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GENDER, SOCIAL JUSTICE, AND PUBLICITY

PAULA CASAL
Catalan Institution for Research and Advanced Studies and Pompeu Fabra University, Barcelona
paula.casal@upf.edu

ABSTRACT
Suppose that the basic structures of two societies conform to Rawls's principles of justice. One of these societies, however, includes—in addition to a just basic structure—an egalitarian ethos that further reduces inequalities that do not benefit the least advantaged. G. A. Cohen and others have argued that the second society is more just, thus rejecting any restriction of Rawls's principles of justice to the basic structure. Andrew Williams has revived the basic structure restriction in the form of a publicity requirement. This paper highlights various problems with this attempt. In addition, it shows that an egalitarian ethos admits various plausible reformulations that could meet Williams's publicity requirements. This only amounts to a partial victory for Cohen, however. In fact, the Rawlsian position could come out of this discussion strengthened, not because it can resist the egalitarian critique, but because it can incorporate its essence in the form of a set of more precise and specific public rules.

KEYWORDS
Basic structure, publicity, egalitarian ethos, John Rawls, G. A. Cohen, Andrew Williams.

1. INTRODUCTION

Suppose that in our furniture-making cooperative we are all paid the same hourly rate, work approximately the same hours, and so earn very similar amounts. Let us call this phase *Unproductive Equality*. We then experiment with payment by output, and discover that the power of economic incentives is such that our company's productivity has increased very noticeably. In fact, we are all now doing better than before.[1] Our salaries, however, now differ far more than they used to do. We may call this new phase *Productive Inequality*. Many authors do not find the new ine-

[1] An *incentive* is a payment that is required for some individual to prefer one job to others. When, in order to obtain a higher salary, individuals bluff about loathing a job they actually like, they obtain *rent*, which is the portion of the salary above their reservation price. Rawlsians may want to defend only incentives, and not rents, but the arguments they employ, such as their appeals to efficiency and publicity, tend to apply to both. See e.g. Williams 1998; 2008: 44ff., 102.

qualities unfair. In their view, it was good that people were allowed to work somewhat different hours if they so wished, and it is now good that some are able to work more and earn more as a result. One could perhaps make people work equally hard without incentives, for example, by penalizing them unless they do so, or by conscripting individuals into the more socially needed occupations. We may call this *Productive Equality.*

This case involves a trilemma that forces us to sacrifice at least one of three important values: liberty, equality, or efficiency (see Williams 1998: 227–8; 2008: 115; Wilkinson 2000, ch. 6). Confronted with this choice, many will sacrifice equality. This appears to be the conclusion reached by John Rawls and his followers (e.g. Rawls 1999a: 64, 68, 252). They reject Productive Equality, because they believe (i) that it compromises occupational freedom, and (ii) that such freedom should not be compromised in order to secure greater equality or greater material gains, in any society that has already reached a comfortable level of economic development.

When a certain degree of material security has been achieved, liberty takes priority. "The priority of liberty," Rawls explains,

> means that we cannot be forced to engage in work that is highly productive in terms of material goods. What kind of work people do, and how hard they do it, is up to them to decide in light of the various incentives society offers. (2001: 64)

This is known as the *Liberty Objection*: we should not sacrifice occupational liberty for the sake of greater material gains. Liberty takes priority.

Rawlsians also deny that Productive Equality is required by justice, because they also believe (iii) that compared to Unproductive Equality, Productive Inequality benefits some and is economically detrimental to none, and (iv) that non-detrimental inequalities are not unjust. This thought finds expression in Rawls's Difference Principle, which rejects financial inequalities that are detrimental to the worst off, and permits only non-detrimental inequalities (Rawls 1999a: 65ff.; 2001: 61ff.).[2] On this view, inequalities which are Pareto superior, because they benefit some and harm no one, should be allowed regardless of their magnitude.[3]

G. A. Cohen and other authors, like Joseph Carens (1981) and Martin Wilkinson (2000), criticize this conclusion, arguing that an egalitarian ethos that requires talented individuals to share their good fortune with the least advantaged will create less inequality without jeopardizing liberty or Pareto improvements. An egalitarian ethos that rejected any inequality that was not maximally beneficial to the least advantaged may not eliminate all inequalities but will create fewer inequalities than its absence.

