

RELATIONSHIPS OF EQUALITY:
A CAMPING TRIP REVISITED

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Jerry Cohen's last book, *Why Not Socialism?*, is short and charming. His arguments are presented as comments on an imagined camping trip, on which, he cogently shows, most people would "strongly favor a socialist form of life" over alternatives that might be recommended by market-obsessed pains in the neck among their fellow-campers. (Cohen, 2009, p. 1) *Why Not Socialism?* might seem a mere grace note to his long next to last book, *Rescuing Justice and Equality*, briefly evoking arguments and claims that he develops there on material equality, social justice and alleged inadequacies in John Rawls' work. The principle of equality that Cohen defends in the very short book is the same as the one he defends in the long one. The appeal of this principle is said to help explain why the socialist form of camping is so attractive, so that our attraction supports the general claim. The strong convictions about various forms of sharing and caring on the camping trip and the sharp dismissals of the right-wing pains in the neck illustrate what he describes as his position on "the big background issue," at the start of the long book: his view, shared with Karl Marx, that concerns for justice, freedom and equality are properly expressed in everyday life and individual relationships, and should not be confined to political choices. (Cohen, 2008, pp. 1f.)

However, a tool for reflection created by a deep and innovative thinker can take on a life of its own, undermining other parts of his creation or adding new insights even if it was meant to illustrate and confirm old ones. I will put Cohen's camping trip to both uses. On the one hand, reflection on good behavior on the camping trip challenges, rather

than supporting, his preferred principle of equality, a challenge that is strengthened when we consider how to interact with fellow-members of a modern society. These reflections on forms of interaction tend to support Rawls' approach to questions of equality. On the other hand, a criticism of Rawls that is implicit in Cohen's commentary on the camping trip is more apt than his earlier, explicit objections. Even if his explicit criticisms of Rawls on distributive justice are unfair though illuminating (as I will argue at some length), his remarks about the value of community on the trip and in social life as a whole point to important moral flaws in current societies that are relevant to political choice and are not detected by Rawls' approach. The direct appeal to our judgments of ways of living together that is characteristic of *Why Not Socialism?* undermines both Cohen's claims for the fundamental status of his principle of equality *and* Rawls' claims for the completeness of the perspective on free and equal citizenship expressed in use of the original position.

Back on the Trip

Among the vast majority to whom Cohen appeals ("us," as I will unqualifiedly call this majority), negative responses to the imagined right-wing pains in the neck on the camping trip are immediate, requiring no consultation with our principles of distributive justice. After describing a nutty fellow-camper who demands payment for the use of his peeler to peel potatoes, Cohen can accurately, peremptorily state, "Now, most people would hate that." (Cohen 2009, p. 6) He is certainly right that most people want lots of sharing and lots of concern for others' enjoyment on camping trips, want to reciprocate, and take less friendly ways of relating as not just differences in taste but misperceptions of how to behave. But a full account of what is morally attractive on the sort of trip

Cohen has in mind would include convictions and attitudes that do not fit the further principles that he recommends.

At the start of *Rescuing Justice and Equality*, Cohen describes the basic tenets of his approach to questions of justice. Well-conducted normative judgment consists of the application of fundamental general moral principles which can conflict with one another in particular cases, so that intuitive balancing is required. (Cohen 2008, pp. 3-5) (He describes this as a method characteristic of Oxford people of a certain vintage, as distinct from Harvard people.) Where justice is concerned, these precepts include a distributive principle, whose violation always constitutes an injustice, even if it is violated in a total package of policies that is, all things considered, more just than any other. This principle is that “an unequal distribution whose inequality cannot be vindicated by some choice or fault or desert on the part of ... relevant affected agents is unfair, and therefore, *pro tanto* unjust ... nothing can remove that particular injustice.” (Cohen, 2008, p. 7) Our convictions about the best way to run a camping trip are supposed to be best explained as reflecting commitments including this strict luck egalitarian principle.

In fact, campers who invoke this principle seem not to know how to run a camping trip. “Most people would hate that,” as they would hate the proposal to charge rent for the use of a peeler.

According to Cohen’s principle, inequalities in aggregate enjoyment of life are unjust if they are due to features of the unequally enjoying people for which they are not responsible.¹ Suppose, as is often true on a camping trip, that everyone enjoys nature, but some enjoy it a whole lot, much more than others. Presumably, this is due to differences

in temperament for which no camper is responsible. Then, in Cohen's view of justice, the camping trip is tainted with injustice, unless some further choice or fact makes a compensating addition to the enjoyment of the mere moderate enjoyers of nature. Suppose that the campers know each other well enough to know that their non-camping lives provide no compensation. (Cohen himself is asking readers to assume that otherwise unjust distributions on the trip are not made all right when the rest of life is taken into account, since he takes our judgments of how to behave while camping to reflect the application of his egalitarian principle to intra-trip distributions.) Then, a camper would honor the egalitarian principle by proposing that those who love nature a whole lot wash more dishes until the enjoyment is equalized.

Most people would hate that, quite as much as rental charges for peelers. They would not just be bothered if they were the ardent nature lovers. If they were moderate nature lovers, they would, typically, be offended by the thought that their lesser capacity for enjoyment should be regarded as an injustice, requiring compensation if the costs of remedy are not too serious. This is a sort of infantilization.

Similarly, if the camping trip is a canoe trip, everyone is good at canoeing and some are extremely good, because of the brute luck of being born in Canada, where canoeing is nurtured at an early age, the Canadians should take care not to move too far ahead of the pack, not to exhaust the non-Canadians, to give them tips on their strokes ... but it hardly seems an injustice, in principle requiring compensation, for the Canadians to enjoy themselves more, perhaps, in part because they hold a few races for the expert of no interest to the non-Canadians. The Montrealer's remark, "I am embarrassed to enjoy

¹ See Cohen (2009, pp. 18-24), and also Cohen (1989), pp. 906-944, especially pp. 909f.,

canoeing more than you, through no fault of your own” would evoke amazement in the New Yorker, who will wonder, “Why on earth would he suppose that I begrudge him his skill?”

These do not seem responses that are best explained by the tenets of Cohen's political philosophy. How might they be explained away, so that, at least, they do not undermine his outlook?

It might be said that considerations of luck egalitarian justice are moot on the camping trip, since people choose to go on them. -- But people choose to go on camping trips with the understanding that interactions will be fair. That is why Cohen can use his example to illustrate principles of justice. In any case, people have been known to be pressured by spouses or kids to go on camping trips. This may generate special requirements of compensation if they are miserable. But in the circumstances in question, in which everyone does well enough, the luck egalitarians would still be pains in the neck.

A more promising response, suggested by both books, is to claim that the question of what is just has been confused with the question of what is a desirable arrangement on balance, given current attitudes. For example (it might be said), if the ardent nature lovers or great canoeists are asked to provide more to others, this might alienate them, dampening fellow-feeling on the trip. If this is the whole justification for maintaining the status quo, the status quo could be tainted by injustice, rather as medical provision is tainted when extremely high salaries have to be paid to placate the greed of specialists with needed skills. But in the cases at hand, a proposal to compensate by washing more

dishes would be rejected -- and not just by the better off -- even if the compensating act were only a small burden. The only cause for alienation would be the view that unmerited resentment is expressed. This strong conviction, shared by most intended beneficiaries of the compensation, remains to be explained away.

