

**AN ASSESSMENT OF COHEN'S CRITIQUE ON
RAWLS:

IS THE EGALITARIAN ETHOS EMBEDDED IN
THE RAWLSIAN SOCIETY?**

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**Submitted to
Central European University
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In partial fulfillment of the requirements for the degree of Master of Arts

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**Budapest, Hungary
(2010)**

ABSTRACT

The egalitarian ethos is embedded element of the just society. The ethos displays an idea that two moral powers of the members of just society should be in balance in their influence on their choices and life in general.

The difference principle could be applied on the personal choices on the same way as on the basic structure of society, but certain constraints must be taken in considerations. Therefore, two conditions are necessary: 1) the number of issues which are subject of individual positive action is limited; 2) a person takes a positive action to benefit a part of a society which s/he considers significantly worse off in comparison with him/herself.

The basic structure should promote the egalitarian ethos in respect to three requirements. Firstly, citizens are not allowed to assess if a person respects the difference principle, entering into the content of choices. Secondly, basic structure should promote the egalitarian ethos without any prescription how the difference principle must be satisfied concretely. Finally, Williams' requirement of publicity in its strict reading must not be satisfied.

These requirements are necessary to avoid the liberty restrictions. Although social ethos is unstructured, non-coercive set of practices, attitudes and values, social pressure could result in valuable losses and heavy violations of liberties.

In such society, the idea of justice would be maximized. It would be Rawlsian just society in its ideal version.

ACKNOWLEDGMENT

I want to thank to my supervisor Andres Moles for support, fruitful discussions and valuable advices. His constant assistance was crucial and priceless for my thesis. I was very lucky.

I also want to thank to my academic writing teacher Cynthia-Marie O'Brien who helped me in thesis' structuring and styling, and in clearer and stronger expression of my arguments.

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INTRODUCTION

I want to defend the claim that Cohen's egalitarian ethos is not only in coherence to the Rawlsian society. It is its embedded element. Some scholars, like Michael G. Titelbaum (2008), completely deny this idea. On the other hand, Paula Casal (2010) accepts it in very limited respect, claiming that the egalitarian ethos heavily violates liberties, despite Cohen's claim "that the egalitarian ethos *cannot restrict liberty because it is only an ethos*, and not a legal restriction"(Casal, 2010: 8). G. A. Cohen thinks that personal prerogatives are acceptable and compatible with justice, but in certain degree. He believes that just society must display the egalitarian ethos, by incorporating the difference principle when making personal choices. I want to examine this problem in relation to the justification of inequality-generating incentives. My starting point will be in brief lines above-presented Cohen's position, but I will departure from Cohen's theory when proposing answer to the Casal's alarming notion. Contrary to Cohen, I will show that it is not necessary and permitted to enter into the content of personal choices, when assessing if a person respects the difference principle or not.

The discussion about the personal prerogatives in recent normative political theory was actualized by G. A. Cohen's (2002) claim that the principles of justice can and should be applied to personal choices. His view contradicts with Rawlsians in claim that social ethos of the just society inevitably requires egalitarianism. Cohen denies that market-maximizing ethos is compatible with the just society. He criticizes a limiting scope of the principles of justice to the basic structure, arguing that it should be extended on the non-coercive structures (conventions), the social ethos and personal choices. He thinks that rational and moral persons who accept the principles should not resist it because they agree with their content. If they

want to reduce the inequalities¹ which origin from a private sphere, for example, from the gender-structured family which limits access to primary goods for women, they should apply it on their daily activities too (Cohen, 2002:139).

He also defends his claims in relation to incentive-generated inequalities, stating that benefits of the worse-off would be higher without the incentives demanded by talented people. So the latter should be willing to work without these incentives due their commitment to the difference principle, seen as their moral duty. The objection is that talented people, who have a possibility to improve the income distribution, request strong incentives for their socially desired success what Cohen considers morally questionable, discussing it through akrasia problem². It shows that people are not truly committed to this principle and, although worst-off group benefits from their activities, they would be in even better position if talented people do not demand such incentives which they would not under same true commitment.

Cohen argues that the egalitarian ethos can succeed being both egalitarian and efficient, without harming liberty. In this argument, he conflicts with Rawls (1999) and Rawlsian advocates like Casal (2010) who considers self-respect and freedom of occupational choice as primary goods, and that Cohen's proposal would violate lexical priority of liberty principle. Cohen agrees that talented people can refuse to employ their abilities if they do not receive incentives. Basically, Cohen accepts that society should not force talented people to work for the benefit of the worse-off because it would turn them into slaves. But if talented persons can

¹ "In my view, there is hardly any serious inequality that satisfies the requirement set by the difference principle, when it is conceived, as Rawls himself proposes to conceive it, as regulating the affairs of a society whose members themselves accept that principle"(Cohen, 2002: 124).

² Cohen discusses it through the kidnapper's argument, but here I will present it on its abstract level.

"1. A believes that he ought all things considered to do X.

2. A does not intend to do X"(Cohen, 2002: 155).

Cohen argues that verifying (in)consistency of this dyad should be based on distinction between moral weakness (justification) and weakness of will (excuse). He concludes: "When you are excused for not having done X, X remains what you should have done; it was the right thing to do, but your excuse renders you less vulnerable to criticism or to penalty for not having done it. When, by contrast, you have a justification for not having done X, then that justification shows that X was not, as it might first have appeared to be, and/or as it would otherwise have been, the thing that you ought to have done" (Cohen, 2002:158).

do a certain job, but will not without particular amount of incentives, it cannot be perceived by the worse off as a legitimate, just request.

Andrew Williams (1998) also opposes to Cohen's socialist view. He argues that one of main reasons why principles of justice cannot be extended is because they apply only to publicly structured social institutions, while conventions, social ethos and personal choices cannot be structured in this way. So, they are not feasible for application of the difference principle. They cannot be structured in a manner necessary to satisfy a requirement of publicity (Williams, 1998; 235). I claim that Williams' idea about the requirement of publicity is actually threat to liberty and that it is not compatible with Rawls' idea about the same. I will support it with Shiffrin's (2010) arguments³.

One more critique of Cohen's suggestions comes from David Estlund (1998). Estlund wants to show that even an extremely just society, which would satisfy all of Cohen's demands, would still hold some prerogatives, capable to produce incentive inequalities. He thinks that Cohen, in tune with his own theory, should accept them all. Cohen already allows persons to follow own goals to some extent, putting aside public goals. Estlund would add three more prerogatives: motive of affection, inequality producing moral requirement⁴ and weak moral factor⁵ (Estlund, 1998; 102).

Related with Cohen's objection on incentive inequalities produced by talented people, Estlund points out that it is hard to differentiate between the result and the amount of inequalities produced by morally unacceptable selfish demands or high quality moral motives. If Cohen would not accept incentive inequalities for Estlund's proposed prerogatives, he would allow terrible consequences of violation of fraternity principle, in which difference

³ See subsection 2.1.1. Occupational choice and individual positive action.

⁴ Estlund gives an example with damaging neighbor's prize winning garden. Person has a moral obligation to fix a damage, even in the same time, same person could do job which would increasing social product.

⁵ "As an illustration, Peter Singer defends a moral duty to prevent great harms (at least) when we can do so without sacrificing anything of comparable moral significance" (Estlund, 1998: 102).

principle is also grounded (Estlund, 1998: 100, 104-107). To give a new perspective in debate and make relative a notion that difference principle produces unacceptable incentive inequalities, Estlund emphasizes that "...first principle of justice may require more economic equality than the difference principle can account for" (Estlund, 1998: 110)⁶. I will present Cohen's reply on his critique in relation with my claims about personal prerogatives in the egalitarian ethos⁷.

Special attention will be given to Michael Titelbaum's (2008) critique of Cohen's egalitarian ethos. He completely denies compatibility of the egalitarian ethos and the Rawlsian ethos. His article is very instructive in the analysis of Cohen's arguments, but I will try to show that his conclusions are not fair to Cohen's claims. My interpretation of Cohen's position will be mainly clarified through my reflection of Titelbaum's critical analysis of Cohen's arguments. Furthermore, I will show that, if we remove the premises which I will label as unjust toward Cohen's theory, Titelbaum's proposal for establishment of full ethos does not differ significantly from the Cohen's egalitarian ethos⁸.

New wings to Cohen's idea were given by Paula Casal's (2010) recent assertion of his "egalitarian ethos". She agrees with Cohen that some incentives should be criticized and that it is possible to replace market-maximizing ethos which will have a strong impact on personal prerogatives and choices. But she agrees with Rawls that it would in certain respect harm liberty because social pressure could also have strong repressive consequences on personal choices as coercive pressure (Casal, 2010: 22).

⁶ "Thus, the first principle may place its own limits on economic inequality, and they be more severe than the difference principle's limits. If do, then even inequalities that benefited the worse off would be unjust if the resulting inequality were incompatible with the fair value of the political liberties." (Estlund, 1998; 110)

⁷ See section 1. 2 Titelbaum-Cohen dispute: personal prerogatives, egalitarian ethos and full-ethos.

⁸ See sections 1. 2 Titelbaum-Cohen dispute: personal prerogatives, egalitarian ethos and full-ethos, 2.3 The source of the egalitarian ethos and 2.4 The difference principle and two conditions.

To reconcile both views she proposes a very interesting solution. She thinks that social ethos should be shaped in a way that increases the range of occupational choice available to the worse-off. The idea is that the better-off in society should actively participate in ensuring feasible social, political and economic environment for those who are in the worse position in society to achieve greater benefits for themselves. For example, supporting their intellectual development through education, or giving proper accommodation for maternity in working places for women (Casal, 2010: 18-21).

I support Casal's idea in the aspect that social ethos and personal prerogatives could be structured to promote egalitarianism, but I would still go further with my claims. Firstly, I do not see Cohen's idea about "egalitarian ethos" problematic for liberty. As Cohen already stated, social pressure differs from coercive formal pressure. In liberal society, such informal form of pressure operates through personal convictions, achieved on the basis of rational deliberation in coherence with political conception of justice. I will show that it is possible to defend the claim that egalitarian ethos does not harm liberty if following three requirements are satisfied:

1.) if we do not enter into the content of choices when assessing if a person respects the egalitarian ethos or not⁹,

2.) if demands of the difference principle are not prescribed by the basic structure¹⁰,

3.) and if William's requirement of publicity is not satisfied¹¹.

Secondly, it could be solved through certain basic structural promotion of the egalitarian ethos which would change a perception of liberty and equality as two both compatible, and contradictor values.

⁹ See section 2.2 How the difference principle could be applied on personal choices?

¹⁰ See section 3.3 The role of the basic structure.

¹¹ See subsection 2.1.1 Occupational choices and individual positive action.

By increasing sensitivity for the position of the worse-off, pointing on the ways how personal choice can or cannot contribute to their benefits and presenting such choices as morally preferable behavior, required in both – public and private sphere, egalitarian ethos could be achieved more successfully. The appeal on this behavior should be based on epistemic reasons and rational deliberation, so it would be really result of a personal choice, without perception of a person that s/he has acted contrary her/his will (and freedom). There will be always part of society who would perceive it as an attack on their will and freedom, so their attitude could support the Rawlsian objection. But again, I also do not find it problematic for liberties if three requirements, which I already mentioned, are satisfied.

Someone might object that promotion of certain moral values is similar to indoctrination, recalling its negative and manipulative side. Certain form of indoctrination is inherent to any political doctrine, and moral and social platforms, so to liberal well-ordered society as Rawls proposed it too. But to avoid pejorative connotation, I will use the word promotion because it must satisfy publicity (what values should be promoted, what forms of promotion are acceptable and similar) and be derived from public deliberation. Social, political and economic institutions could be structured in way to actively promote and demonstrate certain views which are consistent with justice, trying to integrate them in people's personalities.