[2] Inequalities may have to be limited, however, if they become large enough to threaten the principle of Equal Liberty.

[3] Real income inequality is at an all-time high in the US, with the top decile accounting for 49.7% of the income share. See e.g. Saez 2008-2013; Piketty 2014.

A standard Rawlsian response to this argument is that, even if Cohen was right, and an egalitarian ethos that replicated the difference principle protected Pareto improvements while respecting liberty, such an ethos is not *required* by justice.

Rawls begins *A Theory of Justice* by stating that "justice is the first virtue of social institutions, as truth is of systems of thought" (1999a: 3), and later clarifies that "the primary subject of the principles of social justice is the basic structure of society, the arrangement of the major social institutions into one scheme of cooperation" (1999a: 47). An egalitarian ethos could be highly beneficial for the worst off, but it is not required by justice. This argument is usually known as the *Basic Structure Restriction*, or the *Basic Structure Objection*.

This paper discusses the restriction as Andrew Williams interprets it and presents various objections to it. The paper proceeds thus. Section II distinguishes two interpretations of the basic structure restriction, as well as some problems that emerge with each of them. Section III explains a further interpretation of the restriction proposed by Andrew Williams. Sections IV and V note various problems with Williams's proposal. Section VI explores some ways in which, even if Williams's objections to the egalitarian ethos succeeded, egalitarians could overcome them by reformulating the egalitarian ethos. The paper ends by noting that all of this only amounts to a partial victory for Cohen. First, the ethos may still be implausibly overdemanding for the kind of society that Rawls had in mind. Second, the Rawlsian position could come out of this discussion strengthened, not because it can resist the egalitarian critique, but because it can incorporate its essence in the form of a set of more precise and specific public rules.

2. THE BASIC STRUCTURE RESTRICTION

To challenge the basic structure restriction, Cohen draws on Susan Okin's observation that Rawls sometimes refers to the basic structure *narrowly*, as a set of *legally* coercive institutions, whereas on other occasions, he refers to the basic structure *broadly*, as something that includes all major social institutions, such as the family. Family structures may be backed legally or through a combination of "convention, usage and expectation," involving tradition, religion, or social pressure (Okin 1989: 92–3; Cohen 2008: 132).

According to Cohen, the *broad* understanding is more plausible, and fits better with Rawls's declaring the basic structure "the primary subject of justice," because "its effects are so profound and present from the start" (Rawls 1999a: 7). A *narrow,* legalistic understanding seems arbitrary, as many sexist conventions and traditions, for example, have profound effects and are clearly unjust even when not legally enforced.

Cohen asks us to consider, for example, a sexist ethos, "consistent with sex-neutral family law," which burdens working wives, but not husbands, with most domestic chores (2008: 137). Such an ethos will be both profoundly influential and unjust. Cohen notes that the slogan "the personal is political" is not only "widely used by feminists," but is also "a feminist idea" with a *substance* and a general *form*.

> The substance of the feminist critique is that . . . Rawls . . . unjustifiably ignores an unjust division of labor, and unjust power relations, within families. . . But the . . . form of the feminist critique . . . is that choices not regulated by the law fall within the primary purview of justice. (Cohen 2000: 123; 2008: 117)

Cohen uses the feminist critique of the family to rebut the narrow understanding of the basic structure, but finds Okin too charitable to Rawls (Cohen 2008: 117). He thinks that to declare the family basic-structural (Okin 1989: 93) is not enough. Rawls must rather abandon the narrow understanding of the basic structure, or else remain unamenable to feminist reform (Cohen 2008: 117–18, 134).

