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JOBS, INSTITUTIONS, AND BENEFICIAL RETIREMENT

Gerald Lang

Abstract

According to Saul Smilansky's 'Paradox of Beneficial Retirement', many serving members of professions may have decisive integrity-based reasons for retiring immediately. The Paradox of Beneficial Retirement holds that a below-par performance in one's job does not require any outright incompetence, but may take a purely relational form, in which a good performance is not good enough if it would be improved upon by someone else who would be appointed instead. It is argued, in response, that jobs in the sectors Smilansky mentions are not merely positions to optimize the goals of the profession, but are professional careers in which there is the possibility of security and personal fulfilment. The article also explores connections between Smilansky's argument and G. A. Cohen's anti-incentives argument against Rawls. It is suggested that both thinkers underappreciate the relationship between personal reasons and institutional reasons.¹

According to Saul Smilansky's 'Paradox of Beneficial Retirement' (hereafter referred to as 'PBR'), many individuals who serve in the professions may have conclusive reasons for retiring immediately.² My aim here is to outline the PBR, and then assess its force. As we shall see, my treatment of the problem is connected to some issues raised by G. A. Cohen's critique of inequality-permitting incentives in Rawls's theory of social justice. I will examine these further issues as well, in the light of what I say about the PBR.

The article will be structured as follows. In section 1, I outline the PBR. In section 2, I outline and criticize James Lenman's response to the PBR. In section 3, I explore an alternative response to the PBR which quarrels with Smilansky's central assumption about individuals' moral entitlement to the jobs they have. Finally, in section 4, I apply some of these ideas to Cohen's complaints about Rawlsian justice.

1. Explaining the Paradox of Beneficial Retirement

The PBR proceeds from Smilansky's contention that conscientious incumbent professionals are committed to both of the following claims, which stand in mutual tension:³

1. I am a doctor/police detective/academic because I want people to be healthier/the streets to be safer/knowledge to increase; and
2. I will continue working in my present job.

Let us consider these claims in turn. Claim 1 states the aims of the profession, which might reasonably be imputed to, or shared by, those individuals who are admitted into the profession. The specific professional aims will, of course, be highly varied, but they all concern the notion of service to others. Claim 2 represents the average ambition of an

¹ Previous versions of this article were presented at the PSSA Conference, Durban, in January 2013, and at the Applied Ethics Seminar at the University of Leeds. I'd like to thank members of those audiences for the many helpful and thoughtful comments I received on it. Thanks also to an anonymous referee for comments which sharpened up the final version.

² See Smilansky, 'The Paradox of Beneficial Retirement', *Ratio* 18 (2005), pp. 332-38, and his *Ten Moral Paradoxes* (Oxford: Blackwell, 2007), ch. 2. The treatments are very similar, though I will tend to defer to the later discussion, where second thoughts and minor corrections have had the opportunity to be implemented.

³ Smilansky, *Ten Moral Paradoxes*, p. 28.

incumbent professional; for a mixture of reasons, most of us have no plans to retire unless we are nearing retirement age.

There is no formal inconsistency between claims 1 and 2, so why is there any tension between them? It is because, for many people, there are reliable grounds for supposing that the aims stated in claim 1 would be better promoted if they were replaced by other individuals who are currently denied a job in the relevant sector.

The PBR is addressed to those professionals who are ‘not particularly incompetent, but [not] particularly good’⁴ at what they do, and who are unlikely to improve on their long-term performance in their jobs. Smilansky’s exposition focuses on the least talented 20% of the profession, but the case for immediate retirement also applies to those who are much further up the percentile scale of talent and professional competence. How far we should go up the percentile scale is determined by the fulfilment of several conditions which are required for the activation of the PBR. Smilansky calls these the ‘Underlying Conditions’. These require, variously, that there be a plentiful skilled supply of potential new incumbents; that premature retirement would not cause undue economic hardship; that present incumbents would not prove to be even more harmful occupying other positions; and that the individuals who would replace them would not prove to be even more beneficial in the jobs they would otherwise hold.⁵

