

On the Meta-ethical Status of Constructivism: Reflections on G.A. Cohen's 'Facts and Principles'*

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Introduction

In 1971, with the publication of A Theory of Justice,¹ John Rawls posed a considerable challenge to a then-established attitude in analytic philosophy. Contrary to the predominant trend of confining moral philosophy to conceptual analysis and meta-ethics, Rawls's work contained two ambitious messages: both that a rigorous political theory can be normative and that, to construct such a theory, one need not tackle deeply controversial meta-ethical questions about the existence of independent moral facts or the nature of moral values.²

Rawls's attempt to reconcile agnosticism about moral facts with optimism about moral justification leads to a specific methodology that has become known as constructivism. This label designates a family of theories holding that the validity of normative principles does not derive from their success in tracking independent moral facts but rather from the way they are constructed, i.e., via appropriate selection procedures such as Rawls's original position or Kant's Categorical Imperative.

Constructivists believe that the validity of normative principles rests on the fulfillment of certain rational requirements – e.g., universalizability, or being the output of a fair hypothetical agreement and so forth – rather than on the discovery of moral facts. In Rawls's

later work, the term ‘constructivism’ takes on a richer, arguably substantially different meaning.³ Despite this, the idea that the original position is a paradigmatic constructivist device is still widespread. Moreover, constructivist proposals have gained increasing popularity in contemporary ethical and meta-ethical theorizing;⁴ hence, this presence of constructivism is a fact to be dealt with independently of Rawls’s original claim.

One of the most fundamental challenges to the constructivist solution to the problem of moral justification has been raised by G.A. Cohen. In his recent article ‘Facts and Principles’⁵ Cohen argues that fundamental normative principles are ‘fact-insensitive’ – i.e., they are not grounded on facts – and that since Rawls and all other constructivists believe that ‘all sound principles are [...] fact-sensitive’,⁶ this thesis refutes their outlook on justification.

Interestingly, Cohen claims that his thesis is neutral with respect to long-standing meta-ethical debates about the ontological status of moral values, that is, those debates which constructivists also aim to eschew. If his thesis were successful, Cohen would show that the constructivist project is doomed to fail, and that, since 1971, very little has changed: a constructivist approach to justification cannot deliver a sound normative theory.

In this paper we argue that, as it stands, Cohen’s thesis is insufficient to pose a threat to constructivist approaches to ethics, and that an effective refutation of constructivism would require engaging with those highly controversial meta-ethical debates with respect to which Cohen’s thesis aims to be neutral. Our argument proceeds as follows.

In section I, we present Cohen’s fact-insensitivity thesis and its constructivist target. In sections II and III, we argue that, in line with Cohen’s thesis, constructivist fundamental principles are indeed fact-insensitive, but that, contrary to it, they are of a methodological, as opposed to substantive, kind. Finally, in section IV, we illustrate how the constructivist methodology rests on a form of agnosticism about the existence of moral facts and suggest that, in order to refute constructivism, Cohen needs to reject this agnosticism.

Before getting started, let us introduce one caveat. Considering Cohen's long-standing engagement with Rawls's work,⁷ and the undisputed prominence of A Theory of Justice in the discipline, the fact that his attack against constructivism specifically targets Rawls should come as no surprise. But since Cohen considers his arguments against Rawls to be a model of his critical strategy against constructivism in general, so will we.⁸ Although we will be discussing Rawls's constructivism about justice at length, so as to reply to Cohen's charges, our engagement with Cohen's argument will not rely on the endorsement of Rawls's or any other particular constructivist theory of justice. We will not try to defend a specific version of constructivism, but rather to show that Cohen's fact-insensitivity thesis is insufficient to defeat constructivism as a general approach to justification, according to the very characterization of constructivism he provides.

I. Cohen's Thesis and Its Intended Target

Cohen argues that the very fact that some principles are grounded on facts shows that not all principles depend on factual considerations: 'a 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'.⁹ His thesis is conditional in nature and reads as follows: 'if any facts support any principles, then there are fact-insensitive principles that account for that relationship of support'.¹⁰ If we believe that a principle P is grounded on a fact F, then we should be able to say why it is. To answer such a question, Cohen claims, we cannot but appeal to a more ultimate principle P1, which must be in turn insensitive to whether F holds or not. Albeit insensitive to F, P1 could be sensitive to another fact F1; but to explain why F1 grounds P1 we have to appeal to a more ultimate normative principle P2, itself insensitive to F1. Plausibly, Cohen says, such an explanatory process cannot proceed infinitely, for the two following reasons:

1. ‘Such an indefinitely continuing sequence would require something like an infinite nesting of principles, and few will think that there exist a relevantly infinite number of principles’.¹¹

2. An infinite sequence is excluded by the requirement, posited by Cohen,¹² that the person who affirms P has ‘a clear grasp’ of her principles and why she holds them: ‘for we can surely say that a person who cannot complete the indicated sequence, because she has to go on forever, does not know why she holds the principles she does’.¹³

Given 1 and 2, the justificatory process has to come to an end, and Cohen’s central claim is that such an end necessarily corresponds to a fact-independent principle. Let us now illustrate these admittedly abstract reflections with an example offered by Cohen himself.

