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# **Rawlsian Incentives and the Freedom Objection**

***Gerald Lang***

In a hugely significant and much discussed series of writings, G. A. Cohen attacks John Rawls's "justice as fairness" for permitting morally arbitrary inequalities. On Cohen's view, these inequalities are at odds with the egalitarian ethos that ought, by Rawls's own lights, to govern the attitudes and actions of agents in a Rawlsian society.<sup>1</sup>

One potential reply which Cohen canvasses on behalf of Rawlsians, and then proceeds to attack, is the "Freedom Objection."<sup>2</sup> The Freedom Objection has received some attention, but there is much more to say about it. In my view, the Freedom Objection constitutes an important line of the Rawlsian's defence against Cohen's criticisms, and it remains underappreciated why and how Cohen's responses to it are unsatisfactory.<sup>3</sup>

The article unfolds as follows. Section I deals with necessary points of exposition: I supply some brief background to Cohen's general critique of Rawls's justice as fairness, and then I go on to outline the Freedom Objection, which comes in two versions. In section II, I outline and then assess Cohen's response to the "First Version" of the Freedom Objection, which has received comparatively little examination thus far. Then, in section III, I outline and assess Cohen's way of dealing with the "Second Version" of the Freedom Objection. A notable inconsistency between Cohen's treatment of the First Version and his treatment of the Second Version is also identified in section III. The discussion concludes, in section IV, with a further suggestion of why Cohen may find it more difficult than he thinks to escape commitment to the legal enforcement of occupational choice.

## **I. Justice as Fairness and the Freedom Objection**

To begin with some basic background: Rawls's difference principle, which is part of his second principle of justice, permits certain inequalities that work to improve the prospects of the least well-off. Inequalities which do not improve the prospects of the least well-off are not permitted. A special justification for the inequalities authorized by the difference principle has to be secured because, as Nozick put it,

an equal distribution of social primary goods can be legitimately regarded as “the rest ... position of [Rawls’s] system, deviation from which may be caused only by moral forces.”<sup>4</sup> So what creates the egalitarian default, and what are the moral forces that can justify deviation from it?

The egalitarian default is principally created by Rawls’s hostility to morally arbitrary sources of inequalities, such as the natural and social endowments for which we can take no credit. On Cohen’s reading of Rawls, morally arbitrary facts should not, as a deep matter of justice, enjoy *any* influence on the selection of principles of justice. Such influence would be problematic, from the standpoint of justice, even if the resulting inequalities made the worst-off better off than they would otherwise be. Nonetheless, the fact that these inequalities *do* make the unavoidably worst-off better off than they would otherwise be may give us a strong *independent* moral reason to approve of them. Cohen calls this further source of support for incentives the “Pareto Argument” for inequality.<sup>5</sup>

To illustrate in greater detail the central point of the Pareto Argument, let us imagine that the preliminary, anti-arbitrariness considerations prompt Rawlsian agents to select a distribution, *D1*, which is free of morally arbitrary inequalities. Imagine now that *D1* is Pareto-inferior to an achievable unequal Pareto-superior distribution, *D2*: compared to *D1*, *D2* is better for everyone, and worse for no one, though it does introduce morally arbitrary inequalities which were absent in *D1*. Having steered themselves to *D1*, these agents will consider it irrational to stay there, if they can opt for *D2* instead. The difference principle, which permits *D2*, is therefore the joint product of two separate sets of considerations, which jointly commend an initially equal distribution (i.e. *D1*), but then embrace, in preference to *D1*, an unequal distribution (i.e. *D2*) if *D2* is better for everyone or at least some people (the worst-off in particular), and worse for no one.

Cohen does not object as such to the fact that the terminus of this journey is *D2*, rather than *D1*. Nonetheless, he advances two significant objections against the Pareto Argument.

First, the part of the journey that takes us from *D1* to *D2* cannot be endorsed by the value of justice in particular. This is because the considerations which favour egalitarianism, and thus the initial selection of *D1*, stand in tension with the considerations fuelling the Pareto Argument, and thus which favour the selection of *D2* over *D1*. Replacing *D1* with *D2*, even if *D2* makes everyone better off and no one worse off, will simply re-introduce the morally arbitrary inequalities

which the earlier selection of D1 had managed to avoid. Accordingly, D2 will have a specific justice-centred defect that D1 lacked, even if D2 is more choiceworthy, all things considered.

Second, the Pareto Argument overlooks other possibilities for improving the position of the worst-off, which places the argument in a more flattering light than it really deserves. Rawlsian agents are not faced with a brute “manna from heaven” choice between D1 and D2. They are not forced, as of necessity, to choose between the equality enshrined by D1 and the Pareto-optimality enshrined by D2. The high-flying talented agents are, after all, effectively *choosing* to withhold the labour or services that would improve the prospects of the least advantaged in the absence of higher payment. For typical values of D1 and D2, where D2 is Pareto-superior to D1, high-flying conscientious Rawlsians could opt to produce a third distribution, D3, which is Pareto-superior to D1 but Pareto-incomparable with D2 (since the better-off in D3 will not be as well off as the better-off are in D2). In D3, the worst-off are as well off as they are in D2, but there are no more morally arbitrary inequalities contained in D3 than there were in D1. This demonstrates, for Cohen, that Pareto-optimality is not, in fact, incompatible with equality, and it raises the question of why conscientious justice-seeking individuals should not seek to benefit the worse-off in ways which also avoid placing them at the losing end of morally arbitrary inequalities.

Having amassed this background, we are now in a position to turn to the Freedom Objection, which comes in two versions: a more general version, concerned with the underlying spirit of Rawls’s position; and a more specifically Rawlsian version, concerned with the letter of Rawls’s position.<sup>6</sup> I will refer to these versions of the Freedom Objection as the *First Version* and *Second Version*, respectively.

