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Richard Lee Lauer

University of Missouri-St. Louis, rlld4f@mail.umsel.edu

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Unfree and Equal: Challenging G.A. Cohen on the Compatibility between Freedom of
Occupational Choice and Equality

Richard Lee Lauer

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Advisory Committee

Anna Alexandrova, Ph.D.

Chairperson

John Brunero, Ph.D.

Eric Wiland, Ph.D.

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DEDICATION

I dedicate this thesis to Page Quinton. Her patience with my constantly spoken and meandering thoughts is something I will always remember and be thankful for.

ABSTRACT

In his book, *Rescuing Justice and Equality*, G.A. Cohen defends the claim that in a just society it is possible to have Pareto efficiency, equality and freedom of occupational choice. Cohen does this in an attempt to refute the arguments of philosophers that have seen these concepts as at odds with each other. Cohen initially formulates the relationship between these three concepts as a trilemma. If we accept any two, then we must reject the third. Cohen's conclusion is that no such trilemma exists, since in a just society equality, Pareto efficiency and freedom of occupational choice harmonize. To motivate this claim, Cohen argues that people in a just society are under the influence of an egalitarian ethos, which informs their decisions about what is just. I offer a challenge, which results in the rejection of two aspects of Cohen's argument. My challenge consists in the formulation of two competing theses motivated by the rejection of (i) Cohen's claim that rejection of freedom of occupational choice requires the implementation of coercive and extremely invasive state policies that will place people into socially useful occupations and (ii) his claim that informational deficits prevent the implementation of any such policy. I reject the first claim by arguing that we can have more nuanced views in which freedom of occupational choice is limited rather than completely done away with. I reject the second claim by arguing that we needn't obtain the amount of information Cohen demands. The two competing views I formulate are (a) that the state can and should use people's cognitive biases to pursue Pareto efficiency and equality and (b) that people in the just society can individually correct for the biases that lead to inegalitarian distributions. I close by arguing that the latter view may constitute a rejection of freedom of occupational choice.

Introduction

In debates about egalitarianism, many philosophers have doubted the need for strict economic equality. We can find the trend against equality in at least four places in egalitarian literature. First, there is John Rawls' difference principle, which allows for the creation of inequalities that improve the situation of the talented as long as those inequalities improve the situation of the least advantaged.¹ Second, the leveling down objection to egalitarianism has led many to believe that equality is not intrinsically valuable since there are cases where we may intuitively prefer unequal states of affairs.² For example, if we can move from a state of equality to an unequal state of affairs in which all are better off, then we should prefer moving to the latter state of affairs rather than remaining in the former. A third source is the movement to prioritarianism, which is the view that the moral value of a benefit increases the worse off the agent to whom we are distributing the benefit is.³ Prioritarianism is (presumably) a view that is immune to the leveling down objection, which is what has driven some philosophers to endorse it.⁴ The fourth view that has signaled a movement away from equality is the sufficiency view. According to sufficiency views, equality does not matter. What matters is that people have *enough* of what they need to live a good life.⁵ In all of these cases, other values conflict with equality, causing it to be rejected. For example, we may want a society to be as efficient as possible and to make society efficient we may need to pay the talented more than others (considerations relevant to the difference principle or the

¹ See Rawls (1999)

² See Christiano (2007) and (2008), Christiano and Braynen (2009), Frankfurt (1987), Holtug (2007) and (2010), Lippert-Rasmussen (2007), Parfit (2002), Temkin (1993) and (2002) for accounts of the leveling down objection.

³ See Parfit (2002), McKerlie (2007), Arneson (2000) and Holtug (2007) for detailed accounts of prioritarianism.

⁴ See McKerlie (2007) and Holtug (2007)

⁵ See Frankfurt (1987) and Crisp (2003) for accounts of sufficiency

leveling down objection). On the other hand, we may want a society in which people aren't limited in their capacities by the fact that they have to contribute to the welfare of everyone else. In such a case, inequalities would be justified by the fact that people may be able achieve self-realization when they can satisfy certain expensive tastes.

In this paper, I am going to discuss a view held by G.A. Cohen in his book *Rescuing Justice and Equality*.⁶ Unlike the philosophers alluded to above, Cohen stands steadfastly against the idea that we must sacrifice equality for the sake of other values. According to Cohen, in the just society, we would not have to sacrifice equality for the sake of self-realization or efficiency. Rather, the just society is a society in which people are moved by an egalitarian ethos. We may define an ethos as the set of sentiments and attitudes that influence the decisions people make in society. Such decisions determine (among other things) the kinds of distributive policies a society will endorse and in what manner people in society approach one another. The view that I am going to discuss in this paper is the view that we do not have to give up freedom in order to maintain equality and economic efficiency.

The following is the structure of my paper. First, I discuss what Cohen refers to as the "trilemma claim". The trilemma claim states that when confronted with equality, Pareto efficiency and freedom of occupational choice, the retention of any two requires the rejection of the third. Second, I discuss a second form of the trilemma claim which stresses the limitations on an agent's freedom for self-realization, should we retain equality and Pareto efficiency. Third, I summarize four reasons Cohen provides for believing that we should retain an agent's freedom of occupational choice. In the

⁶ My argument is addressing chapter 5 of Cohen's book titled, "The Freedom Objection". See Cohen (2008), 181

following two sections, I offer challenges to (1) Cohen's assumption that rejecting freedom requires endorsement of full coercion of people into occupations that preserve Pareto efficiency and equality and (2) Cohen's claim that informational deficits give us reason to avoid restricting freedom of occupational choice. To motivate this portion of my discussion, I will cite decision-making biases people are prone to. Each bias will be formulated in terms of a case that could have consequences for distributive justice. After offering these criticisms, I put forth two views. I refer to one as "structural egalitarianism" and the other as merely "individual egalitarianism". I then focus on whether or not a premise vital to the formulation of individual egalitarianism actually represents a kind of free action in the senses of "free" used in the trilemma. I argue that some actions relevant to justice (or, in Cohen's terms "moral actions") are cases of constrained action. I then attend to some possible objections to individual egalitarianism, if we interpret it as a claim that allows that some people are not free. I conclude with the claim that rejecting freedom of occupational choice does not commit someone to coercively placing people in socially useful occupations. We can take a more nuanced approach by endorsing claims like individual egalitarianism or structural egalitarianism.

It seems to me that much of the movement away from equality has been unwarranted. The fact that other values are important to us and may upset equality is not a reason to abandon equality as a political *ideal*. The fact that our values clash may be a reason to abandon equality, but we may only have to abandon it because of facts about human nature at a particular time. I agree with Cohen on this point. According to one of the views I present here, some people who are acting in accordance with an egalitarian ethos are not acting freely. I defend this view from arguments made by Cohen. As my

discussion proceeds, the aforementioned points will become clearer. If the claims I present are true, then restricting freedom of occupational choice in order to pursue equality and Pareto efficiency may be justified.

II. The Trilemma

In this section, I will summarize the trilemma Cohen outlines in his book.

Because Cohen also discusses a second trilemma I summarize below, we will refer to the first trilemma as trilemma₁. Recall that in the introduction I made mention that some motivation for movement away from equality as a demand of justice comes from the leveling down objection.⁷ Using this objection some have argued that treating equality as intrinsically valuable has the potential to produce morally grievous results.⁸ The gist of the leveling down objection is that we have reason to prefer unequal states of affairs, where these unequal states of affairs mean an improvement for everybody (with the punch being that egalitarians, given their sympathies, must prefer that everybody be worse off). The leveling down objection, if sound, reveals a tension between Pareto efficiency and equality, where a Pareto efficient⁹ state is a state of affairs in which it is impossible to improve the situation of some without worsening the situation of others. A

⁷ For detailed accounts of the leveling down objection see Christiano (2007), Holtug (2007), Temkin (1993) and (2002), Frankfurt (1987), Parfit (2002), Lippert-Rasmussen (2007) and Christiano and Braynen (2009).