The best response, found in both books, would appeal to a further distinction, between inequalities for which participants are to blame and inequalities that are blameless but still unjust. Cohen states that he believes in the agent-centered prerogative affirmed in Samuel Scheffler's work, a legitimate degree of favoritism toward one's own interests. Perhaps the greater enjoyment of some on the camping trip is covered by an agent-centered prerogative whose legitimacy the others ought to recognize. If so, there is no complaint of injustice *against* anyone. But there is still, Cohen would argue, a complaint of injustice based on inequality: some do less well than others because of differences for which they are not responsible. (Cohen 2008, pp. 152-156)

First, consider the claim that mere differences in how well people fare due to brute luck are unjust on account of the inequality. Wholly detached (as the response requires) from any complaint about what anyone has done to anyone, the negative comparative judgment seems out of place. This is not merely a matter of the triviality of the camping trip differences, which might well be accompanied by compensating differences when we all get home. I have had the good fortune never -- to my knowledge -- to have had cancer. My neighbor has cancer for the second time, from what seems an entirely independent tumor. In a noncomparative way, her affliction is profoundly unjust. She has not, remotely, done anything to deserve this. If God were committed to benefitting humanity, God would be unjust in doing less for my neighbor than for me,

since there is no basis for discrimination. But there is not a whiff of theism in Cohen's writings. I would make sacrifices to help her, and her husband would make enormous ones, reducing inequality. But this conduct pursues a goal of relief of affliction, not equality.

Putting relief of affliction and divine allocation to one side, is there anything left to the ascription of injustice besides the non-comparative judgment? I do not see it. By the same token, the facts that I would like to canoe better than I do and don't because of the bad luck of not being Canadian might be categorized as a minor, non-comparative injustice. (What have I done to deserve this?) This sort of non-comparative injustice is the most that taints the camping cases that violate Cohen's comparative principle.

The claim that what violates the luck egalitarian principle is, by that token, unjustly unequal is central to Cohen's method and to his critique of Rawls. Still, the claim that this principle combined with an agent-centered prerogative justifies the acceptance of arrangements by fully conscientious people deserves separate consideration, even if Cohen was wrong to condemn as unjustly unequal situations whose acceptability is justifiable on these grounds. After all, the question of how we would run our shared lives if we were all fully conscientious is morally central, directly illustrated by how we would run camping trips and far more relevant to political choice than the judgment of cosmic injustice.

If the luck egalitarian principle must be accommodated in establishing conscientious acceptability, then the ardent nature lovers' satisfied acceptance of greater over-all enjoyment would constitute a reason for condemning them, a reason rebutted by appeal to a further principle, affirming a sufficiently strong agent-centered prerogative. In

the language of justificatory community that Cohen powerfully connects with social justice: the ardent nature lovers would need to justify their enjoying the trip more to the moderate nature lovers. But this is what seems wrong. “You need to justify to me your enjoying our trip more” seems as bizarre as “You need to pay me for using my peeler.”

The rebutting principle generates problems of its own. Scheffler’s original agent-centered prerogative was supposed to be expressible in a general principle stating the maximum permitted ratio of losses in aggregate welfare due to one’s choice to gains to one’s own welfare from choosing the less productive outcome. (Scheffler 1994, p. 20)

1.5? 1.341? a quadratic function? a hyperbolic function? After decades, no one has produced an attractive answer or even tried. The utter implausibility of any numerate rule is not the only reason not to try. The implausibility of a general rule is another. On the face of it, the principles governing choices to put one’s interests first vary according to one’s relationship to others whom one might help, differing among friends, family, recreational sharers such as fellow-campers, compatriots, just plain fellow-humans and so forth.² However, once we have found the appropriate principle for the case at hand, there seems to be no further work left for an independent, general distributive principle, in establishing what is conscientiously acceptable. The relevant situation-responsive principle distinguishes what one does not owe to others in the way of advancing their interests at cost to one’s own from what one owes to them. The luck egalitarian principle will function, if at all, as a description of cosmic justice, of the sort that was previously criticized as inappropriately comparative.

² The relevance of relationships became a central theme in Scheffler’s own work, starting with Scheffler (1997, pp. 189-209).

Granted, there are limited prerogatives of general kinds that might be taken to restrict demands of equality. That people need not force so much giving on themselves that they lose spontaneity or zest for life or personal interest in their own success are good candidates. But the acceptability of an unequal arrangement seems to begin well before such thresholds are crossed. The ardent nature lovers and great canoeists need not, in good conscience, wash more dishes, even though this will not wreck their zest for life.

Equality, Harvard-Style

Despite these doubts, it cannot be denied that fairness is important both in political choice and in everyday life, that excessive inequalities are a mark of unfairness, and that the luck egalitarian principle is an initially attractive description of an equality that fairness requires. Those who share Cohen's and Rawls' opposition to current inequalities will appreciate the risk that our judgments that the egalitarian principle is too demanding may reflect inclinations to be greedy and callous that sustain the objectionable inequalities. They will only want to abandon the principle for a more satisfactory alternative approach to the same questions.

Reflection on the camping trip suggests an alternative approach, based on context-specific types of impartiality and appropriate fundamental interests. From this perspective, distributive principles and other precepts of justice play a derivative role as rules and benchmarks implementing the right attitudes. So this is not the method of Oxford of a certain vintage. But neither does it avoid judgments of justice in everyday life or limit judgments of social justice to assessments of what laws and policies ought to be implemented given citizens' current attitudes. It is (I will eventually argue) Rawls' actual approach, the real Harvard rival.

Cohen insightfully requires continuity between judgments of justice in politics and judgments of justice in everyday life. So I will begin with the question of fair treatment on the camping trip.

The point of a joint camping trip (as opposed, say, to a set of solitary hikes) is to enjoy nature and its challenges together. What brings the campers together provides the specific topic of their norms for getting along: the proper response to the benefits, burdens and opportunities of this particular shared activity. Their shared aim is also a reason for commitment to norms that Cohen characterizes as norms of community, not norms of equality. Within limits, they positively want to share and help, expecting and enjoying the same fellowship from others. (Perhaps Cohen should have been more sensitive to those limits. He counts everything used, including fishing rods, as “facilities that, as is usual on camping trips, we avail ourselves of ... collectively.” (Cohen 2009, p. 3) On the trips that I have been on, people like to use their own fishing rods, sharing them only a bit, to show off advantages or satisfy curiosity. I do not think this is atypical, hierarchical or a concession to greed.)