The First Version of the Freedom Objection appeals to a “trilemma claim” or “trilemma problem,” which aims to demonstrate that the following principles cannot be co-satisfied:

1. A distribution which avoids morally arbitrary inequalities. [*Equality*]
2. A distribution which is Pareto-optimal, or which would be better for some, and worse for no one.<sup>7</sup> [*Pareto*]
3. A distribution which upholds freedom of occupational choice.<sup>8</sup> [*Freedom*]

To illustrate the trilemma problem, consider Sarah's personal job-and-income preferences, which, on Cohen's stipulation, conform to the following preference ordering, from the most-preferred (a) to the least-preferred (c):

- (a) Working as a doctor for £50,000 per annum.
- (b) Working as a gardener for £20,000 per annum.
- (c) Working as a doctor for £20,000 per annum.<sup>9</sup>

If the same salary is appended to doctoring and gardening, Sarah prefers gardening, but she can be coaxed into doctoring for the higher salary of £50,000 per annum, which will compensate her for the sacrifice she makes in doctoring rather than gardening during her working hours. It is assumed here that £20,000 per annum is the egalitarian salary.<sup>10</sup> It is also assumed that none of these options imposes notable welfare losses on Sarah: although she definitely prefers gardening to doctoring, doctoring will not constitute a life of drudgery.<sup>11</sup>

Sarah's preference ordering easily illustrates why the trilemma presents Cohen with a challenge. To realize the value of Equality, Sarah will have to choose either (b) or (c). The choice of (a) will introduce a morally arbitrary inequality, since Sarah's award of £50,000 for doctoring will reflect her possession of talent which is, at bottom, morally arbitrary. To realize the value of Pareto, Sarah will have to choose (a) or (c). Choosing either (b) or (c) will preserve the egalitarian distribution, but it is assumed in Cohen's example that the social value of Sarah's doctoring activity far exceeds the social value of her gardening activity. Even if Sarah has to be paid £50,000 rather than £20,000 per annum to coax her into working as a doctor, the community as a whole will still be better off if Sarah spends her working life doctoring than if she spends it gardening.

So far, satisfaction of Equality and satisfaction of Pareto are not disjoint: (c) satisfies both of them. This reply would complete what Cohen has to say about the Pareto Argument, in particular. Cohen can handle the disputed coexistence of Pareto and Equality by reminding conscientious Rawlsian agents that it lies within their power to realize a distribution that secures the coexistence of Pareto and Equality. But now he has a new variable to worry about. This is because, if the value of Freedom is going to be realized, Sarah will choose (a), not (c). In fact, and by assumption, (c) lies at the bottom of Sarah's preference ranking: Sarah prefers (a) to (b), and (b) to (c). So, in this particular case, Equality, Pareto, and Freedom

cannot all co-obtain. In this sense, then, the additional value at stake in the Freedom Objection—the value of freedom of occupational choice—threatens to renew the challenge posed originally by the Pareto Argument, because it appears not to be amenable to Cohen’s original proposal for solving the tension between Equality and Pareto.

Now we turn to the Second Version of the Freedom Objection, which is more concerned with the detailed construction of justice as fairness. The Second Version claims that Rawlsian agents who take advantage of inequality-generating incentives are simply exercising their freedom of occupational choice, which is bequeathed to them by a suitably capacious understanding of the first principle of justice, concerning the distribution of basic liberties (the “liberty principle,” for short). The first principle of justice, moreover, is lexically prior to the second principle of justice. Now Cohen reminds us that Rawls tends not to include freedom of occupational choice in canonical statements of the basic liberties encompassed by the first principle of justice.<sup>12</sup> But Rawls does speak approvingly, here and there, about freedom of occupational choice, such as to suggest that he regards it as a significant freedom.<sup>13</sup> In any case, it does not strain credulity to insist that provision for freedom of occupational choice belongs to a charitable reading of the first principle, and Cohen does not put his foot down over this interpretation of what Rawls had in mind.

This is Cohen’s fuller version of the Second Version, using the values of D1 and D3 as they have already been defined:<sup>14</sup>

1. The liberty principle is lexically prior to the difference principle.
2. The liberty principle mandates freedom of choice of occupation.
3. The move from D1 to D3 denies freedom of choice of occupation.
4. The move to D3 cannot be justified on the basis of Rawls’s difference principle.

The Second Version carries particular significance because, if Rawlsian agents are simply taking advantage of a freedom which Rawls’s own theory explicitly provides for, they cannot be reasonably taken to task for betraying that theory by then actually taking advantage of that freedom. They cannot bear the wrong relation to Rawls’s theory if the theory explicitly permits them, as one of its constituent parts, to bear that very relation to it. Perhaps they have signed up to

the *wrong* theory, but they do not *betray* that theory, and the charge of betrayal, or internal incompatibility between avowed principle and enacted choice, plays a central role in Cohen's argument against Rawls. Cohen tends to argue that Rawls is letting himself down, or, at best, that he is guilty of a puzzling oversight; the problem is that Rawls has given the difference principle a remit which betrays the deep anti-arbitrariness considerations that provide his theory of justice with its ultimate source of moral direction and purpose. If the Second Version is defensible, however, Rawlsians can withstand this charge.

## II. The "Ethical Solution" to the Freedom Objection

Let us deal, first of all, with Cohen's argument against the First Version of the Freedom Objection, in which the trilemma looms large. He attempts to dissolve the trilemma argument by presenting it with an "ethical solution."<sup>15</sup> On this (deceptively simple-looking) solution, Sarah chooses to doctor for £20,000 per annum<sup>16</sup> out of moral inspiration. Moreover—and this is the crucial point—morally inspired action is not unfree action. If Sarah chooses to doctor for £20,000 because she thinks she morally ought to, then each of the claims in the trilemma will be satisfied. Her choice will achieve three things: first, the resulting distribution will satisfy Equality; second, it will be Pareto-superior to the equal distribution that would result if Sarah were to choose to garden for £20,000, thus satisfying Pareto; and third, it will uphold Freedom, since the outcome conforms to her own free, morally inspired, choice.

The central point behind the ethical solution is that morally inspired choices do not abridge freedom. Since that is so, and since the content of the morally inspired choices made by conscientious agents can, as before, resolve the tension between Equality and Pareto, there is no problem. To solve the Freedom Objection, all that needs to be added to Cohen's original solution to the Pareto Argument is moral inspiration.