When these conditions are reasonably judged to be in place, there will be ‘a substantial moral and personal reason to retire’ for, roughly speaking, integrity-based reasons.⁶ Importantly, Smilansky does not employ consequentialist reasoning, to the effect that we are required to do that which maximizes impartial value. The conclusions delivered by the PBR are instead delivered by that to which we are personally committed; if we are serving in such a profession, then the reasons for immediate retirement will follow from the fact that we care about the job we are doing and about the goals which are served by that job. Our reasons for retiring will follow, then, from taking a long hard look at ourselves and at what we are already committed to, not from a sobering glance at the more demanding forms of consequentialism.

Of course, we are used to the idea that professional employment might be terminated for below-par performance, or for incompetence. Normally, also, we would expect standards of incompetence to be context-sensitive: they depend on the job one is doing, which carries the implication that standards for incompetence can vary in terms of stringency or demandingness. The two particularly novel features of the PBR are, first, that incumbents of these jobs may have reasons to quit even without being fired or even in the absence of the sort of antecedently specifiable deleterious performance that would warrant dismissal; and second, and relatedly, that below-par performance does not require any outright incompetence, but may take a purely relational form, in which a good performance is not good enough if it is likely to be improved upon by someone else who would be appointed in place of the present incumbent.

2. Why Lenman Has No Plans to Retire

James Lenman thinks that Smilansky makes a significant mistake in the cost-benefit calculations which incumbent professionals should be making, and that, when the cost-benefit exercise is suitably complicated, the PBR loses much of its bite.⁷ Though there is

⁴ Ten Moral Paradoxes, p. 23.

⁵ Ten Moral Paradoxes, p. 24.

⁶ Ten Moral Paradoxes, p. 31.

⁷ See James Lenman, ‘Why I Have No Plans to Retire: In Defence of Moderate Professional Complacency’, Ratio 20 (2007), pp. 241-46.

something to be learned from Lenman's discussion, I do not think he manages to remove the force of the PBR.

On Lenman's view, Smilansky thinks that an incumbent professional, X, should be exercised by the following cost-benefit condition:

$$C1. V2 > V1,$$

where 'V1' is the value X contributes by staying put, and 'V2' is the value that another individual, Y, would contribute were she to replace X.⁸ Y is the highest ranking relevant member of the Pool, which is comprised by the collection of individuals who are currently denied a place in the profession and are seeking to enter it. Lenman, by contrast, thinks that the relevant condition for X to consider is not C1, but C2:

$$C2. (V2 + V3) > (V1 + V4),$$

where 'V3' is the value that X would continue to contribute if he retired, 'V4' is the value that Y would contribute if X did not retire, and 'V1' and 'V2' are defined as before.

In contrast to C1, Lenman holds that C2 is much more difficult to satisfy. There are two types of case which can be tested for satisfaction of the C2 condition: one type of case in which X's replacement, Y, would be admitted to the profession by some alternative route, and the other type of case in which Y would not be admitted to the profession at all were it not for X's beneficial retirement. Following Lenman, let us call the first set of cases Successful cases (since they concern individuals who will find some other way of being successful), and the second set of cases Unsuccessful cases (since they concern individuals who will fail to find some other way of being successful).

Lenman argues that V3 is likely to be very low, and that V4 is unlikely to be much lower than V2, as long as we are dealing with Successful cases. If V3 is low, and V4 is around as large as V2, C2 will be much less easily satisfied than C1.

