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Book Review | *Rescuing Justice and Equality*

Steven Ross

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***Rescuing Justice and Equality*, G.A. Cohen, Harvard, Cambridge, MA, 411 pages + bibliography and index. \$47.50 (hbk), ISBN 978-0-674-03076-3**

It is not easy to say this, but fundamentally, this is a very disappointing book. Jerry Cohen was killed by a massive stroke just several months ago at the too young age of 68. He was, as I am sure every reader of this review must know, a tireless critic of Rawls in the name of a more thoroughgoing egalitarianism. He was also, truly, undeniably, one the nicer guys you could ever hope to meet, one of those people who seem just naturally to like others and have a certain pleasing enthusiasm for life. I bet he was very popular with students, and will be much missed by all who knew him. Given his warm and engaging personality, his early, unexpected death and, for many, the appealing nature of his political positions, it is not, as I say, a welcome task to open a review with a judgment of this kind on his final substantive work, but, sadly, there it is. *Rescuing Justice and Equality* is certainly provocative (to me at least), and Cohen deserves great credit for pursuing the issues he cares about with a certain starkness and determination, but for a work by a philosopher this senior, and with this sort of claim upon our attention, it is also remarkably casual, badly written, repetitive, and gratuitously, almost gleefully dogmatic.

Cohen raises a challenge that any thoroughgoing assessment of Rawls must take up, and, since it is fair to say that Rawls will now be with us forever, it follows that Cohen will be too. But I think that while Cohen has hit upon a genuine problem – indeed, upon what is in political philosophy an unusually *deep* problem – his own *handling* of this problem is superficial and unsatisfactory. And it is unsatisfactory in at least two ways. To begin with, I think Cohen makes two related mistakes regarding how to understand Rawls' argument, or how what is generated by that argument may be justified. In the first place, the considerations that are in play under the veil of ignorance by no means exhaust what we can say on behalf of whatever arrangements are chosen there. (We

may, for example defend a free speech regime for all sorts of reasons *besides* the fact that it would be chosen by parties ignorant of their political conceptions and anxious to preserve their liberty.) And conversely, the claims we affirm as right for the understandings governing the original position are by no means necessarily true as such, and so to be affirmed everywhere. (Conceptions of the good are rightly treated as equal under the veil of ignorance, but we need not say they are in fact equally good, equal *tout court*.) As I will argue, I think Cohen in fact makes both errors in his arguments against Rawls, and against the difference principle.

Secondly, Cohen just fails to take up, with any force or imagination, the maddeningly difficult question of what talent or effort might reasonably ask for itself in a society fundamentally committed to equality of opportunity. Of course, this is a very hard issue. I don't claim to have perfect (or even not so bad) clarity here. But Cohen seems uninterested in what makes it hard to begin with (at least for those not antecedently committed to the bromides of parlour Marxism). The result is quite paradoxical: while the issue of talent or desert is in some ways at the centre of a very long book by a senior philosopher, it is also barely taken up at all, repeatedly set aside, and the reader feels cheated out of the discussion that the subject deserves. The same two or three fairly thin arguments are rehearsed over and over, while what makes the issue both interesting and difficult is never pursued.

In what follows, I will first sketch out Cohen's argument regarding justice and equality, how he gets to where he does. Given his reading of the consideration Rawls points to in his argument, Cohen sees himself (as his title would have it), as *rescuing* Rawls' argument. It is entirely understandable why would Cohen think this, but because I think he misreads the "morally arbitrary" argument, so crucial to his purposes, I think he is dead wrong about Rawls, and, far more importantly, just wrong about what justice requires. He does not "rescue" justice. He instead, quite consistently, arrives at a wildly implausible conception of it. And seeing why it is implausible is I think of genuine importance apart from any issue of Rawls interpretation.

So what is the argument, the complaint, exactly? Although this is a long and wide ranging book, it is driven throughout by a single, simple claim: Rawls' difference principle, as Rawls has articulated it, is insufficiently egalitarian, and a society in compliance with the difference principle could well be wildly unjust. (74 – 78) Cohen is not interested in raising the sort of deep structural challenges we saw say thirty years ago, where Rawls was accused of begging substantive questions in the way the parties were conceived, or in the way the original position was set up (consider the complaints of Nozick, or feminists, or communitarians in this regard). Rather, Cohen feels Rawls has, in certain parts of the argument at least, got the importance of equality absolutely right, and the *reasons why* we must insist on equality in political life absolutely right. (28) The problem is that he fails to grasp that his difference principle, and his justification for it, won't necessarily carry these principles, and these reasons, through

into social life in a substantive way. Or, more accurately, the difference principle allows citizens to renege, in actual life, on the very things they affirmed when in a position of fairness. And this is just wrong, wrong, wrong. (32; 76)