Homosexual and women's right should be recognized and respected, any form of racism is wrong, imposing suffering without a very strong reason must be avoided and condemned (animals' suffering) are some examples of the moral requirements promoted within liberal and democratic societies. I believe that such list of moral requirements on the level on social ethos could be successfully extended within political normative theory in the direction I proposed. It can accommodate personal prerogatives and personal choices as subjects of moral evaluation.

It is crucial to precisely define values which should be promoted by basic structure. Although in my thesis, I will not focus on this issue, I propose that one of the right ways how to think about public agreement around these values could be Rawls's conception of overlapping consensus¹² and political liberalism¹³. The list of values should satisfy following conditions: "first, a specification of certain rights, liberties, and opportunities (of a kind familiar from democratic regimes); second, a special priority for these freedoms; and third, measures assuring all citizens, whatever their social position, adequate all-purpose means to make intelligent and effective use of their liberties and opportunities"(Rawls,1996:xlvi). The list of promoted values could include political values (the values of political justice and the values of public reason) (Rawls, 2001: 91), but also mutual respect¹⁴ and fraternity¹⁵.

My idea is that the basic structure should inform citizens about the worse-off position and the primary goods from which they lack. Then, it should provide concrete information and suggestions how to decrease inequalities, how citizens can actively participate in improvement of their position. Egalitarian ethos can be promoted successfully through institutions of the basic structure, especially through educational ones. But it should be also displayed on the level of daily politics. However, it is crucial for sake of liberty that

¹² "By this we mean that the political conception is supported by the reasonable though opposing religious, philosophical, and moral doctrines that gain a significant body of adherents and endure over time from one generation to next"(Rawls, 1996: 32).

¹³ Here is what Rawls says about free-standing political liberalism: "It takes for granted the fact of reasonable pluralism of comprehensive doctrines, where some of these doctrines are taken to be nonliberal and religious. The problem of political liberalism is to work out a political conception of political justice for a constitutional democratic regime that a plurality of reasonable doctrines, both religious and nonreligious, liberal and nonliberal, may freely endorse, and so freely live by and come to understand its virtues. Emphatically it does not aim to replace comprehensive doctrines, religious or nonreligious, but intends to be equally distinct from both and, it hopes, acceptable to both"(Rawls, 1996: xl).

¹⁴ "Mutual respect is shown in several ways: in our willingness to see the situation of others from their point of view, from the perspective of their conception of their good; and in our being prepared to give reasons for our actions whenever the interests of others are materially affected"(Rawls, 1999: 297).

¹⁵ "...fraternity is held to represent a certain equality of social esteem manifest in various public conventions and in the absence of manners of deference and servility. ...as well as a sense of civic friendship and social solidarity, but so understood it expresses no definite requirement. (...) The difference principle, however, does seem to correspond to natural meaning of fraternity: namely, to the idea of not wanting to have greater advantages unless this is to the benefit of others who are less well off"(Rawls, 1999: 90).

individual forms decisions related with own positive actions, taken as a result of the respect for the egalitarian ethos (and consequentially for the difference principle).

Final notion – egalitarian ethos as a moral conception promoted by the basic structure is strictly based on the principles of justice, and it does not presupposes perfectionism. “While justice as fairness allows that in a well-ordered society the values of excellence are recognized, the human perfections are to be pursued within the limits of the principle of free association”(Rawls, 1999: 289). Moral theory is derived from the sense of justice which is assumed to have every member of just society, and morality is viewed as a moral capacity of members to recognize demands of justice and be able to evaluate actions in coherence to the principles of justice (Rawls, 1999: 41).

CHAPTER 1: Cohen-Rawls dispute and personal prerogatives

Cohen argues that difference principle should be applied to personal choices. It means that a person should make decisions which would benefit the worse off in society. That is probably the most controversial claim in Cohen's theory which was criticized the most, as anti-liberal attempt. But he allows personal prerogatives, although being heavily criticized for not being cleared about it. In this chapter, I will, firstly present points of the Cohen and Rawls' theoretical discussion. Then, I will focus on this issue.

1.1 Cohen-Rawls dispute

Discussion between Cohen and Rawls will be presented through four major Cohen's objections on Rawls' theory of justice: the basic structure objection, the liberty objection, the Pareto argument and the incentives argument. But before, Rawls' main theoretical concepts will be examined, significant for understanding the whole discussion and issues.

1.1.1 Rawls on justice

"Justice is the first virtue of social institutions, as truth is of systems of thought"(Rawls, 1999: 3). In just society, certain rights and liberties are guaranteed to its members and they are never subject of political bargaining or compromise, even if it would bring benefit to others (Rawls, 1999: 3,4). Justice is defined within the principles of justice which "provide a way of assigning rights and duties in the basic institutions of society and

they define the appropriate distribution of the benefits and burdens of social cooperation”(Rawls, 1999: 4).

Cooperation in society makes its members better off in comparison to the situation in which they would not cooperate, but still such society display, beside cooperation, conflict of interests. Still, such dynamic in just well-ordered society is permitted because every member accepts these principles and knows the same about others, and that basic structure acts up on it (public conception of justice) (Rawls, 1999: 4). Political conception of justice is a result of “civic friendship” and deliberation of rational and moral persons, after bargaining in specific conditions. The main subject of justice is the basic structure which influences the prospects of life of the citizens.

The principles of justice are achieved in hypothetical and ahistorical original position under the veil of ignorance¹⁶ which assured a condition of equal liberty. This initial situation Rawls labels as “justices as fairness” (Rawls, 1999: 11). Rawls lists principles of justice in lexical order which means that if first principle is not satisfied, we cannot move on the second one (Rawls, 1999: 38). First principle is the liberty principle which contains list of certain liberties and rights¹⁷, always protected by justice and provided equally to all. The difference principle deal with inequalities in income and wealth which are permitted in just society, but they are just as long as they benefit the worst off. It also ensures equality of opportunity for all members of society to occupy positions of basic structural authority and responsibility (Rawls, 1999: 53).

¹⁶ “Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities”(Rawls, 1999:11).

¹⁷ These liberties are: political liberty, freedom of speech and assembly, liberty of conscience and freedom of thought, freedom of the person from psychological oppression, physical assault and dismemberment, the right on personal property and freedom from arbitrary arrest and seizure (Rawls, 1999: 53).

In continuation, I will present four points of Rawls-Cohen dispute which basically question whether certain concepts and ideas are compatible with justice and its primacy. Cohen, as an advocate of egalitarianism, generally accuses Rawls to be too modest in his expectations from citizens in virtue of egalitarian requirements. Cohen points out that certain behaviors and motivations of the members of the just society are not compatible with the principles of justice, and should not be acceptable and tolerated. Otherwise, we cannot talk about *just* society.

1.1.2 The basic structure objection and the liberty objection

I propose my own interpretation of Cohen's points that elaborates the inconsistencies in Rawls' theory, known as the basic structure objection and the liberty objection. It will be based on the idea of domination of the liberty principle in the private sphere of the just society, which, I will argue, Cohen accepts as such.

Rawls claims that basic structure is set up to fulfill the requirements of the difference principle (and the liberty principle, but not important for now). Individual members, despite their comprehensive moral doctrine, have no responsibility to be guided with this principle in their personal choices and lifestyle (Rawls, 1999: 7). They can be granted for a fact to create basic structure by including this principle as a part of their conception of justice, for recognition of both principles and values (liberty and equality) as core substance of the just society (Rawls, 1999: 10-15). However, it seems like we can track existence of ideal world perception within Rawlsian ideal world and I will come back to this notion. Here is how Casal comments this objection:

“For example, to motivate support for the Difference Principle, Rawls says that in a society which permits only inequalities that financially benefit the less

advantaged, individuals (a) display fraternity, (b) can bear their economic standing with dignity, and (c) fully realize their moral natures. None of this rings true, however, once we realize that the same theory tells individuals that as they vote and abandon the forum, they can become completely selfish market-maximisers“(Casal, 2010: 7).

Defending Rawls, Joshua Cohen (2001) thinks that institutions to which principles of justice apply crucially influence the form of incentive demands and social ethos¹⁸ from which this form is derived. Therefore, it is not necessary to extend principles of justice on social ethos to put these demands in framework suitable for just, well-ordered society and to improve income distribution for the whole society. In his words: “But the basic structure is just in part because it produces the ethos that raises the contribution curve” (J. Cohen, 2002: 377). T. Pogge’s (2000) critique of Cohen’s argument goes in the same direction, concluding: “Thus, while conventions, ethos, and personal choices are not governed by Rawls’ criterion of justice, they are still affected by it indirectly: through the influence a just basic structure exerts upon them” (Pogge, 2000: 166).

If we analyze two principles, we can see that first principle demands respect for liberties and rights, but the second demands certain empathy¹⁹. When introducing the egalitarian ethos in the just society, Cohen is not asking from the members to feel maximal empathy for the worse off, to be completely committed to demands of the social justice²⁰. But he thinks that a certain degree of empathy and concern for the inequalities in society should be always included in personal reasoning when making decisions and choices. He is not

¹⁸“By the ‘social ethos’ I mean – and I take Cohen to mean – socially widespread preferences and attitudes about the kinds of rewards it is acceptable to insist on, and, associated with those preferences and attitudes, a sense about the ways of life that are attractive, exciting, good, and worthy of pursuit”(Cohen J., 2001: 365).

¹⁹ I will use word empathy for inner sentiment which the members of the just society should feel toward the worse-off, due their sense of justice as a response on the difference principle.

²⁰ In the text above, I was explaining this argument more extensively, and provided very powerful quotations from Cohen’s writings.

questioning the situation in which a person must take care for him/herself and his/her M-related people. Personal prerogatives are permitted and they are not even discussed within production of social injustice²¹. Cohen accepts that, due various reasons and personal prerogatives, some people will give more effort for social justice, some less. However, he does not accept that the difference principle could be ignored completely²². I repeated these arguments once more to clarify Cohen's position.

The idea here is that I equalize egalitarian person with a person who is feeling empathy toward the worse off members of society and this sentiment is motivating him/her to take positive action to decrease these inequalities. I presume that such personality is compatible with Cohen's vision of egalitarian person. He defines the egalitarian person as following: "For we might say that a person is an egalitarian if he applies the difference principle in circumstances in which there exist badly off (as opposed to just well off) people *and* he believes that the principle demands, in those circumstances, equality itself, if, that is, he believes that in the long run and prescinding from rooted inegalitarian attitudes and practices, there *are* in such circumstances no social inequalities that do not *harm* the worse off"(Cohen, 2008: 34). Important question later on will be: how to endorse these beliefs in citizens' personality without harming their liberties?

Cohen might be considered to challenge lexical priority of the liberty principle²³ in Rawlsian ethos. Again, rational and moral members agreed upon principles of justice, believing that ideally just society should cultivate liberty and equality as top-values. They succeeded to establish such stabile well-ordered society, acceptable to reasonable citizens in which everyone is treated as free and equal due their two moral power. "The basic rights and

²¹ In this sentence, I expressed my vision of Cohen's concept of justice which was discussed in previous section.

²² I take that Cohen sees the complete ignorance of the difference principle in private sphere as unjust, and accuses Rawls that he allows it as being compatible with the political conception of justice. As I also already said, I believe that Cohen argues that the difference principle should have significant place in private morality of the members of the just society.

²³ Through this explanation, I will provide my assessment of the liberty objection.

liberties and their priority are there said to guarantee equally for all citizens the social conditions essential for the adequate development and the full and informed exercise of their two moral powers – their capacity for a sense of justice and their capacity for a conception of the good – in what I call the two fundamental cases²⁴”(Rawls, 1999: xii). Therefore, they built an intelligent, sophisticated mechanism which would generate outcomes of this idea in Rawlsian just society. However, due various reasons, people are not capable to follow both principles in their daily lives. In short, they are *people*, and basic structure is a *mechanism*.