But can that really be true? Morality does limit our options for self-interested action, after all, and it is reasonable to suspect that those constraints do reduce our freedom, even if we voluntarily comply with them. Call this the *Restriction Worry*. If the Restriction Worry can be upheld, the Freedom Objection will be vindicated.

Cohen attempts to rebut what I have called the Restriction Worry on two separate fronts. The first of them is concerned with the connection between

freedom and objectively true moral principles. I will call this the *objective interpretation*. The second of them is concerned with the connection between freedom and our moral beliefs. This is the *subjective interpretation*. These interpretations are separate because, while our beliefs aim at truth, these beliefs may of course be false. The distinction between subjective and objective interpretations is explicitly noted by Cohen, who, leaning on what he describes as the “polyinterpretability of the term “constrain,” draws the distinction between constraints imposed by “morality as such” and by “one’s own moral commitment.”<sup>17</sup> The constraints imposed by “morality as such” match the objective interpretation, while the constraints imposed by “one’s own moral commitment” deliver the subjective interpretation. Whichever of these interpretations we focus on, however, Cohen contends that the Restriction Worry is misplaced.<sup>18</sup> I will examine his treatment of the two interpretations in turn. I think there is something unsatisfactory about his treatment of each of them.

Consider, first, the objective interpretation. As we know, Cohen argues that justice, as Rawls conceives it at a deep level, requires the elimination of morally arbitrary relative disadvantage. Cohen refers to this principle, in these particular passages, as the “no-inequality restriction.” Morality generates many other principles and restrictions as well. One such highly plausible principle, which Cohen selects at random to illustrate his argument, is the prohibition on homicide, or the “no-homicide moral restriction.” Cohen compares them in the following passage, in which the objective interpretation of the Restriction Worry is presented with a dilemma:

Either the moral prohibition on murder counts as constraining or it does not. If it does, then it is false that we do not want a morality whose edicts are constraining. But if the no-homicide moral restriction does not constrain, then why should the no-inequality moral restriction be thought to constrain?<sup>19</sup>

Cohen thinks that it would be question-begging to assume that the no-inequality restriction is false; to do so is “inadmissible.”<sup>20</sup> But if that is so, then the no-inequality restriction is in privileged company: its fortunes will track those of the no-homicide restriction. The objective interpretation of the Restriction Worry cannot hope to displace the no-inequality restriction any more than it could hope to displace the no-homicide restriction. But what if, after all, the no-inequality



restriction is false? Then there is, in effect, nothing to discuss. The objective interpretation will not be in play if the no-inequality restriction does not qualify as an objective moral principle.

In short, then, Cohen is presenting the proponent of the objective interpretation of the Restriction Worry with a dilemma. Either it is *too late* for the no-inequality restriction to be challenged by the Restriction Worry, simply in virtue of its being a prescription of objective morality. This is the first horn. Or it is *too early* to invoke the Restriction Worry, simply in virtue of the fact that the no-inequality restriction does not even qualify as a prescription of objective morality. That is the second horn. Either way, there will be nothing for Cohen to worry about under this particular heading.<sup>21</sup> The concern effaces itself, and now, it would seem, the fate of the Restriction Worry must stand or fall on the subjective interpretation.

What should we make of Cohen's treatment of the objective interpretation of the Restriction Worry? Cohen is correct to this extent: *if* the no-inequality restriction can be deemed to be morally unimpeachable, then it will be as secure as the no-homicide restriction. It will indeed be too late to challenge the no-inequality restriction by appealing to freedom of occupational choice. So the first horn *seems* secure. But Cohen's argument is still dialectically unsatisfactory. For what is, or ought to be, under consideration at this point in the argument is the no-inequality restriction's *claim* to be an objective prescription of morality. Can the no-inequality restriction's claim to unimpeachability still be *challenged* by its incursions into personal freedom?

Cohen says that it would beg the question against him to assume that the no-inequality restriction is false. And so it would. But this is not what is going on in the Rawlsian argument. The no-inequality restriction is not being *assumed* in advance to be false. Nor is it question-begging to allow the stringency of the no-inequality restriction to be *called into question* by the claim that it intrudes into personal freedom. The objective interpretation of the Restriction Worry challenges Cohen's position by suggesting that strict compliance with the no-inequality restriction curtails a valuable freedom—freedom of occupational choice—which will, in turn, render it impossible to co-achieve the three principles of the trilemma. Since we know that Rawls places value on freedom of occupational choice, as a privileged route to an individual's self-realization and self-expression, we have the makings of a perfectly intelligible explanation of why Rawls does not insist that individuals' personal choices conform to the no-inequality restriction, and why any

understanding to the contrary would actually imperil their self-realization. If individuals' choices did conform to the no-inequality restriction, they would be curtailing—albeit voluntarily—this particular area of personal sovereignty which Rawls's theory awards to them. Since, according to the Freedom Objection, we have very good reasons to provide for this area of personal sovereignty, we have all the material we need for explaining why, in justice as fairness, the no-inequality restriction is not strict, and holds only when freedom of occupational choice has already been provided for. Rawls's theory of justice, in short, is complex: it combines provision for the basic liberties with provision for rough distributive equality of the social primary goods.<sup>22</sup> If this is not the challenge posed by the objective interpretation of the Restriction Worry, then what is the challenge supposed to amount to?