Cohen argues that inequality could be greatly reduced if workers adopted an *egalitarian ethos* requiring them to work harder and take more socially useful occupations, without demanding higher salaries for doing so. Differential payments should, instead:

(i) compensate for special labor burdens,

(ii) reflect a "modest" agent-centered prerogative to be partial to oneself to a reasonable extent (Cohen 2008: 61), or

(iii) motivate activity that cannot be summoned at will.

Since such an ethos could have profound effects, an appeal to the broad understanding cannot exclude it. Cohen concludes that Rawlsians thus have to choose between an implausibly narrow understanding of the basic structure or a broader, more plausible understanding that is toothless against Cohen's critique of Rawls.

In order to defend Rawls's basic structure restriction while granting that sexist families are unjust, Andrew Williams restates the basic structure restriction as a publicity restriction: basic-structural rules need not be *legal* but must be *public*. Consequently, he writes, "we should . . . favor conceptions whose scope is restricted to publicly accessible phenomena" (Williams 1998: 245), and adds:

> insofar as we care about [sources of inequality] for reasons of justice, we do so because they produce inequalities in ways that can be regulated by public rules. Thus, when faced with sources of inequality incapable of such regulation, we can support our denial that they involve injustice. (245)

He lists the requirements of *publicity* thus:

> individuals are able to attain common knowledge of the rules' (i) general applicability, (ii) their particular requirements, and (iii) the extent to which individuals conform to those requirements. (235)

Responding to "the personal is political" with the rival slogan "justice must be seen in order to be done" (246), Williams argues that a gender-egalitarian ethos can be clearly stated, and that failure to conform to it "is readily apparent to the victims of the injustice" (242). By contrast, it is difficult to know whether individuals have conformed with Cohen's egalitarian ethos (238–42), so we can justify denying that it is required by justice. Williams's conclusion is that unless someone supplies a suitably public egalitarian ethos, we should "trust in tax rather than moralized markets" (246).

Cohen responds that his ethos is as public as other Rawlsian principles (Cohen 2008: 363), but also denies that justice requires the sort of determinacy and precision that, according to Williams, Rawls demands (22, 149, 277, 344ff.).

Williams responds to Cohen's reply by restating the publicity objection in somewhat softer terms (Williams 2008). He omits his requirement that "justice must be seen in order to be done" and his general rejections of "moralized markets," and no longer refers to publicity as a "condition" (Williams 1998: 233), a "requirement" (233), or a "restriction" (242, 243, 245). However, he still insists that the basic structure "excludes influential activities incapable of regulation by public rules" (Williams 2008: 479, 480), and that facts about limited information may suffice to explain why justice does not require an egalitarian ethos (490), leaving us without even a *pro tanto* reason to follow it (492).

3. REFORMULATING THE RESTRICTION

Let us first distinguish various ways in which the basic-structure restriction can be interpreted.

Rawls says that "basic" refers to "major" social institutions, including political arrangements like freedom of religion, economic arrangements like competitive markets, and social arrangements like the monogamous family (1999a: 6–7). Since he repeatedly refers to the "major" social institutions that influence individuals' life prospects, this is the most natural and justified reading of the restriction. And it is also the one that makes his theory more plausible and coherent. The least plausible reading of "basic" is "legal."

Cohen is right to reject a legalistic, narrow understanding of the basic structure and to deem it incompatible with feminism. A broad understanding, by contrast, which deems the "major" social institutions "the *primary*" (7) or "the *first* subject of justice" (347), is not incompatible with feminism. It is more urgent, and cost-effective, to attend first to influential and widespread unjust practices than to one-off events that may even lack social meaning. For example, the occasional genital cut of a sensation-seeking couple lacks the purpose, significance, and consequences of standard female genital mutilation. The parties in the original position would not

want the individuals they represent to live in a society where this practice is as systematic as it is in some countries today, regardless of legal enforcement. And granting "primary" attentions to major institutions, and only "secondary" attention to minor institutions is not incompatible with feminism or common sense. In trying to make society more just, it makes sense to focus first on laws enforced by the state that are discriminatory and harmful to women. Having reformed the main institutions and laws, we can then attempt to modify minor institutions, and finally address the behavior of any individuals who continue to discriminate against women, when social institutions no longer do so. We could agree that "major" institutions are the "first subject of justice," and then add that minor social institutions are the second subject, and that individual actions are the third. Since Rawls later describes institutions as "public systems of rules" (1999a: 47), however, Williams argues that "basic" means "public," a term that, in turn, he interprets in a very specific way. Public rules include legal rules, but they do not include everything and they cannot include, in his view, this particular egalitarian ethos.