⁸ I have in mind Frankfurt (1987)

⁹ The following are definitions important for sorting out some of the claims Cohen makes. For any state of affairs A, A is Pareto optimal/efficient if it is impossible to improve the situation of some without worsening the situation of others. A is *weakly* Pareto superior to another state B if at least one person in A is better off while no one else is worse off. Similarly, A is *strongly* Pareto superior to B if everyone is better off in A and no one is worse off. A is weakly Pareto inferior to B if B is weakly Pareto superior to A. A is strongly Pareto inferior to B if B is strongly Pareto superior to A. A is Pareto incomparable to B if neither is (weakly or strongly) superior or inferior to the other. Finally, we should take note of the Pareto principle, which states that we should make a Pareto improvement whenever one is feasible. The Pareto principle runs implicitly through my discussion. It shows up explicitly when we talk about it being better to improve people's situations whenever we can. My definitions are taken from Rawls (2003), 57-65 and Cohen (2008), 87-88 (see footnote).

similar tension is revealed by Rawls' difference principle, in which it is permissible to generate inequalities through incentives for the sake of improving the situation of the least advantaged. The intuition here is similar to the leveling down objection. By giving the talented more, we can improve everybody's situations. Improving everybody's situation is preferable to remaining in an equal state of affairs. Therefore, we shouldn't prefer equality when we can improve everyone's situation.

As just noted, the cases of leveling down and Rawls' difference principle reveal a tension between Pareto efficiency and equality. In both cases, we are forced into choosing between equality and something better, but not equal. Our choice in the former situation is simple. Either we believe in equality or we give up the belief in equality because of countervailing considerations. Retaining equality may have the result that people are not as well off as they could be, while giving up equality makes everyone better off. As the argument goes, there is something worse with respect to justice about preventing people from being better off than they could be. Imagine a society in which all members are equal to one another with respect to their material prospects, but which conspicuously lacks doctors. In order to make people practice doctoring, the society incentivizes becoming a doctor. However, the creation of such incentives generates material inequalities.¹⁰ The doctors are paid more than average citizens are. But if the society lacks doctors, it is certainly worse off than societies that possess doctors. Therefore, if inequality-generating considerations improve everybody's situation, they should be preferred to equality retaining considerations.

¹⁰ Lippert-Rasmussen (2009) argues against the claim that creating incentives requires generating inequalities. So this claim may be controversial, but for the purposes of my discussion, I will assume it is true.

The foregoing example of the society without doctors more explicitly reveals the tension between Pareto efficiency and equality. In slightly more technical terms, equal states of affairs are Pareto inferior to unequal states where all are better off. Hence, we are posed with a dilemma: efficiency or equality? Cohen resolves the dilemma by arguing¹¹ that for any unequal, Pareto efficient state there is an equal, Pareto incomparable state.¹² Put simply, it is possible that Pareto efficient states are equal. Therefore, there is no dilemma between equality and Pareto efficiency. There is no dilemma because it is possible for some Pareto efficient states to be identical with equal states. But even if we assume the issue is resolved, the egalitarian may run into problems when considering the compatibility of equality and Pareto efficiency with freedom of occupational choice.

Cohen asks us to imagine a talented doctor-gardener who has the following preference ranking,

- (a) A doctor's salary at £50,000: she is a lot better off than most with respect to her job satisfaction and income
- (b) A gardener's salary at £20,000: she is better off than most with respect to job satisfaction, but she is not better than everybody else with respect to her income
- (c) A doctor's salary at £20,000: she is still much better off than most with respect to her job satisfaction, but she is not better off with respect to her income (again).¹³

¹¹ He argues that Pareto efficiency does not require inequality and that the behavior of the talented does not justify the creation of inequalities.

¹² We can show this using the definitions stated footnote 2. Imagine we are distributing goods between three people. We start with a distribution of $D_1 = \{10, 10, 10\}$. A weak Pareto improvement would be $D_2 = \{10, 10, 11\}$. A strong Pareto improvement from D_1 would be $D_3 = \{14, 15, 16\}$. Philosophers like Rawls (2003) have been known to defend moves from equality to inequality if such a movement signals improvement for the situation of the least well-off. But, Cohen argues, there is a state $D_4 = \{15, 15, 15\}$ that is Pareto incomparable to D_3 . In other words, D_4 and D_3 are neither superior nor inferior to one another. If the unequal state is Pareto efficient, then so is the equal state. Therefore, there are Pareto Efficient equal states. The assumption present in this argument is that the goods to be distributed are all goods that can either (1) be distributed equally or (2) divided so as to derive an equal distribution. To see a fuller development of this position, see Cohen (2008), 87-115, Christiano (2007), 71-78, and Christiano and Braynen (2009)

¹³ Cohen (2008), 185

So our doctor gardener prefers to be paid more for doctoring but would take less pay to be a gardener and would prefer doctoring less if she were paid the same she would be for gardening. Cohen pins the doctor-gardener's preferences against the preferences of the community by stipulating that the community would have a preference ranking of (c), (a) and (b). If the doctor-gardener's decisions and actions are guided by egalitarian principles of justice, then she should act in accordance with the community's preference. She should doctor for £20,000 rather than become a gardener for the same amount or become a doctor only on the condition that she is paid £50,000. Suppose that every citizen of a society has his or her actions informed by the proper egalitarian considerations except for the doctor-gardener. She is incorrigible and refuses to be a doctor without higher pay. If the society fixes all salaries at £20,000, then the doctor gardener will choose to garden. But if she chooses to garden, then the society is worse off because it lacks a talented person's doctoring ability. Therefore, in such a case, freedom of occupational choice will conflict with Pareto efficiency because the only means of making her doctor would involve coercion and paying her more for her doctoring skills would create an unequal Pareto efficient state.

In the case provided above, the consequence of taking seriously freedom of occupational choice and equality is the rejection of Pareto efficiency since the doctor would choose to garden only if paid £20,000. But there are still more serious consequences. Let's imagine that we want to retain Pareto efficiency. In conjunction with Pareto efficiency, we may also want to retain freedom of occupational choice. In such a case, consumer preferences would have to govern what a society produces. Furthermore, salaries and wages would have to be determined by changes in consumer preference. The

result would be that the doctor-gardener would opt for doctoring. She would become a doctor because market demands would provide higher wages for doctoring and she prefers doctoring the most when we can adequately pay her. Consequently, society will have inequalities. On the other hand, we may want to retain equality and Pareto efficiency. Doing so requires us to ignore consumer preference (in order to prevent it from determining what is produced as well as wages/salaries for producing services or goods). But if we ignore consumer preference, the only way to make people take up vocations at which they would be talented for lower, not as highly preferred, wages or salaries would be to command them. Otherwise, consumers would choose to do what they most prefer (given the absence of higher wages) and we would find ourselves grappling with Pareto efficiency again. Hence, we have not only a dilemma, but a trilemma. Retaining any two of the notions discussed requires rejection of the third.¹⁴

The salient feature of the trilemma that I have outlined is that it emphasizes the restriction of freedom to *choose* one's occupation. But there is a second trilemma Cohen addresses that does not emphasize choosing. Because it will sometimes be difficult to distinguish which of them I am referring to, I will refer to the first as Trilemma₁ and the other as Trilemma₂. I now turn to describing the second trilemma claim.