Still, campers want to cooperate on fair terms, so they need distributive rules to parcel out at least some of the tasks and benefits of the trip (chores and the day’s catch of fish, in Cohen’s main examples). Here, the general distributive principles that philosophers advocate seem off the mark. I have already noted how inappropriate luck egalitarianism can be. “The same work for all” would be unfair to the weak. “The same burden of work for all” will unduly penalize those who enjoy their work. And so on through the Camping Version of the critiques in Section 47 (“The Precepts of Justice”) of

A Theory of Justice and Chapter 5, Paragraph 30 (“In co-operative industrial association, is it just ...”) of *Utilitarianism*. Another method suggests itself.

Campers can justify a set of norms to one another by showing that each camper has adequate reason to accept them as a shared means of advancing relevant interests without giving preference to anyone over anyone else. In a broad way of speaking, suitable for campsites, these rules are “the right way of running things from everyone’s point of view.” This impartial regard for the appropriate interests of all could be identified (somewhat ponderously) through an appropriate version of the original position. One ends up with something like the radical luck egalitarian principle, if all morally arbitrary advantages and disadvantages are put behind the veil of ignorance and the satisfaction of whatever preferences one happens to have is the interest to be pursued. But this version of the original position is doubly misguided. The task to which the device is to be applied is fairness in response to the specific benefits, burdens and opportunities of the camping trip, not benefits, burdens and opportunities in the campers’ lives as a whole, implicating all advantages and disadvantages. And many preferences that could determine satisfactions are irrelevant. For example, the fact that an arrangement would heighten the pleasures of smug satisfaction at others’ clumsiness, say, through mockery of the New Yorkers’ awkward strokes, does not count at all in favor of it. In the latter case, Cohen could say that further considerations of community oppose reliance on reasons of fairness reflecting certain satisfactions. But in the Harvard method, the point cuts deeper. The interests that are to be impartially promoted in a choice that establishes the appropriateness of distributive norms are a selection from people’s actual interests. These choices must advance certain “fundamental interests,” in Rawls’ jargon,

impartially promoting further interests only if they fit this framework of aspirations. The fundamental interests are interests whose implementation in the choice of norms for all to follow expresses respect for all. These interests and their rank are to be determined by moral reflection on specific convictions. This is an input to, not an outcome of, the impartial choice establishing distributive norms.³

Because fundamental interests always regulate norms of cooperation, they determine the right way to run a camping trip, in addition to the motivating interest in sharing the enjoyment of nature and nature's challenges. For example, the response of the moderate nature lovers and the merely good canoeists to the obsessional luck egalitarian reflects a fundamental interest in self-reliance, in pursuing one's good by advancing life goals and relationships that one values through one's own efforts.⁴ People ought to (and generally do) have a strong preference for getting ahead on their own steam, investing their own energies in achieving happiness and making plans on the basis of what makes them happy without involving others in the need to cater to the specific cast of their own

³ In explaining the central role of fundamental interests, as opposed to actual desires and inclinations, Rawls notes, "Remember it is up to us, you and me, who are setting up justice as fairness, to describe the parties (as artificial persons in our device of representation) as best suits our aims in developing a political conception of justice." See Rawls (2001 [based on lectures written in the 1980's], p. 87). See also pp. 85, 107, 141, and the discussion of the similarity between the ideal of the person in justice as fairness and perfectionism in Rawls (1999, p. 231). (There are no relevant departures from the original edition in the passages that I will cite.) -- In Cohen (1989, p. 913f.), Cohen makes the broadly analogous move of excluding welfare due to the satisfaction of "offensive tastes" from his principle of equality. This does not readily fit his general insistence that a demand for equal access to welfare is part of a freestanding principle solely concerned with equality, to be weighed against other moral principles, describing other aspects of morality.

⁴In Rawls (2001, pp. 139, 144) Rawls takes the ultimate goal of economic justice to be "to put all citizens in a position to manage their own affairs on a footing of a suitable degree of social and economic equality" and bases rights to personal property on

temperament. There is also a fundamental interest in spontaneity, in enjoying what one does without excessive self-monitoring. A fundamental interest in toleration is important, as well, an interest in the treatment of one's own personal goals and others' as on a par in the running of activities that are to be shared, so long as this does not seriously interfere with the impartial pursuit of similarly important interests. Another item relevant to camping and to social justice is a fundamental interest in association, an interest in effective concern for others in valued relationships, especially strong when the relationship is especially important. This interest favors provision for needs of fellow-campers. But if a number of families are joined in the camping trip, it will also set limits to all-camper concern, because of the special importance of family relations.

A choice that implements these fundamental interests without preference among different campers' compatible further personal interests will not lead to the egalitarian principle. The principle violates the interest in self-reliance: at least if she will have a pretty good time in any case, someone with this interest strongly prefers an arrangement in which she finds her own enjoyment on the basis of her less ardent nature loving or less deft canoeing to an arrangement of aid from ardent nature lovers and super canoeists. The application of the egalitarian principle would also interfere with spontaneity. Moreover, if there are a number of families on the trip, family members could not properly value their ties while committing themselves to this all-camper equality. But the appropriate rule almost certainly will not be a familiar philosophical rival to Cohen's principle. Rather, in response to the simplicity of camping, the limited task of fair treatment of its burdens, benefits and opportunities, and relevant background facts about their trip, the campers "fundamental interests" including the interest in "a sufficient material basis for personal

will choose some highly specific rules of familiar arboreal kinds, easy to monitor, respectful of self-reliance and special associations, advancing the interest in shared enjoyment of nature, but tolerant, say, of the non-camperly literary interests of Uncle Dick. Perhaps, there is rotation of the chores no one enjoys and of the tasks enjoyed by so many that too many cooks would otherwise spoil the stew, while, otherwise, people get to do what they especially like to do in campsite tasks. Or maybe everyone's pitching in with all tasks is just as attractive from the relevant point of view, despite the inefficiency, especially given the interest in sharing. Maybe everything hunted, fished or gathered should be shared, with equal sharing of good-sized first portions and seconds for those who want them in the order in which they ask. Or maybe only stuff to be cooked for dinner should be shared, with berries mostly shared by family members and fellow-pickers. Since only very rough rankings of the regulative interests are appropriate and toleration would, in any case, loosen these constraints, a variety of rules are acceptable prior to further selection by consensus.

In this approach to distribution, fundamental moral authority is invested in the perspective from which distributive principles are chosen, not in the principles themselves. If a principle that deserves consideration is ultimately rejected, this reflects the diversity of the relevant interests, but does not indicate a taint of injustice.

From Camping to Society

Of course, the principles that conscientious fellow-citizens would apply in their joint regulation of their activities are very different from fellow-campers' principles for running their trip. Because a modern society involves such a complex, interactive array of independence and a sense of self-respect.”

activities, changing over time, and because of the absence of any shared aim that is properly presupposed apart from the aim of cooperation on fair terms for free and equal citizens, the right distributive principles will be much more abstract. But the same, Harvard-style (or, in any case, Rawls-style) method would be appropriate and would lead to principles differing in form and content from the luck egalitarian principle.

