained (ethos and prerogative are not compatible so that they cannot be part of a public system of rules).

Even if I agree with these conclusions, I believe, as I will try to sketch very briefly, that it might be possible to find a way to identify which kind of choices ought to be considered relevant without being incoherent with the prerogative and giving a standard to evaluate and criticize each-other's self-serving behavior. Let me try to explain my point looking at Cohen's interpersonal test which, as I previously explained, is a justificatory device, used at different levels⁸, comprised of two main elements: the policy to be justified (the subject) and the justificatory community (the public) justification will be addressed to. These two elements are linked to each other; the justificatory community is in fact «a set of people among whom there prevails a norm of comprehensive justification»(G.A. Cohen 1992: 282), and it seems to me that they select the scope of justification (what ought to be tested by the interpersonal justification). This means that the grade of relevancy (for the justification) of people's preferences and choices depends on these two elements; it is clear, for example, that when we want to justify a public policy (as in the case of incentives) to the society as a whole (the justificatory community) we need to focus on the kinds of behaviour which can affect such policy and not everything we can do (whether we gave money to Oxfam or spent them on a holiday).

The interpersonal test might, in my view, identify which kinds of choices ought to be considered relevant and then to be regulated by the egalitarian ethos, leaving room to some reasonable self-interested behaviour and giving a standard to evaluate and criticize each-other's self-serving behavior. People are behaving egoistically when they exploit, for example, their talents to enhance or to boycott a public policy (personal powers should not matter in public debate, because it would be very difficult to justify such behaviour to the whole society); whereas they can legitimately pursue their interests in their daily lives (when they have to decide, for example, whether buy a toy to one of their children rather than give money to Oxfam) since this does not have any effects on other citizens' opportunities (publicly defined) and hence these actions fall outside the scope of public justification. Given such limits, I believe that ethos can be part of a public system of rules, actually it seems to me that it can complete the public system of rules described by Rawls, as Cohen always sustained. Obviously, it would be necessary to understand whether this kind of ethos, let me call it 'ultra narrow', is consistent with Cohen's aim (to develop a critique to Rawls's con-

⁸ You can justify a public policy or a family rule; different justification will be addressed to different people and they need to satisfy different standard.

ception of justice) or it is not fully compatible with Rawlsian justice as fairness. This is not, however, the task of this paper..

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