

Constructivism Claims to Offer a Plausible
Alternative to More Traditional (Foundationalist)
Justificatory Strategies. Does It?

Thomas Tozer

Abstract

Foundationalism espouses a thesis about the structure of justification. It holds that all knowledge or justified belief rests on certain foundational knowledge or justified belief, and it views principles of justice as foundational and independent of facts about the world. In contrast, Rawls's political constructivism begins with certain facts and then aims to 'construct' principles of justice on this basis. It intends to construct political principles of justice that would be acceptable to all reasonable people. I argue that the constructivist justificatory strategy offers a plausible alternative to more traditional (foundationalist) strategies. Constructivism can be theoretically justified by the foundational beliefs of each individual's comprehensive doctrine: to the extent that foundational fact-insensitive principles ground constructivism's fact-sensitive principles, it is up to the citizen to decide what these foundational principles are. Furthermore, constructivism's practical justification rests on its public acceptability and is stronger than that of foundationalism: constructivism is more likely to offer a workable public conception of justice than a foundational metaphysical doctrine because the latter is likely to contradict the foundational beliefs of people's comprehensive doctrines.

Introduction

According to foundationalism, all knowledge and justified belief is grounded on certain ‘non-inferential’ foundations. Thus, although knowledge or justified belief about this event or that event can be justified by reference to some other knowledge or justified belief, which in turn may have been inferred from some other knowledge or justified belief (and so on), ultimately, according to the foundationalist, it is all grounded upon a foundation of knowledge or justified belief that has not itself been inferred from any other source. Foundationalism is therefore a thesis about the structure of knowledge or justification. It has been enormously influential for thousands of years the foundationalist thesis was taken almost as a trivial truism (Fumerton, 2010).

This essay is concerned with the foundationalist account of justification, and specifically its justification of principles of justice. In brief, the foundationalist will claim that pure principles of justice are foundational, or ‘non-inferential’. Facts about the world might influence how we choose to apply these principles, but the principles themselves are independent of, and so cannot be justified with reference to, such facts. In stark contrast, John Rawls’s ‘political constructivism’ proffers a system of justification that begins with certain facts and then ‘constructs’ principles of justice on this basis (Rawls, 1996, pp. 89-129; Rawls, 1985, pp. 224-225). This approach has been criticized for mixing ‘pure’ (foundational) principles of justice with practical considerations or ‘rules of regulation’. However, I defend Rawls’s constructivist approach and argue that its justificatory strategy is not only as plausible as foundationalism but, for practical reasons, it is also preferable.

The essay proceeds as follows. Section I lays out the justificatory strategy of Rawls’s political constructivism. Section II evaluates Cohen’s (2003) claim that any constructivist procedure will fail because it implicitly relies upon ‘fact-insensitive’ principles, and Pogge’s (2008) response to this; I argue that Pogge’s reply is convincing, but it is not sufficient to repudiate Cohen’s argument completely. In section III, I reinforce the conclusions of section II by considering specifically the fact-(in)sensitivity of Rawls’s ‘justice as fairness’ principles. Finally, in section IV I defend constructivism against the claim that its justifica-

tory strategy fails because it privileges practical over theoretical reason.

I. Rawls's Political Constructivism

Modern democratic society, Rawls contends, has come to be characterized by the fact of reasonable pluralism, a great diversity of reasonable comprehensive religious, philosophical and moral doctrines (Rawls, 1996, pp. xvi-xvii, 36-37, 58-66). A comprehensive doctrine here is a doctrine that specifies certain ideals and defines what is of value in human life in a way that informs our conduct and life as a whole (Rawls, 1996, p. 13). Rawls argues that in light of the fact of reasonable pluralism, a comprehensive doctrine, or a 'general moral conception', could not be endorsed generally by citizens and so would be unable to provide a publicly recognized basis for a conception of justice (1996, p. 10; 1985, p. 225). Therefore, rather than proffering a metaphysical conception of justice which would be rejected by some people due to their particular comprehensive doctrines, Rawls aims to construct a freestanding political conception of justice that, he hopes, can be endorsed by an overlapping consensus of divergent comprehensive doctrines (Rawls, 1996, pp. 10-13, 134; 1985, pp. 224-226).