It is, in fact, *Cohen* who arguably begs the question about the objective interpretation by appearing to assume that freedom of occupational choice does *not* stand in tension with the no-inequality restriction. To illustrate these question-begging tendencies, imagine that we are testing the credentials of an avowedly implausible moral principle, whose content can be glossed as the *no-premarital-sex principle*. The major feature of the no-premarital-sex principle I want to emphasize here, aside from its implausibility, lies in the *source* of its implausibility. Let us agree that the no-premarital-sex principle is implausible, at least in part, because it denies unmarried adult men and women the opportunities, conditional upon the consent of others, to conduct their sexual lives as they see fit.<sup>23</sup> That is, the no-premarital-sex principle will infringe upon our personal freedom. Now assume, as before, that the Restriction Worry is articulated as a challenge to the no-premarital-sex restriction. Defenders of the no-premarital-sex restriction—I am not, of course, counting Cohen as one of them—might then distinguish, as before, between the objective interpretation and the subjective interpretation of the Restriction Worry. And, to defend the no-premarital-sex principle against the objective interpretation of the Restriction Worry, they might elect to advance the following argument, which precisely mirrors Cohen's defence of the no-inequality moral restriction:

Either the moral prohibition on murder counts as constraining or it does not. If it does, then it is false that we do not want a morality whose edicts are constraining. But if the no-homicide moral restriction does not constrain, then why should the no-premarital-sex moral restriction be thought to constrain?

As before, a dilemma for the objective interpretation of the Restriction Worry opens up for critics of the no-premarital-sex restriction. On the first horn of it, it will be *too late* for those critics to raise the Restriction Worry if the no-premarital-sex restriction is *already* a prescription of objective morality. We should not allow questions to be begged in advance against the no-premarital-sex restriction. On the second horn of it, it will be *too early* to invoke the Restriction Worry if the no-premarital-sex restriction does not qualify as a prescription of the Restriction Worry. Once again, the fate of the no-premarital-sex restriction will now turn on what we can say about the subjective interpretation of the Restriction Worry. (And we can see what is coming up when we arrive there: what if individuals morally believe they should not have sex before marriage? Are they then free? So there can be no problem!)

This is an unsatisfactory development, and demonstrates that Cohen's argument over-generates implications. For what if we want to reject the no-premarital-sex restriction—as I am assuming we do—because it is insufficiently respectful of personal freedom? There seems to be no room within Cohen's dialectical framework to register this concern. It clearly would not do to uphold the no-premarital-sex restriction by comparing it with the no-homicide restriction, *if* our opposition to the no-premarital-sex restriction is driven precisely by its disrespect for the freedom of single people to have consensual sex. This argument illegitimately assumes that the no-premarital-sex restriction *already* collects the high moral pedigree collected by the no-homicide restriction. The no-premarital-sex restriction could enjoy such a high moral pedigree in such an argument only if its defenders assumed that the freedom-based challenge to it lacked any decisive force. But there could be no justification for making such an assumption before the freedom-based argument for the falsity of the no-premarital-sex restriction had even been heard.

In the relevant dialectical sense, the no-inequality restriction operates like the no-premarital-sex restriction. Rawlsians who advance the Freedom Objection appeal to the value of freedom of occupational choice precisely to disarm Cohen's opposition to Rawlsian incentives.<sup>24</sup> It is *because* Rawls is committed to freedom of occupational choice and other sorts of freedom that he does not insist that individuals be guided by the no-inequality restriction *all the way down*,<sup>25</sup> to encompass everyday decision-making and occupational choices. It is striking that

this argument goes unconsidered by Cohen. Cohen's argument, in fact, prevents the Rawlsian argument from even getting off the ground, so his treatment must be deemed unsatisfactory.

Turn now to the relationship between the Restriction Worry and the subjective interpretation of freedom. Cohen remarks:

[W]e should not normally think that whoever acts under moral inspiration acts unfreely. Why, then, should we think that someone acts unfreely if his occupational choice reflects a sense of social obligation?<sup>26</sup>

And again:

If we stipulate that a person acts freely when and only when he does what he would most like to do, prescind from his generosity and in disregard of the norms he endorses, then the trilemma problem is insoluble, but also uninteresting.<sup>27</sup>

Cohen's view, as it emerges from these passages, is fairly clear: when we act, we act for various reasons, and those reasons at least typically reflect what values we think apply to the situation we are in. It is myopic to think that these values encroach upon our freedom. Properly understood, they provide structure, not constraint; our values shape our view of the situation we are in, so that our responses to it can be rendered intelligible.

As far as it goes, this claim seems reasonable. The values we believe in, and which shape our actions, are not necessarily antithetical to freedom. Nonetheless, it is difficult to see how the subjective interpretation of the Restriction Worry, in and by itself, can make much of a difference to the fate of the Freedom Objection. The original point of distinguishing it from the objective interpretation, after all, was that our beliefs can fail to be aligned with the truth of the principles which they aim to track. If an agent endorses norms which are simply indefensible, then it cannot be much of a recommendation of a theory that it makes provision for the agent's unobstructed pursuit of those mistaken norms. (It may not count strongly against the theory, but it will not count strongly in favour of it, either.) Of course, an agent's "generosity" is unlikely to be a norm we find ourselves questioning. The same goes for the norm of justice, suitably broadly construed. But it is not generosity or the broad concept of justice, but a much more fine-grained theory of justice, which is supposed to be driving Cohen's picture here, and we already know

that Cohen's theory of justice is opposed to Rawls's theory of justice, at least as Rawls conceives it.

To make stark the limited contribution made by the subjective interpretation, imagine an extreme case in which Chloe has been held captive and has developed a version of Stockholm syndrome. Chloe now endorses norms whose upshot is that her kidnappers ought to continue to hold her captive. Given her moral beliefs, Chloe suffers no restriction to her freedom, as it is subjectively experienced. She willingly conforms to the conditions of her captivity. But none of this demonstrates that she enjoys freedom. Clearly, she does not. Naturally, this example is not meant to show that an agent who shares Cohen's beliefs about occupational choice is on a par with an agent whose moral beliefs are shaped by Stockholm syndrome. (That would be demonstrably unfair.) All the example is meant to do is to demonstrate, in a deliberately stark form, that subjective beliefs without a prior objective grounding to accompany them do not get us far enough. Even if there are individuals who would voluntarily implement Cohen's thoroughgoing egalitarianism in their occupational choices, we do not yet have an argument why Rawlsians are wrong to think that these agents are losing out on an important freedom which is provided by Rawlsian justice as fairness. And that must be Cohen's ambition in his dealings with the Freedom Objection: to demonstrate that Rawlsians lose this argument. It is vital to remember that the Freedom Objection, at the end of the day, is a *defensive* argument: Rawlsians use it to defend justice as fairness against Cohen's complaints about it. If Cohen is going to defeat the Freedom Objection, it is incumbent on him to show that this Rawlsian defence is inadequate. The bare insistence that an agent's personal moral commitments are sufficient to preserve her freedom cannot achieve this end, because these commitments need to be related to the adequacy of the moral principles which they reflect. That takes us back, in turn, to the objective interpretation of the Restriction Worry. And, as we have seen, Cohen does not permit an honest engagement with the objective interpretation. His argument is rigged in such a way that the objective interpretation does not receive proper discussion. But that leaves him with a problem. Without an explicit interrogation of the objective interpretation, and given the relative toothlessness of the subjective interpretation, Cohen simply cannot achieve what he set out to do.