Rawls distinguishes three levels of publicity.

First level: Agreement. First, Rawls appeals to the value of publicity to discard principles that have a hidden source, such as "government-house utilitarianism" and other forms of esoteric morality, whether theocratic or lay (1999a: 398). For example, we should reject systems where only an elite knows the source or ground for our rules, imposing some rules that people would not have agreed to; for example, because they violate the "strains of commitment." We should know what we are committing ourselves to, and not find ourselves in situations in which we may suddenly discover an unbearable sacrifice is expected of us because of certain rules (Rawls 1999a: 153, 371). Instead, he argues, first principles ruling major institutions should be publicly shared (1999a: 510; 1999b: 255, 324), in the sense that we should know about them as if they "were the result of an agreement," and others should know that we know; although he notes that this is just "a reasonable simplifying assumption" (Rawls 1999a: 48), because this condition is not always fulfilled by actual institutions.

Second level: Shared methods. The "second level of publicity concerns the general beliefs in light of which first principles of justice themselves can be accepted" (Rawls 1999b: 324): data on what men, women, and social institutions are like should derive from "shared methods of inquiry" (293, 324) like those of science rather than ideological visions. Regarding not just *facts*, but *reasons*, Rawls also advocates a "duty of civility" to appeal to "common, or neutral ground" (421, 459), for we do not respect others or treat them as free and equal if we only give them reasons that they cannot share (293, 579). God's intentions, for example, are not publicly accessible, so we may accompany shared values with Bible citations (586, 591, 593), but must appeal merely to the relevant "part of the truth" on which there is consensus, and to "political values [that] . . . are not puppets manipulated from behind the

scenes by comprehensive doctrines" (585). In addition, he argues that, particularly when "institutions rely on coercive sanctions," it is important that they "stand up to public scrutiny" (293, 325–6).

Third level: Availability. Finally, the third level requires that even if not all justifications are "publicly known" (324, 292), they should be "at least publicly available" (324) in the sense that people should be able to learn about the legal or philosophical traditions behind them.

As Rawls states it, the ideal of public norms and reasons does not seem incompatible with the quest for gender equality. In fact, it is an antidote against ideologically based, scientifically unjustified sexism. On this view, we should reject norms that free and equal women would have never agreed to, had they been aware of their sources and unacceptable implications.

None of this raises problems for Cohen. But Williams stresses Rawls's concern with public checkability; for example, in his selection of primary goods as the metric of justice (Williams 1998: 239). On Williams's view, a principle is public if we can know whether people conform to it. This suggests an *end-stage* conception of "public" as conformity-tracking, which contrasts with Rawls's abovementioned focus on the verifiable *sources* of a principle and its authority, and the common-ground reasons that we must give to free and equal persons so that they respect and endorse the principles.

But let us grant that checkability is an important part of publicity. How important is it? If the difference principle applies *only* to the basic structure, and the basic structure "excludes influential activities incapable of regulation by public rules" (Williams 2008: 479, 480), then the difference principle does not require Cohen's ethos, if Williams is right that it is not public.

Williams's later piece, however, includes a long passage from Rawls referring to publicity as only a *pro tanto*, "other things equal" consideration (Rawls 1999b: 347; Williams 2008: 486). Either way, the publicity requirement still faces various difficulties.