After all, when under the veil of ignorance, deciding what arrangements to endorse, we must, according to Rawls, assess competing arrangements from the standpoint of the least advantaged (say, the unskilled labourer). Obviously, where equality guarantees the most optimal outcome, (as is the case with the distribution of political rights and freedoms), then it is equality we would choose. But, as Rawls says, if inequality were part of an arrangement in which the least advantaged, the ones who had the lesser share, still had more than they would have had under equality, then what is the harm? If under some asymmetrical distribution, I have, having the lesser amount, have more than I would under equality, surely then I would prefer the unequal arrangement, since, even if I have the lesser share of *that*, I have (ex hypothesi) the most that I can have. Thus, unequal distributions that are to the comparative advantage of the one with less are just, since those unequal distributions would be chosen, endorsed, from a position of initial fairness. And this, of course, just *is* the difference principle: differences in wealth (I will just use wealth to stand for any primary good in this formulation) are acceptable only if they are to the advantage of those with the least amount under that distribution, and that means, only if those people are better off than they would be under any other distribution that approached, or reached, equality.

Before getting to Cohen's well known critique of the difference principle, two points of deep agreement between Cohen and Rawls need to be mentioned. There is first the exclusion, under the veil of ignorance, of any knowledge of talent or traits of character that would play out advantageously in a market setting. And this exclusion, or ignorance by the parties of this feature of themselves, simply expresses the idea, which Cohen wholly endorses, that these features of ourselves are "morally arbitrary," and so have no business grounding any claims to differences in outcome. (96) As I will argue later, Cohen spends far too little time on the entitlement issue, on the possibly justifiable role talent or extra effort might play in differences in outcome, and this is largely because he tends to see the "morally arbitrary" line on talent to be so obvious and so decisive as to render the issue hardly worth revisiting. (And this in turn is a very big mistake.) Cohen is absolutely right to see this claim as central to how we are to understand the circumstances under which we will choose the principles that will govern the basic structure of society. He is quite wrong to see this claim as one we should affirm metaphysically as it were, as true in its own right, and so as appropriately controlling wherever it might be relevant. It is precisely because he *does* see this account of talent, and so its irrelevance, as always controlling, that he will see whatever differences we could ever imagine under the difference principle to be "brute," the result of mere selfishness, bargaining, and so forth. And because this reading of the difference principle is the only one Cohen can imagine, he can always reasonably ask that *these* differences be set aside. (32-33, 41)

A second deep point of agreement is this: Cohen has no real quarrel with the fundamental structure of Rawls' assessment strategy: an arrangement really is just if it really is the best it can be for the least advantaged. (29; 94-95) Rawls has the *criterion* absolutely right. The difference principle however is in fact very much *not* that arrangement, or more precisely: not the principle that will inevitably deliver it.

And why is that? The answer is, because it allows for far too much self interest and self dealing, and so for far too much unjustifiable inequality. (72) In essence, Cohen's anti-difference principle argument runs like this. Under the veil of ignorance, we affirm the equal worth of all citizens. We affirm the morally arbitrary nature of talent and those qualities of personality that generate advantages in the marketplace (say a winning smile if you are a salesman, or a willingness just to stay late and check your work a third time if you are devoid of charisma). We affirm the non-controversial worth of primary goods. We are to be risk averse, thereby guaranteeing we will look out for the worst off. And voila, what follows just is the two principles of justice. There will be maximal liberty compatible with equal liberty for all, and if there *are* to be differences in wealth, then those must be part of a scheme that will benefit the worst off. OK, fine. Now we come out from under the veil of ignorance, and lo and behold, people have their particular life plans, conceptions of the good, traits of character, talents and so forth. And they will naturally seek to do as well as they can for themselves and their loved ones within the fundamental structures affirmed. Presumably, the talented or hard working will be taxed highly, leaving them with just enough to make it worth their while to perform these tasks to begin with, thereby leaving all (and so the worst off) better off than they would have been had the talented not performed these tasks at all. But as Cohen points out, surely the talented can now bargain far more aggressively – and within the constraints of so called justice (i.e., within the constraints of justice as Rawls has understood it). That is, all that has to happen for an asymmetrical distribution between the talented surgeon and the unskilled worker to comply with the difference principle is that it has to leave the worker better off than he would be under any available rival. But if the surgeon simply *refuses* to work at all unless he gets to keep almost all of his earnings, then, so long as the redistribution, however meagre, to the worker leaves him better off than he would have been had there been no excess wealth to redistribute at all, this vastly unequal distribution is nevertheless “just,” since it is, after all, in compliance with the difference principle. The surgeon can earn his \$500,000, agree to redistribute one percent, or \$5000 to the worker, and claim, rightly, that this extra \$5000 leaves the worker better off than he would have been had there been nothing to redistribute at all... and voila! It turns out that that greedy America represents the difference principle as well as egalitarian Sweden. But is the greed of the wealthy that makes this so. (57-60, 122, 130, 153)