The subjective interpretation of Cohen's reply to the Restriction Worry is disqualified, then, from playing a significant role in his treatment of the Freedom Objection. This is doubly unfortunate for Cohen. Why?

First, his argument is clearly dependent on the subjective interpretation, not just the objective interpretation. To recapitulate, Cohen's view is that the trilemma problem is solved if Sarah freely chooses to doctor for £20,000; the solution consists in the point that Sarah's choices reflect her moral beliefs, together with the point that choices which reflect an agent's moral beliefs are still free. This solution turns squarely on an appeal to the subjective interpretation, not the objective interpretation. It is dependent on Sarah's *actual* moral beliefs and the *actual* choices she makes in light of those beliefs.

The second source of misfortune for Cohen is that his solution stands in a puzzling tension with the line he takes with the Second Version of the Freedom Objection. I return to this matter in the next section, when the Second Version is under discussion.

For the sake of completeness, and because the first two interpretations have now come under heavy attack, we should consider a third and distinct possibility, which Cohen does not explicitly consider, but which, conceivably, he may have had in mind. This interpretation combines elements of the objective interpretation and the subjective interpretation. Its possibility arises out of Cohen's fondness for the phrase "morally inspired", which might, after all, admit of a factive interpretation. Call this third interpretation the *hybrid interpretation*. On the hybrid interpretation, freedom is preserved when three conditions are satisfied: first, the agent's actions are explained by her moral beliefs; second, the agent's beliefs are true, or maximally adequate;<sup>28</sup> and third, her morally inspired actions are not obstructed. If we adopt the hybrid interpretation, we will not have to worry about the frustration of subjective moral freedom in cases where agents clearly hold false moral beliefs, such as the Stockholm syndrome case.

Though initially promising, the appeal to the hybrid interpretation carries two dangers. First, it still collects all the criticisms which originally accrued to Cohen's treatment of the objective interpretation. It remains the case that Rawls's account has not been granted a fair hearing. Second, and in any case, the hybrid interpretation risks being *ad hoc*. If there is a separate story to acknowledge about the Restriction Worry and an agent's subjective stance to the moral principles she espouses, it is not obvious why the agent's beliefs have to be *true*. What will matter,

once again, is that she *possesses* those beliefs, and that she is *acting* on them. Now I have argued that there is no such separate story to acknowledge when we look at the subjective interpretation alone, independently of how the objective interpretation fares. As a result, however, I believe that we can be relatively dismissive of the hybrid interpretation, as well as the subjective interpretation.

### **III. Why Not Stalinism?**

We turn now to Cohen's way of handling the Second Version of the Freedom Objection. Cohen's main business here is to press hard on the distinction between the *legal* right of occupational freedom and the *moral* right of occupational freedom. On Cohen's view, the liberty principle which leads the charge in the Second Version should now be understood as the legal right of occupational freedom, rather than the moral right of occupational freedom.

Like Rawls, Cohen has no interest in denying the legal right of occupational freedom. He is opposed to the "[o]ld-style Stalinistically inclined"<sup>29</sup> variant of egalitarianism which would simply bite the bullet and coerce individuals into socially useful occupations. Against this Stalinist "forcing" or "frogmarching,"<sup>30</sup> he appeals, once again, to the egalitarian ethos which should motivate conscientious Rawlsian agents to forego job-and-income packages which would introduce morally arbitrary inequalities. As he puts it: "I reject both Stalinist force and Rawlsian inducement, in favour of an ethos of justice."<sup>31</sup>

Cohen does not deny, then, that morality has a say on the exercises in occupational choice made by agents. The value of justice will direct them towards certain occupational choices and not others. But morality's traction in this area does not mandate coercion, and the absence of coercive policies is, in fact, sufficient to uphold the relevant freedom. At bottom, Cohen's basic reply to the *Stalinist Worry*, as we can call it, about the coercive enforcement of occupational choice is fairly simple. The Stalinist enforcement of occupational choice is not a necessary part of the egalitarian picture; so, if it is Stalinist policies we dread, then *we should simply eschew Stalinist policies*. We should not legally enforce occupational choice. We should leave individuals legally free to select, or to decline to select, the occupational choices which justice may demand of them.

To further test Cohen's position, we need to pay attention to two important passages which contribute to his argument. I will label them "Passage A" and "Passage B":

*Passage A:*

The value of freedom lies in the absence of coercion itself, not in the absence of legitimate moral demands that, being legitimate, cannot be absent.<sup>32</sup>

*Passage B:*

It is of the nature of liberty that it leaves choices open, and, therefore, it is of the nature of the liberty principle that it should apply to the structure of choice alone and be indifferent to the content of choice. It is not of the nature of distributive justice that it should be silent on the content of choice within the right structure.<sup>33</sup>

As I hope to show, there is something awry about Cohen's anti-Stalinist argument.