The problem which might appear if such created mechanism imposes any additional requirements on the members of the just society, it might even jeopardize its existence and equality as a widely accepted social value. “This *Liberty Objection* may be elaborated by appeal to the Basic Liberty and Equality of Opportunity Principles, which protect occupational choice, and which have lexical priority over the Difference Principle in societies that have achieved a certain amount of material comfort“ (Casal, 2010: 5).

Liberty is a main reason and argument why such requirements could not be demanded from the members of the just society. We might conclude that it is not accurate that principles of justice are applied only on basic structure. All logic is much more complex. If the liberty is a reason why the difference principle cannot be introduced in just society as a recommended guideline for personal morality, then we might state the following. The liberty principle is already a dominant principle in comprehensive moral doctrines, applied as a norm on personal lives. It is even protected in society by basic structure. While the difference principle is not, and Cohen asks if this is the case with the liberty principle, why it would not also be the case with the difference principle (Cohen, 2008:198).

²⁴ First fundamental case is “the application of the principles of justice to the basic structure of society by the exercise of citizens’ sense of justice. The second fundamental case is the application of citizens’ powers of practical reason and thought in forming, revising, and rationally pursuing their conception of the good”(Rawls, 1999: xii).

For example, Casal (2010) illustrates three forms of social distribution – D1 (equal wages and occupational freedom), D2 (occupational freedom and economic efficiency due incentive-generating inequalities; Rawlsian position) and D3 (economic equality and economic efficiency; egalitarian distribution) and provides the scheme for this trilemma (Casal, 2010: 3):

	W	M	U ²⁵
Occupational Freedom and Economic Equality (D1)	100	100	100
Occupational Freedom and Economic Efficiency (D2)	101	119	380
Economic Equality and Economic Efficiency (D3)	200	200	200

Casal provides answer why Rawlsians (D2) reject D1 and D3 distribution. They reject D1 because “D2 benefits some and is economically detrimental to none, and (...) that non-detrimental inequalities are just” (Casal, 2010: 3). I presume that this explanation is acceptable by all classes and that they would consent up on this. But, Casal gives also explanation why Rawlsians reject D3. “They reject D3 because they believe (i) that it compromises occupational *freedom*²⁶, and (ii) that such *freedom* should not be compromised to secure greater equality“(Casal, 2010: 3). The discussion starts and ends with freedom.

I will develop my argument in continuation, but for now, I just want to conclude that if people are capable to exercise the liberty principle in their daily lives, they can include the difference principle in their reasoning too. I will support Cohen’s provocation which he expressed when answering on Titelbaum’s critique, mentioned above. However, Cohen’s solution might harm freedom as Casal notices and I agree with this concern. “Cohen’s response to the Liberty Objection claims that the egalitarian ethos *cannot restrict liberty because it is only an ethos*, and not a legal restriction“(Casal, 2010:8) But ethos can restrict freedom by making personal choices as a subject of moral criticism and evaluation (Casal,

²⁵ W-the working class, M – the middle class, U – the upper class (Casal, 2010: 3)

²⁶ I put word freedom in italic to emphasize it.

2010:10). I will try to provide solution which would minimally be changed from Cohen's and which would avoid Casal's concern.

1.1.3 The Pareto argument and the incentives argument

The Pareto argument and the incentives argument are crucial points of discussion between Rawls and Cohen for my thesis, so I will present them in more details. They are concerned for different aspects of justice and inequalities, but as I will show their link – I will present them under one title.

The Pareto argument is concerned for the best form of social distribution. Cohen starts this discussion with claim: “You cannot make equality the natural starting point, or default point, for justice, on the ground that nobody deserves more than anybody else and then depart from equality because the departure benefits the worse off and then declare that the result is unambiguously just”(Cohen, 2008: 19)²⁷. Cohen distinguishes two stages of the Pareto argument, as Rawls uses it in his theory and Brian Barry²⁸ interprets it. First stage is social distribution based on equality as the most just distribution. Second stage is Pareto-superior social distribution in which inequalities are allowed as long as everyone (strongly Pareto-superior) or at least one (weakly Pareto-superior) are better off, and no one is worse off in comparison to social distribution based on equality (Cohen, 2008: 87, 88). Cohen derives two points related with the second stage of the argument: “...first, that it is irrational to insist on equality when it is a Pareto-inferior state of affairs (why would anyone, and, in particular, the worst off, prefer equality to an inequality in which everyone is better off?); and, second, that sometimes, and indeed typically, equality is Pareto inferior”(Cohen, 2008: 89).

²⁷ See Cohen's *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), pg 87-115 (Chapter 1, section 2: The Pareto Argument).

²⁸ Cohen refers in this section on Brian Barry's book *Theories of Justice* (London: Harvester Wheatsheaf, 1989).

Cohen argues that Pareto-superior state of affairs could be satisfied without inequalities. He sees as the only cause of these inequalities the behavior of talented people (Cohen, 2008: 115). To show it through illustration²⁹, I propose following three situations:

	B	W ³⁰
social distribution based on equality (D1):	100	100
Pareto-superior social distribution (D2):	400	120
Pareto-superior soc. distr. and equality (D3):	200	200

Cohen claims that D1 could be replaced only by D3 as the most just distribution in which both equality and efficiency are kept, and on which the worse off could consent. It is presupposed that in all three distributions the worse off produce equally, but the difference is in production of the talented (better off) persons. However, Cohen criticizes Rawls that he permits D2, taking the behavior of talented people for granted, against his own definition of the just talented citizen. Firstly, Cohen separates a “good case” in which talented persons are carrying a special labor burden and puts it out of discussion³¹. But, secondly, he asks why D3 was not set up as an initial distribution in which everyone would produce maximally, under condition of equal distribution. Cohen concludes that it could be only possible if talented people are self-interest maximizers and willing to gain advantages due their luck to enjoy special natural goods. “This means that talented people require an unequalizing incentive to produce more than they do at D1: it is because they are in a position to take more than what the untalented could then have that D3 falls out of the feasible set”(Cohen, 2008:104).

²⁹ See also page 24, trilemma as Casal presents it.

³⁰ B= better off (talented persons), W= worse-off.

³¹ “If they were to get more money because of such burden, then this would not be an argument for inequality, but the application of a principle of equality that reasonably takes into account not only money, but also how oppressive a person’s labor is”(Cohen, 2008: 105).

Cohen recalls Barry's discussion about inequalities caused to improve position of the worse off which is built up on Rawls' arguments³². Barry says that these inequalities are justified as being necessary for benefiting the worse off. Cohen asks what could be justification of the talented persons who require them, acceptable from the point of view of the worse off. As desert, entitlement and special burden jobs are already rejected on both Rawls', Barry's and Cohen's ground, Cohen thinks that only plausible answer could contain notion about the freedom of occupational choice and the slavery of talented (Cohen, 2008: 114).

Cohen presupposes that in trilemma – equality, Pareto optimality and freedom of occupational choice, someone might object that one factor cannot be satisfied (Cohen, 2008: 115). But, he thinks it is wrong assumption, dedicating to this issue whole Chapter 5³³. Here we are almost on the ground of the incentives argument, but before I will present one more Cohen's notion which is his conclusion of the trilemma. Cohen thinks it is wrong to force a talented person to do certain job, to violate his/her freedom of occupational choice (first case), but it is also wrong that the same person demands very high income in order to obtain that job (second case) (Cohen, 2008: 223). He compares these cases with raping (first case) and prostitution (second case), concluding that prohibition of the first case does not justify the other (Cohen, 2008: 224,225). It will be clarified in the continuation, in which the incentives argument will be presented.

The incentives argument is focused on a creation of inequalities and the role of talented people in their production. Here are its three premises, as Cohen proposes:

³² "The difference principle represents, in effect, an agreement to regard the distribution of natural talents as in some respects a common asset and to share in the greater social and economic benefits made possible by the complementarities of this distribution. Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out"(Rawls, 1999: 87).

³³ See pg 181-225 in *Rescuing justice and equality* (Cohen, 2008).

“1. Inequalities are unjust unless they are necessary to make the worst off people better off, in which case they are just.

2. Unequalizing incentive payments to productive people are necessary to make the worse off people better off.

3. Therefore, unequalizing incentive payments are just” (Cohen, 2008: 19).

Cohen thinks that the difference principle does not permit any significant incentive-generated inequality and that such inequality only could be produced by the inegalitarian attitude of talented people (Cohen, 2008: 33). He examines it through the kidnapper’s argument, making the same argument on normative level (N) and on personal level (P). It goes as following:

N) “Children should be with their parents.

Unless they pay him, this kidnapper will not return this child to its parents.

So this child’s parents should pay this kidnapper.

P) Children should be with their parents.

Unless you pay me, I shall not return your child.

So you should pay me” (Cohen, 2008: 39).

In this example, child represents productive labor of talented people, kidnapper talented person, parents the worse off and payment incentives. Cohen states that the worst off can respond in accordance to talented person’s demand because they want to be better off, but if they do not – it is not irrational for them to prefer status quo. They might think that self-respect and just mutual treatment are more valuable than material gains under conditions presented in the argument (Cohen, 2008: 64). Finally, the incentives argument could be accepted “only in a society where interpersonal relations lacks of communal character in the specified sense”(Cohen, 2008: 47). It cannot satisfy the interpersonal test, assessed through

“dialogical conditions” between the better off and the worst-off groups of society (Cohen, 2008: 42).

Cohen repeats in this chapter that he allows personal prerogatives (Cohen, 2008: 61), but it is unjust that talented people “blackmail” society to work hard only if high incentives are provided. He accuses Rawls to permit such selfish behavior, as being compatible with just society. “He presents the incentive policy as a feature of the just society, whereas it is in fact, as Mill says, just ‘highly expedient’ in society as we know it, a sober ‘compromise with the selfish type of character’ formed by capitalism”(Cohen, 2008: 86). Cohen argues it should be ruled out.

1.2 Titelbaum-Cohen dispute: personal prerogatives, egalitarian ethos and full ethos

Titelbaum first makes distinction between two choices which a person can have – to choose an act which would maximize the benefits of the worse off, or to exercise “productive latitude”³⁴ (all other choices). He stresses that exercising of “productive latitude” could be chosen for various reasons, not only due self-interest and selfishness. For example, it could be chosen due the moral duty toward M-related people³⁵. But according to his interpretation of Cohen’s theory: “Since exercises of productive latitude create such inequalities, citizens of the just society must never exercise productive latitude” (Titelbaum, 2008: 291)

³⁴ “When an individual makes one of these productive decisions, there will typically be one option that yields the most economic benefit to the worse-off members of society and a number of other options that do not. If the individual chooses one of the latter options rather than the former, I say that he ‘exercises productive latitude’”(Titelbaum, 2008: 291).

³⁵ M-related people is D. Parfit’s (2009) expression which he describes as following: „According to common sense morality, which we can call M, we have special obligations to give certain benefits to those people to whom we are related in certain ways. These are people such as our children, parents, pupils, patients, clients, colleagues, customers, or those whom we represent. We can call these our M-related people“ (Parfit, 2009: 253). I will use it in my thesis.

I want to point out two flaws of this argumentation, and to propose my interpretation. Firstly, G.A. Cohen allows personal prerogatives, compensation for burden jobs and special duties toward M-related people. When Cohen discusses incentive inequalities as failure of the following of the difference principle, he leaves it out of the discussion. Secondly, when claiming that a person should make a choice in coherence to the difference principle, Cohen never states that a person must choose an option which would maximally improve the position of the worse off³⁶.

Cohen accepts three types of personal prerogatives, proposed by David Estlund³⁷: prerogative of narrow self-interest, prerogative of affection (toward M-related people) and “moral requirement” prerogative (Cohen, 2008: 390, 391). He also accepts two reasons for income inequality in society: due labor burden which is justified on egalitarian ground and due personal prerogatives³⁸ (Cohen, 2008: 388, 389). He says that, before reading Estlund’s text, he did not see how incentives could be combined with prerogatives. “My principal thought was that the Scheffler prerogative could not be an argument for the incentive justification, if only because the amount of inequality justified by the incentive consideration

³⁶ Interestingly, Rawls actually calls a perfectly just scheme in which the difference principle is satisfied in manner to maximize the expectations of the worse off. However, Rawls introduces other case “...in which the expectations of all those better off at least contribute to the welfare of the more unfortunate”(Rawls, 1999: 68). In continuation, Rawls says: “A scheme is unjust when the higher expectations, one or more of them, are excessive. If these expectations are decreased, the situation of the least favored would be improved”(Rawls, 1999: 68).