How, then, can we arrive at such a conception of justice? This is the task of Rawls's 'political constructivism'. It is 'a view about the structure and content of a political conception' and it sees the principles of a political conception of justice as 'the outcome of a certain procedure of construction' (Rawls, 1996, pp. 89-90). To clarify the nature of his constructivism, Rawls distinguishes between practical reason and theoretical reason in accord with Kant: practical reason is concerned with the production of objects based on a conception of those objects, such as a conception of a just constitutional regime, while theoretical reason is concerned with our knowledge of given objects. The procedure of constructing a political conception of justice is, Rawls says, based essentially on practical reason (Rawls, 1996, p. 93).

Not everything is constructed: we begin from some material about the basic conceptions of society and person, the necessarily public role of the political conception, and principles of practical reason that enable us to construct the principles of justice. The citizen is conceived as having two moral powers (a

capacity for a sense of justice and a capacity for a conception of the good), and well-ordered society is conceived as 'a fair system of cooperation between reasonable and rational citizens regarded as free and equal' (Rawls, 1996, pp. 103-104). Also, the procedure of construction is, Rawls contends, not itself constructed but 'simply laid out' with reasonable conditions imposed on parties who, as rational representatives, select public principles of justice (Rawls, 1996, p. 103).¹ To exemplify this, Rawls refers to the procedure from which he arrived at his famous principles of justice known as 'justice as fairness' in *A Theory of Justice* (1999): this procedure involves representatives of citizens agreeing on principles of justice in what he called the 'original position' behind a 'veil of ignorance'.² With this procedure and all the relevant material in place, it is only the content of a political conception of justice that is itself constructed (Rawls, 1996, pp. 103-104).

To understand the difference between constructivism and foundationalism, let us consider the contrast that Rawls draws between political constructivism and rational intuitionism (a foundationalist doctrine). Rational intuitionism says that moral first principles are, if correct, true propositions known by theoretical reason about an independent order of moral values that does not depend upon the human mind. Conversely, Rawls's constructivism states that principles of justice, selected by rational agents who are representatives of citizens, must be 'reasonable', but it neither uses nor denies the concept of truth; it is up to each comprehensive doctrine to decide how what is 'reasonable' connects with its concept of truth, if it has one.³ Furthermore, its principles are 'produced' rather than known by theoretical reason (Rawls, 1996, pp. 91-94). But, crucially, a rational intuitionist who agreed with the content of a constructivist view could consider its reasonable judgements to be true without conflict (Rawls, 1996, p. 114). For, without asserting or denying the claim of the rational intuitionist that there is an independent order of moral values, constructivism claims only to have produced an order of political values proceeding from the values expressed

¹ This premise strikes me as very implausible. Rawls's elaborate procedure certainly seems as though it has been cleverly designed to make decisions specifically based the facts that he thinks are relevant. However, even if this is true it need not pose a problem for Rawls's constructivism: designing a procedure for arriving at principles of justice that incorporates all the relevant facts seems entirely consistent with Rawls's constructivist project.

² For a full exposition of this procedure, see Rawls (1999, pp. 102-139).

³ For an account of what is meant by 'reasonable', see Rawls (1996, p. 58f.).

by the principles of practical reason to the principles of justice (Rawls, 1996, p. 95).

II. Cohen's 'Fact-Sensitivity' Objection

Cohen (2003) advances a rigorous argument against constructivism which, if successful, could invalidate Rawls's justification of his principles. Rawls's constructivism claims to begin with certain facts and then construct 'first principles' of justice on this basis, but Cohen protests that this approach is incoherent (Cohen, 2003, pp. 235-239). The reason it is incoherent is, Cohen claims, that 'a [normative] principle can reflect or respond to a fact only because it is also a response to a principle that is not a response to a fact' (Cohen, 2003, p. 214). This is his central thesis. In other words, if someone affirms what Cohen calls a 'fact-sensitive principle', P, on the basis of a fact, F, and we ask that person why she takes F to be a reason for affirming P, she will reply with reference to a more ultimate principle, P1, which could itself survive a denial of both P and F, and which explains why F gives reason to affirm P (Cohen, 2003, p. 215).