What has gone wrong? Rawls has failed to realize that the difference principle gets enacted along an enormous spectrum of possible arrangements depending on the *ethos*

of the parties, depending on how mean spirited or egalitarian in temperament, citizens are. (123) And it seems crazy, or at the least inconsistent, to insist on the equality of all, to insist on the equally deserving nature of all, when under the veil of ignorance, when in an initial position of fairness, where we identify what is central and what is spurious for all time from the standpoint of political justice, and *then*, once the principles have been chosen, to be absolutely indifferent to equality, to allow for or not say anything about the selfishness and self dealing that is now fully tolerated, and that can completely eviscerate equality, leaving something approaching class warfare in its wake. If we believe in equality, as we clearly do, hence the structure of the argument, then, we cannot be indifferent to it when in real life the ethos of selfishness may well leave us with none of it (besides whatever equality can be vouchsafed by compliance with the first principle, of course). For Cohen, it is not as if we cannot affirm equality and also make sense of *some* asymmetries of compensation. We can, for example, make sense of giving a little bit more to those who do more dangerous work for example (56, 73), but apart from marginal examples like these, when we turn to the mere fact that some have a talent others do not, the basic thought is, well, so what? Why should the surgeon not be just willing to do this work within the spirit, the ethos, of equality? Why, to put the point philosophically, should we not insist on carrying the very norms we endorsed in the initial position of fairness through into actual work life, where they count for something (for the first time one might say)? (57-60; 129)

Of course, there is the argument that if we insist on equality, there will just be less for all. It just may be that those with talent or ability will just not do the work – that was always the point of the difference principle, to accommodate this feature of human nature, yes? And it is here that Cohen’s argument gets interesting – not for what it says so much but for what it leaves out. Cohen considers this move by the “talented rich” (or “high fliers,” or whatever other term of abuse lies handy) – but: he sets aside any version of any argument to this end that appeals to desert or entitlement. That argument Cohen thinks is not available when within *Rawls* because Rawls has affirmed the morally arbitrary nature of talent distributions. (95-97) And since Cohen thinks that Rawls is absolutely right to have done so, to have made this point about the nature of talent, he thinks that whatever the differences we might find when living in a society in compliance with the difference principle cannot be justified by any appeal to *desert*. Over and over again, he considers a vast range of examples and cases, but in no case can the surgeon say to the worker, look, I deserve this compensation, because it is what my work is *worth*. Since that claim can never be *true*, it is not one we will bother to bring in as a possible route of justification. The only justifications Cohen considers are, as I say, those of the brute bargain maker. Readers may be surprised, perhaps even offended, to see Cohen analogize the talented worker who seeks higher compensation to the kidnapper who points out to the distraught victim that he (the parent) is far better off with the child, and without the ransom money, than he would be otherwise. (38 – 41, 48, 60) Whether the kidnapper has a right to make this demand is of course quite beside the point – given that this *is* the demand he makes, it is then surely rational to

give into it. Given the alternatives, the parent *is* better off once reunited with his child. Given the alternatives, the unskilled worker is better off with the meagre \$5000 redistribution than with nothing, and if the demand may not be judged, we must say the surgeon may *justly* keep almost he makes. Since the talented *can* make this demand, they will. And since all you need to ask is whether you are better off than you would be if you did not let me have my way... well, I am sure the reader gets the idea.

And so, given that the appeal to desert or entitlement has been taken off the table (whether rightly or not we will get to momentarily), it is going to follow that the only justifications for asymmetries within the difference principle will be those grounded in pure, brute, desire, the brutal bargaining of the amoral kidnapper or the indifferent stronger party. And given *that*, it makes perfect sense for Cohen to say – as he always does – no way! You should not *have* this desire, or, more accurately: you should not be allowed to let this desire have this sort of authority. Given what we affirmed in the original position, how can *this* sort of gross perversion of our fair society be allowed? We should instead arrange things along more egalitarian lines in actual society too. We should be encouraged to nurture and act on egalitarian motives, and we should arrange things objectively so that persons find that the differences in compensation actually offered diminish mightily. The surgeon should not mind making only modestly more than the nurse, if any more at all, (since the desire for the contrary is without justification), and the hospital should try to approximate this state of affairs in the salaries offered. How we get to this point is a tricky matter, but so what? This can be set aside. Surely Cohen has done enough in pointing out how inadequate the difference principle on its own is as a blueprint for any sort of real justice in daily life. (74-81) It is enough that we see that the sort of self interested bargaining that the difference principle countenances has no justification, any more than the bargaining of the kidnapper has any justification. Though it may be hard for us to *accommodate* this insight, or to know how to go about living in ways that express it - as it is no doubt hard for us to accommodate the requirement to give modestly that follows from Singer's arguments - still, this *is* what follows, and this is what we should do. This is the society that would *really* be to the best advantage of the least advantaged - one where the talented did exactly the same work they do for maximal compensation and yet asked for no more compensation than anyone else.