It seems that on the basis of these notions, Cohen and Rawls are on the same theoretical ground, even that Rawls is more or equally extreme egalitarian than/as Cohen because he considers a perfectly just scheme in which the benefits of the worse off are maximized. But their discussion is led around second case which Rawls also considers as a just scheme. Higher expectations in Rawls’ quotations I would equalize with incentives of the better off as Cohen discuss them. If we look again the Rawls’ quotation about the unjust scheme, it is clear that too excessive expectations of the talented people could harm the worst off. The worst off would benefit from removal of inequalities, produced this way. Despite, Cohen criticizes Rawls for allowing “a space” in his theory which blurry the difference between just and unjust scheme. So, although Rawls’ and Cohen’s arguments are in many respect in consensus and compatible, in my thesis I will emphasize their disagreements to achieve my solution.

³⁷ See Estlund, D. ‘Liberalism, Equality and Fraternity in Cohen’s Critique of Rawls’ *Journal of Political Philosophy*, 6 (1998), 99-112. Also, more Estlund’s critique is provided in an introduction of the thesis.

³⁸ “And the second good reason for inequality is that it may supervene on exercise of a Schefflerian personal prerogative that entitles agents not to be fully constrained by egalitarian demands in their personal choices. I also claimed, essentially without argument, that, even when that prerogative was given its proper due, justice would dictate a society without very much inequality. (I didn’t say what I meant by ‘very much’”(Cohen, 2008:389).

varies with circumstances: it might be more, or less, than what the Scheffler prerogative would license”(Cohen, 2008: 389).

However, even after taking Estlund’s critique into consideration and incentives as personal prerogatives, Cohen keeps on instating on his “compromise idea” – “the idea that justice is a compromise between legitimate self-interest and the interest of others’ is, simply, different from the idea that inequalities are justified if they are necessary to benefit the badly off, given that agents are,’ to whatever extent they choose to be, ‘self-regarding maximizers on the market’ “(Cohen, 2008: 389, 390). He gives an example with working at the youth club in the afternoon which, as I suppose, represents a moral duty toward the worse-off. Cohen says that a person can take an hour off due various reasons³⁹ which can be justified by personal prerogatives, but a person cannot take four hours off.

As he gives examples of four different personal prerogatives⁴⁰ in form of concrete activities, he says that, if a person decides to take four hours off, each hour could be justified with different personal prerogative. It is possible to presume that a person could take four different activities during this afternoon. But Cohen does not accept that such decision of the person could be considered as just, claiming: “The fact that you can have more justifications than one for doing something doesn’t means that you are justified in doing that thing to a greater extent than you would be justified in doing it if you had only one justification for doing it”(Cohen, 2008: 391). He refuses Estlund’s critique that, by accepting these prerogatives, he must endorse much more inequality in just society.

³⁹ He lists – having fingernails, visiting aunt, working off the moral debt that a person incurred (referring on the Estlund’s example when a person damaged neighbor’s garden) or pursuing independent moral goals such as, as I presume, religious ceremonies.

⁴⁰ Morality personal prerogatives is divided in personal moral obligation like in example with damaged neighbor’s garden and in pursuing independent moral goals like “the desire to establish a foundation to promote the arts”(Cohen, 2008: 391).

Titelbaum's "productive latitude" includes personal prerogatives, and as Cohen accepts them and I showed it in the text above, it cannot be used against his theory. To support it, I will provide one more Cohen's quotation in which he says it very clearly:

"There are many forms of motivation along the continuum between unrestrained market-maximizing at the end and full self-sacrificing restraint in favor of the worse off on the other. The first extreme is permitted by Rawls (and I regard that as absurd), but the second extreme isn't required by me. Requiring the second extreme is, in my view, excluded by a legitimate personal prerogative. *The prerogative grants each person the right to be something other than an engine for the welfare of other person: we are not nothing but slaves to social justice. (...)* The prerogative justification is a quite different justification of inequality from the difference-principle one and the inequalities that it justifies will coincide only by accident with those that the difference principle would license under Rawls' restricted interpretation of that principle: they might be greater or smaller than the latter. *So individuals indeed have their own lives to lead, and they are therefore permitted to strike a balance between the claims of the difference principle and their own legitimate concerns, but not, therefore, to ignore the difference principle in their everyday life*"⁴¹ (Cohen, 2008: 10,11).

Here is how I see the logic behind Cohen's argumentation. The principle of justice cannot be applied on citizens on the same way as on the basic structure. Egalitarian ethos is derived from the difference principle, and it usually requires positive action⁴². As Titelbaum examines Cohen's view, psychological plausibility and long-term stability as features of just

⁴¹ I put these two sentences in italic to emphasize them.

⁴² I will use an expression "the positive action" for every individual action which is taken with a purpose to benefit the worse-off members of the society.

society, and mutual respect and fraternity as qualities of just society could be endorsed only by introducing the egalitarian ethos in Rawlsian society (Titelbaum, 2008: 299).

In short, this is a segment of theory of justice which Cohen criticizes and sees as its inconsistency. Titelbaum (2008) believes that Cohen's suggestions are or addition to Rawls' theory, or a substantial one at that. He claims that Rawls points out that cases of voting and officialdom to support just basic structure are *only* activities in which a person should act in accordance to his/her sense of justice and egalitarian ethos (Titelbaum, 2008: 295).

I think Titelbaum is wrong here. Cohen has no ambition to provide addition to theory of justice, or a substantial one at that. Most of his effort he spends to show that well-ordered and just society with values, as Rawls presents, cannot be achieved without the egalitarian ethos. Cohen claims that mutual respect, respect for the worse-off and psychological stability cannot be achieved in just society if citizens have only moral requirements to vote and support laws which are in coherence with the principles of justice. He argues if rational, moral and free citizens in original position have chosen the principles of justice as a main guideline for creation of basic structure, how it is possible that they do not see these principles feasible and advisable for their daily life⁴³.

Rawls presupposes that citizens have sense of justice, two moral powers – to pursue own goals and to pursue public goals (Rawls, 1999: 17). As Titelbaum rightly notices, general features of the just society, prescribed by Rawls, are: stability, mutual respect, fraternity and psychological plausibility (Titelbaum, 2008: 295). Egalitarian ethos is based on difference principle which expresses concern for those on the bottom of society. In other words, it could be presumed that it is built upon the feeling of compassion and solidarity toward the members of just society. But even in just society, it is accepted as a normal state of affairs that its

⁴³ More about Cohen-Titelbaum dispute, see sections 2.3 The source of the egalitarian ethos and 2.4 The difference principle and two conditions.

members live their life without any respect of the difference principle. Cohen calls this ethos market-maximizing. He criticizes Rawls that he permits it and that it violates all features and settings of the just society because it completely ignores one of its two essential principles and embedded elements.

As Titelbaum criticizes the egalitarian ethos due its establishment on the difference principle (ignoring the liberty principle), he proposes a full ethos which would be based on both principles of justice, including the first part of the second principle. The full ethos and the sense of justice together would motivate citizens to follow the principles in their daily life (Titelbaum, 2008:303, 304). “Thus a member of the just society with a full ethos will be motivated to maximize the condition of the worse-off, but only when that does not conflict with basic liberties or fair equality of opportunity”(Titelbaum, 2008: 304). Titelbaum shows how his ethos would work within theory of justice, claiming: “The parties in the original position are told not just that the principles of justice they select will be supported by members of the just society in the ballot box and in official position, but also that members will act on correlates of those principles in their daily lives”(Titelbaum, 2008:306).

Titelbaum argues that first principle would kept its priority over the difference principle because all members of society need liberty to exercise both moral power – to pursue own goals and to pursue public goals. Such system of value is valid among better off and worse off, so the worse off representative would consent⁴⁴ with better off representative’s decision to pursue own life plan more than benefiting the worse off members (Titelbaum, 2008: 314). He stresses also the balance between two principles and concludes that it can be achieved as following, providing an example too: “There will be occasion on which an

⁴⁴ This Titelbaum’s idea about the consensus between parties in society, based on the same system value due which they would agree about each other’s action, by putting themselves in each other’s shoes, reminds me on Parfit’s idea of the Consent Principle. Parfit (2009) defines it as following: “It is wrong to treat people in a way to which they would not have sufficient reasons to consent, except, when these people would not have such reasons because the case involves conflicting person-relative moral obligation” (Parfit, 2009: 181).

individual has some desire to make a productive choice beneficial to his personal interests, yet his full ethos moves him to set aside those interests in favor of the option that best benefits society's worst-off. A doctor motivated by a full ethos might hold out for a higher salary so he can buy a car large enough to fit his family, but he will not hold out for a car that accelerates with extra zip and performs exceptionally on tight turns"(Titelbaum, 2008:319)

In my opinion, Titelbaum's full ethos does not offer anything more than Cohen's egalitarian ethos. Firstly, as I already stressed, it is built on wrong assumption that Cohen demands only benefiting the worse off as only egalitarian ethos's requirement. Cohen allows personal prerogatives and points out the balance between two principles of justice, transformed into the two moral principles.

I presume, the only reason, why Cohen does not introduce "the correlate"⁴⁵ of the liberty principle" is because it is already introduced in society and protected by basic structure. The liberty in just society, in Cohen's view, is already protected, and he is concerned with ignorance of the difference principle. Provided quotations from Cohen's text support it.

Secondly, he made the same mistake as Cohen by giving example which clearly shows that it would limit the content of personal conception of good, concluding that it is "the price we must pay to achieve stability, mutual respect, and fraternity in the just society" (Titelbaum, 2008:320). However, his justification of the ethos as a part of the theory of justice, justification of personal prerogatives and idea of consensus between better off and worse off will be useful in my further argumentation⁴⁶.

⁴⁵ After carefully reading of Titelbaum's article, I am not convinced that there is any plausible reason why he needs correlates of the principles of justice in his examination. I do not see any gain out of it.

⁴⁶ In his book *Rescuing justice and equality* (2008), Cohen expresses regret that he could not include a proper answer to Titelbaum's critique and argument (Cohen, 2008: 23,198). But he gives an outline of the response, saying that the liberty principle is enforced by state in the just society and citizens have no other option than to respect it (Cohen, 2008:198). He continues: "So, too, I more controversially say, must they do what the state does in respect of what the difference principle promotes: promote the interests of the worst off. (And in each

1.3 Cohen on justice

I want to present one dilemma related with Cohen's definition of justice. For example, he says that "justice is itself a compromise or balance between self-interest and the claims of equality"(Cohen, 2008: 71). He also introduces "compromise idea"⁴⁷ in which, again, he defines justice as a compromise between own interests and interests of others. I presume that self-interest combines legitimate personal prerogatives and incentives as part of it, but also as a part of illegitimate requests (subject of incentives argument). So here is my dilemma, divided in two points:

1.) Is a justice a matter of degree? Imagine that we have continuum and on one side, we have perfect justice without any usage of personal prerogative. On the other side, we have complete injustice which presupposes pursuing only personal interests. If we apply Cohen's example with personal prerogatives and four working hours for public goods, it would look as following. Complete injustice would be a case in which a person would avoid all four working hours under the excuse of doing activities in coherence with own personal prerogatives. If a person decides to work for public good three hours and take one hour off due personal prerogatives, it would pass interpersonal test in imaginary dialogue with the worse off, so it would be just act. But it would not be perfectly just act, only just in correlation with idea that justice is a matter of degree because it tolerates personal prerogatives. However, personal prerogatives represents legitimate deficit in justice. Perfectly just decision would be if a person works all four hours, but Cohen does not expect anyone to decide it because persons are not slaves of social justice.