First, consider Cohen's claim in Passage A that "[t]he value of freedom lies in the absence of coercion itself." But that cannot be because coercion is straightforwardly antithetical to freedom. Even if Sarah is coerced into doctoring at £20,000, Cohen's view, which is clearly stated in his other work and is plausible in its own right, is that Sarah is also *free* to doctor for that salary.<sup>34</sup> If freedom is a matter of having an unobstructed opportunity to do something,<sup>35</sup> then coercion, far from dismantling that freedom, actually ensures its existence. If Sarah has no choice other than to doctor for £20,000, then she is free to doctor for £20,000. The lack of opportunity to do otherwise does not mean that she lacks the freedom to do what she is being made to do. What is removed, if Sarah is coerced into doctoring for £20,000, is her freedom *not* to doctor for £20,000. It is when, and only when, Sarah has both the freedom to work as a doctor for £20,000 *and* the freedom to decline to doctor for £20,000 that she can be properly regarded as being able to work as a doctor for £20,000 *freely*. Since Sarah's freedom to work as a doctor for £20,000 is entirely compatible with Stalinist forcing, it must therefore be the *combination* of Sarah's freedom to work as a doctor for £20,000 together with her freedom not to work as a doctor for £20,000 which is of central importance to Cohen's attempt to disarm the Stalinist Worry.

Further support for this interpretation is offered by Cohen's remark, in Passage B, that "it is of the nature of the liberty principle that it should apply to the structure of choice alone and be indifferent to the content of choice." Cohen's reference to the "structure of choice" confirms that he is concerned with the existence of alternate options in Sarah's opportunity set. Sarah must have the



ability to decline to doctor for £20,000 if her freedom to doctor for £20,000 is to be considered *valuable*.

Passage B also teaches us something else, which is that his treatment of the Stalinist Worry is standing in tension with the “ethical solution” he provides to the trilemma problem. What matters in his reply to the Stalinist Worry is not the freedom which is preserved *in and through* Sarah’s morally shaped choices, but the existence of an opportunity set: Sarah must enjoy the *opportunity among different options* to be guided by, or decline to be guided by, her moral convictions, whatever they are. It follows that Cohen’s way of dealing with the Stalinist Worry, arising from the Second Version of the Freedom Objection, appears inconsistent with his way of dealing with the First Version of the Freedom Objection.<sup>36</sup> The reply to the First Version requires only that Sarah’s freedom is preserved if she doctors for £20,000 out of moral conviction, whereas the reply to the Second Version requires that Sarah’s freedom is preserved only if she has the freedom not to doctor for £20,000.

Can this tension be assuaged? Cohenians might concede that the solution to the Stalinist Worry (which requires the existence of an opportunity set) is considerably more demanding than the solution to the trilemma argument (which requires the existence only of morally inspired choices), but insist that there is no outright inconsistency between these solutions. After all, morally inspired choices can still unfold within a framework of alternate options. This point is true, as far as it goes, but we have already seen that Cohen places a heavy emphasis, in his discussion of the trilemma problem, on the claim that nothing other than the possibility of morally inspired choice is required to make that problem go away, because nothing other than morally inspired choice is required to uphold freedom. So if Cohen contends that we actually need more than moral inspiration to uphold the value of freedom, his argument against the First Version of the Freedom Objection will have been exposed, by his own lights, as inadequate. We are still left with a puzzle.<sup>37</sup>

Cohen’s antidote to the Stalinist Worry also generates another important question: what does the value of acting freely consist in? One possible answer to this question, suggested by Passage A, is that acting freely avoids the disvalue of coercion. But that is actually a poor answer, at least without supplementation. The disvalue of coercion must have something to do with the value of what coercion removes: namely, the value of acting freely. But we will be trapped in a justificatory

circle if the value of acting freely has to be explained in terms of the absence of the disvalue of coercion, and if the disvalue of coercion then has to be explained in terms of the presence of the value of acting freely. We need more from Cohen than just the *bare refusal* to entertain the idea of coercion.

Compare Rawlsians' response to the same question: for them, it is the value of acting freely, construed as a vehicle of individual self-realization, which allows them to break out of this justificatory circle. If there is coercion of individuals' occupational choices, then these individuals will be deprived of the freedom to seek self-realization by choosing which occupations they join, and this is the site on which Rawlsians will mount their opposition. But Cohen has already repudiated this Rawlsian strategy. He must therefore appeal to other considerations.

Now Cohen does not, in fact, make a brute appeal to the disvalue of coercion in order to explain the value of acting freely, contrary to what Passage A seems to imply. But it is important to labour the truth that he is not *entitled* to make any such brute appeal to the disvalue of coercion, simply in order to clarify what work must now be discharged by the other considerations he offers. And the problem is that those considerations, when examined more closely, are not particularly convincing.<sup>38</sup>

Cohen makes four further points in connection with this issue.<sup>39</sup> First, he thinks that coercive enforcement may be counterproductive: to avoid their exposure to Stalinist frogmarching, individuals may be motivated to conceal their talents and preferences. Second, and partly as a result, there will be informational deficits and distortions that arise, which will make Stalinist central planning crude and highly inefficient. Third, Stalinist enforcement will make it difficult for individuals to act from a sense of justice, since this specifically moral motivation will be crowded out by individuals' concerns to escape punishment or penalization. Fourth, Cohen is concerned that Stalinist frogmarching involves the "manipulation" of persons, since it involves "a control over your behaviour that exercises a knowledge of the intimacies of your personality, what pleases you, what bores you, and so forth"; he glosses this last consideration as the "invasion of the inner economy" objection.<sup>40</sup>

These problems will of course always obtain in the real world, taking people and policies as they are. Still, the first two of these considerations notably step outside the idealized assumptions which characterize much of Cohen's discussion, when, like Rawls, he assumes ideal levels of moral conscientiousness and commitment. That suggests that Cohen is being forced to occupy what is, for him,

non-ideal territory in order to generate critical material to throw at the Stalinist Worry. And that seems suspicious.