III. A Second Trilemma

In trilemma₁, retaining Pareto efficiency and equality limited only the freedom to choose one's occupation, but does not address whether an agent finds work fulfilling. So, we may read trilemma₁ as claiming that if we want to retain Pareto efficiency and equality, the doctor-gardener should be barred from all options other than doctoring if it

¹⁴ Resolving the trilemma requires appealing to the ethos of justice. People with the right attitudes would willingly choose equality (justice) over other things.

means retaining Pareto efficiency and equality. If we outlined the story differently, the doctor-gardener's preferences may be such that doctoring (despite her latent talents) brings her nothing but misery. Our desire for equality and Pareto efficiency would require us (still) to force her into doctoring because of her latent abilities. For some¹⁵, it would be sufficient justification that the doctor-gardener *chose* to (or chose not to) be a doctor that we ought not to encroach on her freedom. If she chooses misery for herself, her *choosing* is enough to make her actions legitimate (other things being equal). Keeping equality and Pareto efficiency in trilemma₁ requires giving up the freedom to choose one's occupation.

The second way of interpreting the trilemma claim is to charge that retention of equality and Pareto efficiency requires restricting (at least some) people from achieving self-realization. We refer to this trilemma as trilemma₂. If we want to retain equality and Pareto efficiency in trilemma₂, people will not have freedom *in*¹⁶ their work. Another way of putting it is to say that an agent lacks freedom of self-realization. If we force the doctor-gardener to become a doctor because it would fulfill a social need, it does not follow that she would find doctoring to be a fulfilling occupation. From the fact that (1) we have forced the doctor-gardener to doctor and (2) she does not find doctoring to be a fulfilling occupation it follows that the doctor-gardener is not free to realize or practice her capacities in a way she finds fulfilling. In Cohen's words, "... [the] unfreedom is not in the choosing of what is chosen: it is the choice in the sense of the option, not the choice in the sense of the choosing, that is said to be unfree."¹⁷ It is not the act of

¹⁵ For example, Mill's famous arguments against Paternalism leaves it ultimately up to the person what is good for her and what she should do with herself. For the arguments, see Mill (1983), 75-93

¹⁶ The word "in" is Cohen's word. We should be careful not to confuse his sense of "in" with the sense in which we say that someone is free to do what he or she want while they are working with what he actually means. To be "free in" something has a deeper-seated psychological meaning.

¹⁷ Ibid., 205 -206

choosing that we are labeling as unfree. Rather, it is the choice “in the sense of the option.” Put simply, Cohen is arguing that an agent is unfree with respect to an option when she cannot choose it, and it is the option she would prefer the most. To make this point clearer, let’s address a fairly explicit case. Imagine that the doctor-gardener has, in the past, taken the time to both doctor and garden. After experiencing both, she realizes there is nothing that satisfies her quite like gardening. Now, imagine further that we have decided that we need doctors, and the doctor-gardener is one of the best suited for the job. Even if the doctor-gardener has spent a large portion of her time endeavoring towards the goal of becoming the best gardener she can, we cannot allow her to choose to garden professionally. So the doctor gardener is not free to attain self-realization because she cannot develop her abilities as she sees fit.

Trilemma₁ has the consequence that if we retain equality and Pareto efficiency, we must get rid of a person’s ability to *choose* her occupation. Trilemma₂ has a stronger consequence. Retention of equality and Pareto efficiency will result in keeping an agent from being able to choose her most preferred vocation. If she would rather garden, the doctor-gardener is barred from gardening because society needs doctors and coerces her into doctoring. As a result, the doctor-gardener cannot realize her abilities as she sees fit. Thus, where trilemma₁ stresses *choosing*, trilemma₂ stresses the restriction of an agent from the option that would allow her to develop her capacities in the way she finds most desirable.

I want to offer further treatment of the distinction between trilemma₁ and trilemma₂ that will help clarify what is different between them. It may be possible to

object by claiming that we can explain trilemma₂ in terms of trilemma₁. For example, consider the following case,

Joan finds nothing more fulfilling than counting blades of grass. However, society has deemed her preferred vocation a complete waste of time. Because it is socially useless, Joan is not allowed to become a grass counter. Therefore, Joan is barred from exercising her capacities in a way she finds fulfilling.

Our objector would claim that Joan is unfree in the sense of her *choosing* rather than *in* her labor. We can infer from this case that she cannot *choose* to be a grass counter.

Therefore, our objector concludes, we can explain Joan's lack of freedom in her work in terms of lacking an ability to choose her occupation. But note that if we alter the case, we can derive a different result. Imagine that instead of restricting Joan from grass counting, we restrict her only from her least preferred option. In such a case, Joan is not unfree in the sense we have to restrict in trilemma₂. Joan is free to become a grass counter. Thus, while she may lack a degree of freedom mentioned in the first form of the trilemma (merely to choose), she does not lack it in the second (to be free in her work, to attain self-realization).¹⁸

In the next section, I discuss four reasons provided by Cohen for retaining freedom of occupational choice. After summarizing the reasons Cohen provides, I present challenges to one of his reasons (the claim about informational deficits) and an assumption he makes about the extent to which we would have to limit freedoms if we reject freedom of occupational choice. After presenting my challenges I show that it is plausible to endorse the three remaining reasons despite the challenges I present to Cohen's other claims.

IV. Reasons to be Free

¹⁸ The solution to the second trilemma is also the societal ethos, but that the individual would be practicing self-restraint because she is moved by the principles of justice.

Cohen provides four reasons against the claim that we ought to restrict occupational choice. These reasons, which I elaborate below are, (1) restricting freedom of occupational choice could produce cases of counter-productive deterrence. (2) Such restriction is muddled by our informational deficits (our lack of information about the idiosyncratic makeup of an agent's psychology). (3) Restricting said choice could make people do things in the wrong spirit (i.e. the restriction would make people choose socially useful work for the wrong reasons). Finally, (4) we should not use a person as a means. We do not have to reject reasons (1), (3) and (4). A position I will discuss in this paper can respect (1), (3) and (4). A reason that views like the kind I discuss in this paper may seem implausible to Cohen is that he seems to assume that when we reject freedom in the trilemma, we are playing an all or nothing game. That is, Cohen seems to believe that we have either to choose freedom, or (the term Cohen uses) Stalinism. In this section, I will summarize Cohen's reasons for keeping freedom of occupational choice. After providing a summary, I will supply what I believe to be a reasonable challenge to his claim about informational deficits. Once I have dealt with both Cohen's claim about freedom and his claim about informational deficits, I will present two positions one might take.

In the case of counter-productive deterrence, Cohen argues that we should not restrict people's freedom of occupational choice because doing so could disincentivize the talented from pursuing socially useful work. In other words, the doctor-gardener may wonder how she can get out of doctoring so that she can garden. The most plausible way to do that is to deny that she has doctoring abilities or to forego being trained as a doctor. It would hurt society more if people avoided socially productive work. Therefore, we

should not coerce people into taking certain occupations, since doing so may deter people from taking up socially useful occupations. A solution to this problem is to claim that having enough information about people's lives will help the state determine which occupation is best for an individual. However, Cohen argues¹⁹ that the state will end up placing people in occupations they are not happy with. A way around this problem (that Cohen offers) is to allow that the state coercively place people in specific occupations only if those people do not come to hate their work.²⁰ However, Cohen writes,

... to suppose that the state could know what it would have to know about people's powers and about their propensity to enjoy and disenjoy jobs, in order to run such a conscription scheme fairly, is quite absurd.²¹

Therefore, because having such detailed knowledge about individual people is implausible, we should reject any "conscription scheme" that would coercively place people into specific occupations. To gather detailed information about people in society, we would need an excessively "invasive" apparatus.²² Furthermore, forcing people into specific occupations goes against the *reasons* we think people should act for. If the doctor-gardener is forced into doctoring and the only reason for which she is doctoring is that she is forced into doctoring, then it does not seem that she is doctoring for the right reason (this is what Cohen means when he says that coercing people into certain jobs makes them do things in the "wrong spirit). Therefore, if we want people to take up socially useful occupations for the right reasons, we should not coerce them into

