

Productive Justice

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In the late 20th and into the early 21st century, political philosophy was largely focused on questions of distributive [justice](#). The central question that theorists of distributive justice aim to answer is: according to what principle or principles ought resources be distributed, either within a single political society or [within the world at large](#)? In asking this question, theorists with broadly [egalitarian](#) sympathies generally considered the fact that most of the resources to be distributed need first to be produced only implicitly (if at all). For example, [John Rawls](#) famously endorsed the [view that inequalities in the distribution of resources could be justified by the need to adopt policies that would incentivize capable individuals to engage in socially valuable productive activity that they might otherwise refrain from performing](#) (Rawls 1999). [Others](#) argued that when some people choose to engage in more or more socially valuable productive activity than others, this choice could make it the case that those who work more or produce more are entitled to a greater share of society's social resources than those who work or produce less (Cohen 1989; Dworkin 2000). [Libertarians](#), on the other hand, relied on the assumption that there are limits on what the state is permitted to do in order to ensure that resources are produced, and argued that similar limitations must apply to state efforts to promote favored distributions of what has already been produced. Robert Nozick, for example, argued that anyone who rejects forced labor must also reject redistributive taxation (Nozick 1974, 169-71).

More recently, theorists of productive justice have argued that the fact that so much of what principles of distributive justice govern the distribution of must be produced via work is more fundamental for theorizing about justice than had previously been acknowledged. More specifically, it has been argued that we cannot make sense of certain plausible distributive requirements without endorsing requirements on production, and thereby on productive activity, since the fact that the resources to be distributed must first be produced means that if there are distributive requirements of certain kinds with respect to the resources (e.g. a [requirement that everyone be provided with some amount of a specific good](#), or a requirement of equal distribution at a level higher than what might be available in the absence of certain state policies and/or individual moral commitments), there must also be requirements to ensure that they are produced in sufficient quantities.

The central questions of productive justice include at least the following:

1. Which goods must be produced, and in what quantities?
2. Which actors (e.g. state institutions, individuals, corporations) are the bearers of obligations of productive justice, and what are the grounds and content of their obligations?
3. What policies is it obligatory or permissible for states to adopt in order to ensure that the necessary goods are produced? And what policies would it be impermissible for states to adopt, even if their adoption would contribute to the production of the necessary goods.

It is important to note that productive justice is most fundamentally about requirements on the productive activity that is necessary in order to satisfy requirements of justice. Not all of this

activity will have the production of goods, in the narrow sense, as its aim. Most importantly, some of it will involve the provision of services that are plausibly essential as a matter of justice, such as medical care. The provision of medical care does, of course, require the production of goods in the narrower sense (e.g. drugs, surgical instruments, hospital buildings, etc.). It also, however, requires the provision of services by some individuals to others (e.g. doctors conducting appointments, nurses caring for patients, etc.). The service activities in these cases are productive in the sense of the term that is relevant for productive justice, even though it does not involve the production of goods in the narrow sense.

In addition, it is important to distinguish the sense of productive justice that I have described thus far from the broader set of issues that has been discussed under the label of “justice in production” (Hsieh 2008). These issues involve questions about the claims of those involved in productive activities to, for example, policies ensuring access to [meaningful work](#), workplace democracy, or economic democracy (i.e. democratic control of the means of production within society as whole). This article focuses on productive justice, and sets aside the broader issues of justice in production.

Egalitarianism and Productive Justice

The fact that much of what is to be distributed must be produced via work raises a challenge for egalitarian accounts of justice that has been most influentially articulated and discussed by [G.A. Cohen](#) (2008, Ch. 5). He describes the challenge in terms of a trilemma, which suggests that three claims that egalitarians tend to want to accept cannot all be true. The relevant claims are:

1. The claim that justice requires an equal distribution of whatever the correct “currency” of justice is (e.g. resources, welfare, opportunity for welfare, Rawlsian primary social goods, [capabilities](#)). Cohen refers to this claim as “equality.”
2. The claim that justice requires that Pareto superior states of affairs are preferred to Pareto inferior states of affairs – that is, that justice requires that people are made better off whenever this can be done without making anyone else worse off. Cohen refers to this claim as “Pareto-optimality.”
3. The claim that freedom of occupational choice is itself a requirement of justice – that is, that people are free to choose what kind of work they will pursue. Cohen refers to this claim as “freedom of occupational choice.”