Suppose, for instance, that someone holds principle (P) that we should keep our promises in virtue of fact (F) that only when promises are kept can people safely pursue their projects.¹⁴ Then we may ask her: Why is F a ground for P? She might answer by affirming the principle that we ought to help people to pursue their projects (P1). It is P1, here, which makes F support P, and the validity of P1 is independent of the truth of F: if I believe that people should be helped to pursue their projects, I believe it whether or not I also believe that people can pursue their projects only if promises are kept. P1 could in turn be sensitive to facts other than F, for instance to the factual claim that people can achieve happiness only if they are able to pursue their own projects (F1). However, F1 itself supports P1 only in the light of a ‘yet more ultimate principle, P2, which says that people’s happiness should be promoted [...]. And it is possible that there will be no fact on which that principle, P2, is grounded’.¹⁵

In any case, as anticipated, Cohen contends that even if P2 itself is not a completely fact-insensitive principle, this process must come to an end, if the advocate of P has a clear grasp

of why she holds the principles she holds. Since the process cannot end with a fact – for, as the example shows, no fact can be the exhaustive normative source of any principles – the sequence must culminate in a fact-insensitive principle.

Having so far explored what we might call the substance of Cohen’s fact-insensitivity thesis, we now turn to its status. Cohen explicitly claims that his thesis is silent about substantive normative questions, and therefore meta-ethical in nature. However, he is also keen to point out that such a thesis occupies a specific position even within the realm of meta-ethics, in that it is ‘non-committal with respect to what might reasonably be regarded as the central question of meta-ethics’,¹⁶ namely the question about the ontological nature of normative claims – what Cohen ironically calls the ‘realism/anti-realism/quasi-realism/a-little-bit-of-realism-here-not-so-much-realism-there controversy’.¹⁷ By claiming that if facts support principles, they do so in virtue of fact-independent principles, Cohen does not aim to conclude that there exist true ultimate principles – nor does he want to deny it. He actually admits to believing in the existence of true principles, but considers such a conviction to be independent of his thesis about the relationship between facts and principles.¹⁸ Given its conditional nature, the thesis only holds that if one is committed to the claim that facts support principles, then one is bound to be committed to the further claim that this relationship of support is ultimately made possible by fact-independent principles.

In spite of his declared neutrality with respect to most meta-ethical debates, Cohen does not profess similar neutrality towards constructivism. Constructivists, according to Cohen’s characterization of their view, hold that all normative principles ‘gain their validity through being the output of a privileged selection procedure’,¹⁹ and, contrary to his thesis, believe that ‘all sound principles are [...] fact-sensitive’.²⁰ However succinct, Cohen’s definition suitably captures what we may regard as the greatest common denominator of constructivist approaches to justification. Let us then see how such a definition applies to two prominent constructivist outlooks: John Rawls’s and Onora O’Neill’s.

Constructivists about justice, Cohen says, believe both that fundamental principles of justice are the outcome of privileged selection procedures and that facts support such principles. This is an accurate account, for what makes their procedures ‘privileged’ is, among other things, precisely an adequate selection of the factual elements defining their fundamental features. Consider the case of Rawls’s original position: if the parties did not have access to several pieces of factual knowledge, they would not be able to choose any principles at all. Such factual knowledge therefore constitutes part of the grounds for selecting them. In Rawls’s own words:

How [...] can they possibly make a decision? A problem of choice is well defined only if the alternatives are suitably restricted by natural laws and other constraints, and those deciding already have certain inclinations to choose among them. Without a definite structure of this kind the question posed is indeterminate. For this reason we need have no hesitation in making the choice of the principles of justice presuppose a certain theory of social institutions. Indeed, one cannot avoid assumptions about general facts.²¹