¹⁹ Cohen (2008), 219

²⁰ Ibid., 219

²¹ Ibid., 219

²² Otsuka (2009) discovers what appears to be an inconsistency in Cohen's argument. Cohen says that it is because of its "invasiveness" that such conscription methods should be avoided. However, Cohen argues a page later that "invasive" methods would be fine if people consented to such methods. Hence, Otsuka concludes, it cannot be because of the invasiveness of such policies that we should reject them. Rather, Otsuka believes that a libertarian right of self-ownership offers a better explanation of why such policies seem so morally reprehensible.

occupations, but instead allow people to choose them freely. Furthermore, if people are only participating in socially useful modes of production because of coercion, our end in having them work in these jobs is to ensure the retention of Pareto efficiency and equality. That is, coerced people are being used for the sake of justice (when it seems that, at least, it should be the other way around).²³

I believe that we can reject Cohen's claim about informational deficits and still retain the intuitions captured in reasons (1), (3) and (4). The following two sections will present my arguments against the worry about informational deficits as well as my argument against Cohen's assumption that our rejection of freedom pins us against a sort of "Stalinism". We shall understand "Stalinism" to be the claim that we should force people to work in occupations that ensure Pareto efficiency and equality. The following two sections after my challenges to Cohen will focus on presenting alternatives that result from my analysis of Cohen's position. The two positions will rest on how we decide to interpret what Cohen means when he says that certain policies are "invasive". Under one interpretation of "invasive", the state may be justified in using information about peoples psychology to place them in socially useful work. Under another interpretation, the state would only be justified in providing people with information about decision-making biases they are prone to.

V. Why Informational Deficits Don't Matter

In this section, I will summarize biases in decision-making that may have consequences for distributive justice. These cases support claims that compete with Cohen's assumption that the rejection of freedom of occupational choice results in

²³ Another way to phrase Cohen's claim may be to say that using people as a means results in the fetishizing of justice at the expense of those justice is supposed to protect (the people at large).

Stalinism. Even if we cannot know everything about a person's situation, it is possible that we can at least know general truths about people and the effects of their judgments on their well-being or welfare.²⁴ Consider the case of a woman who prefers to remain with her abuser rather than leave him. In such a case, she may be under the influence of an *impact bias*.²⁵ An impact bias is a bias brought about by overestimation of the emotional impact an event will have. For example, the abused woman may believe that if she leaves her abuser, she will be supremely unhappy at the loss of her significant other. We do not need to know the exact character of her relationship with her abuser. All we need to know is that she is abused, and overestimating the loss she will suffer from leaving her abuser. If people are consistently under the influence of biases such as these (in a regular, law-like fashion), and such biases affect people's welfare, then it seems we may have a way of using information about people to place them into socially useful work. Therefore, we have at least some reason for believing that we do not need access to every one of a person's idiosyncrasies. Instead, we only need a general understanding of the biases and mistakes in reason to which people are suspect, and how these biases affect their welfare.

Some have argued²⁶ that knowing the biases people have when making decisions can help us implement "institutional assistance" that will exploit these errors in a way that increases people's welfare. Such methods are not necessarily coercive, since people aren't being forced into making a decision, but are instead making decisions using the biases they are already prone to having. State policies structure people's circumstances so as to make the consequences of using the biases better than they would otherwise be. This

²⁴ See Haybron (2008), 225 as well as Kahneman (2011)

²⁵ Haybron (2008), 231

²⁶ See Trout (2005)

does not require knowing anything more than *tendencies* in human behavior. I am going to borrow these ideas for the purposes of showing how such biases may affect Pareto efficiency and equality. If we apply this idea to the trilemma claim, rejecting freedom may require little more than framing people's circumstances so that they will choose socially useful occupations. But there is something else suggested by these considerations. People may be able to make choices about pursuing socially useful work by becoming aware of the biases they are prone to. There are two possible claims that I will discuss after listing the biases I think can be best applied to issues of distributive justice. Using the foregoing considerations, this section of my paper will provide challenges that I believe lead to the formulation of competing claims against Cohen. My challenges are not intended as knock-down arguments against Cohen's position, but rather as reasonable questions that, if taken seriously, lead us to different conclusions about the compatibility of the three concepts in the trilemma.

In order to show how general information about agents' psychology can plausibly enter into our judgments in a way that does not require intimate knowledge of their respective situations, we can appeal to three decision-making biases. The three biases I discuss do not exhaust the list of biases that may have relevance for distributive justice, but they are the three biases I believe are best for thinking about how individual decision-making can affect distributive justice. First, I will again discuss the impact bias but construct a plausible case in which the impact bias could affect distributive justice. Second, I will provide two cases using what is referred to as the hindsight bias (to be defined below). Third, I will appeal to framing biases (also defined below).

Recall that the impact bias results when someone overestimates the costs of the emotional fallout that follows from her actions. In the case I traced out above, the abused wife does not want to leave her abuser because she believes that the loss of her significant other will far outweigh the benefits she gains from getting away from him. We can find an analogue to this case as it pertains to distributive justice. Consider the following case,

Joan is extremely attached to plovers' eggs and pre phylloxera claret. She feels that if she has to go without these things, her quality of life will be significantly lowered. So she continues to satisfy her expensive tastes.

Unless Joan's preferences are incorrigible, i.e. they cannot be changed, it is plausible that once she gives up the plovers' eggs and claret she will adjust to life without them. So the emotional costs of giving up the goods Joan favors may have a larger psychological impact on her judgments and thus affect the overall distribution of goods in society.

Remember, we are looking for cases in which people's decisions affect their welfare. Along with the impact bias, consider the "hindsight bias"²⁷ The hindsight bias occurs because people are not fully aware of how information about the outcomes of events affects them.²⁸ The hindsight bias causes people to impute events that have occurred with higher probabilities and events that have not occurred with lower probabilities after the time at which the events were supposed to occur. Let's consider two cases that are relevant to our worries about equality. The first case runs as follows,

Tom believes that people should bear the weight of their voluntary risks. He supports this position by appealing to the premise that many of the welfare damaging consequences of peoples' actions are easily foreseeable and so, when people can reasonably know the consequences of their actions, they should be held responsible for them.

²⁷ Trout (2005), 402

²⁸ In a study done by Fischhoff and Beyth (1975), people asked about the probabilities of some event occurring *after* its occurrence often reported the event's occurrence with a higher probability and offered lower probabilities for events that did not occur.

Tom's belief that the welfare-damaging consequences of people's actions are easily foreseeable may be the result of a hindsight bias. If the support for Tom's premise was the fact that it seemed clear to him that the less advantaged should have been able to foresee their plight after the fact, then it seems that it is the fact that they were not able to that supports his belief that they ought to bear the risks of their voluntary choices. Thus, we see a plausible way in which a person's attitudes about justice may be influenced by a hindsight bias. Such a bias has consequences for a view like Cohen's, in which individual attitudes, decisions and actions are supposed to be the basis of justice.

The second case I want to consider appeals to the ways in which the hindsight bias could affect an agent's welfare, but not necessarily the welfare of others (as in the previous case). Let's consider Tom again,

Tom is prone to making decisions that ultimately leave him worse off than everyone else. But every time he makes these risky choices, he rationalizes it by appealing to the fact that it was so clear which decision would be the best in hindsight. Using this as his strategy, he continues to take these risky gambles and continues to worsen his situation.

Perhaps after taking enough of these risky gambles, Tom will eventually win out. But let's assume that he is particularly unlucky. The hindsight bias leaves him a lot worse off than he could be if he noticed it and attempted a different decision strategy. Thus, there are plausible cases we can construct using the hindsight bias that demonstrate how this bias could affect an agent's welfare.