Here is an example: someone believes the principle, P, 'we should keep our promises', on the basis of the fact, F (or, if you prefer, F0), 'only when promises are kept can people successfully pursue their projects'. If she is asked why F is able to ground P, she will surely respond by affirming the more ultimate principle, P1, 'we should help people to pursue their projects'.⁴ Note that this principle, P1, could survive a denial of both F and P. We could continue by asking why she believes in P1, and she might respond that there is another fact that grounds it, F1, 'people can achieve happiness only if they are able to pursue their projects; but this evidently depends upon a yet more ultimate principle, P2, 'we should promote people's happiness' (Cohen, 2003, p. 216). Cohen argues that if this interrogative process is continued, the person will

⁴ The reader may think I am being inconsistent in my exposition of Cohen's argument because I first discussed a principle that reflects or responds to a fact, and now I am talking about a principle that is grounded upon a fact. This seeming inconsistency, however, is only due to Cohen's own variation in the ways in which he defines fact-sensitivity. See Pogge (2008, p. 465) for a list of all the ways in which Cohen defines fact-sensitivity in his more extensive work 'Rescuing Justice and Equality' (2008).

eventually uncover a (foundational) principle, P_n, that grounds all her previous fact-sensitive principles and that is not only insensitive to all the previous facts, F₀, 1, n-1, but is entirely ‘fact-insensitive’ (Cohen, 2003, pp. 216-217).

If correct, Cohen’s argument does seem to pose serious problems for Rawls’s constructivist justification of his principles of justice. For if it is indeed the case that any principle grounded upon a fact also depends upon a distinct foundational fact-insensitive principle then, at the very least, Rawls cannot claim that the principles which come out of his constructivist procedure are ‘first principles’. Worse, this would imply that the entire justificatory process of constructivism is flawed: the principles of justice which constructivism arrives at lack a justificatory base if constructivism’s justification of its principles is blind to the foundational fact-insensitive principles that actually undergird its fact-sensitive principles.

A critique of Cohen’s argument from Pogge (2008), however, reveals that Cohen’s argument is actually able to say far less than Cohen intends; although I submit that it can, if restated in a weaker form, say more than Pogge seems to allow for. Pogge’s (2008) critique relies upon a distinction that he makes between two different types of fact-sensitivity. There is, he says, internal fact-sensitivity for which the ‘content’ of a principle is such that its ‘directive’ (i.e. application) depends upon certain facts, for example: ‘we should do A whenever certain facts, F, obtain’. Thus, a principle is internally fact-insensitive when its directive does not depend upon certain facts. And there is external fact-sensitivity for which the holding or truth (Pogge: ‘range’) of a principle depends upon certain facts, for example: whenever certain facts, F, obtain, the principle ‘we should do A’ holds. Thus, a principle is externally fact-insensitive if it holds in all factual contexts (Pogge, 2008, p. 259). It is the latter, external fact-sensitivity, that Cohen is concerned with.

Here is an example to elucidate the distinction. Consider the proposition: whenever it is the case that maximizing happiness does not require that we institute slavery, ‘we should aim to maximize happiness’. Which type of fact-sensitivity does that principle (between the apostrophes) display? It is externally fact-sensitive because whether it holds depends upon the external fact that ‘happiness maximization does not require that we institute slavery’. Here is an al-

ternative: ‘whenever it is the case that maximizing happiness does not require that we institute slavery, we should aim to maximize happiness’. This principle, which now consists of the whole proposition (between the apostrophes), is internally fact-sensitive because although it can hold in all factual contexts (i.e. it is externally fact-insensitive because the truth of the principle will not change depending upon the factual conditions), its directive, whether we should follow the maxim ‘maximise happiness’, depends upon the fact of whether in the possible world in question maximizing happiness will not require that we institute slavery.⁵

The astute reader, however, will have noticed that the only actual difference between these two propositions is the location of the apostrophe and what, hence, lies outside of the apostrophe. But this is precisely the point. Pogge points out that these two types of fact-sensitivity are essentially equivalent: one cannot accept the externally fact-sensitive principle without also accepting the internally fact-sensitive one (Pogge, 2008, p. 460). Pogge uses one of Cohen’s own examples of a fact-insensitive principle to demonstrate this. Following his interrogative process to find the fact-insensitive principle(s) grounding the principle ‘we should keep our promises’, Cohen uncovers P3, we should respect people, grounded by F3, ‘people have respect-meriting characteristics’, and suggests that the interrogative process concludes with the fact-insensitive principle, P4, ‘one ought to respect beings, human or otherwise, who have the relevant characteristics’ (Cohen, 2003, p. 217). But what has really happened in the shift from P3 to P4? The fact to which P3 was externally sensitive was internalized. (Pogge, 2008, p. 460).