What about Unsuccessful cases? If Y is Unsuccessful, then V4 will be low. Since V3 will also be low, C2 will be little different from C1. So, in Unsuccessful cases, C2 will be about as easy to satisfy as C1. But Lenman holds that, if Y would otherwise be Unsuccessful, then C1 cannot be satisfied either. To secure this verdict, he makes three further and avowedly idealized assumptions:

[A]ssume (a) that however good X and his professional peers may be at their job, how good they are remains constant throughout their careers... (b) that recruitment into this profession is reliably meritocratic: so, in any given year, all those members of the Pool who prove Successful will all reliably contribute more to the profession than would any of their Unsuccessful peers. And ... (c) the standard of competition for being Successful is constant over time.⁹

If these three conditions are in place, Lenman contends that C2 will be very difficult to satisfy. This is because it will in fact be certain that C1 cannot be satisfied; V1 will definitely exceed V2, since the individuals who are Successful will all outrank the Unsuccessful in terms of talent. As he says:

⁸ Lenman, 'Why I Have No Plans to Retire', pp. 242-3.

⁹ 'Why I Have No Plans to Retire', p. 244; original emphases.

Now X may be in the bottom 50% of the profession. But 100% of the profession is made up of Successful members of what was once the Pool. If (a) and (b) are true, that means they are all better contributors than any of their Unsuccessful peers would have been. And if (c) is also true, that means they are all better contributors than any of the destined-to-be-Unsuccessful members of the present Pool will be.¹⁰

Lenman's reasoning seems to me to be askew in both Successful cases and Unsuccessful cases. I consider them in turn.

In Successful cases, it cannot be assumed that X's failure to make way for Y causes negligible disvalue. There may be a long period of unemployment which Y has to face before finally gaining professional entry. In this respect, the non-consequentialist character of Smilansky's argument aids him; it is not the total disvalue caused by X's refusal to cede his place to Y which should be of primary concern to X, but the fact that Y would achieve the relevant professional goals more effectively than X does. Since X is supposed to be committed to the pursuit of these professional goals, the problem is less easily banished than Lenman thinks.

Lenman's treatment of Unsuccessful cases requires a more complex response. For my immediate purposes, I need not quarrel with (a) or (b). The problems boil down to (c). What does (c) amount to? On what I think is its most obvious interpretation, (c) holds that it is equally probable in any given year that some Successful individual with a fixed level of talent—X, say—will gain entry into the profession.

Let me now distinguish between two worlds, W1 and W2. In W1, no one is motivated by the PBR, and the process of retirement-and hiring is entirely unaffected by cases of beneficial retirement. We can carve up W1 into year-sized segments: from Year 0 to Year 10, say. We then assume, according to the suggested interpretation of (c), that it is equally probable in any of these years that X is admitted into the profession. That is, it will be as probable that X is admitted into the profession in Year 2 as it is in Year 8. Call that probability, whatever it is, p_1 .

In W2, by contrast, every individual is motivated by the conclusions Smilansky reaches in the PBR.¹¹ We also assume, according to the proposed interpretation of (c), that in W2 it is equally probable in any of these years that X gains entry into the profession. Since hiring behaviour in W2 may be substantially affected by cases of beneficial retirement, the overall odds of X's becoming Successful may be different from what they were in W1. Call the probability, whatever it is, of X's becoming Successful in any year in W2 p_2 .

Within W1 and within W2, considered as separate worlds, there is an obvious, and obviously coherent, interpretation of (c) along the lines indicated. But how should we deal with a 'mixed world' case, in which we go from W1 to W2? Imagine that we go from W1 to W2 at the start of Year 6. We now have hybrid time structure: the period from Year 0 to Year 5 falls under W1, while the period from Year 6 to Year 10 falls under W2. Call this hybrid world W3. How is (c) to be interpreted in W3? We have already admitted the possibility, when W1 and W2 were separate worlds, that p_1 is not equal to p_2 .

A dilemma arises for Lenman's argument. Either we retain the assumption that it is equally probable that X gains entry into the profession in each year from Year 0 to Year 10 in W3, or we do not. If we do retain this assumption, then we must be assuming when we reach Year 6 that the destined-to-be-Unsuccessful individuals are all less talented than the incumbent individuals they would otherwise replace. Because the destined-to-be-Unsuccessful individuals are all less talented than the incumbent individuals they would

¹⁰ 'Why I Have No Plans to Retire', p. 244; original emphases.