Cohen's third consideration is his most important: this is the point that Stalinist occupational conscription will make it difficult for individuals to act from a sense of justice, rather than acting simply in order to escape official censure. This consideration carries the further strategic significance of offering an internal supplementation to the ethical solution to the First Version, so that the conditions on freedom which are required by the ethical solution, when fully enumerated, might be rendered consistent with the conditions on freedom required to deal with the Stalinist Worry. But the claim that Stalinist occupational conscription will make it difficult for individuals to act from a sense of justice actually seems false. If Sarah willingly conforms to the law to work as a doctor, then we can still appeal to the value served by Sarah's moral inspiration. Even if a Stalinist regime would prevent Sarah from not working as a doctor for £20,000 by heavily penalizing her failure not to work as a doctor for that salary, Sarah is not thereby precluded from acting on moral inspiration. This is because the explanation of why Sarah chooses to doctor, if and when she does choose to doctor, need not be that she is unable to refrain, without penalty, from doctoring. Sarah can still conform, out of moral inspiration, to the law which obliges her to work as a doctor.<sup>41</sup> She can still be *morally committed* to the course of action which the law compels her to perform, even when declining that course of action is not available to her. This case has the approximate structure of a *Frankfurt case*.<sup>42</sup> It may be *over-determined* that Sarah will doctor for £20,000, since, if inspiration fails her, she will be coerced into doing so anyway. But the fact that a Stalinist system will not permit Sarah to do anything except to doctor for £20,000 does not rob of her of the ability to make that choice out of moral conviction. Compare anti-homicide laws: I can be morally committed to not performing acts of homicide even if, were I to do so, I would reliably be caught and convicted. Despite the fact that I would be severely punished for these offences, I can still refrain from committing them for the right reasons, rather than for purely self-interested reasons. I can refrain from murdering other people because I think it is wrong to do so, not just because I want to avoid a lengthy prison sentence.

Reservations must also attach to Cohen's contention that Stalinist frogmarching involves the invasion of the inner economy, or the objectionable manipulation of people. The main problem here is that Cohen has *already* provided

room for the first-person prerogative, which is meant to uphold each person's sense of herself as "something other than an engine for the welfare of other people."<sup>43</sup> It is unclear what additional substantial critical opposition Cohen can muster against a looser form of Stalinist conscription that respected this bounded prerogative.<sup>44</sup>

Taken together, Cohen's collected offerings against the Stalinist Worry suggest the presence of commitments which outrun his possession of the arguments which are needed to properly ground those commitments.

#### **IV. How to Back into Stalinism (Without Really Trying)**

Cohen is not, of course, precluded from enrolling other possible moral considerations into his opposition to the range of powers assumed by a Stalinist regime. After all, history books are awash with details of the crimes committed by Stalin's regime, as well as other twentieth century regimes that approximated to it in its cruelty and severity. The concern to avoid show trials, a sclerotic economy, and the general obliteration of private and family life that have been encouraged by overweening Stalinist-type states will surely be enough to confirm the lack of wisdom in tolerating a state that removed freedom of occupational choice. So Cohen may say; and who would disagree with him?

Though Cohen's anti-Stalinism, as a concrete political commitment, is of course to be applauded,<sup>45</sup> this line of argument is incomplete, for our typical hostility to the prospect of occupational forcing seems clearly distinct from our objections to these other atrocities. Many of us would regard occupational conscription as objectionable in its own right, and not just as an indirect source of evidence that the state had assumed powers that were suddenly pointing in the direction of more gross and obvious moral outrages.<sup>46</sup>

Interestingly, Cohen also concedes that, in the right circumstances, he would actually *endorse* legislation regarding job allocation, albeit non-coercive legislation. He writes, about the (doubtlessly unattainable) "truly just society" which consisted only of conscientious egalitarians:

Informational problems would prevent the [ideal] state from ... (noncoercively) legislating job allocation. But if it could do so, under a properly prerogative-informed egalitarian principle, then I would see nothing wrong with that.<sup>47</sup>

This turns out to be a costly concession, for the worry which now arises is that the reference to *non-coercive* legislation appears to be a merely contingent and *ad hoc* piece of kindness on Cohen's part. If the state in a truly just society were morally justified in legislating job allocation, then what exactly could prevent it from going one step further and coercively enforcing that legislation? None of these conscientious individuals, after all, would feel a strain, at least at that point. Legislative enforcement would merely be rubber-stamping what they were already inclined to do. If there is a decisive case for legislation, then there must be a presumptively compelling case for the coercive enforcement of that legislation. The laws would be *enforceable*, even if no *enforcement* was actually needed.

But what if enforcement *was* needed? Could the enforceability of the legislation then be withdrawn? This would be a strange argument to adopt for someone who had already conceded that the legislation was enforceable. If and when enforcement did actually come to be needed, due perhaps to evidence of backsliding or unjust patterns of behaviour among the individuals governed by the legislation, the fact that such enforcement was applied to laws that had already been deemed to be legitimately enforceable would then seem to be a sufficient justification for their actual enforcement. The decision not to enforce them would seem perverse. We should not resist the enforcement of enforceable laws just because, out of the blue, some individuals might decide that they do not want to conform to them any more. These are, by assumption, enforceable laws which reflect the demands of justice. How could their enforcement—and in fact their very enforceability—be suspended just because individuals no longer fancied acting as justice requires them to act?

This argumentative thread has taken us, in a small number of secure steps, all the way from occupational freedom to Stalinist conscription. Cohen's argument appears to have unravelled. In the Cohenian society, I think it remains unclear what the principled reasons for resisting these final steps would be.

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discussion. Finally, I thank an anonymous reviewer for many helpful comments on what turned out to be the penultimate version.

## NOTES

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<sup>1</sup> See Cohen, *Rescuing Justice and Equality* (London: Harvard University Press, 2008). Also relevant is his earlier *If You're an Egalitarian, How Come You're So Rich?* (London: Harvard University Press, 2000).

<sup>2</sup> See *Rescuing Justice*, ch. 5.

<sup>3</sup> For valuable earlier discussions, see Michael Otsuka, "Freedom of Occupational Choice," *Ratio* 21, no. 4 (2008): 440-53, Paula Casal, "Occupational Choice and the Egalitarian Ethos," *Economics and Philosophy* 29, no. 1 (2013): 3-20, and Cécile Fabre, "Distributive Justice and Freedom: Cohen on Money and Labour," *Utilitas* 22, no. 4 (2010): 393-412. These articles are largely concerned with what I call the "Second Version" rather than the "First Version" of Cohen's reply to the Freedom Objection. (For an explanation of these terms, see the main text below.)