Pogge concludes that this is an entirely pyrrhic victory for Cohen because although those (such as Rawls) who are committed to fact-sensitive principles of justice must, as a consequence of Cohen’s argument, admit of fact-insensitive principles, they can do this simply by reformulating their principles such that the external fact-sensitivity of each principle is internalized. If the concept of justice really must be expressed in terms of fact-insensitive principles, Rawls can reclaim it simply with a small shuffle of fact-sensitivity from external to

⁵ In fact, this seems to be the only difference between the two apparently ‘differently animated’ sources of opposition to utilitarianism which Cohen thinks Rawls missed (Cohen, 2003, pp. 239-243).

internal (Pogge, 2008, p. 461). There is therefore nothing lost or mistaken in Rawls's justification of his fact-sensitive principles of justice: he could reformulate these as externally fact-insensitive if he wished, without changing the essential meaning of the principles at all.

Pogge anticipates the following response from Cohen: explaining that a principle is fact-insensitive requires more than just an internalization of the relevant fact. A genuinely ultimate, fact-insensitive principle must be such that for all conceivable factual contexts the principle resolves whether its directive applies. That this is what Cohen thinks must be true of an ultimate fact-insensitive principle is demonstrated by his transition from P3 to P4 above. For Cohen substitutes 'people' in P3 and F3 with 'beings, human or otherwise' in P4, thus refining his principle in such a way that it will apply in all conceivable factual contexts, and not just those contexts in which the being in question is human. Yet Pogge (2008, pp. 464-469) responds that it is perfectly possible to, for good reason, hold a principle in one context without specifying whether it should apply in other factual contexts. For someone's fact-sensitivity could be such that the fact would only be sufficient, but not necessary, for the principle to hold ('we should maximize happiness if maximizing happiness does not require slavery'). Thus, a fact might, for clear-headed reasons such as those suggested by Pogge (2008, p. 469ff.), guarantee that a principle will hold in a given factual context without specifying whether it would apply in another.

For all its merits, however, I do not believe that Pogge's critique is sufficient to completely repudiate Cohen's (2003) argument. Pogge's example of Cohen's (2003, p. 217) transition from P3, (which states that we should respect people, due to F3, 'people have respect-meriting characteristics') to P4, ('one ought to respect beings, human or otherwise, who have the relevant characteristics') clearly demonstrates Pogge's point about the transition from external to internal fact-sensitivity. But consider Cohen's (2003, p. 216) earlier example: we affirm P1, 'we should help people to pursue their projects', due to a fact, F1, 'people can achieve happiness only if they are able to pursue their own projects'; and this evidently depends upon a yet more ultimate principle, P2, 'we should promote people's happiness'. Cohen allows that for some people this might be their ultimate fact-insensitive (foundational) principle (Cohen, 2003, p. 216). And yet, evidently, this principle is not a reformulation of P1 that just internal-

*Constructivism Claims to Offer a Plausible Alternative to More Traditional
(Foundationalist) Justificatory Strategies. Does It?*

izes its reliance on F1; that principle would be: ‘whenever people can achieve happiness only if they are able to pursue their projects, we should help people to pursue their projects’. Clearly this is distinct from the principle, P2, ‘we should promote people’s happiness’.

Therefore, it is not the case that Cohen’s (2003) argument says nothing valuable: although it is true that any externally fact-sensitive principle can be reformulated to become an (internally fact-sensitive) externally fact-insensitive one, it is not true that the externally fact-insensitive principle undergirding a fact-sensitive principle always consists of such a reformulation. Sometimes, evidently, such a principle will say something new and interesting. Hence, we can salvage Cohen’s thesis by reformulating it as the weaker claim that a fact-sensitive principle is sometimes grounded by a distinct fact-insensitive principle: Pogge’s (2008) critique does not repudiate this weaker formulation of Cohen’s (2003) thesis.

How does this bear on Rawls’s constructivist justification of his principles of justice? It means that Rawls’s constructivism is not yet fully vindicated because although Pogge’s argument implies that Rawls’s principles of justice could be formulated in an externally fact-insensitive way, it is possible that they may nonetheless be grounded on distinct foundational principles. This would leave Rawls’s constructivist justification of his principles vulnerable to the weaker form of Cohen’s initial attack: the constructed principles may not be ‘first principles’,⁶ and if this is the case and the foundational principles that support Rawls’s principles of justice are not specified then Rawls’s principles lack a coherent justificatory basis. To illustrate this criticism, and to determine whether constructivism can withstand it, in the next section we shall apply the above considerations about fact-(in)sensitivity to Rawls’s principles of justice as fairness.