In seeking the standard that fully conscientious fellow-citizens would apply to their own society, one ought to respect the priority of certain highest-order fundamental interests in integrity, in rational reflection on and shaping of one's own life goals, and in social support for self-respect. (As always, the priority is established by arguments from especially strong specific convictions.) According to familiar arguments, the priority of the core equal civil liberties, such as freedom of religion and irreligion, results.⁵

Because the interest in self-reliance concerns the goals that determine the contours of a life, not just desires for current enjoyments, its great importance gives strong priority to a system of secure entitlement, through which people are assured that their efforts to acquire material means to their own ends will not be deprived of point and value. Because of the importance of this interest, the guarantee of some such entitlement to personal property will be part of the system of basic liberties that has priority over other aspects of social justice.⁶ Similarly, because of the importance of the interest in association, the system of basic liberties will protect the effective exercise of mutual concern in valued special relationships -- above all, nurturance in families.⁷

⁵ See, for example, Rawls (1999, Sections 33, 82); Rawls (2001, pp. 104f.); Rawls (1993), pp. 310-315, 318-320).

⁶ See Rawls (1999, p. 53); [1993, p. 298 (where the connection with “personal independence and self-respect” is explicit)].

⁷ See, for example, Rawls (1999, p. 265).

In all of these choices, including choices to protect the core liberties, ways of running society are promoted in order to impartially advance substantive interests in how one's life should go. Moreover, there is a general high order interest in autonomy, in shaping one's life according to some life-plan with which one can self-respectfully, rationally identify.⁸ So the system of basic liberties must be opposed to avoidable abject poverty. The first priority is the "effective exercise" of basic liberties, with emphasis on liberties protecting the core interests, until "all the basic liberties can be fully enjoyed."⁹ Far from regarding material needs as secondary, Rawls came to be receptive to a first-ranked principle of justice requiring "that citizens' basic needs be met ... at least insofar as their being met is necessary for citizens to understand and to be able fruitfully to exercise [the equal basic] rights and liberties."¹⁰

Responsive though they are to harms of destitution, the rules reflecting these fundamental interests will limit the achievement of material equality. A system of secure entitlements secures gains due to lucky breaks. Protection of nurturance in families will convert these gains, to some extent, into different capacities in the next generation. So, even if the original position is to be applied to the whole life-prospects of fellow-members of a society, a luck egalitarian standard for regulating the shared social arrangements will not be the outcome. Still, on that assumption of application to whole life-prospects, the appropriate impartial choice will impartially promote all personal interests compatible with those fundamental interests and with an underlying commitment to impartially justifiable shared arrangements.

⁸ See, for example, Rawls (1993, pp. 19, 30-32, 72-74).

⁹ Rawls (1999, p. 217).

¹⁰ Rawls (1993, p. 7).

In these further choices of standards, centrally concerned with economic activity, the interest in self-reliance requires emphasis on the provision of means to develop endowments, present early in life, into capacities to advance oneself through one's own valued activities. Once these special needs for education and open access have been given their due, the inequalities that would otherwise remain ought be adjusted to make the lifetime expectations of the most disadvantaged as great as possible, to the extent to which this can be done by appropriate means. These means must respect the basic liberties and the interest in self-reliance. In the political enforcement of distributive standards, fundamental interests in mutual trust and in the autonomous pursuit of life-plans favor primary reliance on assessments susceptible to public monitoring (for example, income comparisons) and require the regularity of expectations provided by the rule of law.¹¹

Through the Rawlsian arguments that I have evoked, the same type of appropriate impartiality that grounds distributive rules on the camping trip grounds distributive rules for society as a whole, namely, Rawls' special conception of justice. Cohen's egalitarian principle is not sustained, in either case, as a standard whose violation constitutes an injustice.

Fairness to Justice as Fairness

Of course, a defense of this approach to distributive justice must meet Cohen's forceful criticisms, as well. He argues that his approach has more solid justificatory foundations and that it exposes moral limitations that Rawls obscures, through over-emphasis on feasibility. In both criticisms (or so I will argue), Cohen under-estimates the

¹¹ See Rawls (1999, p. 48, Section 38); (2001, pp. 116, 127).

proper role of specific social relationships in shaping standards of justice. As in the commentary on the camping trip, general distributive principles are given undeserved priority.

Cohen's argument for superiority in the order of justification is briefly stated but extremely challenging. Rawls' reliance on the original position is said to be unjustified unless it is based on a commitment to Cohen's radical egalitarian principle, which is "part of the underlay of the authority of the original position itself."¹²

Admittedly, one possible basis for employing the original position in identifying justice is that each of us has a duty to favor arrangements in which no one is better off than anyone else because of morally arbitrary differences. Putting those differences behind the veil of ignorance and adopting some construal of what the ignorant chooser seeks to maximize that is suitable for public application might yield a convenient device for finding out what comes closest to satisfying this luck egalitarian demand among feasible and desirable political arrangements. But departures from the underlying luck egalitarian principle will still count as unjust, and direct scrutiny of wellbeing will be morally superior even when it is not politically productive. In *A Theory of Justice*, Rawls himself sometimes seemed to base his approach to justice on that luck egalitarian demand, justifying reliance on the original position as a means of correcting for "the arbitrariness of the world."¹³ Later, Rawls came to emphasize instead, more and more strongly and explicitly, the appropriateness of the original position for the development of fair terms of cooperation among fellow-members of a political society seeking full recognition of one another's status as free and equal citizens. The vital question is

¹² Cohen (2008, p. 159).

whether insistence on this different foundation was a mistake. Do specific relationships among fellow-citizens sustain the assumption that the original position should govern their whole life prospects?

This is the topic of a vast Cosmopolitanism Controversy, in which some criticize and some defend Rawls' own refusal to extend the domestic form of the original position and the conception of justice it yields to the world at large. Here, Cohen's luck egalitarian principle has even more radical consequences than those he actually pressed -- for example, that people in the United States benefit from injustice so long as they are better off than Malians on account of undeserved advantages of being born in the U.S. rather than Mali. It is too bad that Cohen only mentioned the question of global equality very occasionally and very much in passing.¹⁴

In grounding the original position in its Rawlsian domestic version on specific relationships, this much should be conceded: the relationships binding fellow-members of all imaginable political societies will not sustain reliance on the original position or affirmation of demanding egalitarian standards such as the difference principle. Monopolizing permission to use force throughout a territory is not enough. If households farming an as yet ungoverned territory organized a force that sought such a monopoly and used it to prevent murder and rape, the better-off farmers would not take on a duty impartially to promote the fundamental interests of everyone in their territory.¹⁵ Even protection against theft works no such moral magic, in itself. One might as well claim that a farmer acquires a duty to help the needy even to the serious disadvantage of his

¹³ Rawls (1999, p. 122).