Well, that this arrangement would be to the maximal advantage of the least advantaged cannot I think be coherently denied. Obviously, that unskilled worker gets the best possible arrangement ever if everyone provides whatever services they can provide, and the wealth is then divided more or less equally. Thus we approximate Marx's "from each according to his abilities and to each according to his needs" – though not exactly, and in ways that actually improve upon it, for here the second part would be, "and to each according to what equality of distribution entails." Of course, of course – it is not as if "needs" disappears completely from our sense of what the right distribution should be – in Cohen's world, the handicapped child would surely get a wheelchair (I take this

to be obvious) – but to get into this sort of issue would be a distraction. The central point is clear. An argument in which we affirm the worth of all, and equal respect for all, on the level of theory and then cheerfully abandon these norms on the level of practice cannot be right. An ethos of egalitarianism, and the enactment of that ethos, is precisely what is necessary if we are to *rescue* justice and equality.

I believe that Cohen has made a genuinely interesting mistake, or set of related mistakes. I think this for a several reasons. There are certain claims that I have attributed to Cohen that I think are not quite right, claims I would dispute quite apart of their implications. But the main reason I think Cohen has made an interesting mistake is because of where he winds up. Cohen winds up affirming a conception of social relations that truly makes no sense to me. And whenever a philosopher does *that*, whenever a philosopher winds up in a place that is no longer recognizable or plausible given the most non-controversial pre-philosophical claims we can make, then we just *know* he has made a mistake. And so it is here. The idea that there is no place, when assessing differences in compensation, for any appeal to desert or talent or entitlement just has to be wrong. And that appeal to desert often generates a justification about as good as a justification ever gets just has to be right. Surely John Rawls *deserved* the Harvard chair he held, with its excellent salary, its minimal course load, its expense account, far more than I would have. I suppose I could, in a footnote, take the time to explain patiently just *why* this is so, but for the time being, I am pretty confident that this is one claim even my sharpest critic will concede. You might say, well, OK, maybe, but he should have been willing to do this work, to write these books and articles, for whatever the figure would have been had the cumulative wealth of the nation been more or less divided equally. Rawls might be five times more talented than Ross (I would put the ratio far higher, but this will do) but that does not mean he *deserves more* than Ross. And if we really say *this*, or really believe it, then we have begun to imagine or construct a world that in fact makes no sense – or so I will argue. Of course Rawls is more talented than Ross, and of course he deserves something better than what Ross deserves. The idea that we would arrange things so that this undeniable platitude would not get *some* genuine representation in the world is about as coherent to me as the idea that we might try to arrange things so that people did not fall in love because of the way they found others attractive. Or seek the company of those they found more witty or intelligent. These *judgments* of merit or ability or talent are so natural to us, so deep for us, it might really be impossible to overstate this feature of our lives. It is hard to imagine *trying* to form a sentence, throw a ball, hum a tune, or repel an intruder without also being the kind of creature who notices, is struck by, those who can do these things better. Chances are, the first time you noticed and were struck by someone doing something that you wanted to do, but better, it was your parents. When I say these judgments are “natural,” I really mean it. And if these judgments are inevitable simply to noticing the world, simply to being in it, the *expression* of these judgments must be too. And it is just not obvious what form the expression of these judgments might take. We might give praise, a prize, an offer or marriage – even a

salary. I cannot imagine a world in which these judgments were not made and once made, expressed in some tangible form or other any more than I can imagine a world in which sexual attraction did not play a role in courtship. (You can *try*, of course, but why would you bother? The results just can't be that interesting.) The idea that we might not want to represent the judgments we naturally, and rightly, *make into life* – or more precisely, that we might be at home in a world where these judgments were either not made or not extended – this to me really is “pure philosophy,” almost silly, certainly not in any way plausible. When we have reached a point in our argument where we affirm a world like *this*, and further, even treat it as some sort of ideal, then it we know we have made a wrong turn and must start again. If someone really does such and such better: does philosophy better, plays the cello better, grown tomatoes better, makes conversation better, makes movies better, why not say this, acknowledge this? And if it *is* to be acknowledged, what then is wrong with this acknowledgment taking the form of praise, or vacation time, or more money – in short, in the form of a *better job*?