Similar considerations also apply to O’Neill’s model. O’Neill claims that the only two things we can legitimately assume in a constructivist procedure are a very thin conception of rationality and an ‘indeterminate’ account of the mutual dependence of agents: issues of justice arise when imperfectly rational and mutually dependent agents have to interact with each other. From these premises O’Neill elaborates her own constructivist procedure, which consists of the following question: ‘What principles can a plurality of agents of minimal rationality and indeterminate capacities for mutual independence live by?’²²

O’Neill’s answer is orthodoxically Kantian: only principles that could be coherently adopted by all. In order to pass the test of O’Neill’s constructivist procedure, a principle has

to be capable of being simultaneously held – and acted upon – by all agents. Unjust principles are, on the contrary, principles which cannot be coherently adopted by all. Following this rationale, principles of deception and coercion are ruled out: ‘those who become victims of action on such principles not merely do not act on their oppressor’s principles: they cannot do so’.²³ O’Neill’s account of justice, then, consists in the rejection of all principles of injury, i.e., principles whose adoption denies other agents’ capacity to act.

In both Rawls’s and O’Neill’s approaches, therefore, some facts have to be presupposed for constructivist procedures to model a situation where meaningful choices can be made. Which facts are incorporated in each specific procedure crucially depends on the particular question the procedure is meant to address. On the one hand, Rawls’s procedure seeks to deliver appropriate principles of justice for solving the conflicts of interests arising among the members of a society, so as to fairly distribute ‘benefits and burdens of social cooperation’.²⁴

O’Neill, on the other, addresses a question of the same kind as Rawls’s – i.e., one to do with coordination and conflict-resolution – but rather than focusing on its social version, she conceives of it with reference to the human condition. Consequently, the facts presupposed by her constructivist procedure are much thinner: the existence of a plurality of interacting and interdependent agents with limited rationality and independence – what she calls the ‘circumstances of justice meagerly construed’.²⁵

In light of the above, Cohen seems right in claiming that the principles issuing from constructivist procedures are grounded on facts. However, if the fact-insensitivity thesis is correct and fundamental principles must be fact-free, constructivists cannot consistently claim that the principles generated by their procedures are first or fundamental principles of justice. What could a constructivist respond to this general and potentially disruptive charge?

II. Methodological vs. Substantive Principles: A Constructivist Reply

Interestingly, Cohen himself suggests a possible constructivist reply to his thesis.²⁶ Recall that, according to the thesis, any justificatory sequence necessarily terminates with a fact-free normative principle, and by this Cohen means a substantive, i.e., directly action-guiding, principle. As Cohen himself notes, however, this qualification renders his thesis vulnerable to the following objection. Constructivists could grant his claim that there must be an explanation of why a fact supports a principle, but deny that the only available explanation necessarily resorts to a substantive normative principle.²⁷ An alternative, they might say, could be a methodological principle, ‘such as the methodological principle that is embodied in the design of a constructivist machine’.²⁸ That is, the fundamental, fact-free principle, in which justificatory chains culminate could be of a methodological, as opposed to substantive, kind.

On Cohen’s own definition, a methodological principle is ‘a principle that says how to generate normative principles’,²⁹ or a principle that ‘does not tell you (directly) what to do, that is, what action(s) to perform; rather, it tells you how to choose principles that tell you what to do’.³⁰ There are two possible ways of spelling out the content of this definition. One way is to conceive of methodological principles as imperatives of the form ‘You ought to follow procedure X’. On this reading, Rawls’s methodological principle would be something like: ‘You shall adopt the normative principles that would be chosen by the parties in the original position’.

If this were the case, it would be trivially true that methodological principles could not be fundamental (i.e., located at the end of a justificatory sequence): a command of the form ‘You ought to follow procedure X’ clearly has to be backed by a justification of why procedure X ought to be followed, namely of why procedure X is an appropriate procedure. In other words, the principle ‘You ought to follow procedure X’ is obviously not freestanding. The question is

whether any more ultimate justification of why X is an appropriate procedure necessarily relies on substantive normative principles.

This need not be the case, since there is a second, more plausible, way to conceive of methodological principles: namely as principles that explain ‘how to generate normative principles’³¹ and indicate which criteria one ought to adopt when one engages in substantive normative theorizing. On this reading, there is a sense in which methodological principles are also normative: they are meta-theoretical principles imposing normative constraints on how a theory should be constructed and developed.³² But they are not substantive normative principles. The appropriate distinction, in this understanding, is not between methodological principles on one side and normative principles on the other, but rather between methodological and substantive normative principles.