<sup>4</sup> Nozick, *Anarchy, State and Utopia* (Oxford: Basil Blackwell, 1974), 223.

<sup>5</sup> It is discussed at length in *Rescuing Justice*, ch. 2.

<sup>6</sup> See *Rescuing Justice*, 183-96 for the First Version of the Freedom Objection, and 196-205 (and also 406-11) for the Second Version.

<sup>7</sup> Cohen often refers to a stronger version of Pareto-optimality, according to which everyone is better off. The difference between stronger and weaker versions of Pareto does not matter for present purposes.

<sup>8</sup> *Rescuing Justice*, 184.

<sup>9</sup> *Rescuing Justice*, 185. (I have substituted "Sarah" for the more minimally named "A" in Cohen's discussion.)

<sup>10</sup> *Rescuing Justice*, 185.

<sup>11</sup> *Rescuing Justice*, 184, 207.

<sup>12</sup> *Rescuing Justice*, 196-7.

<sup>13</sup> *Rescuing Justice*, 197, esp. n. 18 and n. 19.

<sup>14</sup> *Rescuing Justice*, 196; I have slightly abbreviated it.

<sup>15</sup> *Rescuing Justice*, 189.

<sup>16</sup> To save clutter, I will drop the "per annum" qualification from now on.

<sup>17</sup> *Rescuing Justice*, 192.

<sup>18</sup> A third possible view, combining the subjective interpretation and the objective interpretation—the *hybrid* interpretation, as I will call it—will emerge below.

<sup>19</sup> *Rescuing Justice*, 192.

<sup>20</sup> *Rescuing Justice*, 194.

<sup>21</sup> This "too early"/"too late" style of dilemma was sometimes advanced by Bernard Williams against cruder forms of moral relativism: see, for example, his "Human Rights and Relativism," in *In the Beginning Was the Deed*, ed. G. Hawthorn (London: Princeton University Press, 2005), 69.

<sup>22</sup> See Norman Daniels, "Democratic Equality: Rawls's Complex Egalitarianism," in *The Cambridge Companion to Rawls*, ed. S. Freeman (Cambridge: Cambridge University Press, 2003), for a good discussion.

<sup>23</sup> This argument works for any principle which implausibly masquerades as morally objective, and which is open to a decisive freedom-based challenge: choose another such implausible principle if the no-sex principle strikes you as being unsuitably cast in this role.

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<sup>24</sup> See Casal, “Occupational Choice,” and Seana Shiffrin, “Moral Autonomy and Agent-Centred Options,” *Analysis* 51, no. 4 (1991): 244-54, for relevant discussions of why an agent’s freedom is enlarged by having a plurality of morally permissible options.

<sup>25</sup> This famous phrase is due to Nozick, *Anarchy, State, and Utopia*, 225.

<sup>26</sup> *Rescuing Justice*, 192.

<sup>27</sup> *Rescuing Justice*, 193.

<sup>28</sup> I distinguish between these options in order to indicate metaethical neutrality.

<sup>29</sup> *Rescuing Justice*, 186.

<sup>30</sup> *Rescuing Justice*, 219, 220.

<sup>31</sup> *Rescuing Justice*, 220-1.

<sup>32</sup> *Rescuing Justice*, 195.

<sup>33</sup> *Rescuing Justice*, 199.

<sup>34</sup> See, for example, Cohen, “Capitalism, Freedom and the Proletariat,” in his *On the Currency of Egalitarian Justice and Other Essays in Political Philosophy*, ed. M. Otsuka (London: Princeton University Press, 2011), 147.

<sup>35</sup> Cohen’s work clearly evinces a general commitment to the view of freedom as an “opportunity concept,” rather than an “exercise concept”: liberty consists in the existence of unimpeded opportunities rather than the actual exercises of those opportunities. See also Passage B, below. For instructive commentary on these more general questions, see Quentin Skinner, “A Third Concept of Liberty,” *Proceedings of the British Academy* 117 (2002): 237-68.

<sup>36</sup> This problem will affect the hybrid interpretation as well as the subjective interpretation.

<sup>37</sup> One further important possibility, which we will consider below, is that the conditions required for morally inspired choice may demand, as an internal corollary of what it is to act in a morally inspired way, an opportunity set.

<sup>38</sup> *Rescuing Justice*, 218-22. He candidly adds: “My thoughts about [this issue] have not achieved a finished form ... [and] I am not satisfied with them” (218).

<sup>39</sup> Since Casal, Fabre and Otsuka (see the references in n. 3) all deal with these further considerations in some detail, my commentary on them will be relatively brief.

<sup>40</sup> *Rescuing Justice*, 221, 222.

<sup>41</sup> See Fabre, “Distributive Justice and Freedom,” 407-9, for further useful comments on this issue.

<sup>42</sup> See Harry Frankfurt, “Alternate Possibilities and Moral Responsibility,” *Journal of Philosophy* 66, no. 23 (1969): 828-39. The similarity is only approximate because the prospect of Stalinist frogmarching or interference will not operate, as it does in Frankfurt’s original example, entirely behind the scenes, in ways that are as yet unknown to the agent who is making the decision. I touch on this point in my “Jobs, Institutions, and Beneficial Retirement,” *Ratio* 27, no. 2 (2014): 205-21, at n. 24, 220, though the comparison with Frankfurt cases is not mentioned in that earlier discussion.

<sup>43</sup> *Rescuing Justice*, 10.

<sup>44</sup> It is also none too clear how policies which enforce morally correct actions can involve the objectionable *use* of people: see Otsuka, “Freedom of Occupational Choice,” 444 ff., for a helpful discussion of this point.

<sup>45</sup> See also Cohen’s examination of the camping trip expedition in his *Why Not Socialism?* (Oxon: Princeton University Press, 2009). Thanks to an anonymous reviewer for reminding me of this discussion.

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<sup>46</sup> Military conscription raises special issues, which I cannot consider here.

<sup>47</sup> *Rescuing Justice and Equality*, 221.