A third bias is the framing bias.²⁹ This bias occurs when a problem presented to an audience is depicted in a way that is meant to allow them to easily see a specific range

²⁹ See Kahneman (2011), 240

of options and solutions.³⁰ Consider the following example, which comes from an actual study,

A company is making a small profit. It is located in a community experiencing a recession with substantial unemployment but no inflation. There are many workers anxious to work at the company. The company decides to decrease wages and salaries 7% this year.³¹

People presented with this scenario were more likely to judge it as unfair when the situation was framed as a reduction in wages and salaries and less likely to judge the situation as unfair when the situation was framed in terms of increases to wages and salaries, despite the fact that the increases and decreases are only nominal.³² So in the context of my worries about distributive justice, this situation displays how the presentation of information can affect people's attitudes about the fairness of situations – attitudes intuitively relevant when considering if others have received what they deserve.

All of these biases lend support to the claim that to gain knowledge about the ways in which people's decisions affect their welfare we do not have to indulge in overly invasive methods. Though I have not referenced them explicitly, all of the biases discussed have been supported by empirical studies. The biases have only required knowledge of general tendencies in human decision-making. Most of the cases I constructed are not cases that have been discussed in empirical studies but are plausible cases that represent possible application of the biases to considerations that would affect distributive justice. Notice that the cases outlined are cases of the kind that Cohen would be worried about. That is, the cases I formulated are cases where an individual's actions would affect whether a state of justice would hold and where possession of an egalitarian

³⁰ Trout (2005), 404

³¹ Kahneman, Knetsch and Thaler (1986), 731

³² Trout (2005), 405

ethos would signal a change in behavior. An extension of a view I put forth in this paper considers people motivated by the egalitarian ethos to be people who would be aware of the errors they could make in situations that would affect the prospects of others or themselves.³³ Communities could come to discover these biases by the very same means used by psychologists in our society. In a way, the title of this section is misleading. It is not necessarily the case that informational deficits don't matter. Rather, it's that we do not have a reason to believe that there are any informational deficits in the first place. On the other hand, the title of this section also rings true. The level of information that Cohen thinks would be required, but which we do not have, doesn't matter for the purposes of justice. All we need is the ability to discover general truths about the ways people behave. If Cohen endorsed such a claim, he would be able to conclude that people in the just society are people who are not subject to these errors when making just decisions. In the next section, I focus on what seems to be an assumption made by Cohen that by rejecting freedom of occupational choice, we endorse a view in which people must be forced by an external entity (e.g. the state or another person) to take up socially useful occupations.

VI. Using Biases

Now we can take stock of the claims I believe the cases above support. There are two possible claims I can support using the cases mentioned above. We can call the first claim institutional assistance (IA) because the claim would justify the use of our understanding of human psychology as a mechanism for manipulating people into

³³ This is important because we should note that on Cohen's view, the egalitarian ethos is not a set of attitudes that would make people sacrifice themselves for the sake of everyone else in society. It is permissible for people to regard their interests in the egalitarian society. However, the extent to which people should regard their interests is more limited than, say, the way in which people should regard their interests in a libertarian society where equality is not a concern.

making decisions that would be conducive to the retention of Pareto efficiency and equality,

(IA) Using general decision-making biases, the state should structure people's environment to non-invasively place people into socially useful occupations.³⁴

We may call the second claim self-paternalism³⁵ (SP) because it would require people to make use of the aforementioned information about human psychology for the purposes of self-management. I refer to it as a kind of "paternalism" because while it may be useful for our worries about retaining equality and Pareto efficiency, someone could also use decision-making biases to make welfare-enhancing decisions.

(SP) People have the capacity to be aware of these decision-making biases, to correct for them and should correct for them.³⁶

Which of these positions is most justified will be determined by our understanding of what it means for the policy of a state to be "invasive" (consider Cohen's claim that Stalinist state policies would be invasive, and hence, undesirable). There are two ways I believe we can understand what it means for a policy to be invasive. The first I refer to as "actually invasive" (AI),

(AI) X is an invasive act if and only if the person being invaded upon is resistant to and offended by the act, and it concerns that over which someone has justified control (i.e. oneself, property).

³⁴ This kind of view can be drawn from consideration of Trout (2005)'s work in which he is specifically worried about the impact of decision-biases on people's welfare.

³⁵ This position was inspired by the following passage from Elster (1989), "The political question remains, however, even granting that people do not desire that which would be best for them, how, except in a dictatorial or paternalist fashion, could a change for the better come about? The solution must be a form of self-paternalism: If people do not want to have the preferences they have, they can take steps – individually or collectively – to change them." (P. 128) I only take issue with one feature of the view Elster espouses in this quote. He implies that all people could change their preferences. I do not think it is true, and I do not think it is necessary. We may be able to distinguish between weak-willed people with bad preferences and strong(er) willed people with bad preferences. Where the former may always fall victim to their preferences, the latter will have a greater capacity to change their behavior even if their preferences never go away.

³⁶ This kind of Position can be attributed to Elster (1993) and (1983)

According to this definition, if an agent is offended by an act that affects that over which she has “justified control”, then the act is invasive. I leave the term “justified control” intuitive, but the basic idea is that one has justified control over what one owns.³⁷

Furthermore, notice that unless an agent resists or expresses offense at the act of another, the act *isn't* invasive. And this leads me to formulate a second definition of something's invasiveness, which I will call “possibly invasive” (PI),

(PI) X is an invasive act if and only if the person being invaded upon would be resistant to and offended by the act were she aware of it, and it concerns that over which someone has justified control (i.e. property, oneself).

To see the difference between (AI) and (PI), consider the following example,

Knowing what it knows about human psychology, the state manages to structure the doctor-gardener's circumstances so that she ends up doctoring. She is blissfully unaware of what the state has done to get her to doctor, and lives a fulfilled life. However, if she had found out that her decision was the product of the state's manipulation, she would have resisted becoming a doctor.

According to (AI), there is nothing wrong with this. No invasive act occurred because there was never an actual resistance or offense on the doctor-gardener's part. However, according to (PI), invasion has occurred because of the mere fact that the doctor-gardener would have been resistant or offended by the state's actions. Each of these definitions of invasion will affect whether we can endorse (IA) or (SP) as well. If we endorse (AI), and the only invasive behavior that matters is that invasive behavior someone actually retaliates against, then (IA) is justified and not invasive as long as nobody is resists or is offended. It follows that the number of policies that can be justified is larger than that which would be formulated if one endorsed (PI).

³⁷ I won't pretend that this doesn't deserve further philosophical analysis, but treating the notion of justified control and ownership here would take me too far from the scope of my paper. For accounts of ownership that imply, or explicitly discuss, control, see Otsuka (2003), Cohen (2011) and Nozick (1974)

On the other hand, by endorsing (PI), many acts justified by (IA) can't be supported since it constitutes an invasion that in some counterfactual situation, someone would resist or be offended. Hence, only the most non-invasive acts can be pursued by the state. However, we can still endorse (SP), since it is not a claim about the authority the state has to use claims about human psychology to better people's welfare. Instead, (SP) is a claim about what people can do with information about their psychology. The conjunction of either (IA) and (AI) or (SP) and (PI) has consequences for two claims I will discuss later about what an egalitarian society should look like.

VII. Freedom or Stalinism?

From my discussion about the decision-making biases people are subject to, one should start to get an idea of where my disagreement with Cohen resides. Rejecting freedom of occupational choice does not require that we resort to an extreme totalitarian position. That is, we do not have to push forth to the conclusion that we need to place people into jobs against their wills. Thus, my criticism of Cohen's approach to rejecting the rejection of freedom of occupational choice is that he wrongly assumes that we must endorse Stalinism upon rejecting freedom of occupational choice. Consider the following variation on the case of Joan presented above,

Joan has a taste for plovers' eggs and pre-phyloxera claret.³⁸ She feels very dissatisfied without these goods but has to give them up if she expects others to be as well off as she is.