To gain a better understanding of this distinction, consider the following justificatory sequence:

P1=One ought to act on those principles which the constructive procedure X delivers;

F1=The constructive procedure X is the most appropriate way to justify normative principles without appealing to the independent existence of moral facts;

P2=One ought not to put forward principles whose validity is grounded on the alleged existence of independent moral facts;

F2=No compelling proof in favor of, or against, the existence of independent moral facts is available;

P3= When theorizing, one ought not to start from assumptions whose validity or truth is beyond the limits of what we can plausibly claim to know;

Call this the ‘general constructivist sequence’. From the point of view of its formal structure, this justificatory line does not contradict Cohen’s meta-ethical thesis: we have a sequence containing (1) principle-grounding facts, and (2) principles explaining why certain facts ground certain principles, which terminates (3) with a principle that is not grounded on any facts. However, the ultimate fact-independent principle which lies at the end of this justificatory process is not a substantive normative principle: instead of telling us directly how to act,³³ P3 is a methodological principle which prescribes how to single out substantive principles. It is true that P3 expresses normative concerns, namely what constraints a legitimate theoretical approach ought to respect; but P3 cannot plausibly be described as a substantive normative principle. P3 expresses normative concerns of a meta-theoretical and epistemic nature: it tells us what we can and cannot plausibly rely on, that is which assumptions we can legitimately make when engaging in theory construction.

The general constructivist sequence shows that a fact-insensitive principle may lie at the end of a justificatory chain without being substantive. In so doing, the sequence seems to undermine the critical potential of Cohen’s thesis against constructivism, insofar as such a thesis is restricted to substantive principles alone. Still, the general constructivist sequence is, as we say, ‘general’, and one might react by claiming that no constructivist procedure is actually capable of satisfying the constraints the sequence articulates. In other words, one could argue that no constructivist procedure can get off the ground without relying on some substantive normative commitment, and this is indeed what Cohen does.

III. Challenging the Constructivist Reply

Taking the original position as an example, Cohen notes that ‘[p]rocedure is not ultimate’:³⁴ as Rawls himself claims, not everything is constructed. If so, ‘we have to reckon not only with the principles justified by the original position procedure, but also with the principles that justify that procedure’.³⁵ The rationale governing its construction, i.e., the idea that ‘persons are to be regarded as free and equal’,³⁶ is itself a substantive normative principle. The upshot of this reasoning is that the original position cannot be justified on purely methodological grounds, that is, it cannot satisfy the general constructivist sequence. Does this argument suffice to defeat the sequence, showing that no constructivist procedure could possibly do without substantive normative foundations? We believe not.

Cohen is certainly right in claiming that the idea of people’s freedom and equality articulated in the original position has a normative flavor to it. To be sure, the later Rawls himself advocates freedom and equality on grounds of a substantive conviction that this is a normative truth about persons.³⁷ But the assumption of freedom and equality need not be interpreted in this way. Instead, it could be justified by appeal to the fact that, since no uncontroversial normative truth is available (see F2), putting the ideal choosers in a position of freedom and equality is the only starting point for designing principles they can *all* regard as rationally justified, and accept as authoritative.

To see this, imagine a group of interacting agents who strongly disagree about moral values and yet recognize that no moral code can be given a conclusive justification. These agents are free – i.e., they act on plans of life they have themselves designed – but also vulnerable and interdependent. To avoid unduly affecting each other they need to coordinate but, predictably, they disagree about what the best approach to social coordination is. A, for instance, believes society should be hierarchically structured, B believes that all ginger-haired

people should be given a greater share of social goods, C thinks that all human beings are equal and this should be reflected in the way society is organized.

Even if A, B and C know that their disagreement about which of the three solutions is true cannot be settled, they are still not justified in imposing their views on others. This is not just because resorting to brute force would not be in their long-term interest, but also, and primarily, because it would be contrary to reason. If they are rational, A, B, and C have to recognize that (i) they have no compelling grounds to show that others' take on social coordination is mistaken (e.g., C cannot prove that B is irrational, A cannot prove that C is wrong and so forth); and (ii) that reaching a solution that each may regard as rationally justified is therefore necessary. This requires 'bracketing off' their individual convictions about 'the truth in social coordination', and reasoning from premises none of them finds contentious. These are their common motivation to pursue their own life plans (by commanding as much resources as possible) subject to the achievement of coordination. Problematically, these two motives pull in different directions. The more I push for social rules that are disproportionately advantageous to me, the more it will be rational for others to reject that proposal – why should they accept it?

Imagine that at one point A comes up with the 'Dictator Principle' (DP), suggesting the procedure 'ask rex' (with rex = A him/herself or any other individual in the group).³⁸ The question then is: Why should all other agents regard that choice as being justified? Unless our agents agree that Rex (i.e., the specific individual indicated by A) has better epistemic access to 'the truth about coordination', which s/he has not ex hypothesi, the DP will be rejected as irrational. In fact, why would it be rational for the parties to assent to it? The notion of equality leading to the rejection of the DP is integral to the idea of justification itself.