4. GENERAL PROBLEMS WITH THE REFORMULATION

The trade-off between plausibility and checkability

In order to accuse the egalitarian ethos of being insufficiently precise, Williams targets Cohen's plausibility-enhancing qualifications on the egalitarian ethos, such as (i) its allowing compensation for differential labor burdens, and (ii) its including an agent-centered prerogative to be partial to oneself to a reasonable extent. These are general problems in ethics. It is hard to calculate how burdensome something is for a particular person. Being allowed to be partial to oneself to some extent makes the limits of permissible behavior much more vague than requiring complete

impartiality. But most people find that ignoring special burdens or requiring complete impartiality is implausible. This is a common phenomena. Plausibility and checkability typically diverge. Qualifying simple principles such as "do not kill" or "do not steal" increases their plausibility, but also diminishes their simplicity and checkability. This happens to Williams himself: whereas claiming that all principles of justice are sound only if they are checkable is implausible yet simple and clear, claiming that checkability is sometimes a desideratum of unspecified importance is more plausible, but rather vague. It could be that no plausible principle regarding, for example, gender, world poverty, the environment, or war is checkable to the required degree either. But it would be implausible to conclude that we will have no principles until we find some that satisfy all the aforementioned criteria.

The interdependence of publicity and justice

It is plausible and feasible for Rawls to require publicity at the three levels described earlier. But we do not know if Williams's three requirements must be fully satisfied, nor what happens when they are not. If lack of checkability is insufficient reason to reject a principle, then we need to know what other defects a principle must simultaneously possess for insufficient checkability to make a difference.

If it is hard to ascertain whether a rule is sufficiently checkable, then we cannot know whether an inequality that is largely eliminable through it is unjust. This second problem is important because it may render unclear, informationally over-demanding, or impossible to determine what is just or unjust. Since checkability often depends on normative decisions regarding the permissible investigation of individuals, and the permissible expenditure for this purpose, we could end up lost in a circle of moving parts, where what is just depends on what is checkable, and what is checkable depends on what is just (or permissible) to check.

It is good, for example, that we now have speed and alcohol detectors. But the reasons to have rules against speeding and driving in an impaired state were there before those innovations, and it would have been wrong to delay their introduction until the generalized use of these technologies became feasible, affordable, and politically acceptable. Perhaps these technologies make a difference, such as allowing us to impose more accurate fines: penalizing greater infractions more than minor infractions. But before these technologies were introduced, we did not even have a *pro tanto* reason against an ethos prohibiting speeding or drunk-driving. In fact, we had even more reason to defend such an ethos back then, as it was even more necessary than today.

The restriction may be rendered toothless

It is true that it is better to have reliable methods to check if people are speeding or drunk-driving than not to have them, but if publicity is only a tiebreaker, it can be rendered toothless.

The initial dilemma appeared because, although defining "basic" as "legal" was sufficient to discard any egalitarian ethos, this reading was *implausible*. Taking "basic" to mean "major and profoundly influential," was more plausible, but was *insufficient* to discard an ethos that could become influential. Similarly, in order for us to reject the egalitarian ethos for this reason alone, checkability would have to be a necessary condition for any rule to be just or unjust. But it would be implausible to reject a plausible and otherwise unobjectionable ethos that could reduce important problems merely because of conformity-tracking difficulties. If, then, checkability becomes only an other-things-equal consideration, a tiebreaker, or a desideratum that may be easy to defeat, then the objection is also insufficient to reject the egalitarian ethos, for the benefits of the diffusion of an ethos of public spiritedness may amply compensate for its imperfect checkability. Consider, for example, an ethos against littering at sea. The fact that checking conformity is impossible cannot be a reason against it. In fact, the impossibility of verifying what people do at sea seems irrelevant.

Let us now turn to more specific problems that emerge regarding the gender egalitarian ethos, which is a case about which Cohen and Williams partially agree. They agree that justice requires a gender egalitarian ethos but disagree over whether it meets publicity requirements.