By Cohen's own account, a state of justice does not hold unless people in society are moved by an ethos of justice.³⁹ While someone could readily concede that an ethos of

³⁸ For a detailed account of the problem of expensive tastes, see Dworkin (2000), 49

³⁹ "It emerges ... that distributive justice cannot be achieved solely through citizens' compliance with the laws of a state that aims at benefiting the worst off, and therefore, regardless of how self-seeking ... the behavior of those citizens is. A society that is just within the terms of the difference principle, so I

justice is necessary, we must ask some questions at least one question about what it means for an ethos to hold. We must ask ourselves to what extent we believe Joan's right of self-ownership (right to control herself) is defeated by countervailing considerations. Using this approach, we can determine what kinds of state policies should be endorsed. If her right is not defeated by any considerations, then we should look to (PI) and endorse (SP), since these would both secure the strongest sense of self-ownership one could ask for. The consequence of this view is that we cannot intrude on Joan and force her to act against her preferences. There is a very weak claim we may endorse about one role the state has in the just society if we accept (PI) and (SP). I will call it the "source of information" view,

(SI) The state is justified in giving people information about their decision biases as long as such information is obtained through voluntary consent.

The qualification at the end of (SI) is meant to ensure that we retain people's right of self-ownership (in the strong sense that we want to retain for this position). People's right to self-ownership also limits the state's ability to use the information. Next let's assume that someone's right of self-ownership can be defeated by other considerations. If we take this position, we can justify policies that would follow from (IA). If we endorse (IA) and accept (AI), then the state could certainly honor (SI), but it would not be bound to. In fact, policies that (IA) would endorse would be opposed to a strong right of self-ownership in that it would include a very important sphere of agency within the scope of state power, an individual's capacity for making decisions. Because structuring an individual's circumstances in a specific way can carry with it a tendency to evoke a specific response from someone, the state using this power for retaining equality and

conclude, requires not only just coercive *rules*, but also an *ethos* of justice that informs individual choices." Cohen (2008), 16

Pareto efficiency, would affect *what* decisions someone makes. So, (AI), as a claim about what constitutes invasiveness, seems to grant the state a larger role.

We can take these reflections, apply them to the ethos of justice, and thus provide a set of views on what an egalitarian society may look like given the claims I've traced out so far. If one endorses (IA) and (AI), where (IA) is justified if (AI) isn't satisfied, then we may formulate the following claim, which I call structural egalitarianism (SE),

(SE) Using decision-making biases that may otherwise negatively affect people's welfare, the state should influence people into taking up socially useful modes of production and thus retain equality, Pareto efficiency and freedom of occupational choice.

A lot depends on how we construe the word "free" here. If all we mean by someone's "freedom of occupational choice" is that they are not actually resistant or offended by the state's actions (in the sense captured by (AI)), then freedom of occupational choice is retained. However, we can get a different consequence if we instead endorse (SP), (PI) and (SI). To derive a claim about an egalitarian society (the kind Cohen might endorse), we need to include a premise about what the just society requires. Thus, let's stipulate the following as a claim about a necessary condition for the just society (JS),

(JS) In the just society, people freely choose to retain equality and Pareto efficiency.⁴⁰

Taken together, (SP), (PI) and (SI) can be used to support the following claim. Call this claim individual egalitarianism (IE),

⁴⁰ It should strike one as obvious that this claim is contentious, but I have used it because I am trying to be as charitable as possible to Cohen's position by formulating an alternative position that makes similar demands on the just society. Also, one should not read this as a sufficient condition for being a just society, since being a just society likely requires a panoply of different virtues. Because we are discussing a specific dimension of the just society that concerns people's freedom in the face of other values, I am only focusing on the kinds of demands that come from these considerations.

(IE) In the just society, people should freely choose equality. They are aware of the modes of irrationality that will have an adverse affect on an egalitarian distribution and should correct for them.

People's "awareness" is constituted by (1) the claim made in (SP) in which people manage themselves using information about their psychological deficiencies and (2), the claim made in (SI) about the justified use the state can make of information about human psychology. People are "choosing freely" because they are not being influenced by state policies that may, unbeknownst to someone, make them choose a particular occupation. Ideally then, state policies avoid invading in people's lives in the sense of invasion mentioned in (PI), where invasion means that someone *would* be resistant to or offended by state action that influences her decisions.

Recall that I defined Stalinism as the following thesis (S),

(S) A society should force people to work in occupations that ensure Pareto efficiency and equality.

It will be useful at this point to contrast this thesis with the two egalitarian theses just formulated,

(IE) In the just society, people should freely choose equality. They are aware of the modes of irrationality that will have an adverse affect on an egalitarian distribution and should correct for them.

(SE) Using decision-making biases that may otherwise negatively affect people's welfare, the state should influence people into taking up socially useful modes of production and thus retain equality, Pareto efficiency and freedom of occupational choice.

Cohen derived (S) from his four reasons against the rejection of freedom of occupational choice and his assumption that rejecting freedom of occupational choice required full coercion of people into specific occupations. But in considering (IE) and (SE), we see that Cohen's assumption is not necessarily warranted. Specifically, (SE) still leaves room

for people to choose what occupations they want. But instead of forcibly placing people into specific lines of work, (SE) allows people to choose what they want to do within circumstances the parameters of which have been structured by state policies. (IE) will prove to be a more controversial case since it is not clear that people who are choosing an egalitarian distribution of wealth are doing so because they prefer it, or because they are constraining themselves to the demands of justice. This is a claim that Cohen addresses specifically, so we will consider this claim later. But from the fact that (SE) is a restriction of freedom we will be able to conclude that freedom of occupational choice is restricted within the trilemma. In the next section, I address whether (IE) actually constitutes a rejection of freedom of occupational choice.

VIII. Is Self-Restriction Free?

First, I want to clarify what we could mean when we use the word “free” in the present context. Let’s consider two cases,

- (1) S prefers X to Y but acts in order to satisfy Y
- (2) S prefers X to Y and acts so as to satisfy X

Each case, without context, is ambiguous as to the intuitions we may have about political freedom. For example, in (1) S may pursue Y instead of X because the circumstances are such that the pursuit of X is impossible. I may prefer a steak dinner to a hamburger, but if I don’t have the means to obtain the steak dinner, I may be left with the hamburger as my only option. In such a case, I suffer from a lack of positive freedom (or “freedom to”). Furthermore, we may also be able to provide situation in which (1) is the function of an absence of negative liberty.⁴¹ Someone might prefer voting to not voting, but the laws of a society may be such that the coercive state apparatus intrudes upon an individual’s

⁴¹ See Berlin (2006)

ability to vote. Now consider case (2). In the hamburger-steak case, one might be able to eat steak because she has the means to obtain it. So she is not barred from eating steak and can satisfy her preferences. In this sense, someone is free to satisfy her preference for steak. A more interesting case is the case in which someone can attain self-realization because she can pursue her most preferred option. In the case of the doctor-gardener, she seems to be free when she can do that which would satisfy her preferences, where her preferences are those preferences she has free from any deficiencies that might make them irrational. The doctor-gardener's is a case of positive freedom (or, to use Berlin's grammatical distinction, it is a case of "freedom to" rather than "freedom from").⁴² In such a case, there is a harmony between (1) someone's ideal and actual preferences and (2) her choices. But notice that the interpretation of (2) as a case of positive liberty is also compatible with a varying degrees of a lack of negative freedom. It's possible to be free under one interpretation of (2) but unfree in another. The same follows for (1).