In this stylized scenario, the idea of freedom is understood as modeling that of moral agency: any moral agent must, by definition, be free. The idea of equality, on the other hand, does not embody a positive value to be promoted, but constitutes a procedural constraint on

how principles of justice should be constructed. In other words, freedom and equality (or ‘equal concern’) articulate the rational requirement that, in the absence of authoritative premises – as when no moral truths are available – we must resort to intersubjective justification.

The validity of principles of justice depends on their being agreed upon under conditions where everyone is free and equal because there is no moral truth one is rationally justified to appeal to in order to warrant the exclusion of others from the deliberation process. On this constructivist view, it is not ‘intrinsically wrong’ to claim the moral entitlement to impose our views on others because they are free, equal, worthy of respect, and so forth; rather, it is irrational. By imposing our views on others, we would act on principles whose validity is beyond the limits of what we can plausibly claim to know: that is, our actions would not be rationally justified. To avoid irrationality, we must therefore find an alternative method through which the principles governing our actions may be validated.

In searching for such a method, constructivists cannot content themselves with any procedural solution. This is because, absent a pre-established authority, anyone can, in principle, turn out to be right. Under such circumstances, principles can only be valid if they are intersubjectively justifiable – i.e., if they are responsive to the reason of all. From this perspective, violating such a requirement would be contrary to reason: if everybody can in principle be right, principles of justice must be justifiable to all of them. As Onora O’Neill rightly points out, in the case of both theoretical and practical reason ‘we have a plurality of agents or voices [...] and no transcendent or preestablished authority. Authority has in either case to be constructed’.³⁹ In her view, if nothing else but our capacity to reason and act can be assumed, ‘any fundamental principles of thought and action we deploy [should] be ones that it is not impossible for all to follow’.⁴⁰ Freedom and equality are a way of articulating this requirement. Far from being foundational moral ideals, they express the methodological

constraint of intersubjective justifiability which applies to those fields of knowledge where no pre-existing authority can be presupposed.

We believe that, if the assumption of freedom and equality is understood in terms of intersubjective justifiability, the justification of a constructivist procedure (of which the original position constitutes one example) safely falls within the methodological realm. Freedom and equality are endorsed as a consequence of P2 (One ought not to put forward principles whose validity is grounded on the alleged existence of independent moral facts), and P2 is part of a justificatory sequence which culminates in the methodological command P3 that we should engage in theorizing with a significant amount of modesty.

So far we have argued that, given the absence moral facts which we might plausibly claim to be true, sound moral theorizing must proceed through intersubjective justification. A critic might find this answer prima facie persuasive, and yet conclude that it would not take constructivists very far. This is because the requirement of intersubjective justifiability is itself susceptible to multiple articulations in different constructivist procedures, and each specific articulation, so the critic might argue, cannot be defended without appealing to substantive moral considerations. After all, constructivists disagree about which procedure best expresses their methodological commitments and, ultimately, the choice of one procedure over another will have to be justified by reference to some substantive moral claim.

For all that we have said so far, the best or ‘most appropriate’ procedure for singling out principles of justice could be a Rawls-inspired thought experiment, Kant’s Categorical Imperative, Scanlon’s reasonable rejectability test.⁴¹ Each of these may plausibly be regarded as a methodological articulation of ‘freedom and equality’ (i.e., of intersubjective justifiability), and our preference for one or the other has to rely, at least in part, on some substantive considerations. This being so, constructivists seem to face a dilemma: they must either defend a specific procedural articulation of intersubjective justifiability, in which case they cannot avoid appealing to substantive considerations, or content themselves with

defending a highly indeterminate, thus unhelpful, approach to justification.⁴² What could a constructivist reply to this challenge?

It is indeed undeniable that P3 may be reasonably satisfied by more than one selection procedure. Constructivism, as we have described it, indicates a general approach to the justification of normative principles, one that considers principles to be justified so long as they respect certain rational requirements – in particular intersubjective justifiability. Our critic is right in pointing out that there may be more than one plausible account of what intersubjective justifiability amounts to – just as there may be more than one realist account of what ‘moral facts’ there are. But this does not render the methodological requirement of intersubjective justifiability itself any less methodological in kind. Each particular articulation of intersubjective justifiability through constructivist procedures is but one, provisional and non-fundamental attempt to meet that requirement. Since no ‘compelling proof whatsoever’ in favor of, or against, say, a Rawlsian, a Scanlonian or Kantian articulation of intersubjective justifiability is available, from the viewpoint of a constructivist methodology, each of these procedures is a plausible instantiation of P3, and is ‘non-fundamental’.