⁶ I say ‘may’ because I have only argued that a fact-sensitive principle is sometimes grounded by a distinct fact-insensitive principle; we have yet to see whether Rawls’s principles are grounded by some such principle(s).

III. The Fact-(In)sensitivity of Justice As Fairness

The ‘facts’, if you will, from which the process of construction begins were given in section I. To recap briefly, these are: the conception of well-ordered society, the conception of the citizen as free and equal and having the two moral powers, the fact of reasonable pluralism, and the principles of practical reason. I shall refer to these facts as ‘F’.

From these facts, the principles of justice as fairness that Rawls ‘constructs’, lexically ordered, are as follows:

1. Each person has an equal right to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with a similar scheme for all. (P1)
2. Social and economic inequalities are to satisfy two conditions: first, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society. (P2) (Rawls, 1985, p. 227)

Are these principles of justice as fairness really first principles of justice, and not merely, as Cohen would argue, reflections of fact-insensitive foundational principles such as ‘too much inequality is bad’? Let us see whether Pogge’s argument, that externally fact-insensitive principles can be arrived at simply by internalizing fact-sensitivity, would suffice as a response to Cohen. According to Pogge’s argument, to satisfy Cohen Rawls’s principles could be reformulated as follows:

1. ‘Whenever F, P1.’ (P1*)
2. ‘Whenever F and P1, P2.’ (P2*)⁷

Is it really that simple? Actually, yes: because the facts, F, are now internalized, P1* and P2* are now externally fact-insensitive principles ‘their holding (i.e. truth) is not dependent upon any particular facts, but would hold in all possible

⁷ Note that I add ‘and P1’ to the antecedent of P2* to explicate the lexical ordering of Rawls’s two principles.

*Constructivism Claims to Offer a Plausible Alternative to More Traditional
(Foundationalist) Justificatory Strategies. Does It?*

worlds. Effectively, Rawls's two principles were originally formulated in the form: whenever F, 'P1', and whenever F and P1, 'P2'. They were therefore externally fact-sensitive because the truth or 'holding' of P1 and P2 depended upon the truth of F, and the truth of F and P1, respectively. But by internalizing the fact-sensitivity, so that it becomes part of the principle itself, the principles become fact-insensitive and therefore hold in all factual contexts, thus shielding them from the strong form of Cohen's critique.

Cohen might object that there are still other principles underpinning P1* and P2*, such as 'we should prioritize the welfare of the worst off' underpinning P2*. However, even if this were true, the principles do nonetheless fulfil Cohen's criteria of fact-insensitivity.⁸ Perhaps, then, the foundationalist could appeal to the weaker form of Cohen's (2003) thesis and object to Rawls's constructivism in the way that I alluded to at the end of section II: the principles of justice as fairness, even if they can be reformulated in such a way as to become externally fact-insensitive, are nonetheless clearly grounded on other (foundational) principles; and a failure to identify these implies that the principles of justice as fairness are not properly justified.

Rawls, I suspect, would be completely unmoved by this objection. He would simply reply 'yes, that's right' without having to give up any aspect of his justificatory project. For he readily admits that important aspects of the principles are left out in the brief statement with which he expresses them and states, for example, that P1 'may easily be preceded by a lexically prior principle requiring that the citizens' basic needs be met, at least insofar as their being met is necessary for citizens to understand and to be able to fruitfully exercise those rights and liberties' (Rawls, 1996, p. 7). Yet Rawls nonetheless maintains that his principles are first principles of political justice, setting out fundamental values by which different political forms can be evaluated (Rawls, 1996, pp. 7-8n7).