¹⁴ See, for example, Cohen (2008, p. 44).

household by putting a lock on his granary.¹⁶ Nor would an isolated step beyond protection against unilateral interference be enough. If a coastal community of farmers are only politically united by a public authority that builds and maintains dykes, needed to keep the sea out of their farms, then costs imposed in maintaining the jointly needed dykes should reflect differences in burdens and benefits of participation. If, to cope with public goods problems, tendencies to defer maintenance and needs for coordination, the farmers impose an enduring dyke-construction-and-maintenance arrangement on everyone in their community, then the terms for sustaining the project should, arguably, be those that everyone would accept behind a veil of ignorance of their locations, resources and needs. But even if the worst-off are poor and everyone would be destitute without the dykes, an appropriately impartial choice among rules to regulate the building and maintenance of dykes will not impartially regulate life-prospects as a whole. For example, if the dyke arrangement frees the poor of all obligations, the better-off have no duty to attend to their disadvantages beyond the limited demands of general beneficence.¹⁷

¹⁵ Cf. Michael Blake's thesis that political coercion is a sufficient basis for egalitarian demands of a broadly Rawlsian sort, in Blake (2002, pp. 281-284).

¹⁶ Cf. the claim that "the state's capacity to provide the basic goods necessary to protect us from physical attack and to maintain and reproduce a stable system of property rights and justice" is sufficient to make economic equality a demand of justice, in Sangiovanni (2007, p. 19).

¹⁷ Rawls himself aligns with common sense in asserting nothing more than a well-hedged "duty of helping another when he is in need or jeopardy, provided that one can do so without excessive risk or loss to oneself ... that ... [holds] between persons irrespective of their institutional relationships." See Rawls (1999, pp. 98f.). I present a detailed specification and defense of such a moderate duty of beneficence in Miller (2010, Chapter 1); (2004, pp. 357-383).

However, Rawls' interest (and Cohen's, in practice) is in justice among fellow members of a modern society. Here, a specific social basis does justify reliance on the original position, without the need for luck egalitarianism.

At least in modern circumstances, governments promote interests of people in their territory through diverse, shifting, wide ranging legislation of rights and responsibilities, coordination, maintenance and start-up of all sorts of facilities for transportation, communication, education, research, protection and insurance, and fiscal and monetary policies. A government with this broad authority is in the interest of all. But the particular ways in which this broad authority is exercised can benefit some much more than others. Indeed, while it is in the interest of all to grant their government authority to advance the interests of its citizens, some will lose out in nearly every particular exercise of this authority, because their skills, location, needs or the goals with which they identify are less well-suited to the generally progressive alternative than to the situation that was changed.

The broad scope of a modern government's proper authority creates a correspondingly broad requirement of fairness that makes the original position, fair equality of opportunity and the difference principle parts of justice. The imposition of political authority is subordination if the imposed arrangements are unfair. If the government confined itself to imposition of obligations needed to sustain a specific public project, such as dyke-construction-and-maintenance, then fairness would only require impartial selection among alternative packages of burdens and benefits of the project. But acceptance of an indefinitely extensive authority to advance interests among those who can only leave at great cost by imposing measures that often burden some

without commensurate benefits requires a correspondingly extensive assurance of impartiality.

One cannot achieve fairness in the general project of betterment through a rule that each contribute in proportion to what she receives. For this would beg the question of the fairness of the public enterprise as a whole. As Rawls insists in response to Gauthier's equation of social fairness with mutual benefit, abilities to contribute and needs and desires determining what counts as contribution and benefit are themselves importantly determined by the selection among opportunities, rights and responsibilities in the exercise of authority whose fairness is being judged.¹⁸ So, to insure that the imposed arrangements, which deeply shape capacities, needs and desires, are not imposed unfairly, one must apply principles that would be chosen by all on whom the arrangements are imposed if they advanced morally appropriate interests behind a veil of ignorance of their own capacities, needs and desires.

This is, I hope, a plausible start in grounding Rawls' use of the original position on the relationships of fellow-citizens, rather than a general luck egalitarian principle.¹⁹ Of course, it is true and important that we do not deserve our initial advantages. It might seem to follow from this truth that we must be willing to give up benefits depending on these advantages. But undeserved initial advantages, say, from especially beneficial upbringing or early environment, are not, just by that token, illegitimately provided. In the world at large as on the camping trip, people can rightly refuse to give up benefits from their making good use of undeserved advantages that did not result from unfair impositions.

¹⁸ See Rawls (1993, pp. 269f., 277-279).

Rawls' approach to justice has turned out to be even more enmeshed than first seems in the actual machinery of social relations. Cohen claims that the enmeshment is so great that it distorts judgments of justice. His central charge is that Rawls misidentifies as just unjustly unequal arrangements providing incentives that meet greedy demands of people with scarce talents in order to mobilize their skills in ways that benefit the worst off. Rawls' mistake is said to be "unqualified endorsement of unequalizing incentives," unqualified, that is, by insistence that the appropriate motivations for social contributions must reflect an appropriately egalitarian ethos of attitudes toward self and others.²⁰ -- This charge, I will argue, is at once unfair and highly illuminating.

The characterization of Rawls as unqualifiedly endorsing unequalizing incentives, regardless of the desires and aspirations underlying the incentives, is puzzling. The part of *A Theory of Justice* entitled "Distributive Shares" begins with a long section entirely devoted to arguing that his contractualist approach to justice does not and must not rely "upon the aims of existing individuals," a stance that would be intolerably conservative because "the social system shapes the aims and aspirations that its citizens come to have."²¹ Justice, in his repeated view, is to be assessed by nearness to and departure from a social ideal. This ideal is only fully achieved in "a well-ordered society such that the aspiration to realize" an ideally just state of affairs "and to maintain it in being, answers to our good and is continuous with our natural sentiments."²² The last third of *A Theory of Justice* is devoted to showing that such an ethos is a realistic hope as a means of

¹⁹ I develop this justification at greater length in Miller (2010, Chapter 2).

²⁰ Miller (2010, p. 74. See also p. 2). With sufficient bad luck in fellow-campers, Rawlsian camping might be vulnerable to a similar objection.

²¹ Rawls (1999, pp. 230, 229).

²² Rawls (1999, p. 417).

meeting the demands established in the first two thirds. In *Justice as Fairness*, the basic structure, the primary subject of justice, is said to answer “to the public role of educating citizens to a conception of themselves as free and equal.”²³ In *Political Liberalism*, the proper role of a government in a well-ordered society is taken to include “reasonable measures to strengthen the forms of thought and feeling [a nice term for an *ethos*] that sustain fair social cooperation between citizens as free and equal.”²⁴

It certainly looks as if the ideal against which Rawls measures the distributive justice of actual societies includes an ethos of pervasive aspirations to contribute to the difference principle’s maximization of the expectations of the worst off, aspirations which are incompatible with the greed for incentives of many well-placed people in actual societies. Cohen himself accepts that Rawls is sometimes inclined to this view. He takes this to constitute an inconsistency.²⁵ His strongest argument that Rawls sometimes affirmed the “lax” view, of unqualified endorsement of actual unequalizing incentives, is encapsulated in his initial description of the central target of *Rescuing Justice and Equality*: “justice does not tolerate the deep inequality, driven by the provision of economic incentives to well-placed people, that John Rawls and his followers think a just society displays.”²⁶ The passage that he cites, here, as showing Rawls’ acceptance of deep inequalities in any society cannot be dismissed as a mere anomaly. It is an explicit statement in Rawls’ initial sketch of his theory, toward the start of *A Theory of Justice*: “... institutions of society favor certain starting points over others. These are especially deep inequalities. Not only are they pervasive, but they affect men's initial chances in

²³ Rawls (1999, p. 56).