5. THE GENDER EGALITARIAN ETHOS AND PUBLICITY

Cohen argues that the publicity requirement is not plausible in the case of the sexist family, because it may be hard to ascertain, for example, whether the backache that the husband invokes as a reason for not washing the dishes is substantial or contrived (Cohen 2008: 359). Williams claims, by contrast, that "a gender-egalitarian ethos" is public, but he does not state such an ethos himself (Williams 1998: 242; 2008: 480). Consider, then, rules like "equal housework for couples with equal jobs" or "equal opportunities for sons and daughters," which prohibit inequalities of the sort that Cohen describes. William claims that the fact that Cohen's workplace egalitarian ethos involves comparing differential labor burdens makes it nonpublic (Williams 1998: 238–9). The proposed rules, however, involve precisely such comparisons, and further complications too.

Since jobs are unequally burdensome and time-consuming, and people are unequally able and resilient, Williams deems it nonpublic to calculate the egalitarian demands on each worker. But the gender egalitarian ethos also requires calculating

the labor burdens of a husband and comparing them to the labor burdens of his wife. These labor burdens must be compared, in order to see if they are equalized by differences in the housework performed by each. The result would then have to be compared with other households, in order to know if the rule is generally respected, or if the labor burdens of one gender tend not to be compensated at home. Here, moreover, not only the equal shares but even the total *distribuendum* is unclear, as partners often lack neutral, shared meanings for "sufficiently clean," "safe for children," or "appropriate meals or clothing." Even in a very simple situation in which both parents have equal health, equally long and strenuous jobs, and so on, leading us to conclude that each must do half of the required childcare, we will still have to decide what provision of childcare is required by justice in their specific circumstances.

Granting equal opportunities for sons and daughters may face even greater uncertainties. This would require taking into account differences in socially valued talents, the discrimination each is likely to face, as well as the burdens and benefits of male and female careers, which again involves comparing differential labor-burdens.

As with Cohen's workplace ethos, sometimes it will be crystal clear that we are violating the ethos; at other times we will be unsure. But morality requires good-faith efforts, not omniscience. Even if we cannot know what happens in other homes, we should follow a gender-egalitarian ethos in our own and condemn as unjust the inequalities that result from its violation.

Williams claims that, in the case of parents who give their sons and daughters unequal opportunities, as well as that of "partners who shirk," the violation of a public rule "is readily apparent to the victims of the injustice" (1998: 242); but this need not be so. One reason is that a fundamental part of gender oppression consists precisely in what Mill called "the enslavement of the soul" (2008: 8–9). Women around the world feel duty-bound to accept conditions akin to serfdom and slavery, to deliver sex, and to take orders and even beatings and threats. Victims may fail to see the oppression, manipulation, deliberate intimidation, exploitation, or inequality, and not merely its injustice. Thus being "readily apparent to the victims" is not a reliable indicator of injustice.

More worryingly, if the soundness of a norm of justice depends on our being able to know whether others follow it (Williams 1998: 233–4, 238–45), then whether we can know what other men get away with bears on what a man may do to his wife. If knowledge of conformity matters because *conformity with a norm* matters, then, if abuse is rife, this weakens the case for norms prohibiting it. This is implausible: the more widespread the abuse, the more firmly it should be condemned. The fact that in a certain society most men do not contribute to housework and oppress their wives does not make their doing so less unjust. If, then, it is not

conformity, but rather the possibility of acquiring *knowledge of conformity* that matters, then the mere fact that we cannot *know* what others get away with would weaken the case for deeming it unjust. This also seems implausible.

As we have learned from decades of feminist research, the problem with sexual abuse, harassment and other sources of oppression is precisely the fact that it takes place behind closed doors, remains unreported, and is notoriously difficult to demonstrate or measure. In fact, reported abuse is often lowest in the places and periods where sexism is greater (EU-FRA 2014: 31–2), and even discrimination is often invisible and practiced unconsciously (Hart 2005; Lee 2005). Typically, *many* hidden sources of gender inequality and "microaggressions" combine to perpetuate it (Rowe 1990). Such sources resist public regulation for many reasons, including: respect for privacy, apparent voluntariness, religious freedom, unavailability of reliable data, self-underestimation, anticipatory surrender, community closure, the pressures not to denounce one's religious or ethnic group, and plain fear. Fear alone can suffice to impede transparency. But gender inequality is unjust, and the fact that it cannot be made to disappear with simple, clear, and easily checkable rules does not make it less so. Secretly felt and practiced sexism—like secret racism or homophobia—are unjust even if inherently nonpublic.