This answers the first concern of our critic, but not the second. Since different ‘plausible’ procedures will answer moral questions differently, constructivism would seem to lack (methodologically warranted) reasons for answering certain moral questions one way or the other. True, constructivism, as a methodology, contains a certain degree of indeterminacy, but this does not render it useless or incapable of answering crucial moral questions.⁴³ In particular, rather than indicating what justice positively requires, constructivism helps us identify what justice must exclude. There are rules of interaction which agents who are vulnerable, interconnected and concerned with leading their lives in accordance with their conception of the good could never unanimously consent to.

Consider, for instance, the issue of whether there should be rules allowing to torture people for fun, or prohibiting gay marriage. Constructivism tells us that such questions should not be

answered by appeal to the idea that it is intrinsically wrong to treat people in certain ways, because of some substantive view about the kinds of creatures that they are. Instead, it invites us to answer them by asking ourselves whether, given a plausible conception of human rationality, the practice of torturing people for fun, or the prohibition of gay marriage, would ever be unanimously agreed on. It would seem that such practices could never obtain unanimous consent, no matter what particular articulation of the constructivist test we were to adopt. On some crucial moral questions, plausible constructivist procedures will tend to converge. On others, they will offer different answers.

Which procedure is best suited to capture the idea of intersubjective justifiability is, in principle, an open question (though, admittedly, some candidates might seem prima facie more plausible than others). Our arguments wish to revive, rather than close, that debate. Recall that our aim here is neither to defend a specific constructivist procedure, nor to provide a conclusive defense of constructivism as such, but rather to claim that Cohen's thesis is not sufficient to defeat constructivism as a general approach to justification.

That said, one might want to pose an even more fundamental challenge to our proposal, by arguing not only that the idea of procedural equality and freedom can be articulated in many ways, but also that it is merely one possible way of justifying principles without appealing to the objective truth of some independent value(s). If people reasonably disagree about a morally crucial issue, why do our normative principles have to be acceptable, as constructivism insists, to each and every person (at least in some idealized sense)? It seems that flipping a coin, or appealing to a democratic vote, would deliver the same result.⁴⁴

Our response to such an objection is that 'to deliver the same result' a lottery or a majority system must not only avoid appealing to independent values, but also claim an alternative source of authority. As we have argued above, from an agnostic standpoint, the only plausible source of authority is some of form of intersubjective justifiability. Since, in the absence of a pre-established authority over a certain subject-matter, anybody could in principle be right,

violating intersubjective justifiability constitutes a violation of reason itself: if everybody can in principle be right, everybody must be included in the common construction of an alternative account of authority.

From this, agnostics conclude that the adoption of a lottery system or a principle of democracy should also be acceptable to everybody as a fair way of settling disputes, at least in a thin, idealized sense. Establishing whether they can is, predictably, beyond the scope of this paper – although intersubjective justifiability assigns at least some initial plausibility to more classical, unanimity-based, constructivist procedures. At any rate, what matters here is that agnosticism cannot escape the fundamental idea of universal acceptability: even if the chosen procedure does not rely on unanimous acceptability directly, the justification of the procedure must itself be intersubjectively justifiable, hence universally acceptable.

In the light of our discussion, we can conclude that the constructivist objection still stands: constructivists can accept the formal structure of Cohen's meta-ethical thesis, while rejecting the idea that they ultimately have to rely on fact-insensitive substantive normative principles.

IV. 'Where the Action Is': Why the Fact-insensitivity Thesis Is not Enough

The challenge raised by the 'general constructivist sequence' shows that the fact-insensitivity thesis cannot, by itself, refute constructivism as an outlook on justification. In this section we further substantiate this claim, revealing why, ultimately, such a thesis fails to meet its target. As we have seen, the 'fact-insensitivity thesis' is a piece of meta-ethics – i.e., one that does not articulate substantive normative prescriptions – but it is also neutral with respect to the most traditional meta-ethical debates. This indicates that the realm of meta-ethics is an internally complex one. To model this complexity, we suggest that meta-ethical questions may be asked at three different levels: (1) descriptive, (2) ontological, and (3) methodological.