He illustrates why we might think that these three claims cannot all be accepted by describing an example in which an individual who could choose to pursue either of two career paths, one of which is significantly more socially beneficial, has a preference for the less socially beneficial career when the pay for each is the same, but would be willing to pursue the more socially beneficial career if she is paid substantially more. Here is the case:

Doctor/Gardener: A is capable of working either as a doctor or as a gardener. Her work as a doctor would greatly benefit badly off people in her society, while her work as a gardener would produce much less social benefit. If the pay for each job were the same, namely the egalitarian salary for her society, then A would prefer being a gardener over being a doctor. However, if she were to be paid more than double the egalitarian salary, then she would be willing to be a doctor. The amount of social benefit that she would

produce as a doctor, and its distribution, would be sufficient to make it the case that the state of affairs in which she serves as a doctor for more than double the egalitarian salary is Pareto superior to the state of affairs in which she works as a gardener for the egalitarian salary. In addition, while A would be somewhat better off as a gardener at the egalitarian salary than she would as a doctor at the egalitarian salary, she would nonetheless still be better off than most people in her society as a doctor at the egalitarian salary, because she would enjoy working as a doctor more than most other people enjoy their work, despite enjoying it less than she would enjoy gardening (Cohen 2008, p. 184-85).

The apparent inconsistency between equality, Pareto-optimality, and freedom of occupational choice can be seen by considering what would happen if we arranged society to ensure that two of the three will be satisfied. If, for example, we ensure that equality and freedom of occupational choice are protected by mandating that jobs are available only at the egalitarian salary, and allowing people to choose their occupations, then A will choose to become a gardener, and the resulting state of affairs will be Pareto inferior to available alternatives, such as that in which she is paid more than double the egalitarian salary to work as a doctor. If we instead ensure that Pareto-optimality is satisfied while protecting freedom of occupational choice, then we will be committed to paying A more than double the egalitarian salary in order to get her to work as a doctor, with the result that equality is sacrificed. Lastly, if we aim to ensure that equality and Pareto-optimality are both satisfied, it would appear that we would have to force A to work as a doctor for the egalitarian salary, which would be incompatible with freedom of occupational choice.

Cohen argues that we can resolve the apparent inconsistency by understanding freedom of occupational choice such that it prohibits the state from using coercive measures to force people to work in jobs in which they would make significant social contributions whenever this is consistent with equality and Pareto-optimality, but does not imply that it is permissible, as a matter of justice, for individuals to refuse to work in more socially productive jobs at the egalitarian salary when they face choices like A's (2008, 189-96). In other words, Cohen claims that egalitarians should believe that it would be wrong for A to refuse to work as a doctor at the egalitarian wage; but he also holds that the fact that she would be acting wrongly by refusing does not make it the case that the state (or any other agent) is entitled to use [coercion](#) in order to get her to satisfy her obligation. Justice requires equality and Pareto-optimality, on this view, because it requires individuals to choose the most productive careers that are available to them that are also compatible with their being no worse off overall than others even if they are paid no more than the egalitarian wage. If everyone complies with this obligation, then everyone will be paid the egalitarian wage, and no available Pareto-improvements will be forgone. And it is compatible with freedom of occupational choice, properly understood, because no one will be subject to coercive measures that limit the occupational choices that are available to them.

Cohen's view has been criticized in several ways. Paula Casal argues that the "ethos" that Cohen claims must exist in a just society, which would consist in a general commitment among individuals to comply with the obligations that he endorses, including the obligation to work in productive careers at the egalitarian salary, would be incompatible with freedom of occupational choice, properly understood (Casal 2013; see also Lang 2016, pp. 235-41 and Mackay 2016).

Cécile Fabre, on the other hand, argues that Cohen's egalitarian commitments are incompatible with his refusal to endorse using state coercion in order to force individuals to perform especially socially valuable work that would benefit the badly off, such as providing needed medical care to those who would otherwise be left without it (Fabre 2010; see also Lang 2016, pp. 241-47).