¹¹ It will be obvious that W1 and W2 are not exhaustive. They do not need to be.

otherwise replace, p_2 will be equal to p_1 . That would explain why V1 is reliably greater than V2 when we run the C1 test, but it also exposes Lenman's assumption as plainly illegitimate. It must surely be possible for Y to be more talented than X. To assume otherwise is to beg the question against Smilansky. By contrast, if we do not retain the assumption that p_1 is equal to p_2 , then Lenman is not being faithful to his own assumption, and—more significantly—he will have no grounds for suggesting that incumbent professionals have no reason to cede their jobs to talented individuals who would otherwise be Unsuccessful.

The basic shortcoming in Lenman's argument is that he ignores the fact that the Unsuccessful Pool is not fixed. If the lessons of the PBR are properly heeded, then there will be, or may be, a larger number of Successful individuals than there would be if those lessons are simply ignored. Lenman's response to the PBR does not adequately deal with these potential new entrants to the professions, even though a charitable interpretation of the PBR will make the PBR primarily concerned with these members of the Pool.¹²

Lenman's assumptions, then, ultimately let him down. But the news on this particular front is not all good for Smilansky either, because he too is dependent on assumptions, concerning the Underlying Conditions, whose obtaining in the real world can only be determined with some difficulty. It may be easy to form an estimate of your effectiveness in local settings when, for example, you compare your detection rates to other local detectives, or the quality of your publication outputs against that of your colleagues. But it is genuinely more difficult to situate yourself in a percentile scale across the whole field of relevant professional activity, both local and non-local. How can one reliably determine that one belongs to the bottom 50% of the profession, as opposed to somewhere in the top 50% of the profession? And why suppose that the other Underlying Conditions are reliably in place? How could we tell? For reasons like these, I doubt that the PBR enjoys any great practical force. But it would be a shame to leave things there. Less pragmatic or epistemic reasons for resisting the PBR warrant exploration.

3. Jobs are for the People Who Have Them: Personal Reasons and Institutional Reasons

One seemingly obvious strategy for dealing with the PBR might be to quarrel with one of the premises which Smilansky uses to generate it. As we have seen, Smilansky's argument exploits the tension between the two following claims:

1. I am a doctor/police detective/academic because I want people to be healthier/the streets to be safer/knowledge to increase; and
2. I will continue working in my present job.

We might consider substituting, for claim 1, the following claim:

3. I am a doctor/police detective/academic because I want to be the person who is helping people to be healthier/the streets to be safer/knowledge to increase.

Unlike the conflict between claims 1 and 2, there is no problematic tension between claims 3 and 2. Now claim 3, or something like it, is what we might legitimately hope to end up with. My conclusions will be compatible with it. But it will not do to employ it at the immediate start of the counterargument to Smilansky. This is because of the suspicion that it suffers

¹² In his 'The Paradox of Beneficial Retirement: A Reply to Lenman', *Ratio* 20 (2007), pp. 348-51, and *Ten Moral Paradoxes*, p. 32, n. 1, Smilansky offers other replies to Lenman's argument. I tend to concur with the drift of Smilansky's discussion, but wish to emphasize different points.

from an egocentric inflexion which, in this context, seems problematic. If I am involved in the project to make people healthier, or to make the streets safer, or to increase knowledge, then what explains the insistence that it should be me who continues to contribute to these aims, if others would make better contributions to them? The PBR cannot be dismissed as easily as this.¹³

Nonetheless, this counter-response contains a nugget of truth, which I now want to extract and build on. The basic thought I want to advance here is that jobs in the sectors Smilansky mentions are not merely positions to optimize the goals of the profession, but are professional careers in which there is the possibility of security and fulfilment. As I hope to show, there need be no threat to integrity when this bifurcated character of jobs is acknowledged.

I begin with an anonymous tweet reported in a recent article in Inside Higher Ed:

My dream job has always been adjunct professor. Since childhood I have abhorred stability, living wages and insurance.¹⁴

Why is this anonymous tweeter entitled to be sarcastic? And would this be an appropriate reply?