2.) Or, is justice divided from injustice with particular threshold? Now, we can imagine two areas, divided with clear border. One area presents justice, while the other injustice. Justice

case within the limits of a defensible personal prerogative"(Cohen, 2008:198). According to this outlines, I based my conclusion about potential Cohen's answer on Titelbaum's article.

⁴⁷ See 1. 1 Titelbaum-Cohen dispute: personal prerogatives, egalitarian ethos and full ethos.

and legitimate personal prerogatives are in the same field, presuming that such personal prerogatives do not represent any deficit in justice. But, the balance or compromise which already exists in the area of justice could be jeopardized if the amount of personal prerogatives increases or if self-interests which could violate the difference principle appear. When this balance of justice is undermined, after particular threshold or level of tolerance, it finishes in the area of injustice.

If we again recall Cohen's example, situation in which a person would decide to work four hours or to work three hours and one take off due personal prerogatives would be equally perfectly just decisions. It is clear that if a person would avoid working all four hours due personal prerogatives, it would be unjust decision. But Cohen did not define the threshold, so I do not know whether 50-50 ratio of pursuing public goods and pursuing private goods would be still considered as a stabile balance, or he was thinking about other ratio.

In Cohen's writing, I found support for both visions of justice, and therefore, I would leave it open for discussion. Personally, I prefer second option because I believe Cohen defines self-interest together with interests of others as justice as long as certain balance is established between them. I could not find a point in Cohen's theory in which he is more specific about this balance and the way it was established. However, even on this, I will provide my opinion which would be the most suitable for the idea of difference principle, promoted through egalitarian ethos. Personal prerogatives give to person a justification not to pursue public goods, so not to benefit the worst off. They can cause the decline in a standard of the worst off, or if they are not requested – they can cause its growth. Therefore, I would presume that balance of justice would be set up in a way that interests of others, due claims of equality, would be represented in higher degree than personal interests.

CHAPTER 2: Benefiting the worse-off and the difference principle

2.1 Benefiting the worse-off

It is important to clarify the benefiting of the worse off which seems the most problematic aspect of the difference principle and the biggest threat to liberty. Firstly, it should be clear that, according to Rawls, and as Titelbaum (2008) rightly notices, benefit is measured by the index of the primary goods, not in money or similar financial instruments (Titelbaum, 2008: 293). Rawls defines the primary goods as following: “The primary social goods, to give them in broad categories, are rights, liberties, and opportunities, and income and wealth. (A very important primary good is a sense of one’s own worth...)” (Rawls, 1999: 79)

While first principle⁴⁸ supports a free access to primary goods, especially to rights and liberties, the second principle⁴⁹ recognizes that even just society has inequalities. Therefore, as Cohen suggests, the second principle requires a positive action which would zoom in that access to those who are at the bottom of the society. For various reasons⁵⁰, part of the society cannot enjoy in primary goods, despite the free access to it, and those on the bottom of the society are of the special concern for the principle.

⁴⁸ Liberty principle: “Each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for other”(Rawls, 1999: 53).

⁴⁹ The second principle which contains two part – the difference principle (a) and the fair equality of opportunity principle (b): “Social and economic inequalities are to be arranged so that they are both (a) to the greatest expected benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity”(Rawls, 1999:72).

⁵⁰ “The major justification of the Difference Principle is that distributions of social primary goods should not reflect factors that are arbitrary from a moral point of view” (Shiffrin, 2010: 121,122).

Two principles would be chosen in original position under the veil of ignorance⁵¹. Here is how Rawls explains these “unusual conditions”:

“The idea here is simply to make vivid ourselves the restrictions that it seems reasonable to impose on arguments for principle of justice, and therefore on these principles themselves. Thus it seems reasonable and generally acceptable that no one should be advantaged or disadvantaged by natural fortune or social circumstances in the choice of principles. It also seems widely agreed that it should be impossible to tailor principles to the circumstances of one’s own case. We should insure further that particular inclinations or aspirations, and persons’ conceptions of their good do not affect the principles adopted”(Rawls, 1999: 16,17).

In the just society, one way how inequalities are caused is by morally arbitrary factors -distribution of natural assets and social circumstances. No one deserves certain natural talents or being born in particular social circumstances, but it cannot be considered just or unjust –it is only a natural fact (Rawls, 1999: 87). However, the way institutions treat it can be just or unjust, and only arrangement of the social scheme in which these inequalities are handled as the difference principle demands is just. Other way how inequalities are caused in just society is through compensation for the amount of work or special burden jobs. “Where work is specially arduous, or stressful, higher remuneration is counterbalancing equalizer, on a sensible view of how to judge whether or not things are equal”(Cohen, 2008: 103). Cohen argues that from the egalitarian perspective, such compensations work to ensure equality in just society on which every reasonable member must consent (Cohen, 2008: 103). Finally,

⁵¹ „Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conception of good or their special psychological propensities”(Rawls, 1999: 11).

inequalities can be caused by incentives of talented persons. Cohen criticizes Rawlsians that they consider them just as long as the difference principle is satisfied (Cohen, 2008: 32)⁵².

Although Rawls was not clear about it, I will propose that we view as the examples for the positive action to benefit the worse-off, carried out by the basic structure, the positive discrimination for women or black people. Or another example is scholarships for poor students or unemployment benefits. But here we are concerned with a positive action, carried out by individual, and a question whether it endangers personal rights and liberties. So, secondly, I would like to provide my vision of the individual positive action. From Cohen's writings, it is clear that it would not have a legal force and it would be an individual decision, so already here it is visible that it would not conflict with one's liberty. But it requires more argumentation.

2.1.1 Occupational choice and individual positive action

Occupational choice and the individual positive action are one of the most intriguing elements of this discussion because it includes incentive inequalities, and according to Cohen – they are unjust. Cohen claims that a talented person would do the same job for less incentive, if a person is really committed to the difference principle. He is highly criticized for

⁵² See 1.3.3 The Pareto argument and the incentives argument. In this part, I have one dilemma which could be special topic and I took it as unclear in Cohen's theses, but I will not expand it in my thesis as it is not central to my argument. According to Cohen, special burden job compensation and proportional salary for the amount of work would be permitted in equal distribution (initial distribution), Pareto-superior distribution (Rawls) and equal-efficient distribution (Cohen). Although they produce inequalities, they are provided to persons to satisfy the value of equality.

My first question is whether the difference principle can be applied on these inequalities, especially if we presume that such compensations could be perceived as incentives by talented people. In my opinion, it would be plausible that the difference principle cannot be applied, but then my second question should be answered.

My second question is related with talented person's demand for more incentives. When talented person demands for more incentives, while doing special burden job, is for Cohen problematic the marginal difference between special burden job compensation (probably set up by basic structure) and incentives, or these two taken as one unit. Here the problem is with a definition of incentives per se, especially with authority who defines them. If special burden job compensation and incentives could be equalized (completely or in certain degree), then the difference principle could be applied on it.

this argument (Cohen, 2008:119-124). In my opinion, his examples sometimes really sound strict and demanding. His examples could be a way how to express a commitment to the difference principle, but it requires some flexibility and wider perspective. It could be simply derived from the fact that relationship between personal prerogatives and display of the egalitarian ethos is flexible.

Now I will focus on my example and try to make my point on the individual positive action. Before, one clarification. Occupational choice could be written like this in singular, if we are talking only about the main choice of the occupation – for example, being a doctor, lawyer, mason or waiter. But even then, it might be problematic because people change occupations during the life, educates in various directions. Therefore, I propose that we define the occupational choice as a set of choices, based on the personal occupation, but related with various other elements. I will continue to write it in the singular, but I will keep my remark.

In my opinion, it would be absurd if we assess every our decision in its relation with the difference principle. It would be too demanding and when Cohen says that we are not slaves of the social justice demands, I think, he meant that and I already partly elaborated his position. He also says: “It is not true, in the society I have in mind, a person would have to worry about unfortunate people every time he made an economic decision. Liberals would regard that as oppressive, and whether or not they are right, one function of the egalitarian ethos is to make conscious focus on the worse off unnecessary”(Cohen, 2008: 73).

He supports it with his “compromise idea” and acceptance of personal prerogatives, including incentives as a result of his discussion with David Estlund. Casal⁵³ also recognizes Cohen’s position as such, by claiming: “In Cohen’s view, the ethos prohibits the unlimited pursuit of financial self- interest, but does not compromise liberty because it operates through

⁵³ As a contrast, I will recall Titelbaum’s position. He completely ignores Cohen’s position as such, claiming that Cohen argues for extreme in which every productive decision should be assessed through demands of the egalitarian ethos. The elaboration is provided in the text.

workers' own convictions rather than through legal coercion. Moreover, the ethos does not require individuals to ignore their own preferences and plans, for it grants an *agent-centred prerogative* to be guided by self-interest to some reasonable extent. Finally, the ethos not only allows, but requires higher wages which compensate for *special labour burdens*, such as higher levels of risk or stress”(Casal, 2010: 4,5) Therefore, I will keep this argument in my further elaboration, without entering in deeper analysis of his theoretical premises to assess whether it is consistent with his theory or not. When giving examples, he enters into the content of the occupational and other choices, believing that there is a way out for benefiting of the worse off⁵⁴. I think it is a key cause of his disagreement with liberals and I will address this issue.

Also, we should imagine that generally, part of the choices which we must make, will not have impact on the worse off. I propose we call them difference-principle-neutral. For an illustration of occupational choice, I propose that we consider a choice between being a doctor, teacher or social worker difference-principle-neutral because they are equally valuable from the point of view of the worse-off. I believe that such choices are minority⁵⁵.

Finally, when we compare occupational choices, some people will have more power to contribute to the worse-off than others. Usually, talented people are such, but even between them, there are differences because of the nature of their occupation, success, willingness to

⁵⁴ He refers on the content of choices explicitly as following: “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 the distributive justice that it should be silent on the content of choice within the right structure”(Cohen, 2008: 199).

⁵⁵ This is my empirical claim. I presume that in every moment of decision about future occupation, need for above mentioned occupations exists and that they are equally valuable and desirable from the point of view of the worst-off. That is why I call these dilemmas the-difference-principle-neutral choices. I still think that these choices are in minority because if we presume that persons have strong sense of justice, after stipulation and deliberation in condition of full information, I believe in most cases best choice(s) for the worst-off could be detected.

It is difficult to set up hierarchy of occupations according to their contribution to the worst off, and I do not want to enter into such assessment. I will repeat my argument. Generally, I believe that diversity of occupations brings the greatest benefit to society. But we can presume that some occupations per se benefit the worse off less than others. For example, being a banker. However, even a person has chosen the occupation which does not serve to the greatest benefit of the worst-off, it does not mean that the same person cannot satisfy the egalitarian ethos through occupation-related and other choices.

support the worse off and so forth. Also, we can presume that some occupations contribute more to the worse off than others. Again, society in total needs and should have a wide range of the occupations. So far, nothing of that is problematic for the difference principle.

The difference principle should be calculated in the occupational choice⁵⁶. It means that it needs not to be within every single decision, but it should express a balance in its total. It is not enough to think that paying taxes, voting and supporting the basic structure makes a person a good citizen. If a person really has a sense of justice and possess the egalitarian ethos, s/he should be sensitive for the social inequalities and feel a need to do something.

The idea about the balance should be promoted through the egalitarian ethos by the basic structure, but it should not be defined in specific measures which would press individuals to take specific action in specific time and place. It should also not enter in the content of choices in the way that individuals should feel that their certain preferences are anti-egalitarian. Finally, it should not satisfy “publicity requirements” as A. Williams (1998) has defined it. These characteristics of balance in total will be crucial in my defense of the egalitarian ethos against liberals’ concerns, especially Casal’s which I find very powerful.