1. Descriptive questions address the issue of how normative thinking actually works. By this we do not refer to empirical accounts of human psychological mechanisms, but rather to enquiries into the logical structure of normative reasoning: for instance, the Cohenite question whether it is logically possible for a principle to be grounded on a fact and nothing other than a fact. Such questions, as Cohen himself emphasizes, have no bearing on ontological investigations.
2. Ontological issues deal with the status of ethical notions – i.e., what ethical notions stand for or are a representation of – and correspond to what Cohen calls the ‘central question of meta-ethics’. Within this sub-field of meta-ethics we might find questions such as: What sort of ‘things’ are values? Are they mind-dependent or mind-independent? Are there such things as moral facts?
3. Methodological questions concern how moral principles should be justified. They ask: What is the appropriate method for reaching substantive normative conclusions which can be accepted as authoritative? This is, for instance, the kind of debate that engages intuitionists (i.e., those who believe that principles are the object of intuition) against constructivists (i.e., those who think that principles should be constructed through some appropriate procedure, rather than intuited or discovered).

As already anticipated, Cohen’s thesis pertains to the domain of descriptive meta-ethics. Constructivists, on the other hand, operate within the province of methodological meta-ethics: indeed, according to Cohen’s own characterization of their view, they hold that constructive procedures offer the most adequate way to obtain valid substantive normative prescriptions.

However, the justification of a methodology (3) derives (among other things) from the endorsement of an ontological standpoint (2). No methodology can be fully independent of a certain understanding of what it is a methodology for: in the specific case of a theory of justice, a method to single out normative principles has to be constrained by an antecedent account of what such principles are and are for. If we believe that there exist mind-independent normative facts, we will tend to think that such facts should be discovered or intuited; on the other hand, if we are doubtful or agnostic about the existence of such facts, we will be inclined to take the view that valid moral principles should be constructed through appropriate procedures; finally, if we positively hold that normative truths do not exist, we will be committed to thinking that there is nothing we need a method for, and that the enterprise of justifying principles is doomed.

To see how this connection between the ontological and methodological levels applies to constructivism specifically, let us once again consider the general constructivist sequence:

P1=One ought to act on those principle which the constructive procedure X delivers;

F1=The constructive procedure X is the most appropriate way to justify normative principles without appealing to the independent existence of moral facts;

P2=One ought not to put forward principles whose validity is grounded on the alleged existence of independent moral facts;

F2=No compelling in favor of, or against, the existence of independent moral facts is available;

P3=When theorizing, one ought not to start from assumptions whose validity or truth is beyond the limits of what we can plausibly claim to know;

On the constructivist understanding, P3 is clearly a fully general, ‘ultimate’ methodological principle, stating what might be regarded as a fundamental requirement of reason. Simply put, it says that when we engage in theory construction – no matter what specific area of knowledge we are focusing on – we should not base our arguments on unsound premises. Of course, which premises might reasonably be regarded as sound varies from one field to the other. What counts as a good premise in mathematics, differs from what counts as a good premise in economics or moral philosophy. Despite such differences, the general methodological principle P3 seems to hold across all fields of human knowledge. In conjunction with fact F2, P3 in turn justifies the narrower methodological principle P2, which specifically pertains to the domain of ethical enquiry. Finally, the combination of principle P2 and claim F1, delivers the action-guiding principle P1. Fact F2 warrants the endorsement of a form of ontological agnosticism in meta-ethics, and what follows is the adoption of constructivism as a methodology.

Behind this admittedly technical reconstruction lies the ‘soul’ of constructivism. Since it seems impossible to achieve an epistemically justified answer as to which substantive values are true, constructivists claim that we can never be sure that normative answers based on our own convictions are superior to those endorsed by others. Constructivism, therefore, relies on a form of ontological agnosticism: it claims that we do not know whether mind-independent moral truths exist.⁴⁵

Notice that agnosticism is a distinctive stand. Unlike nihilism, it does not endorse the claim that moral knowledge is chimerical, but it more modestly recognizes that, at least for now and the foreseeable future, we lack the epistemic tools to settle the question. Unlike skepticism, it does not entail an attitude of incredulity towards those who hold beliefs that cannot be

justified. One is agnostic with respect to views for which there is neither a compelling proof, nor a compelling refutation, and good enough arguments on both sides of the debate to believe that the issue is not settled. Constructivist agnosticism with respect to moral truths greatly differs from, say, the scientist's skepticism towards the existence of unicorns. So, for instance, those who believe that autonomy is objectively good for human beings are asked to recognize that their arguments are not strong enough to defeat the opposing view. They are not, however, asked to abandon their view, nor are they discouraged from keeping on trying to find a compelling argument in favor of it.