Since your chosen profession is academia, you should be pleased simply to have been given the opportunity to be doing academic work: to be teaching, doing research, and carrying out academic administrative tasks. Your salary and long-term prospects have nothing to do with the intrinsic character of this work, and your anxiety over them shows that your commitment to the academic profession is not all it should be, or could be.

This reply seems obnoxious, and not just because it is uncaring and sanctimonious. The deeper point to be made about it is that a commitment to a profession is, or should be, safely combinable with a commitment to one's personal prospects.

It will be easier to grasp this point if we distinguish between looking at careers in a prospective way and looking at them in a non-prospective way. Prospectively, we do not think ourselves morally obligated to do just anything to further the goals of a particular profession. If the pay is lousy, or the conditions dangerous, or if pursuing the profession would impose considerable strain on our other projects and commitments, we would normally not feel obliged to attempt to join it. That decision should not make us vulnerable to any moral criticism. It is the first principal manifestation of the basic thought that jobs are for people who have them. But how far does it get us? The basic thought needs further refinement. On one response to it, perhaps it may be blameless for a young would-be professional—call her Sarah—to renounce the ambition to join a certain profession, P, but that will be because it is permissible for Sarah to refrain from adopting the goals and values of P. However, if Sarah does enter profession P, then we might expect her goals and values to change in order to reflect these new P-related facts about her professional identity. Thus there might be a large difference between the prospective case, when Sarah is deliberating whether to attempt to join P, and the non-prospective case, when Sarah has already joined P, or has acquired a commitment to joining P.

¹³ Thanks, in particular, to Ward Jones and Michael Pitman for discussion of the challenge posed by claim 3.

¹⁴ See S. Jaschik, 'Least Stressful Job? Really?', Inside Higher Ed, online at: <http://www.insidehighered.com/news/2013/01/07/claim-college-professor-least-stressful-job-infuriates-faculty> (posted 7 January 2013).

However, there is a more substantive continuity between the prospective case and the non-prospective case than this counterargument acknowledges. To see this, imagine that Sarah decides to join profession P rather than some alternative profession, P*. When that decision has been reached, Sarah is released from any commitment to acquire P*-related goals and values, and incurs a commitment to acquire P-related goals and values. But how did she arrive at the decision to acquire P-related goals and values rather than P*-related goals and values? She had to acquire a commitment to P, and the acquisition of this commitment cannot be explained by any route which presupposes her pre-existing commitment to P. Her decision is going to be reached by, *inter alia*, concerns about her personal prospects; minimally, whether she is suited to the work in question. But that is not all: she will want to know whether she is suited to P partly in order to determine whether P is suited to her. It surely does not follow that, because Sarah's decision to join P rather than P* ensued from these broadly personal goals, that she is then incapable of accepting the specifically P-related goals and values. Her very presence in profession P will testify to P's ability to serve these more personal goals and aims. Moreover, the prospective case will be continuous with the non-prospective case insofar as Sarah's deliberation at the prospective stage will be concerned with her prospects as a non-prospective serving member of P. Prospectively, she will be concerned with the conditions that she will enjoy when she is an actual and not just a prospective member of P. This indicates that Sarah's personal goals and values should be combinable with the P-related goals and values in order to form a single integrated commitment to Sarah's-serving-in-P.

We can now start recovering some lessons. We start with (a), (b), and (c):

- (a) It is not inappropriate, in the prospective case, that Sarah's decision to enter profession P is explained in part by P's ability to satisfy Sarah's personal goals and values.
- (b) Sarah's personal deliberations as to whether she joins P do not exclude a subsequent commitment to the P-related goals and values which she would acquire if she decides to join P.
- (c) It is not inappropriate that Sarah's deliberations in the prospective case are sensitive to the professional conditions she will then continue to enjoy in the non-prospective case.

And so, from (a), (b), and (c), we can plausibly move to:

- (d) It is not inappropriate that Sarah's serving as an actual member of P is conditional on P's ability to meet Sarah's personal goals and values.