Basic Interests and Productive Justice

While it is fairly easy to see that egalitarian distributive commitments raise the kind of challenge that Cohen describes regarding freedom of occupational choice, and so raise questions of productive justice, there are reasons to think that commitments far less controversial than distributive egalitarianism raise a similar challenge. Lucas Stanczyk has argued that fairly minimal distributive commitments, such as that everyone in a society is entitled as a matter of justice to basic medical care or education, present a similar challenge to traditional [liberal](#) views about freedom of occupational choice, and that we need an account of productive justice that can meet this challenge (Stanczyk 2012).

Like Cohen, Stanczyk presents the challenge in terms of a trilemma. He suggests that the following claims are all widely endorsed and plausible, but cannot all be true:

1. Principles of justice do not limit the permissible occupational choices of individuals – that is, individuals do nothing wrong, at the bar of justice, by choosing to work in any legally available occupation. We can call this claim “anti-obligation.”
2. The state may not forcibly assign people to jobs, except in cases in which the basic liberties of citizens are at stake (e.g. military conscription for national defense or other

national service necessary to protect basic liberties from external threats). We can call this claim “anti-coercion.”

3. Justice requires societies to ensure more than basic liberties for their citizens (e.g. basic medical care, education, food, etc.). We can call this claim “productive justice.”

The incompatibility of the three claims can be illustrated by considering the [needs](#) of the residents of a [poor](#), underserved region of a country for basic medical care. Imagine that many of the residents of the region currently lack access to basic medical services that they are plausibly entitled to as a matter of justice. If the anti-coercion claim is true, then the state cannot address the lack of access to basic care by forcing doctors, nurses, and other medical professionals to work in the underserved region. And if the anti-obligation claim is true, then those who are capable of performing the necessary work have no obligation to contribute to ensuring that it is performed. But if the state is prohibited from forcing people to perform the necessary work, and no one is obligated to perform it voluntarily, then there are no obligations of justice that could explain why the lack of access to basic care endured by those in the region is an injustice. As Stanczyk puts it, “[i]f occupational choices cannot be unjust, and if justice forbids forcibly assigning welfare-improving jobs, then *there can be no injustice in any failure to bring about any state of affairs in which people fare well, whenever able people will not do the necessary work without being forced* (2012, p. 151).

It might be suggested that the state does not need to force people to do the necessary work, but can simply incentivize its performance by offering capable workers as much money as is necessary in order to get enough of them to accept the jobs. For example, doctors might be

offered significantly more to work in underserved regions than they are paid to work in desirable locations that do not face shortages of needed medical personnel. Stanczyk argues, however, that this cannot resolve some of the most significant cases in which access to basic goods or services is lacking, and may not be able to permissibly resolve others. For example, many poor countries in which a significant number of residents lack access to basic care simply cannot afford to pay a sufficient number of doctors and nurses enough to incentivize them to take jobs that would involve providing the needed care, given the opportunities available in richer countries to those who could fill those jobs (Stanczyk 2012, p. 156). In addition, in rich countries, even if it is economically feasible to pay doctors the amount that would be necessary to incentivize them to take jobs in underserved regions, there may be other matters of justice that have stronger claims on the limited available resources, as well as reasons to refrain from increasing the already extremely large economic disparities between doctors and those in poor regions that lack access to basic services (Stanczyk 2012, p. 156). A final reason to reject the claim that state provision of incentives can allow us to maintain all three claims that constitute the apparent trilemma is that it is always possible that no amount of monetary incentive would induce enough capable people to accept the jobs that must be performed in order for the required basic goods and services to be provided for everyone (Berkey 2018, p. 733).

If the incentives solution fails, then those who want to maintain the productive justice claim must reject at least one of the anti-coercion and anti-obligation claims (they could also reject both claims). Stanczyk seems to endorse the anti-obligation claim (2012, pp. 157-58, 163), and his proposed solution involves rejecting the anti-coercion claim. He says that “[p]rovided that the

burdens of compulsory service are distributed fairly, it can be permissible to...compel people to work as doctors or nurses for welfare improving purposes” (2012, p. 163).