²⁴ Rawls (1999, p. 95).

²⁵ Cohen (2008, p. 69).

life; yet they cannot possibly be justified by an appeal to notions of merit or desert. ... It is these inequalities, presumably inevitable in the basic structure of any society, to which the principles of social justice must in the first instance apply.”²⁷ If “deep” means big, including income differences on something like the scale of current inequalities, then, it might seem, Rawls’ only reason for conceding their persistence in a well-ordered society is the need, in order to help the worst off, to propitiate selfish talented people who would continue to play economically central roles.

Given the evidence elsewhere that Rawls hopes that greed would no longer be a central economic force in a well-ordered society, we should seek another reading of the crucial passage. In the right reading, “deep” has a different meaning: morally troubling, i.e., in urgent need of change unless a suitable justification is available. The passage is testimony to the depth, not the shallowness, of Rawls’ egalitarianism.²⁸

In a well-ordered society in which greedy talented people need not be propitiated, security of entitlement in personal property and protection of nurturance in families will still generate differences in aptitude, quite apart from any differences in natural endowment. People have a prerogative to prefer activity that best fits their non-greedy temperaments and to pursue non-greedy life-goals with which they identify. Since their preferred activities may not fit social needs and non-greedy life-goals usually are not

²⁶ Cohen (2008, p. 2).

²⁷ Rawls (1999, p. 7).

²⁸ Another reason favoring this reading is Rawls’ denial that hold-outs by greedy people with special talents would, in fact, be effective in creating large and important inequalities against the background of fair equality of opportunity that is instituted by well-ordered societies. See Rawls (1999, pp. 136f.), (2001, p. 67). In the latter passage, Rawls concedes that a few rarities such as divas in opera might command big salaries when opportunities are fair, because of special fixed constraints on supply of talent

ascetic, there will have to be significant incentives to overcome non-greedy reluctance to engage in socially needed activities in any efficient labor market. The premiums that efficiently attract people with the right skills and aptitudes to positions in the evolving network of production will lead to stably superior careers, required for appropriately low turn-over, long-term commitment and the accumulation of knowledge of skills, practices and people within the firm. In *Why Not Socialism?*, Cohen does not deny that such social production of advantage might be inevitable if a modern economy is to meet legitimate demands. A new feature of his outlook is the acknowledgment, in Part IV, that some significant reliance on unequalizing market mechanisms may be essential for reasonably efficient allocation of labor and capital investment, because of problems of design that do not respond to greed.

Even if only income differences were in question, differences that are not large on the scale of current inequality, the difference in initial chances in life would be “especially deep,” i.e., in need of stringent moral scrutiny. Imposed social processes that all are expected to support give rise to unchosen disadvantages of some in achieving a life that is as materially good as others’. But Rawls is especially concerned with differences in how much authority and responsibility is attached to positions, with differences in the interest of the work that carries out those responsibilities, and with differences in contributions of work to society, about which people care in a well-ordered society. For example, limited access to positions is not just a matter of “being excluded from certain external rewards” but of being “debarred from experiencing the realization

relative to demand, but insists that doctors could not cash in greed without restrictions on fair equality of opportunity that a well-ordered society would not permit.

of self which comes from a skillful and devoted exercise of social duties ... one of the main forms of human good.”²⁹

Rawls very plausibly supposes that some hierarchy of positions of responsibility and authority in economic and political life will be required for reasonable efficiency and for the regularity of expectations on which the autonomous pursuit of legitimate life-goals depends. By their nature, the higher positions in the hierarchies are in shorter supply than the lower ones whose work they regulate. Costs of training and needs for constant practice and cumulative learning-by-doing in the especially interesting work of very challenging, socially useful jobs will, presumably, keep these positions in short supply, as well. Presumably, employers will be selective in hiring for these various special positions in an efficient economy. Security of entitlement in personal property and protection of nurturance in families will give some people a better chance of being selected. Even if they do not depend on greed, unequal initial chances to achieve aspirations to positions of authority and responsibility, positions of special social importance, and positions that respond to challenges in interesting, demanding ways are extremely troubling, in need of a deep justification. These are not just differences in income, after all, but differences in success in aspirations to which people might properly be deeply attached.

No doubt, Rawls should have said more about the search for a less unequal division of labor. His celebration of the well-ordered society as a social union of social unions seems to exaggerate the extent to which people should be reconciled to the modern division of labor by admiration for the skills of the neurosurgeons they wanted to

²⁹Rawls (1999, p. 73).

become. Still, his presumption of the inevitability of some such differences is never challenged by Cohen. Indeed, it parallels the openness to pessimism about equality in Part IV of *What Is Socialism?* Rawls' judgment that inevitable inequality of access in this regard (again, not challenged by Cohen) is deep, i.e., always in need of stringent moral scrutiny, is as far as can be from unqualified endorsement of incentives based on greed.

Still, even if Rawls does not unqualifiedly endorse incentives for the greedy, he is certainly attentive to practical constraints that a lover of justice must regret. If his alleged inconsistency is to be converted to morally apt complexity, one needs to connect his various adjustments to practical constraints with plausible moral assessments. By forcing a Rawls-lover to be more explicit than Rawls about these distinctions, Cohen's critique is extremely illuminating, regardless of whether it is fair.

In *A Theory of Justice*, Rawls makes a start in distinguishing different types of justified accommodations to reality in the murky section, "The Priority of Liberty Defined." (Probably, his focus on justified accommodations connected with liberty partly reflects a concern to provide a basis for judging departures in developing countries from the constitutional arrangements appropriate to the United States and other developed countries.) Our basic standard for judging the justice of a society is said to be an ideal that "presents a conception of a just society that we are to achieve if we can. ...Existing institutions are to be judged in light of this conception and held to be unjust to the extent that they depart from it without sufficient reason."³⁰ Even when the departures are justified, we are in the sphere of the nonideal.

³⁰ Rawls (1999, p. 216).

Rawls' most emphatic claim is that two kinds of justified departures ought to be distinguished. In one case, "injustice already exists, either in the social arrangements or in the conduct of individuals. The question here is what is the just way to answer injustice."³¹ His main example is the possibility that the reduction of harms due to religious intolerance might justify restrictions of the liberties characteristic of an ideal society -- presumably by such measures as restrictions of speech with a specific, dangerous content. The institutions are justified, but Rawls never denies that social life in such a society is tainted with injustice. Indeed, he makes this salient by describing the possibility that the institution of enslavement of war captives might be the best way of protecting these vulnerable people from what would otherwise be their fate, the killing of war captives. While his immediate concern is the restriction of civil and political liberties, these judgments of the nonideal would extend to greed that has to be propitiated in the interest of vulnerable people. Religious intolerance, after all, is a sort of ideological greed. In both cases, social wisdom temporarily justifies arrangements that take account of "injustice ... in the conduct of individuals."³² Nonetheless, a commitment to justice requires an ongoing effort to reduce and, eventually, eliminate these reasons to depart from the characteristic features of an ideal society.