Here I will provide my explanation of rejecting Williams’ strict-reading of “public requirements”. Williams criticizes Cohen that conventions, social ethos and personal choices cannot be structured and institutionalized, so they fail to fulfill publicity requirement and are not feasible for application of principles of justice. Related with occupational choice, he argues that it would require criteria for evaluation of occupations (which to give higher compensation, which has no value for benefiting the least advantaged), prescribe a standard when and in what measure is permissible for a person to avoid pursuing equality, at what stage self-interest becomes unreasonable and so forth. Also, there is a problem of measuring how much talent a person uses to achieve personal goal and how much public goal, how

⁵⁶ I will support these arguments with an example in section 3.2 Incentive-generating inequalities and the egalitarian ethos. It will be completely devoted to showing how these arguments could work in practice.

persons will compare each others' productive potential. There is no way of collecting such information which is necessary to satisfy publicity requirement (Williams, 1998: 238-246). My point here is that the basic structure should never have even an attempt to satisfy the publicity requirement the way Williams sees it.

I will take Shiffrin's argument to support it, agreeing with her that Williams wrongly interprets Rawls' publicity requirements:

“But, Williams' reasoning that if compliance with a purported directive of justice is unobservable, the directive is therefore suspect, exaggerates the importance of observability in the Rawlsian scheme. Rawls's own understanding of the publicity requirement requires that citizens have mental states—that they accept the principles and accept the reasons for them—but these mental states are not themselves observable. (A weaker version of Williams's view might be plausible, to wit that the *institutions* comprising the Basic Structure must operate on public rules whose implementation is observable)“ (Shiffrin, 2010: 121, 122).

I would also agree with weaker version of Williams' view in respect that publicity should be satisfied in following aspects: how the basic structure promotes the egalitarian ethos, what values and justification is behind it and how decision about the promotion was achieved⁵⁷. As the egalitarian ethos is set of certain preferences and attitudes compatible with the difference principle, it can be also satisfied in respect that all members of society are familiar with its all relevant information. However, it should not impose any specific requirements on citizens, even if they do not presuppose coercive force. It should not enter into evaluation of personal choices or build a basis for comparison of choices related with the egalitarian ethos between citizens. This argument and its justification will be developed further in section 3.3 The role of the basic structure.

⁵⁷ Only if it is a result of public deliberation, it can be considered legitimate.

For example, being a doctor is one of the top occupations which can benefit the worse off in various manners. It requires from the person a long lasting education and specialization, and it is possible that a person chooses this occupation for more than one reason - because s/he prefers it over any other (as a true call), is aware that society needs it extensively (social sensitivity), but also because it can bring a significant income and social prestige (self-interest).

One doctor with rare and special skills and knowledge can decide to work for high salary and buy Ferrari⁵⁸. It is problematic from the perspective of the egalitarian ethos only if that doctor does nothing to express his/her commitment to the difference principle. In deciding about the positive action, s/he could be creative. For example, s/he could choose to make one surgery per month for free, for people who cannot afford it. It is an opportunity cost because usually – time is money. But, no one can transform all of the time into money because we need to spend it on the basic needs, on our M-related people, recreation, leisure and so on. So, the doctor could allocate it for the difference principle demands and see it as his/her personal contribution to social justice. The doctor could also choose to invest part of his/her income in fund for scholarships for the poor students of medicine. Furthermore, s/he

⁵⁸ I took Ferrari as an example of luxury goods which, as I presume, most of the worst off would not consider as a reasonable self-interest. Other example could be diamonds. But my point is that the focus should be on the contribution to the worst off, not on the content of personal choices. The egalitarian ethos should be clear in its idea that a true egalitarian person should contribute more to public good than to own good. That way, a person would reach a balance of justice in own life. So any personal choice which is permitted in Rawlsian society before establishment of Cohen's egalitarian ethos should be permitted after. The difference is that egalitarian ethos would promote choices in which the difference principle is in calculated.

If we allow a space for evaluation of the content of personal choices, then every member of society would be examined that way because they are free and equal. It would be legitimate that better off representative also proclaims certain interests of worst-off illegitimate and refuses to benefit them as long as they do not give up from these interests. It could be justified by appeal to the responsibility of choices. Where would it lead? I will give one example. In my neighborhood in Croatia, four-member family earns 3000 monetary units per month and therefore, it is a subject of social policy care. Costs related with education of their children are covered. House utilities are also covered by social policy of local community. The parents are heavy smokers, spending almost 50 percent of their income on cigarettes. Does this family still deserve the special treatment of the basic structure? Would it be right candidate for benefiting by the better off representatives who would follow the egalitarian ethos?

and his/her husband/wife can adopt an orphan, although having their own children. That way s/he would promote Cohen's "compromise idea" through non-occupational choices.

If Williams' strict-reading of "publicity requirement" is satisfied in the just society, having Ferrari could be viewed as an example of unreasonable self-interest. Even if the basic structure does not have any attempt to prohibit these choices, Casal's fear of social pressure could be plausible. If Ferrari is associated with anti-egalitarian behavior, this doctor could be stigmatized as such. Firstly, it does not need to be even close to correct evaluation of doctor's commitment to the egalitarian ethos, and his noticeable choice would be short-cut for opposite conclusion. Secondly, it would heavily violate his liberties, rights and sense of own worth. Generally, it could have long-term consequences of social instability because the egalitarian ethos would provide platform on which members of society could compare each other's contribution to justice. It could require from a person to adjust to social demands more than willing. Finally, it would open the question of personal conceptions of good. So far, just society respects plurality of reasonable conceptions of good what is significant part of agreement in the original position. In the conflict with the political conception of justice, person gives priority to demands of the political conception of justice, putting own aside. The egalitarian ethos could jeopardize this plurality, by promoting certain conceptions of good which are the most compatible with it, but condemning and stigmatizing those who are less or not at all. It would completely miss the goal of the egalitarian ethos and produce way much injustice. We can even foresee end of the just society.

To sum up with an illustration, the doctor can drive Ferrari (personal prerogatives) as long as making a personal contribution to social justice. It is an individual choice how to contribute and in what measure. Some persons know that their abilities to contribute are very significant, but still it is their decision. Cohen thinks, and I agree, that absence of any such contribution, complete ignorance of the difference principle is not consistent with an image of

the moral and rational citizen, just society and a true support of the political conception of justice. It is not logical that it is normal and acceptable that principles, which shape the basic structure and defines the social justice for the just, well-ordered society, have no any impact on the personal moralities of at least part of their members. The egalitarian ethos would play significant role in this. However, further elaboration of these arguments is required.

2.2 How the difference principle could be applied on personal choices?

G.A. Cohen (2008) distinguishes two readings of the difference principle – the strict and the lax. To explain their difference, he focuses on the word “necessary” and says: “...in its strict reading, it counts inequalities as necessary only when they are, strictly, necessary, necessary, that is, apart from people’s chosen intentions. In its lax reading, it countenances intention-relative necessities as well”(Cohen, 2008: 69). Cohen argues that people who are truly committed to the difference principle would follow it in its strict version. It would affect their motivation and choices related with occupational choice.

For Cohen, justice is a compromise between personal interest and the claims of equality, but he considers incentive as illegitimate personal prerogative. He believes that such compromise is not the result of the priority of the liberty principle over the difference principle, then with the unjust use of liberty which cannot be coercively restricted due justice. (Cohen, 2008: 71) In Cohen’s view, a personal prerogative “does not vindicate the incentive argument, but that permits individuals in the right sorts of cases to provide less benefit to the worse off than strict adherence to the difference principle would command”(Cohen, 2008: 62).

This is the point in which I disagree with Cohen, and I want to argue that personal prerogatives should not be restricted in itself, then by its balance with the claims of equality

which should be in demand. The balance should express a true respect to the egalitarian ethos. Therefore, incentives should be legitimate element of the personal prerogatives. Cohen gives an example with a doctor who can choose to work for 100.000 monetary units per year, according to market trends, and for 50.000 in modest regional, I presume, state-run hospital (Cohen, 2008: 70). After elaboration, he concludes: “If, as I am claiming, they⁵⁹ would in general take jobs for modest post-tax salaries, then each could reflect that, together with others, he or she is making a massive difference to (what would otherwise be) badly off people”(Cohen, 2008: 70). I think that Cohen here, in this example, oversimplifies his own arguments and claims.

In my opinion, his example can serve as one of the instructions how a person can express his/her commitment to the egalitarian ethos. But, one point should be clear. Even if the doctor chooses to work for 100.000, he can benefit the worse off significantly more than he would benefit in respect to various primary goods if he would choose to work for 50.000. So, we need more morally relevant facts to assess whether the doctor follows the difference principle or not, and does he use his/her liberty justly or unjustly. Before entering in further discussion about this issue, I propose to discuss the ground on which Cohen makes his claim about the egalitarian ethos.

2.2.1 The source of the egalitarian ethos

Some scholars, like Titelbaum (2008), have a problem to recognize the source of Cohen’s idea about the egalitarian ethos, derived from Rawls’ theory. Titelbaum firstly explores the difference principle, then the sense of justice as a basis of the ethos, and concludes that it cannot be prescribed to Rawlsian just society (Titelbaum, 2008: 294). Cohen

⁵⁹ In this sentence, word “they” refers on doctors.

believes that members of the just society, under Rawls' own terms, would follow the strict version of the difference principle, appealing on Rawls' "...remarks about 'full compliance', the dignity of the badly off, and fraternity" (Cohen, 2008: 69). Cohen is not denying that Rawls leaves a space for the lax version of the difference principle which could possibly even ignore the egalitarian ethos, but he questions its compatibility with Rawls' own list of remarks about the members of the just society, mentioned above.

Interestingly, Titelbaum rightly notices, after analyzing Rawls' writings, that some of its parts "...clearly attribute some form of individual action to the members of the just society: not just compliance with the laws laid down by a just system, but further acts of individual support in daily life for the principles behind that system"(Titelbaum, 2008: 294). But he has no problem, after further examination of Rawls' writings, to conclude that Rawls were only referring on the "cases of voting and officialdom" (Titelbaum, 2008: 295). So, when Cohen argues that beside it, it should include the case of occupational choice, Titelbaum cannot recognize any disparity in Rawls' theory, any ground for Cohen's critique and suggestion, and concludes that Cohen or adds new, elements to Rawls' theory or creates a new one.

Firstly, Titelbaum himself provides Rawls' quotation from the theory of justice which lists, as examples of positive actions for direct support of the principle in daily life, cases of voting **or** (not *and* as Titelbaum later on interpreted) officialdom (Titelbaum, 2008: 295). Titelbaum closed Rawls' list of the positive actions, while Rawls himself never did it. Secondly, how logical and plausible is to write about fraternity, dignity of the worse off, sense of justice and so forth as Rawls did, only to justify people's moral obligation as citizens to vote for and support political parties and political programs which are maximally in coherence with the principles of justice. If persons with particular conception of the good, due self interest, need such strong rhetoric and justification of doing these minimal moral obligations

to sustain just basic structure which requires again minimal of their time, taken from their daily life, then I would agree with Titelbaum that Cohen really missed the point.

But I cannot accept that Rawls created the concept of just society in which the members are minimally willing to contribute to the basic structure in coherence with the principles of justice upon which they agreed voluntary in original position. So to ensure only this minimal will, that Rawls spends enormous effort. We are talking about the society which has chosen the difference principle for a principle of justice. "...the difference principle expresses a conception of reciprocity. It is a principle of mutual benefit"(Rawls, 1999: 88). Furthermore, "...merit of the difference principle is that it provides an interpretation of the principle of fraternity"(Rawls, 1999: 90). Fraternity in its ideal is derived from the family⁶⁰, and although it is hard (maybe even impossible) to maintain this idea in the wide society, members of the Rawlsian society still want to keep its spirit by choosing the difference principle.