One possible response would be to grant that publicity may not even be a *pro tanto* consideration when evaluating norms that diminish gender or racial equality, and to restrict to resource-distribution the claim that "when faced with sources of inequality incapable of such regulation, we can support our denial that they involve injustice" (Williams 1998: 245). This, however, would involve a very artificial distinction. Gender and racial inequality and distributive justice are deeply interconnected, and we would need a plausible justification for treating all the counterexamples explained here as special cases that fail to prove any general rule. Comparing the labor burdens of two workers is no more difficult than comparing the labor burdens of two workers who happen to be husband and wife or belong to different racialized minorities. If the first comparison of labor burdens is so difficult that it cannot be made, then the others are likely to suffer from very similar problems.

Suppose, nonetheless, that there were some way to restrict the publicity objection to Cohen's expansive interpretation of the difference principle. There are two possibilities here. One could argue that lack of publicity is always a defect, albeit insufficient to reject a principle in other cases. For example, lack of publicity can be overlooked when the benefits of conforming with a rule are great, and the cost of conforming with it is small. In the case of an ethos that includes a productive requirement, like Cohen's, publicity matters because there are high costs in terms of occupational liberty, which has priority, and benefits which are insufficient because they involve merely material benefits for people who are already above a certain threshold of material comfort. Adopting this strategy would involve making the publicity objection rest heavily on the liberty objection, and it would require explaining

why, in the case of other principles, lack of checkability does not seem to provide any reason (even a defeasible one) not to follow or promote them.

Another possibility would be to argue that, for reasons yet to be specified, checkability may be entirely irrelevant in the case of other ethical principles, and even in the case of other Rawlsian principles of justice, such as those condemning sexism or racism, and yet remains crucial for addressing inequalities in income and wealth. So, for example, taxation rules should be public and verifiable and tax authorities should be able to check that taxes have been paid correctly. There are different levels of taxation attached to different income levels, and certain conditions, such as the verifiable existence of children or other dependents, which can alter the final payment. But people are not allowed to modify what they owe in tax on the basis of how hard they find their jobs, or by appealing to their permission to be selfish to some extent. There are reasons to oppose altering the current tax system with similarly vague, subjective and uncheckable criteria, even if this could create more equality. This example will not convince everybody, but it illustrates how checkability could become relevant to the application of the difference principle, even if it was not considered relevant to other principles. Now, assuming this argument is successful, the following section explores a different way to defend the egalitarian ethos.

6. REFORMULATING THE ETHOS

Williams admits that although he has shown that his interpretation of the basic structure restriction is not arbitrary, he has not shown that it is plausible. "Nor, worrisomely," he adds, "have I proved that it is impossible to design a public egalitarian ethos or to devise further counterexamples against restricting the ambit of justice to public rules" (1998: 246). The previous sections focused on the problems with his requirement's plausibility. This section focuses instead on the possibility of reformulating the egalitarian ethos in ways which satisfy the publicity requirement.

One may argue that the exact formulation of an egalitarian ethos is not what matters, just as the formulation of a particular gender-egalitarian ethos is not what is central to feminism. Cohen's critique includes his opposition to the market as a morally free zone where individuals can hold their talents hostage (Cohen 2008: 38), and his rejection of the idea of "distributive justice as a task for the state alone" (10). It also includes his judgment that ignoring how extremely influential and unjust an ethos can be is implausible, and contrary to the rationale for focusing on the basic structure. The specific formulation of the ethos he proposes is perhaps unfortunate, but as Cohen notes, from Rawls's "unrestrained market-maximizing . . . [to] full self-sacrificing restraint" (10), there is a wide spectrum of intermediate positions. Perhaps, had Cohen merely described his prerogative as "ample," it would have gained so much more acceptance that its decreased checkability may not have been

a concern. After all, checkability is not the reason behind the numerous alternative formulations of the ethos he offered, often with Cohen's approval (Carens 1981, 1986; Van Parijs 1993; Wilkinson 2000; J. Cohen 2001; Lippert-Rasmussen 2008; Titelbaum 2008; Shiffrin 2010; Casal 2013). Some of these just happen to be checkable, while others are explicitly so (Vandenbroucke 2001), and it is possible to invent further checkable rules.