Rawls says that there is another category of "circumstances that justify or excuse a restriction of liberty" and, presumably, other departures from the ideal: "natural limitations and accidents of human life, or ... historical and social contingencies."³³ One example that he emphasizes concerns a historical contingency. It might be the case that

³¹ Rawls (1999, p. 215).

³² Rawls (1999, p. 215).

³³ Rawls (1999, p. 215).

the special coordinative capacities and knowledge of a landed aristocracy make limited suffrage the means (as Edmund Burke thought it actually was) to the effective enjoyment of the most basic civil liberties and the reduction of abject poverty among those who are denied voting rights.³⁴ In one way, this departure from the ideal would differ from the first type. The justification does not “answer injustice,” but responds to a limitation in social and technological capacities. In another way, it resembles the first: in pursuing justice, one should seek to overcome the barrier to further movement toward the ideal, “making sure that the course of change being followed is such that social conditions will eventually be brought about under whether these restrictions on freedom are no longer justified.”³⁵ Similar characterizations could apply to limitations on fair equality of opportunity needed for a process of capital accumulation that reduces abject poverty, as Rawls notes in commenting on a hypothesis of A. Keynes’.³⁶

In addition, there could be departures from ideal social justice that reflect natural limitations and inevitable accidents of human life, not historical and social contingencies. In “The Priority of Liberty Defined,” Rawls argues that nonideal theory would include “the regulation of liberty of conscience and freedom of thought in ways consistent with public order, and the limitation of the scope of majority rule ... [which] arise from the permanent conditions of human life.”³⁷ For example, the protection of civil liberties in a bill of rights not subject to majority rule may always be necessary to provide a secure social basis for self-respect and mutual trust; serene confidence that a majority would never be led by intolerance, fear or confusion to support an unjust intrusion is too much

³⁴ Rawls (1999, p. 217. See also pp. 264f.).

³⁵ Rawls (1999, p. 218).

³⁶ Rawls (1999, p. 264).

to expect, in any human society. One always has a civic duty to be on the look out for just means of mitigating these tendencies. But their total elimination is not feasible. So institutions must always take account of sources of difficulty in upholding fundamental interests that a lover of justice must wish were eliminable. Rawls' earlier remark about inevitable deep inequalities expresses a similar appraisal. The morally troubling inequalities of access do not depend on the persistence of injustice in individual conduct. However, one should always be on the look out for ways of reducing them, compatible with prior constraints of justice, even though one has reason to believe that they are not wholly eliminable.

How should these different nonideal situations be described, in terms of justice? These are all situations in which the interest in justice of a conscientious member of society would lead her to seek ways to promote eventual change in her society, to bring it closer to the best-ordered imaginable human society. In the first sort of case, change in institutions should not be sought immediately, because of a need to accommodate abiding injustice. Deploying ordinary terms of moral appraisal, one could describe the institutions as tainted with injustice but justified -- or, perhaps, merely excused (relying on the second disjunct in Rawls' "justify or excuse a restriction of liberty.") Where historical contingencies involving no injustice are accommodated, it seems more appropriate to say that the institutions that are as close as the contingencies allow to the best-ordered imaginable human society are just for the time being as well as currently justified, but that the interest in justice dictates the promotion of further changes, moving toward that ideal. Finally, even assuming that the best-ordered society that is humanly feasible need

³⁷ Rawls (1999, p. 217).

make no accommodation to injustice, there is a point in noting a short-fall from the best-ordered human society imaginable: a member of that society, which is in fact the best feasible, should, from love of justice, hope for further improvement, staying on the look out for ways of doing even better. One might say that such a society is as just as can be but does not fulfill all hopes for justice.

Rawls does not stipulate or systematically employ these terminologies of justice. He prefers his own jargon of “nonideal theory,” “full compliance,” “noncompliance” and, in his last writings, “realistic utopia.” Perhaps the ungainly usages are wiser, since familiar connotations of the ordinary terms of justice may obscure the proper bearing of the different justifications on conscientious people’s attitudes and projects. So far, nothing seems to be missed that Cohen singles out with his own usage of “unjust.”

The Challenge of Community

Up until now, I have exploited Cohen’s sensitivity to the moral quality of relationships in *Why Not Socialism?* as part of a defense of Rawls’ approach to distributive justice from his criticisms. But that same sensitivity in his last book points the way to a flaw in Rawls’ theory, the failure to take full account of values of community.

Why Not Socialism? is full of touching and compelling evocations of values of community that Cohen presents as part of “the socialist form of life” that ought to be embodied on the camping trip, values whose absence is a moral defect in contemporary capitalist societies. This is not the abstract community that he emphasizes in *Rescuing Justice and Inequality*, a commitment to mutual justification that he incisively defines and uses to advance egalitarian claims. It is community in the ordinary sense, the sharing

and caring celebrated as making for a wonderful world in a left-wing song of his childhood.³⁸ Far from claiming that the value of community derives from his principle of equality (say, because the principle requires the promotion of a corresponding ethos of equality), Cohen notes conflicts between that principle and community and accepts that his principle should sometimes give way.³⁹ Indeed, while he sometimes characterizes the form of life he favors as one of community and equality,⁴⁰ his capsule descriptions often simply evoke community. The best way to run a camping trip is “the socialist way, with collective property and planned mutual giving;”⁴¹ socialist aspirations are realized in “community conquests;”⁴² apart from avoidance of transaction costs, people are drawn to the socialist form of camping trip “on grounds of fellowship.”⁴³

Community as Cohen understands it in *Why Not Socialism?* has two complementary aspects.⁴⁴ One is the enjoyed sharing of a common life, including the opportunities it affords for empathy based on shared experiences. (One of his nice examples shows that even kvetching over shared inconveniences has genuine value.) The other is mutual generosity, concern for others’ needs, not borne as a burdensome obligation, but enjoyed, so long as those helped would willingly reciprocate if they could. This practice and attitude of mutual generosity is stifled by a social life based on greed and fear.

³⁸ See Cohen (2009, p. 51).

³⁹ See Cohen (2009, pp. 34-37).

⁴⁰ Cohen (2009, p. 1).

⁴¹ Cohen (2009, p. 10).

⁴² Cohen (2009, p. 81).

⁴³ Cohen (2009, p. 6).

⁴⁴ See especially Cohen (2009, pp. 37-46).

I have briefly evoked several densely rich, evocative, passionate paragraphs. Cohen should have had the time to further enrich us by further developing them. But this quick summary is, I hope, enough to show that the values of community that Cohen celebrates involve the relationships whose loss people lament when they say that there is too little community in their society. One of Rawls' most poignant struggles was to capture what was relevant and right in these aspirations, i.e., relevant to the political choices that concerned him. Cohen's celebration of the socialist ideal suggests the failure of this attempt.