We can go further. Though individuals' private circumstances and preferences will of course be very different, it is not inappropriate that there be institutional conditions which induce a suitably large number of talented individuals to attempt to join P. So, from (d), we can also plausibly embrace:

- (e) It is not inappropriate that there be institutional conditions which are such that individuals such as Sarah are motivated to pledge commitment to P on an actual ongoing basis.

Imagine how things would go if there was an institutional realization of the personal reasoning Smilansky approves of. Call this thought experiment the Institutional Test. If we apply the Institutional Test to the drift of Smilansky's discussion, it seems plausible to

suppose that jobs would be untenured, or short-term. But who on earth would be attracted to the academic sector, for example, if every appointment was annual—where you would only ever be as good as your last couple of papers and round of student evaluations—and renewal in one’s position had to be continually secured in conditions of open competition?

Now Smilansky briefly mentions the ‘organizational’ matter of whether jobs in a particular sector should be tenured,¹⁵ but dismisses it in order to pursue the personal, non-organizational matter of whether tenured individuals have good reasons to voluntarily quit employment in those sectors. It seems to me, however, that the issues cannot be separated in this way. If we do not like the results that would proceed from the Institutional Test, then we must either find fault in the individual preferences which would imperil the success of these institutional arrangements, or else find fault in the institutional arrangements themselves. Since it would not be unreasonable for talented would-be entrants to be dissuaded from joining profession P due to the overwhelming prevalence of short-term contracts in P, and since it would not be unreasonable for talented incumbent members of P to count on P’s continuing to serve the personal goals that were satisfied in their original decision to join P, then it must be the institutional arrangements themselves which we find unreasonable. If there are good organizational reasons for making jobs tenured, then those reasons should be reasons which relate to individuals, and they should be reasons of which individuals can avail themselves.

I conclude with a caveat. The conclusions I have reached so far do not completely retire a conscientious individual’s need to think about the issues raised by the PBR. My aim has been to accommodate personal goals and aims, and to show that it is a mistake to regard them as a source of professional impurity, or blemish on personal integrity. But, although the pressure points are certainly not as stark as Smilansky thinks they are, I do not seek the stronger conclusion that conflicts between private advantage and professional conscience can never arise. Some cases for beneficial retirement may arise when the expected consequences of not opting for beneficial retirement are simply very bad. These cases will be governed by the ordinary, and ordinarily demanding, standards of general morality, which sometimes require self-sacrifice for the greater good. Good and well-intentioned individuals are not always in a position to avoid exposure to bad luck; through no fault of their own, they may be required to make personal sacrifices to respond appropriately to the circumstances in which they have been placed. My counterargument to the PBR does not rest upon the general denial of moral luck or moral risk.

But what about the particular integrity-based concerns which are highlighted by Smilansky in the PBR? In my view, these reasons have been largely laid to rest. Though we should not shy away from the existence of bad luck in our practical lives, we need not make a rod for our own backs.¹⁶ A profession would not exist at all were it not constituted, at any given time, by the professionals who serve in it, and these jobs, in the first instance, are for the people who have them. Now there may be cases in which, due to public underfunding or a shift in general preferences, the very survival of the profession is at stake, and where the demise of that profession might be averted through the recruitment into it of talented new individuals with new energy and new ideas. Though such cases might impose integrity-based

¹⁵ Smilansky, *Ten Moral Paradoxes*, p. 26.