The point, then, is that as far as Rawls is concerned a 'first principle' of justice does not mean 'a foundational principle on which all other principles are grounded'. Rather, it means a principle that is 'first' in terms of its fundamental

⁸ I set aside the objection that the principles are not sufficiently general to be considered truly fact-insensitive; in section II I explained Pogge's response to this requirement, but if the reader was unpersuaded then she can easily fulfil Cohen's criteria by replacing words such as 'person' with more general descriptive terms such as 'being, human or otherwise'.

political nature: no deeper principles are needed to evaluate political ideas or principles since Rawls's first principles set out the fundamental values for such assessment and identify which facts are to be counted as relevant (Rawls, 1996, pp. 7-8n7, 121-125). Furthermore, Rawls intends to construct principles of justice that can be publicly endorsed, given the fact of reasonable pluralism: he wants 'political' principles of justice that are sufficiently abstract, or 'ultimate', to offer a clear political conception that is capable of assessing other political ideas or principles, but which are not so abstract as to be foundational in a way that would lead citizens to reject them due to the citizens' personal comprehensive doctrines. Therefore, to the foundationalist who complains that Rawls's principles are not 'pure', 'genuine' or 'foundational' principles of justice, Rawls would probably reply: 'So what? I am interested in a stable public conception of justice that is justifiable for all reasonable people (for reasons of their own comprehensive doctrines), not a philosophically justifiable but practically inappropriate conception.'

Rawls's response can also be applied more generally to the constructivist justificatory strategy: the political constructivist aims not to discover pure, foundational principles of justice but rather to produce an order of political principles (while remaining neutral on the question of whether these reflect an independent order of 'true' moral values). Just as the production of a chair depends upon materials that are fundamental to the chair (such as wood and glue), the same is true of constructed principles of justice: there are other (foundational) principles that could be thought to ground constructed principles of justice. The fact that these foundational principles are unspecified does not matter so long as the chosen principles of justice offer a workable political conception that can be publicly endorsed. To this end, rather than specifying the foundational justification of his principles, the constructivist intends to leave the individual to decide which foundational beliefs he wishes to use to justify the principles of justice.

Notwithstanding, the foundationalist might reply: 'Even if that were your intention, there are undoubtedly particular foundational beliefs that do underpin your principles. Since you are endorsing principles that you think are capable of being endorsed by the public and therefore lead to a stable democratic society then you must admit, at the very least, that grounding your justification of your

*Constructivism Claims to Offer a Plausible Alternative to More Traditional
(Foundationalist) Justificatory Strategies. Does It?*

principles are the foundational principles that ‘it is good if everyone can share the same political principles’, and ‘we should aim for a stable society.’”

In part, this seems hard to deny: it is clear that political constructivism proceeding in a Rawlsian spirit assumes that publicly shared principles and a stable society are both desirable ends. But these particular foundational beliefs do not harm constructivism’s justificatory strategy: they are so uncontroversial that they would surely be accepted by all reasonable people, and therefore they do not harm the constructivist pursuit of public acceptability. Furthermore, they might not actually be foundational: people might accept these principles foundationally, or they may espouse these principles for different reasons stemming from their particular comprehensive doctrines; and whether or not these principles are actually foundational is not something that the constructivist would wish to affirm or deny.

IV. Theoretical or Practical Justification?

So far, I have defended constructivism’s justificatory strategy by arguing that it explicitly intends not to discover foundational principles of justice, but rather to construct principles of justice that can be justified to the public and endorsed for the foundational reasons of citizens’ personal comprehensive doctrines. There is, however, one final, important challenge that can be levelled at the constructivist approach. That challenge is to say that constructivism misunderstands what it means to justify something; that many people will accept ‘constructed’ principles of justice does not constitute justification, at least as the foundationalist would see it. Constructivism might be able to successfully defend a practical justificatory strategy, but its principles nonetheless remain philosophically unjustified if their theoretical foundations are unspecified.

This, I think, hinges upon the distinction that Kant makes between theoretical and practical reason, as briefly outlined in section I. Rawls states that his constructivist approach invokes practical reason, although it will nonetheless rely to some extent on theoretical reason (Rawls, 1996, p. 93), but the foundationalist may disagree that such a distinction should, or even can, be made. True principles of justice are foundational, she may say, and practical considerations

about how to ‘produce’ principles that people may agree upon are irrelevant to the quest for these true foundational principles. Therefore, principles of justice must be established on the basis of theoretical reason the search for truth is as relevant in political philosophy as in epistemology, and there is no such thing as ‘practical’ justification.

Even if this were true (and I do not believe that it is), it need not pose a significant problem for constructivism: for the constructivist, it is not the case that there is a gaping hole in the theoretical justification of constructed principles of justice, but rather that there are many different ways to fill this hole and which particular way to do this is left up to the individual. Thus, even from the narrow foundationalist perspective that only theoretical justification is valid, constructed principles of justice can still be defended but to find out precisely how they are to be defended you must ask not the constructor, but the individual citizen who endorses the principles for his or her own reasons. Rawls, for example, offers three different views, among others, that may lead citizens to endorse his principles of justice as fairness (Rawls, 1985, p. 250). In this sense, it could even be said that the theoretical justification of constructed principles of justice is not merely as plausible as that of foundational principles but is actually stronger because, in this case for example, Rawls offers not just one but three different philosophical views that could justify his principles!