Recall that if the doctor-gardener did not choose equality we would not be justified in making her take up doctoring for the four reasons spelled out above.⁴³ If the doctor-gardener had preferences that she or we could not adjust in the light of information about what justice demands, we are not justified in forcing her to doctor even if forcing her results in satisfying the demands of justice and creating a Pareto efficient state. So, the doctor gardener would freely (without external coercion) choose to doctor at

⁴² A separate, but nevertheless interesting, point about Cohen's view is that there seems to be a real sense in which the trilemma is *not* resolvable. If we focus on trilemma₂ then at least some people will have to be unfree. But Cohen argues that this fact doesn't entail that people are acting unfreely when they act from moral commitment. I take this position to task below. Here is a case where there is a tension between equality such that the stakes are very high for Cohen. They are high because if people who have to give up self-realization in the just society aren't free when they act out of moral commitment, he has no solution to the stronger objection against the trilemma claim.

⁴³ The reasons are (i) counter-productive deterrence, (ii) informational deficits, (iii) doing things in the wrong spirit, and (iv) that we ought not to use people as a means.

the same wage as everyone else (doctors and non-doctors alike). If the doctor-gardener does not prefer to doctor, and will not doctor, there is little (if anything) the state can do to change her behavior.

Elsewhere⁴⁴ Cohen argues that if someone has the option of receiving treatment to change his expensive tastes, the ideal of equality would say that he should take up the procedure. Consider the following passage in which Cohen is discussing whether one's alienation from one's tastes is reason to think of them as an obsession. In this passage, Cohen is trying to show that people should only be compensated for those tastes they have as the result of voluntary choice,

Suppose that there was no such warning, that our unfortunate contracted his expensive taste innocently, and that we now offer him, *gratis*, expensive unrepugnant therapy which would school him out of it. If he agrees to the free therapy, then, so I believe, the ideal of equality says he should get it, regardless of whether he says farewell to his taste with unmixed relief or, instead, with a regret which reflects some degree of identification. This suggests that identification and disidentification [with tastes] matter for egalitarian justice only if and insofar as they indicate presence and absence of choice.⁴⁵

Let's imagine that the doctor-gardener cannot change her preference for gardening and is offered the opportunity to participate in a procedure that will result in her preferences being changed so as to be compatible with the demands of justice. On Cohen's view, it seems that justice would demand that the doctor-gardener should change her preferences in order to satisfy its demands. If everyone in society had the option of getting the "unrepugnant" therapy then everyone would be able to have whatever produces a just state of affairs at the top of their preference ranking. Furthermore, everyone would be able to find self-realization in doing what is just.

⁴⁴ See Cohen (2011), 25

⁴⁵ *Ibid.*, 25

The above considerations suggest that ideally, people will prefer what is just. But we can't reasonably expect that all people in a society will prefer what is just. When I summarized the doctor-gardener's preferences above, they appeared as,

- (a) A doctor's salary at £50,000: she is a lot better off than most with respect to her job satisfaction and income
- (b) A gardener's salary at £20,000: she is better off than most with respect to job satisfaction, but she is not better than everybody else with respect to her income
- (c) A doctor's salary at £20,000: she is still much better off than most with respect to her job satisfaction, but she is not better off with respect to her income (again).

According to Cohen's view, the doctor-gardener supplied with the means and circumstances by which to satisfy (a) will choose (a) over (b) and (c). However, as Cohen set up the example, it turns out that (c), the least preferred option, is the option that would help realize justice, but the doctor-gardener would rather choose (b) before (c). If the doctor-gardener was properly motivated by an egalitarian ethos, she would choose (c) over (b) or (a) but it does not follow that because the doctor-gardener *chooses* (c) that she prefers (c). It may very well be the case that the doctor-gardener prefers (a), but that her moral or political values cause her to choose differently. But then it seems we may ask the question: is the doctor-gardener acting freely? If we really respected the doctor-gardener's freedom for self-realization, wouldn't we say she is free when she can and does choose (a)? Cohen offers an argument against the claim that the doctor-gardener is unfree when she is constrained by the demands of morality or justice. I will now turn to his argument.

Cohen responds to the aforementioned claim by posing a dilemma, Either the moral prohibition of murder counts as constraining or it does not. If it does, then it is false that we do not want a morality whose edicts are constraining. But if the no homicide moral restriction does not constrain, then why should the no-inequality moral restriction be thought to constrain? So either morality doesn't constrain, or it's no objection to occupational obligation being a part of morality that morality would in a certain sense constrain if that obligation were a part of it.

In the relevant sense of “constraint,” it does not follow from morality’s anti-murder “constraint” that I act unfreely when I conscientiously refrain from murdering.⁴⁶

This argument does not establish much. At most, it gives plausibility to the claim that some moral action is not forced action. However, assuming it’s true that some moral action is not forced action, it may still be true that some moral action is forced action. And if some moral action is forced action and some moral action is not forced action, then it’s false that no moral action is forced action or that all moral action is forced action. So Cohen is correct to infer that it doesn’t follow that all action is a species of forced action even if murder is forced action. But we can also endorse a different kind of claim. Instead of focusing on moral action, we focus on people’s particular actions. Thus, while it may be true that some moral action is not forced action, it may still be true that for some (those with incorrigible preferences), all moral action is forced action. It may also be true that for some, some cases of moral action (the moral action of particular people) are cases of forced action. Thus, we aren’t worried about action in general, but action in particular. We only need to endorse the conclusion that the moral actions of *some* people are forced actions.

Hence, Cohen’s argument seems to miss this point. He seems to reply to the conclusion of the last paragraph,

The first suggestion, that one might be constrained (not by morality as such but) by one’s own moral commitment, perhaps deserves more consideration. Yet we do not normally think that whoever acts under moral inspiration acts unfreely. Why, then, should we think that someone acts unfreely if his occupational choice reflects a sense of social obligation?⁴⁷

⁴⁶ Ibid., 192

⁴⁷ Ibid., 192

But this doesn't seem adequate to dismiss the claim that if someone is acting in accordance with her moral commitments that she is acting unfreely in the sense spelled out in (SP). It surely *seems* intuitive that people acting this way are acting freely but the intuitiveness of an idea doesn't (by itself) entail its truth.

There is at least one more reply Cohen has against the view that person behaving consistently with (SP) is acting unfreely. Consider the following passage,

Either the trilemma reflects a more general truth, or there is something about being inspired by egalitarian principle [sic] in particular that is supposed to make it hold. The more general truth would be that people do things that benefit other people only if they either benefit from doing so themselves or are forced to do so: that would disqualify the ethical solution. But the mooted general truth is false, for it entails that either the falsehood that people never act out of generous or conscientious inspiration, with no prospect of benefit, in the relevant extrinsic sense, or the falsehood that such action is a species of forced action.⁴⁸

This argument begins with the assumption that all people have incorrigible preferences. But If (SP) or (IE) are claims that allow for some people to act unfreely, then it seems we do not have to prove that all moral action is a species of forced action. We only have to assume the plausible claim that some cases of moral action are cases of forced action. Defending this claim does not require assuming that all moral actions are forced actions and it does not require us to believe that it is false that some cases of moral action are not cases of forced action. I don't think that any of the premises in Cohen's argument are false, and the argument seems (at least) to be valid. However, I question his starting point. He assumes that someone who holds a positions like (SP) or (IE) would be trying to make a claim about all people. But the claim that (SP) and (IE) constitute a rejection of freedom only needs as support the claim that there are some people who unfree when they act morally.

⁴⁸ Ibid., 193

The trilemma claim has the solution that it does because people acting consistently with claims like (SP) are people who may have preferences they can do nothing to eradicate, and yet may still resist. Thus we should distinguish between the following four cases,

- (i) Some people have preferences/desires that once satisfied will also satisfy the demands of justice.
- (ii) Some people have preferences/desires that they can influence and change so as to satisfy the demands of justice.
- (iii) Some people have preferences/desires that they cannot change, but which they can resist because of moral commitments and thus satisfy the demands of justice.
- (iv) Some people have preferences/desires that they cannot resist and cannot influence and so they cannot satisfy the demands of justice.