¹⁶ The general moral mood in *Ten Moral Paradoxes* (and in some of his other work) reflects, I think, Smilansky’s conviction that life can often be tragic and unfair. It hasn’t been my intention to present an objectionably tidied up picture of our practical lives that sidesteps all these worries. But neither does it follow that we must accept evidence of tragedy or instability in every area of our practical lives. In the area of our practical lives under discussion, I believe that we can put up some resistance to this sort of pressure.

pressure on incumbent individuals to retire for beneficial reasons, these cases will be comparatively rare.¹⁷

4. Incentives, Equality, and Freedom of Occupation Choice

Up to now, I have been concerned with the combinability of an individual's personal goals with a sincere and full-blooded commitment to the goals and values of the profession in question, and have bracketed wider questions of social justice. The policy of holding out for high salaries may indeed be condemned by justice if the award of this salary enriched the individual beyond what a broader theory of justice would deem appropriate. Even so, some progress can be made with these broader justice issues. To that end, I now want to connect the issues arising from the PBR to G. A. Cohen's critique of Rawls's provision for inequality-generating incentives in his theory of justice.¹⁸

First, a little background. In his 'Difference Principle', which is one of the two provisions of his second principle of justice, Rawls permits inequalities which are necessary for maximizing or at least promoting the expected bundle of social primary goods of the least well-off. The main contention in Cohen's critique of the Difference Principle, or of some of the uses of it which Rawls permits,¹⁹ is that individuals who hold out for inequality-generating incentives in order to do work which raises the prospects of the least advantaged are being unfaithful to the underlying ethos of Rawls's theory of social justice, 'justice as fairness'. This is because, on Cohen's view, the principal aim of justice as fairness consists in the neutralization of morally arbitrary inequalities among individuals, and because these incentive-seekers are seeing to it that they are disproportionately rewarded for their possession of morally arbitrary talents. Thus these individuals' willingness to take advantage of these incentives constitutes a betrayal of those principles of justice which, as morally conscientious members of the Rawlsian society, they are assumed to uphold.

It should be further emphasized, as Cohen does, that these individuals claim their incentives because they decide to claim them; there is no genuine sense of necessity they can appeal to that does not just boil down to a settled policy of refusing to work without incentives. (If they labour under the idea that it is necessary for them, given their preferences, to hold out for these incentives, they display a peculiar and confused attitude towards their own agency.)²⁰

Now Cohen does not want the state to remove freedom of occupational choice; he is not in favour of a regime of heavy-handed Stalinist enforcement. (I return to this point below.) He nonetheless thinks that morally conscientious individuals ought to act, not merely in conformity to the institutional rules which are generated by a theory of justice, but from a personal ethos which reflects their allegiance to those principles of justice. This ethos will instruct them to work in ways which promote the socio-economic position of the worst off without inducement from inequality-generating incentives. This ethos reveals the truth in the phrase 'the personal is political'; for Cohen, our commitment to justice requires a more personal commitment than that which can be fully regulated or manifested by our conformity to the rules of public institutions.

¹⁷ Lenman also concedes that the PBR 'might conceivably work in microcosm' ('Why I Have No Plans to Retire', p. 245).

¹⁸ See G. A. Cohen, *Rescuing Justice and Equality* (London: Harvard University Press, 2008); and Rawls, *A Theory of Justice*, Revised Edition (London: Harvard University Press, 1999), esp. Part One.

¹⁹ Cohen does not completely deny the propriety of incentives; they can be legitimately employed to induce individuals to do socially necessary work that is unpleasant or dangerous.

²⁰ Cohen, *Rescuing Justice and Equality*, ch. 1.

Now I turn to the PBR-flavoured lessons. Generally speaking, there are at least two different types of institutional accommodation of individual preferences.²¹ In the benign case, individual preferences are judged, in themselves, to be morally unobjectionable, and the task is then to design institutional features to recruit or harness these individual preferences in such a way as to satisfy socially worthy or morally necessary ends.²² In the non-benign case, individual preferences are, or may be, morally objectionable, and the task is then to design institutional features in order to manage these preferences so that their moral badness is ameliorated.

In the territory addressed by the PBR, my argument suggested that we are dealing with a basically benign case. In Rawls's theory of justice, Cohen thinks that we are basically dealing with a non-benign case, or a case with at least the strong potential to be non-benign. On Cohen's view, institutional design is an imperfect or second-best way of managing preferences which permit, or require, a more personal expression, if they are to manifest a commitment to the underlying principle of neutralizing morally arbitrary differences among individuals.