Finally, someone who accepts the Kantian distinction between practical and theoretical reason might nonetheless deny Rawls’s claim that his constructed principles of justice are practically justifiable. They may object that his attempt to produce a universally appealing political conception of justice, built upon public reason that everyone will agree upon, is hopelessly idealistic and depends upon a largely fallacious conception of a ‘people’ who share a political identity. In reality, citizens are often unsure of their political identity and may not regard those they live with as their own people (O’Neill, 1997, pp. 418-423).

Yet this pessimism seems something of a self-fulfilling prophecy: even Rawls agreed that a shared political understanding could not arise unless ‘we bring ourselves to conceive how this could happen’ (Rawls, 1985, p. 231). Furthermore, we must remember that the alternative to the ‘merely political’ conception of justice that Rawls constructs is a foundational metaphysical doctrine surely,

*Constructivism Claims to Offer a Plausible Alternative to More Traditional
(Foundationalist) Justificatory Strategies. Does It?*

given the fact of reasonable pluralism, the former is far more likely to be publicly endorsed than the latter (Rawls, 1985, p. 230)? Indeed, if we accept reasonable pluralism as a permanent feature of public culture under free institutions then the concept of the ‘reasonable’ invoked by constructivism is advantageous because it can form the basis of public justification in a way that a foundational metaphysical doctrine, with a particular account of moral truth, could not. For although there are many reasonable doctrines, there can only be one ‘true’ comprehensive one; hence, if a political conception were held as ‘true’, and for that reason the only appropriate such conception, this would be, in Rawls’s words, ‘exclusive, even sectarian, and so likely to foster political division’ (Rawls, 1996, p. 129).⁹ Therefore, constructivism is much better able to practically justify its political principles than foundationalism (though the foundationalist would probably be unconcerned by this).

In conclusion, then, constructivism offers both a plausible theoretical and practical alternative to foundationalism’s justificatory strategy. Its theoretical justification is, in large part, left up to the citizen; and its practical justification is precisely embodied in this fact, for it is the reason why constructivism’s principles can be endorsed by citizens with diverse comprehensive doctrines. In this way, constructivism is immune to the foundationalist criticism that its justificatory base is unspecified. Furthermore, constructivism’s alternative justificatory strategy is not only at least as theoretically plausible as foundationalism in practical terms, it is also preferable.

⁹ I am referring to truths and foundational beliefs interchangeably here since, according to classical foundationalism, correct foundational beliefs and truths essentially amount to the same thing; foundationalists aim to discover a kind of truth that can be known without inference (Fumerton, 2010).

Thomas Tozer

References

- [1] Cohen, G. A. “Facts and Principles” (2003). *Philosophy and Public Affairs* 31(3): 211–245.
- [2] Cohen, G. A. “Rescuing Justice and Equality” (2008). Cambridge, MA: Harvard University Press.
- [3] Fumerton, R. “Foundationalist Theories of Epistemic Justification” (2010). [online] *Stanford Encyclopedia of Philosophy* <http://plato.stanford.edu/archives/sum2010/entries/justep-foundational/>.
- [4] O’Neill, O. “Political Liberalism and Public Reason: A Critical Notice of John Rawls, *Political Liberalism*” (1997). *The Philosophical Review* 106(3): 411–428.
- [5] Pogge, T. “Cohen to the Rescue!” (2008). *Ratio* 21(4): 454–475.
- [6] Rawls, J. “Justice as Fairness: Political Not Metaphysical” (1985). *Philosophy and Public Affairs* 14(3): 223–251.
- [7] Rawls, J. “Political Liberalism” (1996). New York: Columbia University Press.
- [8] Rawls, J. “A Theory of Justice” (1999). Revised ed. Cambridge, MA: Harvard University Press.

Thomas Tozer has just completed his MSc in Philosophy & Public Policy. His main areas of interest are global justice, Rawlsian political liberalism, the basis of human rights, and the appropriate reach of political principles. He can be contacted at [thomastozer@gmail.com].