Consider, for example, a rule inspired by the egalitarian ethos that prohibits engaging in self-seeking industrial action if you are in the top half of the income distribution. Only those with below-average incomes will be able to go on strike to obtain salary increases. This rule will be easily checkable and it will increase equality. Another rule may prohibit threatening your government with moving your company abroad whenever changes in taxation are announced, so that taxation does not become more progressive. Any breaches of this rule will be known by the government, or by the voters who such threats try to influence, so this rule is checkable too. Similarly, consider a rule that requires you to support affordable reductions in the work week in order to reduce the level of unemployment, or to protect people in your firm from losing their jobs in a recession. Such an ethos could be checkable and could make a considerable difference. A fourth potentially public rule would prohibit us from bargaining to be paid more than the women (or members of other salient social minorities) in the firm where we work.

All of these examples of rules inspired by the egalitarian ethos seem able to satisfy Williams's publicity requirement and are not too controversial or overdemanding. This allows us to conclude that the basic structure restriction, with or without William's publicity requirement, is unsuccessful in undermining Cohen's critique of Rawls. On the other hand, this is only a partial victory for Cohen. In fact, if Rawlsians can accept all these checkable ethical rules, their position will be closer to Cohen's, but also more difficult for him to defeat, as much of the force of the egalitarian ethos will have already been incorporated into the Rawlsian view.

CONCLUSIONS

G. A. Cohen has criticized John Rawls's defense of incentive payments by proposing an egalitarian ethos that can improve the condition of the least advantaged, beyond what Rawls proposed. Cohen tries to show that even Rawlsians, given what they believe, should endorse the egalitarian ethos and consider incentives unjust. In response, Rawlsians have argued that the egalitarian ethos is not required by justice, arguing that the difference principle and other principles of justice are meant to apply to the basic structure of society (the major social institutions), rather than to the actions of individuals. The basic structure restriction can be variously formulated by interpreting the basic structure in broader or narrower terms. Both options,

however, present difficulties. The narrow view is implausible, and the broad view is toothless against Cohen.

In order to rescue the basic structure restriction and defend Rawls against Cohen's internal critique of *A Theory of Justice*, Andrew Williams has reinterpreted this restriction in terms of a publicity requirement. In so doing, he has shown that Rawlsians have more resources to resist the egalitarian ethos and charges of arbitrariness than Cohen had initially contemplated. Williams's attempt, however, encounters difficulties, as checkability does not seem relevant to other principles, including other Rawlsian principles of justice. Its unique relevance to the difference principle still needs to be justified. The publicity requirement, then, cannot function alone to distinguish rules that may be required by justice from those that cannot. So we cannot reduce our substantive disagreement over the fairness of economic incentives by focusing on more procedural matters regarding the correct form of public rules. Perhaps we can support a preference for public rules in the very specific area of taxation. Fortunately, however, publicity requirements do not rule out various formulations of an egalitarian ethos.

This seems like a victory for Cohen, but one could argue that the Rawlsian position in fact emerges stronger from this discussion, if more public rules like those mentioned earlier are accepted. Rawlsians could argue that, having incorporated those egalitarian public rules, there is no need to introduce an even more demanding and non-public egalitarian ethos. Williams's defense, then, can result in a Rawlsian position that is harder to defeat, not so much because it can successfully appeal to publicity to resist egalitarian requirements, but rather because it can incorporate most of these requirements in the form of a set of more precise and specific public rules.[4]

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