Cohen mistakes the direction of moral traffic between the personal and the institutional in Rawls's account. For Rawls, as I understand him, the only natural outlet for moral commitment to justice as fairness is institutional, not because of the arbitrary stipulation that he is concerned only with the design of the basic structure, but because he is concerned to protect the expression of two moral powers which are assumed to be present in every individual: to pursue a comprehensive conception of the good, and to comply with justice-based obligations. Freedom of occupational choice, with the corollary of acting on work-leisure preferences, is part of that comprehensive conception of the good. The pursuit of it is therefore nothing to apologize for, so long as the cumulative distributive effects of separate and differently talented individuals who are economically interacting with each other are fixed so that everyone can be seen to collect equal significance. And everyone does collect equal significance, on Rawls's view, just as long as the rules of the basic structure are upheld and those who occupy the worst-off positions are as well off as they can be. The institutions supervise the distributive effects so that individuals can non-apologetically implement their comprehensive conceptions of the good.

As long as work-leisure preferences avoid certain defects, Rawls holds them to be benign, not non-benign. What are these defects? Four relevant defects have been helpfully listed by Joshua Cohen.²³ For example, a Rawlsian can and should condemn extortionate incentive-seeking, where an individual uses her talents as leverage to command a higher salary; strategic incentive-seeking, where an individual conceals her true preferences in order to command a higher salary; relative discrepancy incentive-seeking, where an individual holds out for a higher salary in order to maintain pay differentials between her and the worst off (or between racial groups, etc.); and greedy incentive-seeking, where an individual holds out for a higher salary despite the fact that the worst off are genuinely needy, not merely worse off than others. It is possible to form the impression from Joshua Cohen's discussion of these cases that these cases are simply the thin end of the wedge; they offend in a more gratuitous or obvious way against an ethos which should take exception to any de facto distributive influence enjoyed by morally arbitrary talents. But that is not so: these objectionable forms of incentive-seeking offend against the Rawlsian ethos of justice because

²¹ I do not claim that these options are exhaustive, or indeed exclusive.

²² It need not be pretended that individual preferences are wholly determinate before individuals are exposed to institutional and other types of social influence.

²³ See Joshua Cohen, 'Taking People as They Are?', *Philosophy & Public Affairs* 30 (2002), pp. 363-86, at pp. 369-71.

they express either dishonesty or contempt or disrespect for others. They are not morally continuous with less explicitly relational forms of incentive-seeking, which may reflect only an individual's pursuit of her comprehensive conception of the good.

A final and illuminating way of thinking about Cohen's arguments is to run the Institutional Test, as we did for Smilansky. If the personal ethos Cohen approves of were to be institutionally realized, then we would, after all, end up with a regime of heavy-handed Stalinist enforcement. Now Cohen may be within his rights to reject Stalinism. But it is none too clear where a justice-based objection to Stalinism could come from.²⁴ If justice demands the neutralization of morally arbitrary inequalities among individuals, and also requires that the market-talented work in ways which improve the lot of the worse off, then justice requires that individuals perform certain types of work and not others. Why, then, at least in theory, couldn't that regime be enforced by the state without breaching principles of justice?

The Institutional Test, we may conclude, exposes shortcomings in Cohen's arguments about justice no less than it exposed shortcomings in Smilansky's argument about jobs.

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²⁴ Cohen might be dependent on largely pragmatic considerations, in fact, since he also rejects the 'Freedom Objection' to his argument (see *Rescuing Justice and Equality*, ch. 5). On Cohen's view, individuals' willing compliance with the justice-realizing strictures on professional effort and occupational choice may reflect moral inspiration, but that does not mean that these individuals were not free to act in these morally inspired ways. But if that is so, then why couldn't such individuals willingly, and out of moral inspiration, conform to a law to respect these justice-realizing strictures without any morally consequential loss of freedom? See also Michael Otsuka, 'Freedom of Occupational Choice', *Ratio* 21 (2008), pp. 440-53, for a revealing discussion of the Freedom Objection.