But wait a moment – what about Rawls' own alleged hostility to talent? Doesn't Rawls himself see talent as “morally arbitrary” and so as rightly not grounding any claims to special treatment? It is pretty undeniable that he conceives of the parties in the original position as having no *knowledge* of their own talent or abilities when determining the fundamental principles of society – *that* is pretty clear. And Rawls is clearly not satisfied with mere “equality of opportunity,” allowing our natural talents and abilities the outcome they would have in the absence of discrimination or class structure. (96) Cohen turns to a nice summary by Thomas Nagel for an account of Rawls' argument against allowing talent to make a difference. It is simply a matter of following the right, intuitively compelling political principles with which we begin, through, consistently, to their natural conclusion:

... the principle of negative equality of opportunity which excludes deliberate discrimination, depends of the belief that the social system should not assign benefits or disadvantages solely on the basis of differences between people for which they are not responsible and which they have done nothing to deserve...

Yet a system which guarantees only negative equality of opportunity permits class inequalities [which are equally undeserved] to develop...It must therefore be supplemented of the resources that will permit each potential competitor to develop his natural abilities and therefore to be in a position to take advantage of his opportunities. That is what Rawls means by fair equality of opportunity.

The same reasoning leads him further. Even under a regime of fair equality of opportunity, undeserved inequalities would continue to arise... people are not equal in natural ability, and their natural or genetic differences will continue to affect the benefits they gain from interaction with the social and economic order. Yet this too is

morally arbitrary, for people are no more responsible for their genetic endowment than for their race or the economic status of their parents. Consequently a just society will counter these underserved differences in benefit to the extent that it can do so without hurting the very people whose arbitrary penalization it is most concerned to rectify, namely, those who come in last in the socioeconomic race. Hence, the difference principle. (161)

And if Cohen is just carrying forward the principles that Rawls himself sees right to endorse, how wrong can he be?

Well, this is an interesting issue. I think Rawls' relation to the moral arbitrariness of talent argument (what I will sometimes call the "morally arbitrary" argument) is subtler than first appears. To begin with, I believe, when reconstructing Rawls, this argument, this commitment, should be thought of as confined to the understandings governing the original position. Like other claims of this type, it is not meant to be thought of as getting at the whole truth of the issue in question. Consider: we also treat all conceptions of the good as equally justified in the original position, but it hardly follows we must say they in fact *are* evaluatively equivalent. It is the right thing to say when constructing the principles governing the basic structure of society. It is not the right thing to say *tout court*. Similarly, we see the parties under the veil of ignorance as self interested, and risk averse. This does not mean (as earlier critics in fact supposed) that Rawls thinks of *persons* this way, as always this way, or as essentially this way. Hardly. Second, I think what it means to think of talent *as* "morally arbitrary" may be far subtler than is usually realized. To put the view I will argue for in a nutshell, the moral occupies a small subset of the evaluative. It may well be, to speak in Kantian terms, that talent cannot ground any claim to *moral worth*. But the issue of moral worth refers to but one assessment framework among many. Wit, courage, intelligence, (to continue in the Kantian voice) may well not be "good in themselves," but Kant would be the first to concede (since he does so in the very first paragraph of the *Groundwork*) that all can still be praised, assessed, and acknowledged along meritocratic lines.

These two points are not unrelated. It is in part because I believe that the *moral* arbitrariness of talent does not get at the whole truth about the *assessments* talent may legitimately ground that I also believe, when thinking about Rawls' relationship to the "morally arbitrary" argument, we should think of Rawls' commitment to it as confined to the understandings governing the original position alone. That is, I am attributing to Rawls the position I think independently best. I will say a bit more about this below, but let us return to Cohen.

I think it is central to understanding *Rescuing Justice and Equality*, central to understanding how it is that Cohen winds up where he does, to see that Cohen affirms the "morally arbitrary" argument as *just true*, and further, as always controlling wherever it is relevant. This is why he sees the disparities in compensation always and

only in terms of brute power, the truculent insistence on simply getting one's way. While this sort of story does not generate *much* of a justification, and the justification story it generates is easily overpowered by the arguments Cohen brings to bear against it, the *sort* of justification it generates is not, at least, ruled out from the start by way Cohen understands the "morally arbitrary" argument. And that's why the brute choice justification is the one Cohen returns to, elaborates upon, and defeats over and over again. It is, more or less, because of the "morally arbitrary" argument, the only one in play. The "morally arbitrary" argument is like a very big, very determined doorman at a night club, and the desert or entitlement argument for differences in compensation is very much *not* on that guest list. It never gets in the door. Why should it? If differences in talent really *are* morally arbitrary, then why should they ever ground any difference in outcome?