More specifically, Stanczyk endorses two kinds of policies that he believes states can permissibly adopt when doing so is necessary in order to improve the extent to which basic goods and services are provided to those who would otherwise lack access to them. The first is emigration restrictions, which would, in effect, force those who have received certain kinds of training (e.g. medical training) within a country to work in that country, at least for a certain period of time (2012, pp. 158, 162-63). He thinks that this kind of policy is especially likely to be justified and helpful in poor countries that invest a significant amount of resources in training needed professionals, but [tend to lose many of them to richer countries upon the completion of their training, in large part because richer countries can offer higher salaries, better working conditions, and other benefits.](#)

The second kind of policy that Stanczyk endorses is compulsory service requirements, which involve requiring that those who are trained in certain fields (e.g. medicine) to work in underserved areas for a period of time, in exchange for having the costs of their training covered (2012, pp. 158-62). He thinks that policies of this kind could help both rich countries and poor countries ensure that greater access to needed services such as medical care is available in underserved regions.

Both of these kinds of policies conflict with traditional liberal understandings of freedom of occupational choice, and many liberals will likely find them troubling, even if they could help

remedy shortfalls in access to basic goods and services that many of them will also tend to think are unjust. Stanczyk argues that in light of the urgency of satisfying requirements of access to basic goods and services, we should accept the intuitive costs of allowing that these policies are sometimes permissible, or perhaps even required. He also argues that the policies do not conflict with freedom of occupational choice, properly understood. With respect to compulsory service requirements, he says that there is no violation of freedom of occupational choice because these policies “would not force anyone to serve needy populations. To avoid compulsory service, would-be medical professionals could simply choose a different profession” (Stanczyk 2012, p. 160).

Stanczyk’s acknowledgement that those who would be forced to perform compulsory service if they pursue medical training can avoid such service by choosing another profession provides the basis for an objection to his claim to have resolved the trilemma by endorsing the policies that he advocates. Importantly, the objection applies even if he is correct that neither compulsory service requirements nor emigration restrictions are incompatible with freedom of occupational choice, properly understood. The core of the objection is that adopting the policies that he endorses would not guarantee that the requirements of productive justice are met – for example, it would not guarantee that everyone will have access to basic medical care. This is because it is possible that the adoption of the policies would deter at least some people from acquiring the training necessary to serve as doctors or nurses, so that the shortage in underserved regions could not be remedied even if everyone who is not deterred from pursuing the training is forced to serve for a period of time (Berkey 2018, p. 735).

Imagine, for example, that a country needs to train at least 1000 doctors per year in order to be able to provide access to basic care for all of its citizens. The country currently trains enough doctors, and lacks both compulsory service requirements and emigration restrictions. There are several underserved regions in which many people lack access to basic care, because those who are trained as doctors tend to take jobs in wealthier cities where there is already adequate provision of care for everyone. In an effort to address the shortage of doctors in the underserved regions, the government adopts a policy that imposes a two-year compulsory service requirement for everyone who is trained as a doctor, along with a policy restricting those who have received such training from emigrating for the same period of time. In response to this policy change, many people who would otherwise have chosen to pursue medical training choose alternative career paths instead, because they have a strong preference not to be subject to the compulsory service requirement or emigration restriction. As a result, the country now trains only 800 doctors per year, and remains unable to provide basic care to many people in the underserved regions (Berkey 2018, p. 735).

In order to maintain the productive justice claim in the face of this possibility, it is necessary to either abandon the anti-obligation claim, and allow that individuals can be obligated to contribute to the satisfaction of requirements of productive justice voluntarily, or else to endorse additional coercive measures that would ensure that the requirements are met regardless of the choices that individuals make. The kind of coercive measures that could be necessary in some cases, however, are clearly incompatible with freedom of occupational choice. For example, if compulsory service requirements and emigration restrictions alone would have a significant deterrent effect on people choosing to pursue medical training, then it could be that the only way

that a state can ensure both that enough doctors are trained, and that there is sufficient service provision throughout its territory, would be to conscript otherwise unwilling people into medical school, and then subject them to a compulsory service requirement and emigration restrictions upon the completion of their training (Berkey 2018, p. 736).