If we assume (iv) for everybody, we will end up with the kind of situation Cohen is thinking of: people may only ever do things because they get something in return. But there is no reason to start from this assumption. If we remove this assumption, we can just as easily resolve the trilemma by assuming that people satisfy (i) through (iii). It's possible that people do sometimes act for beneficent reasons, but it may also be true that some people have to tame their unwieldy preferences/desires in order to satisfy the demands of justice. We don't need to conclude that all moral action is a species of forced action, we only need to conclude that the moral actions of some are instances of forced action.

Finally, if in (SP), for some people, some or all moral action is forced action, we may still retain three of the four reasons Cohen cites as reasons for retaining freedom of occupational choice. To recap those reasons, we can still retain the ideas that external coercion of an agent would (1) produce counter-productive deterrence, (2) cause an agent to act for the wrong reasons (in "the wrong spirit") and (3) require that we use people as a

means. If we expect agents to act according to egalitarian considerations despite their preferences, we violate none of (1)-(3). (1) is not relevant because agents who are acting for egalitarian considerations despite their preferences are already going to pursue socially useful occupations. Nor is (2) a problem because an agent acting as I describe would already be acting for the right reasons. And lastly, (3) does not pose difficulty because we are still assuming that agents are acting autonomously. Thus, we reject freedom of occupational choice but retain intuitions that someone who values the free action of people in political society would have.

In conclusion, some people behaving in a way consistent with (SP), and therefore with (IE), individual egalitarianism, may only be free in the sense that they are free from invasion from others (in the sense spelled out in (PI)). This sense of freedom is less robust than what Cohen has in mind, where he is suggesting that people have freedom for self-realization that the state can do nothing to mitigate when that person uses their freedom in a way that isn't compatible with the demands of justice. Though I mostly agree with Cohen, I think that we should consider freedom from the invasive action of others as what we mean by the word "free". And if this is what we mean by the word "free", then we can still say that people are unfree in the senses spelled out in the trilemma claims. In the next section, I address some plausible objections to (SP), which may lead us to re-consider whether we should understand (IE) to allow some people to be unfree when they act morally.

IX. Some Remaining Objections to (IE)

Remember, so far I've only tried to defend (SP) (and (IE)) as a thesis about the what people are capable of doing with information about their own psychologies.

Extended to the trilemma and egalitarianism, the claim made a statement about what people can do with information about their psychologies when they seek to satisfy the demands of justice (this was (IE)). I criticized Cohen's arguments against the idea that moral action can be forced action by arguing that even if some people prefer to act in an egalitarian way, it doesn't preclude us from talking about people who have preferences that are inconsistent with justice and yet still act for considerations of justice. In this final section of my paper, I will conclude by addressing some possible objections to (IE).

The first objection someone might place against (SP) is that the ability to govern oneself with knowledge of the mistakes in reasoning to which one is prone would require extraordinary resources not only from the self-governing agent, but also from the state. In the case of the state, the need to instruct people about their psychologies would require resources that would make such policies impracticable.⁴⁹ In the case of the self-governing agent, while she may be able to catch many of her errors, she certainly will not be able to catch them all. Despite all of her practice, she may still choose unjustly, even in the most just of societies. I reply by first noting the object of analysis that I'm concerned with. First, my discussion has been in terms of *ideal theory*. It's possible that the resources of a society may be scarce so as to prevent the meting out of justice, but it's also possible that some societies at some time could have the resources needed to satisfy the demands of justice. (IE) does not recommend that the state pursue the education of people come what may. It only claims that people in the just society would be of a certain character and the state would have a limited role in ensuring that they have that character. Furthermore, (IE)'s only prescription about what the state ought to do should only hold when the state can plausibly enact the right kinds of policy. Second, as to the claim that people could not

⁴⁹ Trout (2005)

realistically catch all of their mistakes in reasoning, I will admit that this may be true. However, there is also a question as to how precise we must be with respect to satisfying the demands of justice. Justice may require equality, but justice may not require a very precise idea of equality.⁵⁰ Therefore, though we may sometimes err in our reasoning about which are the most just decisions, we may still live in a just society.

A second objection someone might press against me is another claim about the practicability of causing forcing oneself to take up socially useful occupations. I will try to outline the argument precisely,

- (1) All people with non-just preferences are people who do not enjoy doing the just thing
- (2) All people who do not enjoy doing the just thing are people who have either to (1) come to enjoy doing the just thing or (2) tolerate doing the just thing even if they do not enjoy it.
- (3) All people who have to come to enjoy doing the just thing are people who cannot will enjoyment of doing the just thing
- (4) All people who have to tolerate doing the just thing are people who can never come to want to do the just thing.
- (5) Therefore, All people who have non-just preferences are either people who (1) cannot will enjoyment of doing the just thing or (2) can never come to want to do the just thing.

First, I will start with premise (3). The motivation for this premise comes from the idea that there are some states of mind that cannot be brought about by sheer force of will. In other words, there are some mental states the willing of which defeats our success in attaining that state. Jon Elster⁵¹ has argued that we can include the state of sleep and the state of trying to impress in this category. By willing these states in ourselves, or trying to will certain states in others (i.e. trying to impress them), we fail to achieve our ends.

⁵⁰ Consider Cohen's example of the camping trip. A group of us go on a camping trip and all participate in setting it up. Some of us fetch firewood, others of us prepare the tents, and others of us forage for food. We may have no way of knowing that all of us has exerted the same amount of effort in our labor, but we may regard such a situation as one in which everyone has worked equally to contribute to our enjoyment of the camping trip. In such a case, establishing such a state as equal doesn't require a precise, operationalized formulation of equality.

⁵¹ Elster (1983)

Likewise, someone may think it is plausible that the desire to do what justice demands cannot be willed, so (SP) is implausible as a claim about the demands of justice on people. But this objection has an easy solution (also offered by Elster). For example, even if we cannot directly will ourselves to sleep, we may still find ways of making ourselves fall asleep. If you can't fall asleep, you can take sleeping pills, thus causing yourself to sleep. Likewise, you may have to find alternative means towards the enjoyment of just action. Premise (4) presents a stronger objection than premise (3). If people *cannot* alter their preferences to preferences that are compatible with justice, then they merely have to tolerate it. But if they have to tolerate doing the just thing, then they can never make themselves want to do the just thing. I can think of two problems with having such people in an ideal society. First, they may be more inclined towards making unjust decisions. Second, the just society is one in which many people will not like what they do. To the former point, I reply that it is difficult to ascertain how prone to unjust decisions people will be in a just society, and this seems to be more of an empirical question dependent on how weak-willed someone happens to be. To the second claim, I reply that this does not seem to be a problem. Someone who strongly prefers murdering to abstention from it may find a world that doesn't tolerate murder to be less than satisfying place (such a world would be unsatisfying with respect to that preference). A person who prefers murdering to abstention from it may never want to abstain from murdering, but may still do it because he realizes that his murderous inclinations are not compatible with what morality demands. This doesn't seem to be an incoherent way of talking. The fact that a just society doesn't satisfy everyone's preferences doesn't seem to be an objection against the just society.

Conclusion

In this paper, I have offered two claims that constitute a partial rejection of freedom opposed to Cohen's assumption that we have to cope with a "Stalinist" view if we want to reject freedom of occupational choice. Against some of Cohen's arguments, I have defended the claim that some moral action may be forced action. I argued this on the basis that it may be true that though not all moral action is a species of forced action, for some, moral action may be forced action. These considerations lead me to conclude that if by "freedom" in the trilemma we only mean the freedom to choose one's occupation, or the freedom to realize one's capacities as one sees fit, then resolving the tension between equality, Pareto efficiency and freedom requires us to reject freedom. If we conceive of freedom as freedom from invasive policies enacted by others or the state, then it doesn't require us to reject freedom, and in a just society, people choose justice without the invasion of the state. Hence, justice requires that we choose socially useful occupations regardless of what we would rather be doing.

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