Well, at this point, I am afraid it just can't be avoided; we must do what Cohen does not, i.e., think about the morally arbitrary argument in some detail, what it does and does not show. Let me begin by saying just what I understand the morally arbitrary argument to be. I take the argument to be given in the following two claims:

- 1) talent is distributed, or attaches to persons, for reasons that are themselves random, causally contingent, and so morally arbitrary, (95-96) and,
- 2) therefore, as a result of (1), no one can have any morally justified claim on any good in virtue of talent.

OK, first a point about completeness. Let us assume you think this argument is true. That does not mean you think, or have to think, this argument gives us the whole truth about the issue in question. I mean, you might well think that every intentional state is a brain state, but you might also think that is not all there is to say about the matter, that there are true, non-reducible descriptions of mental states that are not brain state descriptions too. It might be *hard* to say how these are both true, and it might be hard to say how intentional non-physical descriptions and pure brain state descriptions *fit*, sure, but you don't get anywhere by denying half of the puzzle, by just repeating the brain state half. You just stop the puzzle from arising, since each half of *this* puzzle, each statement in its own right, is as compelling as the other. I think something comparable might be true here too. You might say, yes it seems the morally arbitrary argument is right, and at the same time, it *also* seems just as right, just as undeniable, that Rawls deserved the chair he held at Harvard, deserved this job, far more than Ross. You might be puzzled as to how both can be true (I am not, but it is certainly possible that someone could be) but you hardly have to deny what the "morally arbitrary" argument affirms. You just have to be committed to figuring out how to fit these two together, how to give an account of the world in which the truth each expresses is somehow accommodated. But as the brain state / intentional description case is supposed to show, this – being committed to some accommodation but being unable to say just what this account will be – is not so unrespectable a position in philosophy as you might think. I

put this point forward because, though I *do* have a possible solution as to how it is that the “morally arbitrary” argument can be true, and it also be true that Rawls deserves his chair, the reader does not have to accept *my* solution, or any solution, to be able to affirm, quite consistently, the thought that there must be *some* solution. There must be some account in which we make sense of both being true, because if any of these two claims is the one we cannot give up, not easily, not naturally, it is the claim about Rawls deserving his chair, and deserving it more than I do.

Now let me sketch the accommodation solution I favor. Because, as was suggested above, this solution is broadly Kantian in character, it is not going to be too hard for me to attribute this view to Rawls too. Once I have done that, I will say a bit as to how this conceptual framework would play out in actual social practice, what it would mean to be a Rawlsian, committed to excluding talent when within the original position, and allowing it a kind of robust representation once the veil is lifted. In short, I will say something about what it would be like to have a world governed by the difference principle where the difference principle in turn is understood in ways not vulnerable to Cohen like objections.

Rawls, of course, is not only constructing a distinctively liberal political theory; this is liberalism with a distinctively Kantian flavor. Unlike utilitarianism which thinks of persons as equal claimants to an aggregative good, here we conceive of persons as autonomous deliberative agents, deserving respect. And it will be crucial, on this view, that a just society *expresses* or *mirrors* this conception of persons in a satisfactory way. When thinking of persons in this way, as autonomous deliberative agents, obviously, the degree to which they otherwise differ will not matter. That people are in fact (in addition to being autonomous) more or less intelligent, imaginative, lively, entrepreneurial, witty or kind is not relevant – if *all* you are considering is the fact that persons are autonomous, how could it be? So, if we wanted to say how society might respect persons as autonomous creatures, what understandings such a society would be bound by, it makes perfect sense to think of the following procedure as a way of figuring out what these understandings should be. Let us imagine hypothetical parties that are to choose the fundamental principles they will live by, and we imagine these hypothetical parties as governed by self interest but ignorant of all the ways in which they otherwise differ. Thus, all that will get carried forward into the assessment of possible rivals is protection of persons as autonomous creatures. To say that talent is “morally arbitrary” is just to say that this difference across persons is irrelevant to what it is to respect persons. And so it is. The unskilled labourer deserves just as much respect, qua person, as Harold Pinter. And Pinter would be the first to say so. Differences in talent, like any other contingent fact about us (our beauty) are meaningless, from this point of view. Ignorance of one’s own talent under the veil of ignorance is just a way of expressing this evaluative fact, just as ignorance of one’s race or religion expresses the counterpart evaluative fact about race or religion. These differences, and what we think of them, are irrelevant to *this* project; “ignorance,” in

this framework, simply makes sure (or expresses the conviction that) they do not count, and that what *should* count (alone) does. Respecting persons will be to treat them in certain ways (we do not, having not yet chosen the principles, know yet what these ways are) *regardless* of their talent, or regardless of their race, or regardless of their gender. This much we can say before we even know what the content of respect for persons will be. Whatever it is, whatever it turns out to be, talent variation must be, *irrelevant*.