Rawls tried to show that the impartial recognition of fundamental interests which do not themselves affirm the values of sharing and mutual generosity was all that is needed to sustain what is politically relevant in values of community. Making use of the original position and its consequences, he notes a variety of ways that yearnings for community are partly satisfied. Because the difference principle requires concern by everyone in society to find institutions, laws and policies maximizing the lifetime expectations of the most disadvantaged among them, it can be seen as promoting fraternity.⁴⁵ In a society governed by fair equality of opportunity and the difference principle, people can enjoy imaginative participation in others' skillful exercise of capacities which they do not themselves develop, participating in a social union of social unions.⁴⁶ Material inequalities are ruled out if they are so big that the self-respect of losers is inevitably undermined.⁴⁷ Willing commitment to shared political values is,

⁴⁵ See Rawls (1999, pp. 90f.).

⁴⁶ See Rawls (1999, pp. 463f.).

⁴⁷ See Rawls (1999, p. 468).

ideally, universally shared.⁴⁸ Taking part in the joint activity of realizing justice in one's sovereign territory is itself a source of enjoyment, part of the participants' good.⁴⁹

Despite this partial success, the social and political relevance of sharing and mutual generosity does not receive its due. For example, in a society in which basic liberties are protected, fair equality of opportunity is provided and the lifetime expectations of income and wealth of the most disadvantaged are maximized, community might be limited in the following ways, through side-effects of income-enhancing measures and non-greedy choices. People of diverse walks of life do not routinely encounter one another (except as servers and served) in shared centers of public activity, because of the passing of downtowns/High Streets where they might have come together to shop and to enjoy public facilities. People live in neighborhoods with others who are at about the same rank in the hierarchy of responsibility, authority and skill, in part because of housing prices, in part because of shared tastes. They drive to work, rather than taking public transportation. Public schools languish in comparison with private schools and charter schools. To encourage efficiency in production (which is then deployed to maximize the lifetime expectations of wealth and income of the worst-off), employers have broad prerogatives to fire for legitimate economic reasons, reducing the scope for long-term, non-competitive relations on the job and mutual empathy among supervisors and supervisees. Teachers and clinicians are subjected to strong pressures to cut costs, through market competition or the monitoring of cost-effectiveness by bureaucracies on whom they depend. The vigorously productive economy, which maximizes the material possessions of those who have least, leaves most people little energy and time for shared

⁴⁸ See Rawls (1999, pp. 153f.).

enjoyment and active empathy outside of their immediate families. Most people are attached to life-goals requiring lots of individual material consumption for basic success, at a level that grows with technological progress, making it risky to give much to help meet strangers' needs. Economic growth is stoked by these individual material demands, which are encouraged by the public culture as well as pervasive advertising.

Granted, people committed to seeking fair terms of cooperation will disagree about whether to promote more sharing and mutual generosity when this conflicts with other legitimate goals. But detaching those considerations of community from political choice would not be fair to the interests of all fairminded people. The availability of unifying and diverse downtowns, public transportation, economically mixed neighborhoods, jobs in which fears of firing are mild and the pace of work is moderate, public facilities substituting for private consumption, caring professions unpressured by monitoring for costs, and a milieu of moderation in consumption depends on political choices, including trade-offs with other dimensions of better or worse, such as income and wealth. The impact of these choices on people's interests must somehow be assessed. If the impact on goods of community is excluded from these assessments, inadequate respect is shown for those who care about community.

There will be some scope for communal concerns in the rules for political institutions that emerge from the original position. While income and wealth have special practical political importance as aspects of wellbeing that are readily publicly monitored, they are only broadly correlated with what people properly care about once their fundamental interests in liberty and opportunity are protected. So adherence to the

⁴⁹ See Rawls (1999, p. 462); (1993, p. 204).

original position will only require rough conformity to the goal of maximizing the lifetime expectation of income and wealth of the representative worst-off individual.⁵⁰ Within this margin, choosers in the original position will seek measures impartially serving the actual legitimate personal interests of all affected, a goal best pursued politically through tolerant discussions in a public forum in which all interests can be voiced, leading to democratic legislation. By supporting a democratic consensus formed through tolerant, attentive discussion of what people want from life and how policies shape their options, we show respect for the personal interests that our fellow-citizens affirm as “self-authenticating sources of claims.”⁵¹

Cohen has no stake in denying that laws affecting the issues of community he poses should reflect a democratic consensus resulting from fair and tolerant deliberations, even if the consensus supports the somewhat atomized, fearful and uncaring social life that I described. Willingly upholding these laws seems, indeed, a dictate of political community. But this leaves open the question of whether appeals to sharing and caring deserve independent political standing not just as personal preferences but as politically relevant considerations that could make the tolerant decision of the majority wrong.

Rawls' response seems to be, “No.” The conception of justice that can be expressed in commitment to the outcome of the original position is, in his view, “complete;” it gives “a reasonable public answer to all, or to nearly all, questions involving the constitutional essentials and questions of basic justice.”⁵² But a way of settling questions of justice that does not acknowledge the moral and political relevance

⁵⁰ See Rawls (1999, p. 84).

⁵¹ See Rawls (1993, p. 32).

⁵² Rawls (1993, p. 225. See also p. 240).

of Cohen's appeals to community seems to be incomplete, unless "basic justice" is a misleading term of art. Questions about employers' prerogatives, interference with private initiatives in order to improve the moral quality of lives, the political shaping of urban environments, the balance between public facilities and private consumption, and the ethical content and primacy of public education are hotly debated in modern constitutional democracies, and rightly so.

Cohen's descriptions of losses of community may not be decisive reasons for change. Just as there is something to be said for keeping one's fishing tackle largely to oneself, there is something to be said for paying special attention to one's projects and one's intimates, for having control over associations that evoke attention and empathy, for cultivating large zones of privacy in which one is unobserved by strangers and unobservant of them, and for individualistic initiatives that do not require cooperation or adherence to public schedules, including initiatives that take adventurous risks and seek to prove distinctive capacities. There is also the need to consider the social pay-off of efficient market processes that reduce sharing and caring in everyday life. Still, the discussion to which Cohen incisively contributed in his last book seems a politically relevant, many sided discussion of how to live together in which considerations of community are cogently advanced as reasons that everyone ought to take seriously, not just as personal preferences that they should respect.

While the need to balance values of community with values of separateness, individual striving and material consumption may force qualifications of Cohen's praise of the socialist form of life, this need is also a barrier to efforts to make Rawls' method complete. If a fundamental interest in sharing and caring is introduced into the original

position, it must compete with a variety of contrary interests, to avoid one-sidedness. There seems to be no defensible general ranking of interests, here, that will lead to a resolution of nearly all important political questions raised by Cohen's complaints about the loss of community. So, a divide like the one that Cohen locates between Harvard and Oxford must be crossed.⁵³ Political questions of whether and how to promote community seem to require extensive direct intuitionistic balancing of competing considerations, even if intuitionism can be tamed (though not eliminated) in matters of liberty and equality through use of the original position.

Giving community its proper place, through this unruly method, is a daunting task. As we use this part of his legacy, Jerry Cohen will deserve our gratitude for pressing questions that are, at once, uncomfortable and urgent. His help in answering them will be sorely missed.

⁵³ Of course, Rawls' strongest strictures against the political assertion of more-than-purely-political values must also be abandoned.