Since at least most people will surely find the conscription of unwilling people into particular careers objectionable, and since this kind of policy is clearly incompatible with freedom of occupational choice, there are grounds for preferring a solution to the trilemma that involves rejecting the anti-obligation claim. In addition, it is difficult to see what grounds there could be for accepting that a policy as radical as conscripting unwilling people into particular careers could be permissible, while obligations to voluntarily contribute to satisfying requirements of productive justice should be rejected. This combination of views would require thinking that there are stronger grounds for rejecting individual obligations to contribute voluntarily than there are for rejecting being forced by the state to make similar contributions. And it is quite unclear on what basis we might argue that this could be the case (Berkey 2018, pp. 739-44).

The Fair Distribution of Burdens and the Obligation to Work

Whether we endorse policies that force contributions, individual obligations to voluntarily contribute, or some combination of the two, important questions about the fair distribution of the burdens of performing the necessary work arise. A natural initial thought is that the burdens of this work ought, all else equal, to be distributed equally among members of society, or at least that these burdens ought to be shared in a reasonably equitable manner (Kandiyali 2023; Furendal forthcoming).

There are competing views about what should count as a reasonably equitable distribution of the relevant burdens. One type of view has at its core the first clause in Karl Marx's famous formulation of the socialist principle of contribution and distribution, "from each according to their ability, to each according to their needs" (Marx 1978, 531). The idea is, at least roughly, that everyone who can ought to contribute to the productive activity necessary to meet everyone's needs, and to do so in the ways that will most effectively help to satisfy those needs. Any view that is built around this idea requires that the contributory requirements are specified in a plausible way. For example, it is implausible that individuals are required to engage in the maximum possible amount of the maximally productive activities available to them in order to meet their contributory obligations. Instead, the requirement to contribute according to one's ability must mean, for example, that one should spend a fair share of working hours, or take on a fair share of work burdens (which may mean a different number of hours for different people), and should direct one's efforts where they will do the most to satisfy others' needs.

Another view is that individuals should, all else equal, aim to contribute in the way that generates the highest market price for their labor, since this will maximize the social value of their efforts. If we accept some of the central assumptions of contemporary economics, this can be understood as a way of filling in some of the details of the "from each according to their ability" principle (Carens 1981). On this view, as long as individuals contribute in ways that are materially incentivized by market conditions, they will satisfy their obligations of productive justice; and if they do not contribute in such ways, they will fail to satisfy their obligations. The view can be objected to, however, on the grounds that it rules out the possibility of satisfying obligations of

productive justice by performing some clearly socially valuable and necessary forms of labor, such as care work that is often unpaid (Furendal 2019; for the view that care work in particular should be distributed equally in a “post-work” future, see Althorpe & Finneron-Burns 2024).

Many states have “workfare” policies that have among their central aims getting particular citizens to work (Anderson 2004; Bou-Habib & Olsaretti 2004; Goodin 2004; White 2004). These policies, which make it a condition of receiving certain forms of government aid that one is working or at least actively looking for work, are often defended by appeal to the claim that those who can engage in productive activity ought to do so.

While it is at least fairly widely accepted that in a fully just society everyone would have an obligation to contribute to performing the work necessary to ensure that requirements of productive justice are satisfied (either voluntarily or by complying with justly imposed state policies), some have offered reasons to doubt that in unjust societies everyone is obligated to contribute by working. For example, Tommie Shelby argues that in the United States, the failure of the state, and of society more generally, to ensure that the “ghetto poor” (i.e. members of primarily black, mostly urban populations living in poverty) enjoy even minimally just conditions provides grounds for holding that they do not wrong their fellow citizens by refusing to work and instead living off of public welfare funds (Shelby 2012; for related discussion see Cholbi 2018).

If Shelby is right, this would seem to undermine at least some of the arguments often offered in defense of workfare policies in unjust societies. There would seem also to be grounds for

thinking that in unjust societies, there are either reasons for the state to adopt policies that aim to ensure that those who are unjustly advantaged will perform more of the socially necessary labor that might otherwise not be done, or reasons to hold that the unjustly advantaged have obligations to voluntarily perform significantly more of this labor than they typically do (or both). Reflecting on the reasons to endorse requirements and obligations of productive justice generally, in combination with reasons not to endorse policies or obligations that would further burden those who are already unjustly disadvantaged, then, may force us to accept that the better off are subject to significantly more demanding obligations than many have been inclined to accept.

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