Now, it was Rawls' great genius (*inter alia*) to see that this project of respecting persons in framing social principles could not be completely unrelated to access to resources. Kant himself was famously hostile to allowing interest in ends into his account of moral goodness, and the subsequent impoverishment (and obscurity) of the categorical imperative test testifies to the limits of this strategy. Rawls is happy to borrow a page from utilitarian theory and worry about *welfare* when worrying about respecting persons. It simply is not plausible to say one is committed to respecting persons as autonomous agents and then not worry *at all* about the resources persons have at their disposal to pursue reasonable life plans. This is why the parties do not stop when they have chosen the first principle, giving them all equal freedoms. We would not want someone's ability to make and live out their life choices to be non-existent simply because of a lack of competitiveness in the marketplace. *Some* account of talent-indifferent wealth distribution must be determined as well. Given the way Rawls has set up the original position, given self interest combined with risk aversion, of course, the difference principle alone can follow. The difference principle describes a distribution that is maximally favourable to the least advantaged, or more accurately, those least successful within the marketplace. Under the veil of ignorance, concerned only with the least advantaged, we are necessarily indifferent to *how* it comes about that a distribution might satisfy the difference principle. And this is where Cohen comes in – he imagines a story in which the difference principle is satisfied through coercion and greed. When *that* story is told, it is always right to say, as Cohen always says, but we could do so much better *without* the greed! Why have *that*? Under the veil, blind to different ways in which this pattern could be satisfied in real life, we are vulnerable to Cohen like considerations. But this is not unlike Nozick's famous (and more facile) jibe about the emptiness of equality, conceived merely as a pattern. Someone who believes in an equal distribution hardly contemplates the case where the thief steals half of my \$100, leaving us both with \$50. It would hardly be an interesting counterexample to egalitarianism to point to that narrative and sneer, "so is *that* what you had in mind? You shouldn't complain; it *is* "equality," isn't it?" From the fact that the *parties* under the veil of ignorance are conceived of in ways that makes them unable to distinguish different ways in which the difference principle could be satisfied (being interested only the best for the least, as such) hardly means that *we* cannot say anything on this issue or distinguish between different ways in which the difference principle could be realized.

Cohen presents differences in compensation as the result, and so the expression, of adversarial bargaining. Of course this is one way in which substantive differences might arise, but it is hardly the only one. Differences in compensation might instead be arranged to reflect well founded beliefs about entitlement or desert. So, for example, I might think (I do think) that, given the nature of the work, and the nature of what you need in the way of training to be able to do it, a policeman, or a nurse, or a teacher, deserves to make at least \$80,000 in the New York area. And I might well think (I do think) that someone who performs the job of a doorman or security guard does not deserve a salary anywhere near that high. Imagine extending these episodic assessments, and constructing a more or less comprehensive scheme, in which we correlated all jobs or occupations to a compensation level that reflected our considered views about desert. This is not so crazy an idea as might first appear. A scheme of criminal law reflects a comprehensive scheme of well thought out views about what every punishable act deserves. So, analogously, imagine a more or less comprehensive account of kinds of work and well considered views about what each kind deserved. (These views do not have to be perfect or “beyond challenge,” they just have to be reasonably well *justified*.) Imagine a society structured along these lines; well, that society would surely comply with the difference principle. After all, such compensation levels, being well considered or justified, would certainly attract the efforts of the talented, and as a result these differences in compensation would be part of a practice that was to the advantage of the least advantaged. (Notice: it is not the “differences in compensation” *as such* that are to the advantage of the least advantaged; it is the *policy* or *practice* they are a part of that is. Obviously, it is not “grades as such” that advance educational goals; it is the practice of justified evaluation that grades *express* that does, if anything does.) Let us call this sort of compliance with the difference principle “entitlement-based compliance with the difference principle.”