In his text about the family, he writes about the public and private spheres in their relations to the political conception of justice:

"A domain so-called, or a sphere of life, is not, then, something already given apart from the principles of justice. A domain is not a kind of space, or place, but rather is simply the result, or upshot, of how the principles of justice are applied, directly to the basic structure and indirectly to the associations within it. (...) So the spheres of the political and the public, and of the not-public and the private, take their shape from the content and application of the conception of justice and its principles"(Rawls, 2001: 166)⁶¹

⁶⁰ Family is an institution of the basic structure in the well-ordered society (Rawls, 2001: 163).

⁶¹ Rawls also says: "As citizens we have reasons to impose the constraints specified by the political principles of justice on associations; while as members of associations we have reasons for limiting those constraints so that they leave room for a free and flourishing internal life of the family. Here again we see the need for the division of labor between different kinds of principles. We wouldn't want political principles of justice to apply directly

So if we take all these Rawls' remarks, Titelbaum's interpretation cannot be accurate interpretation of Rawls' writings. If the egalitarian ethos is so absent from the private sphere of just society that persons cannot, or very hardly can⁶², consent with their moral obligations, which they have, and just decisions which they make as citizens. If they do not acknowledge the concern which they need to have toward the worse off as citizens, then even Rawls missed the point. But provided quotations from Rawls' writing reject it. It is weird to interpret that he introduces the story about fraternity (and similar concepts) which have no any moral ground in society to barely have any impact on its members to make them do their minimal obligation toward the basic structure. In Titelbaum's words, cases of voting and officialdom.

To sum up, it cannot be the case. It might be that Cohen added to Rawls' list a positive action⁶³ which Rawls did not consider as such. But my point here is that the discussion can be led about the question what else can be added to Rawls' list and Cohen's claims are very strong in this respect. It is wrong to proclaim this list is closed as Titelbaum did.

2.2.3 The difference principle and two conditions

I will try to answer now the main question of this section: can the difference principle operate on the same way, when applied on the basic structure and on personal choices? In my opinion, the answer is positive, although with certain constrains related with the personal choices. Therefore, I propose two conditions of the difference principle application on the personal choices. Same conditions cannot be allowed for the basic structure because it does not suffer from the same constrains.

to the internal life of the family. (...) Certainly parents should follow some conception of justice (or fairness) and due respect in regard to each of their children, but, within certain limits, this is not for political principles to prescribe"(Rawls, 2001: 165).

⁶² After a lot of persuasion and appeal on their deepest sentiments and reason.

⁶³ Straightforwardly, Cohen added to this list the case of person's daily business. (Cohen, 1992: 317)

The difference principle could be applied on the personal choices on the same way as on the basic structure of society, but certain constraints must be taken in considerations. Constraints are related with person's limitations of time, space, capabilities and information, while the basic structure does not suffer from the same ones. Therefore, two conditions must be taken into a consideration when assessing whether a person follows the difference principle or not.

First condition: on the level of reasoning and demonstration of the support when making personal choices, the number of social issues, taken into a consideration, could be larger. But usually, the number of issues which are subject of individual positive action is small, and a person usually deals with it locally and narrowly. The basic structure handles all inequalities in society which are of the difference principle concern. But, the person, due these limitations, is bounded to select certain issue or set of issues to contribute.

Second condition: it is not important for a person to search for the worse off among the members of the bottom of the society. The accent is on the action and egalitarian ethos could be satisfied even if a person takes a positive action to benefit a part of a society which s/he considers significantly worse off in comparison with him/herself, in relation with certain one or more primary goods.

In the section of the role of the basic structure, I will argue that providing relevant information to citizens and intermediation in social cooperation should be some of them. However, I would keep an idea that a person cannot always be fully informed and is not always in contact with the worse off. Also, as positive action is individual decision, it should be allowed a prerogative to a person to benefit who s/he considers as a subject of the difference principle.

When a person assesses his/her contribution to the worse-off, the basic structure cannot be the reference because a person should be aware of these constraints and conditions

which are not applicable on the basic structure. However, a person should have ambition to reduce inequalities as much as possible by taking his/her positive action. Optimal requirement of the egalitarian ethos would be that a person pursues equally public and own private good. Ideal requirement of the egalitarian ethos would be that in total, pursuing public good is in demand over the pursuing own private good. Socially sensible and engaged members of the just society with the egalitarian ethos would perceive inequalities and the worse-off positions as a strong drive for action.

CHAPTER 3: Why most of incentive-generated inequalities are unjust?

Rawls argues that the basic structure of society is perfectly just, due its complete loyalty to the principles of justice. So, the basic structure cannot produce unjust inequalities. But, it is different with members of the just society because they live in coherence to at least two parallel moral standards. According to the first standard, they live as citizens in public sphere which is only world of the basic structure and in which rules one and unique political (and moral) conception. According to the other one, they live as individuals without being directed by the principles of justice. It is on their choice will they and in what degree incorporate the principles of justice as guidelines in their comprehensive moral doctrine. Their only ultimate obligation toward the first world is to give a priority to the principles of justice when the issue is related with the basic structure.

The first standard represents maximal reconciliation of social diversity in wide sense without harming liberty. The price is that the private sphere can and will generate inequalities in society, but the basic structure will canalize and amortize them. Behind this logic lies justification why the society should function this way which finish in claim that in such society everyone will be better off than under any other rules and conditions.

I will take that Cohen and me accept all these premises. As I already showed, Cohen allows personal prerogatives which might generate inequalities such as demand for certain incentives, but he asks from a person to make a balance with the difference principle in his/her choices. He does not demand from the members of just society to leave their second standard, or to sacrifice their freedom for achievement of the maximal equality. But he wants

that, in certain degree, inequalities are perceived as unjust and incompatible with distributive justice.

3.1 The worse-off position

I propose that we perceive being in a position of the worse off due incentives as unjust and that the difference principle, followed by the basic structure, cannot make significant difference for the worse off without engaged citizens. As Casal says: “Being the least advantaged in a very unequal society has so many, so frustrating, even life-changing, disadvantages, that it is hard to believe that a small increase in income for the worst off, accompanied by a far greater increase in income for all the already wealthier groups, will normally make things better rather than worse for the worst off” (Casal, 2010: 4) Personal prerogatives are not the subject of the principles of justice, but the result of the personal prerogatives could be that someone ends up in the worse off position and that is unjust. As such, it is a subject of the difference principle, but citizens should acknowledge this link and be aware of it as a potential consequence of their private actions. **Persons** do not want to give up from their personal prerogatives, although knowing that it can harm social justice, but they should participate actively in its restoration, being in the same time disturbed by it as **citizens**.

Cohen cannot accept that all incentives, requested by the talented people, are necessary to benefit the worse off. Casal rightly notices:

“His critique does rest on a fact, albeit a generally uncontroversial one, namely, that the talented do not become incapable of performing well without extra rewards. Instead, they *choose* not to work as productively without their privileges. He concludes that since the trilemma arises only because of individual’s attitudes, it can be solved by transforming those attitudes“(Casal, 2010: 4).

Someone might argue that in the just society, the basic structure is capable to successfully apply the difference principle and that additional “help” of the citizens is not necessary. The just society should not display large inequalities. Two answers could be provided in respect to this claim which would justify the need for introducing the egalitarian ethos in the just society.

First, we can presume that the just society would be even more just if the political conception of justice has stronger impact on social distribution. So, the application of the principles of justice would be more efficient. The idea of justice would be maximized.

I propose to view Cohen’s vision of the just society as an ideal society of the Rawlsian just society. Rawlsian society should acknowledge it as ideal⁶⁴ and detect its deviations, especially in respect to positions of the members whose access to primary goods is seriously harmed. As long as society tries to zoom in that access through basic structure and social cooperation, the society can keep the label – just.

As a second, we can presume that the market-maximizing ethos could have a strong impact on the private sphere and that incentives could produce larger inequalities. We can recall cases of the real world societies which are, at least in a principle, close to the just society (i.e. the US society). For example, Casal and feminists seem to overlap issues of real and just societies, and examine them through normative theory.

Before giving an example with incentive inequalities, I will give an example which is, hopefully, less controversial, to show how the argument goes. I propose to label a woman’s decision to give her newborn baby to orphanage a personal prerogative. As personal prerogative is not a subject of the principles of justice, whatever the reason, interest and

⁶⁴ Cohen’s ideally just society is not the utopist one. I would see the utopist society as the one in which all members enjoy primary goods as much as they want and can.

motivation behind this decision is⁶⁵, it should not be evaluated as just or unjust. In short, the motivation does not matter. If we label a childhood in economically stable, love-caring family a primary good of a child, in my example – the child suffers from complete absence of it and therefore, being in a worse-off position.

Furthermore, basic structure takes care of him/her, as the orphanage is part of it, specialized for such inequalities. But citizens should also view the position of this child as unjust, acknowledging that his/her situation is unjust outcome of their personal prerogative⁶⁶ and be disturbed with it. Citizens want to keep personal prerogatives, and it is collective decision from which they do not want to give up. But, once when they become aware that this collective decision could produce inequalities such as in my example, they should have inner impulse due to their sense of justice to take a positive action⁶⁷ personally. On the first level, child's position is an unjust outcome of mother's personal prerogative. On the second level, child's position is an unjust outcome of collective decision of society to allow and preserve personal prerogatives which could result in such inequalities.

⁶⁵ If focusing on particular personal choice, I claim that it should not be evaluated through its compatibility with the difference principle demands because individual choices in total should display balance of justice. Moreover, it should be individual concern how to achieve this balance and I reject the idea of publicity in this respect. It is plausible to presume that a society could accept some mother's interests as more reasonable than some others. Even some interests could be perceived as unreasonable. For instance, society would not equally understand mother's interest to devote to science and education, and mother's interest to be groupie as a reason why she decided to give her newborn child to orphanage. But, I wanted to show in my thesis that allowance of such evaluation of personal choices is wrong way to think about it. The consequences could be enormous – even dissolution of the just society.

But the egalitarian ethos would help people to be aware of their choices in relation to their outcomes which could be unjust, putting someone in the worse off position or additionally harming those who already are on the bottom of inequality. In my example, every member of society (citizens, the child and the mother) should perceive as unjust for a child to be an orphan as an outcome of personal prerogatives.

⁶⁶ Bad moral luck, social circumstances, personal tragedies could also lead to this position. But if it is a result of such natural facts, it cannot be examined through the conception of justice. For example, recall Rawls' definition of justice in subsection 1.3.1 Rawls on justice.

In my opinion, citizens should have the same obligations toward inequalities, whatever the cause of them is. If we apply it on my example, every orphan should end up in economically stable, love caring family. But as it requires strong argumentation and clarification which is out of scope of my thesis, and is a topic per se, I will not enter in further examination.

⁶⁷ In my example, it would be to adopt a child. Some heterosexual couples adopt children from orphanages because they cannot have their own and they really want it. It is a lucky coincidence. But, in my opinion, the idea of the egalitarian ethos and the difference principle when being applied on the private life in my example would be next (although it is not a receipt and it does not mean that every family must follow it). Family with own children and satisfactory economic standard should be open for adoption of one or more orphans, or for cooperation with a basic structure in respect to this issue.

3.2 Incentive-generating inequalities and the egalitarian ethos

Casal argues that the egalitarian ethos, as Cohen proposes it, can harm liberty and that his answer is not sufficient to avoid liberty restriction which could be result of the social pressure. She puts Cohen's claim in the following connotation: "His response to the Basic Structure Objection, however, argues that merely *because the sexist is an ethos, this does not mean* it cannot be as profoundly influential, and unjust as a legal practice"(Casal, 2010: 8). She thinks that social sanctions could never be avoided, and that it can result in the valuable losses if additional moral obligations are imposed on people to deal with issues for which they have the basic structure anyway (Casal, 2010: 11). But in the same time she rightly detects the idea of the egalitarian ethos and how it could be avoided, as I see it too⁶⁸:

"A variant of this solution, which fails for the same reasons, claims that while sexist, racist or homophobic beliefs restricts the liberty of *others* (women, blacks, gays and lesbians) by spreading false ideas about *them*, the egalitarian ethos is an ethos of *self*-restraint. It does not restrict our liberty because whilst other people's belief about us restrict our freedom *our own* beliefs cannot"(Casal, 2010: 9).