Now of course, the idea of jobs or occupations being captured within some comprehensive entitlement scheme can only go so far. There are some ways of being in the economy where compensation can fluctuate wildly without raising any serious question of desert either way. If a teacher taught responsibly for a term and was not paid a decent salary I would think this most unjust. He did not get what he *deserves*. But actors, rock musicians and real estate salesman can work very hard and make very little, or work relatively little and make a great deal – and here, the idea of desert or entitlement gets very little foothold either way. Before some ways of making a living, it seems the issue of desert does not really arise; barring fraud, the outcome that “should” occur is simply what does occur through the expression of individual market choices (it is precisely this intuition that Nozick’s Wilt Chamberlain example exploits so well). The rock musician who makes nothing after years of trying has nothing to be indignant about (which is not the same as saying he has nothing to *complain* about), and the bands (like Abba) that make millions though talentless ought not to raise any reaction of indignation from others (very much *unlike* the grossly overpaid CEO case). My thought is: we imagine a world in which all that *should* be tied to a well thought out

conception of compensation *is*, and all the rest is rightly left to market outcomes. Let us further imagine that incomes generated through the second category are taxed, when high, at a high rate. This would be a world in perfect entitlement compliance with the difference principle.

It is clear, I hope, that *this* realization of the difference principle is not really vulnerable to Cohen-like objections. I mean, of course, we *could* ask the trained nurse with ten years experience to take a \$20,000 pay cut, (assuming she makes \$20,000 more than she needs, or the average, whichever) since doing so certainly would be to the advantage of the least of advantaged, and she *might* be altruistic enough to do it. But why should we? There is, *ex hypothesi* absolutely nothing unjust about her income *now*. And on my reading of Rawls, from the fact when under the veil of ignorance, we are to assess rival arrangements from the standpoint of the least advantaged most emphatically does *not* mean that this consideration trumps everything else once we are in real life. One might as well say because when under the veil of ignorance we must treat all conceptions of the good as equal, parents cannot, in real life, claim with a straight face in front of their children that a life of friendship and love is better than one of selfishness. Cohen completely misses the way the standpoint of “best for the least advantaged” is a *device*; using it, under the veil of ignorance, we make sure that respect for persons has an appropriate representation in the matter of resources. It is not a criterion-from-God we are to be slavishly devoted to maximizing everywhere. But that is exactly what Cohen thinks.

And if this is right, we can say something further. An entitlement based realization of the difference principle is not simply the best (by which I mean, “most justified”) version of the difference principle we can imagine; it is I think the version of the difference principle we can think of as contemplated by the parties under the veil of ignorance. After all, we are to imagine the parties having access to all relevant non-controversial claims. Consider the following claim, which I will call “super-modest Lockeanism”:

S-ML: significant differences in talent and effort, expressed in labor over time, should not make *no* difference whatsoever in compensation.

We need not, in affirming super-modest Lockeanism, affirm anything like a Lockean conception of *property* or property rights. No one is saying that the farmer who stays up late, attends to his fields with assiduous devotion, and grows one and a half as many tomatoes as his neighbour, has an absolute Nozick like property-claim on every extra dollar he winds up with. But it would be very strange, very strange indeed, if that farmer and his less talented farmer-neighbor would up with *exactly* the same amount too. That is all, really, that super-modest Lockeanism says. Significant differences in talent or effort expressed over time must make *some* difference in outcome. And because this idea, is, for me, so central to the world we know that to deny it would be to

risk sense, I have no difficulty imagining the parties having access to it, or affirming it, when deciding upon the basic structure of society. Of course, you cannot know *your* talent. And that, combined with risk aversion, generates the difference principle. But just because you cannot know *your* talent hardly means you can have no beliefs *about* talent. That would follow only if there were no general beliefs about talent to be *had*. And why would anyone ever say *that*? Suppose a group of us were to found a university, and at the point of this initial founding, we don't know anything about how talented we may prove to be in higher mathematics. Fine. But from this it hardly follows that we would not want grades in our mathematics courses, not want ways of tracking ability that in turn had differential outcomes for the bearers of that ability. We can affirm general non-controversial claims about talent in the absence of knowing where we fall in the spectrum of talent. Super-modest Lockeanism is exactly such a claim. And so I imagine the parties under the veil of ignorance affirming the difference principle *expecting that* when realized, it will be realized in its "entitlement compliance" form.

And of course, on this reconstruction of Rawls, and on this way of understanding the difference principle, Cohen's criticisms of Rawls, his gleeful pokes about "high fliers" (153) and the "bastards" (199) who make more than others, the analogy with the kidnapper who immorally demands a ransom (40), is all completely, annoyingly, off the point. These criticisms turn out to be not very interesting, not very deep, after all, for they set aside from the start the one thing that might make compensation differentials justified, and then argue, unsurprisingly, that such differentials are not justified!

And that is really pretty much the essence of it.