Casal also rightly stresses Cohen's claim that the freedom of occupational choice should be guaranteed to talented people, but it does not requires a prohibition of the criticism of their incentives (Casal, 2010: 14). Her final solution, in my opinion, is very similar to Cohen's idea. She permits a moderate version of the egalitarian ethos, arguing for balance of values⁶⁹: "It seems to me, however, than we have three values, and we cannot preserve them all, the most sensible reaction is to balance all three, rather than discard one entirely to preserve maximally the other two"(Casal, 2010: 13).

⁶⁸ But further argumentation is required. I already presented them in my thesis, in the previous chapters.

⁶⁹ See section 1.2 Cohen on justice.

Casal gives an example with the strike of pilots for higher salary in her homeland Spain which resulted in decrease of salaries of luggage handlers, airport cleaners and so on (Casal, 2010: 13). Even if lower-paid jobs employees were not underpaid, the decrease of their salary could stop them, at least for a while, to escape from these lower paid jobs and to follow occupations which they truly want. The presumption is that most of the people do not dream to become, for example, luggage handlers and that it is a job in which a person ends up due various reasons. The other situation is with being a pilot – the presumption is that it is a real occupational choice of those who are pilots (Casal, 2010: 16).

Casal emphasizes that such result of pilots' strike is unjust, and that the basic structure should find solution for these outcomes. The poverty is the main cause of it (Casal, 2010: 18). Her solution is the following:

“Enhancing the real occupational choice of those who have least of it may require measures like subsidized child-care, adult education, accessible start-up loans, and perhaps a guaranteed social minimum. The latter could offer individuals the opportunity to break free oppressive situations, partners or employers and eliminate not merely the poverty trap, but also the existence of occupations so dreadful that only a desperate person will accept”(Casal, 2010: 18).

But her solution also involves, as I already stated - basically, the Cohen's idea, the egalitarian ethos⁷⁰ as he proposes it. Firstly, my claim is that the egalitarian ethos, as Casal proposes it, is exactly what Cohen suggests. My main concern is with her liberty restriction objection on Cohen's idea and my thesis is based mainly around it, finding solution how to avoid it.

⁷⁰ “...a moderate egalitarian ethos, or an ethos of ‘due considerations’, to use again Mill’s word, seems both unobjectionable and perhaps essential to rally the required support for the proposed reforms. Emphasizing basic structural changes and mutually binding public rules may be a good way to make the most available altruism, by concentrating the human capacity for self-denial where it is likely to be more cost-effective”(Casal, 2010: 21). Comment: she supports her “intermediate solution” between Cohen’s and Rawls’ idea of just society with Mill’s position.

Secondly, to come back at the beginning of her elaboration of this objection, I do not think that we can easily accept her comparison of the sexist ethos and egalitarian ethos. Sexist ethos is not compatible with the egalitarian ethos, and consequentially – with the political conception of justice. Actually, I would go as far as to label it as unreasonable political conception of good which I cannot to imagine to be accepted in just society. The political conception of justice and the sexist ethos conflict directly. Furthermore, I hope, I successfully showed that the egalitarian ethos is inherent to the just society, supporting it from Rawls' writing. The same cannot be said for the sexist ethos. Even if we cannot avoid liberty restriction, we cannot state that it is the same or similar as the sexist ethos restricts liberty. But, I claim that we can avoid this objection completely.

I will provide my own example to show how can my argument work. Some remarks before. My focus is on individual as the egalitarian ethos should be promoted through values, practices and attitudes, compatible with the difference principle. My presumption is that, basic structure can promote it in a way to influence on individual personality in the egalitarian ethos manner. But, it should be left to a person to decide how s/he will reconcile it within his/her personality and manifest it in society. Also, I will give an example which is a bit extreme in a term of presumption how it could influence the most average talented person, but I believe that my example can give an idea how it would work in general.

I propose we imagine a person who is very talented and successful on stock market, making incredibly large amount of money. His intelligence was maximally employed to earn as much money as possible, and his speculations resulted in making this person one of the richest people in the world. It is plausible to presume that his stock market game, in which he won, also resulted in some other persons' losses (directly or indirectly). Some surely ended up as the worst off. If we would enter into analysis of his occupational and other choices, we

would see that they were mainly in coherence with market-maximizing ethos. Logically, we might presume that this person has no any respect for the difference principle.

But, he surprises us. After achieving certain high-degree of wealth and social status, he becomes one of the leading followers and advocates of the egalitarian ethos in the society. It turns out that one of his main motivations for the financial success was grandiose project for making significant contribution for the egalitarian ethos. Beside the project, he himself wants to serve as an example to other talented, market-maximizing people, showing that money has a real value only when it brings good to society.

His project and dream involved the establishment of the university which maximally promotes both principles of justice, and is prominent world's education institution. It gathers students even from the burdened societies⁷¹, spreading the values of just society outside its borders. It becomes known in the world as an institution in which great majority of admitted students can study without financial concerns because it covers almost all their costs. Thank to it, the university attracts talented people whose social circumstances, position in their society and similar aspects would never or very hardly allow them to develop their talents on the prominent educational basis, helping them to escape from their position on the bottom of inequalities.

⁷¹ "Burdened societies, while they are not expansive or aggressive, lack of the political and cultural traditions, the human capital and known-how, and, often, the material and technological resources needed to be well-ordered. The long-term goal of (relatively) well-ordered societies should be to bring burdened societies, like outlaw states, into the Society of well-ordered Peoples"(Rawls, 1999a: 106).

3.3 The role of the basic structure

The basic structure is official promoter of the egalitarian ethos. It should promote it in manner to avoid entering into the content of personal choices, when suggesting what positive actions and choices are in coherence to the egalitarian ethos and contribute the worst-off, and what might result in opposite outcome.

It should inform citizens about the worst off and their position, the primary goods from which they lack, and give ideas how they can decrease inequalities in respect to certain worst-off groups and missing primary goods. The basic structure should also rear and educate citizens in the respect of the egalitarian ethos through its direct relations with citizens. Daily politics should be included in it too. The basic structure could also organize various projects, campaigns and social activities which main stimulant is a fulfillment of the difference principle.

The basic structure could follow the practices of successful moderate social movements and organizations which changed the beliefs of citizens for good, without coercive power and the power to impose the social pressure on citizens. For example, today it is just unpopular and ill-favored to wear real animal fur, while not so long time ago – it was very classy fashion piece. Citizens became aware that it is a skin of dead animal which was (raised and) killed to serve for it. While in the early history, people wear it due lack of other alternatives, contemporary society has numerous good-quality artificial fur and other substitutes to warm them in winters. The activity of animal rights organizations mainly included facing citizens with these and similar facts, asking to think about it and respond on them. In simple words, they managed to direct part of citizens' attention on the issue which they emphasized.

We can speculate what would be the result of the promotion. If trust, solidarity and empathy prevail in relations of social scheme structure as it is presumed in the just society, we do not have reason for concern. Some inequalities would be decreased by the positive action of citizens, but I claim that even significant amount of inequalities could be decreased that way. The power of egalitarian ethos to influence personal beliefs and convictions should not be underestimated. Again, I will recall one example. The Western world cannot ignore a heritage of the sexual revolution in '60s. It simply changed beliefs and perspective of its citizens.

The egalitarian ethos would strengthen and inspire social cooperation. It would maximize the idea of justice in society. Final result would be ideally just society with highly sensitivity and empathy for inequalities, produced by personal prerogatives in which incentives are included.

CONCLUSION

So, is the egalitarian ethos embedded in the Rawlsian society? Contrary to Rawlsian theoretical stream, it is not only compatible with the just society. It is its inherent, embedded element. In this point, I agree completely on Cohen's position. But, Cohen makes a cardinal mistake when allowing evaluation of the personal choices on the basis of their compatibility with the difference principle. Casal rightly emphasizes that it would lead to severe liberty restriction and would result in valuable losses (Casal, 2010: 8). Social pressure could be even more effective in it than coercive power.

My interpretation of Cohen's idea shows that his theoretical elaboration differs from his examples and modes which proscribe how the inequalities could be decreased. On the one side, he talks about compromise idea, balance of justice, internal personal convictions, allowance of personal prerogatives and incentives. On the other side, he states that most incentives are not legitimate personal prerogatives. He gives an example with an egalitarian doctor who works for 50.000 monetary units. The doctor is egalitarian because s/he could decide to work for 100.000 monetary units, but due egalitarian ethos and respect for the difference principle, s/he has chosen modest salary.

Cohen disagrees with Rawls' allowance of market-maximizing ethos in the just society. He presents it as inconsistency in Rawls' theory, while in this point I disagree with Cohen. The egalitarian ethos must not harm liberties, and it is possible if three requirements are satisfied. Firstly, citizens are not allowed to assess if a person respects the difference principle, entering into the content of choices. Secondly, basic structure should promote the egalitarian ethos without any prescription how the difference principle must be satisfied concretely. The aim of this requirement is to avoid any basis for failure of the first requirement. It is an individual decision how a person will respond on the demands of the

difference principle, and a person should be trusted to be capable for it due his/her sense of justice. Finally, Williams' requirement of publicity in its strict reading must not be satisfied. If any of these requirements are not satisfied, in long-run it would lead to dissolution of the just society.

Potential power of the egalitarian ethos should not be diminished. Although it could be described as soft, unstructured power which influence must not be measured and imposed coercively or through social pressure, it will surely result in significant decline of inequalities. It would influence people's beliefs, making them sensitive and to feel empathy toward the position of the worst-off, caused by incentives. Citizens want to keep personal prerogatives, including the right to demand incentives as a part of it. But, once when they become aware that this collective decision produces inequalities, putting someone or additionally harming those who already are in the position of the worst-off, they will feel a need to do something about it personally and take a positive action.

Citizens have a sense of justice, and they cannot be reluctant when social relations are provided in this perspective. Basically, the egalitarian ethos displays an idea that two moral powers⁷² of the members of just society should be in balance in their influence on their choices and life in general. The basic structure should promote it in this spirit, without any further concerns and concrete expectations. In such society, the idea of justice would be maximized. It would be Rawlsian just society in its ideal version, as Cohen suggests it. I do not acknowledge as any plausible reason why we would departure from this ideally just society on the level of normative political theory.

The difference principle could be applied on the personal choices on the same way as on the basic structure of society, but certain constraints must be taken in consideration. Constraints are related with person's limitations of time, space, capabilities and information,

⁷² To recall, the sense of justice and sense for own good.

while the basic structure does not suffer from the same ones. Therefore, I proposed two conditions under which the application of the difference principle on the personal choices should be viewed. First condition: the number of issues which are subject of individual positive action is small, and a person usually deals with it locally and narrowly. Second condition: the egalitarian ethos could be satisfied even if a person takes a positive action to benefit a part of a society which s/he considers significantly worse off in comparison with him/herself, in relation with certain one or more primary goods.

My thesis faces severe critiques from both Rawlsian and Cohen's side due above-presented arguments. I hope to answer them all. Although I consider each of them valuable, for now I have only one message for those who do not approve my disagreement with Cohen, claiming that, although I departure from Cohen's position, I end up on Rawls' position. It would be those egalitarians who see as the only way how the egalitarianism could be achieved, limitations of the personal choices, at least in some degree, as addition to Rawlsian scheme of the just society. They would say that I did not do anything to decrease inequalities and that I am not the egalitarian.

If someone from the Western, liberal and democratic world asks me to pick up one point from the socialist ideology and policy which caused the most enormous amount of injustice, frustration and unhappiness in the socialist society, I would say restrictions in the personal choices in the name of equality. Marxism and the heritage of the socialist system had some precious worthiness, and therefore, their ghost walks even through liberal normative political theory. But if there is something what should be labeled as its huge mistake which the liberal society should never repeat, not even in theory – it would be that. It does not work.

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