To make the point most vivid, consider the paradigmatic case where the language of agnosticism is used, namely the issue of the existence of God. It would seem to be true that no compelling proof in favor or against God's existence is available, and that God's existence is beyond what we can plausibly claim to know. This, however, does not mean that all of those who believe in God are irrational and is certainly not evidence in favor of atheism. If anything, it suggests that the rational attitude to take about the existence of God is agnosticism. The non-dogmatic believer – who recognizes that she cannot ground a philosophically sound theory of justice on the principles of her faith, because she has no compelling argument in favor of them – would qualify as agnostic on our account. Believing in God, moral realism, or the objective goodness of autonomy are reasonable positions to hold: in the absence of a compelling argument for or against those views, it is not irrational to believe them to be true. What it is not reasonable (i.e., not rationally justified), however, is to believe that their truth is so beyond doubt that the practical implications of these views can be imposed on those who reasonably reject it.⁴⁶ This in turn, would be unreasonable not because it is wrong to coerce people in virtue of some intrinsic moral property they have, but because those who reject the existence of God, moral realism, or the objective goodness of autonomy also have a chance of being right.⁴⁷

This is why agnostics cannot conclude that, in moral matters, ‘anything goes’. In order to be justified in doing so, they would have to endorse the positive claim that there exist no moral truths. Only if morality is nonsense does it make sense to believe that ‘might makes right’. This skeptical solution, however, is unavailable to ontological agnostics, because their very agnosticism implies that they ‘cannot take any faith or belief, tradition or norm, claim or proposition, in short any arbitrary premise, as having [...] unrestricted authority’,⁴⁸ including the claim that there exist no moral truths. Faced with such epistemic uncertainty, agnostics conclude that, if we are to interact with each other on morally legitimate terms, we need an alternative way of justifying moral principles; one which does not take the existence of substantive moral values or truths as a given, and yet is still binding. Constructivism is meant to offer a solution to this problem: if normative principles that may legitimately claim authority over us cannot be given – because, simply put, we have no plausible story to tell where they come from – they ought to be constructed.

Taking Rawls’s original position as its main target, Cohen has tried to show that no such genuine construction can be carried out without reintroducing ‘arbitrary’ substantive moral elements through the backdoor, but we have argued that he does not convincingly establish such a claim.

To return to the constructivist sequence, what is at stake in the dispute between Cohen and constructivists is whether the substantive fact-sensitive principle P1 may be arrived at from methodological principles directly, i.e., not via additional substantive fact-independent principles. If constructivists are right, principle P1 is fundamental as a substantive principle, while being fact-dependent; it would depend on a fact-independent and hence more fundamental, but not directly action-guiding, justification. Hence, the outcome of the constructivist procedure would be a set of fundamental normative principles, and all of them would be fact-dependent.

This is not to say that we have demonstrated that constructivists can meet Cohen's challenge. In fact, we have not provided a full explanation of how P1 could be generated by a methodological principle – we have simply sketched out what form such an explanation could take. We have shown, however, that Cohen's thesis about the logical structure of the relationship between facts and principles does not prove that P1 cannot be generated by methodological principles alone. Indeed, establishing that P1 cannot be so generated would require a much more controversial and ambitious argument than the fact-insensitivity thesis. Specifically, one would have to argue that methodological principles alone, no matter how many facts they are combined with, can never generate fact-dependent, action-guiding principles, and that disguised, fact-independent normative premises must therefore always be found at some point in the justificatory sequence.

Alternatively, to refute constructivism, Cohen might deny that P3 is appropriately regarded as a methodological principle: the general constructivist sequence would then confirm his thesis that fact-independent substantive normative principles constitute the necessary source of any process of justification. If, however, P3 is a substantive principle in Cohen's view, we suspect that the quarrel between him and constructivists might amount to little more than terminology. Surely, when constructivists claim that all sound principles are fact-sensitive, they are not referring to principles for theory construction based on certain fundamental requirements of reason, like P3. It would be both implausible and unfair to attribute such a view to constructivists. What they are referring to are directly action-guiding principles, such as Rawls's two principles of justice for the basic structure. Consider, for instance, the principle 'Any sound theory should not contain contradictory statements'. The constructivist slogan that all sound principles are sensitive to facts of course does not include the principle of non-contradiction.

Finally, there may be a third argumentative path open to Cohen: he could simply, but controversially, deny F2, i.e., the fact that 'No compelling proof in favor of the existence of

independent moral facts is available'. In other words, Cohen could accept P3, but claim that there are indeed moral facts we can 'plausibly claim to know', and consequently deny that principle P2 (One ought not to put forward principles whose validity is grounded on the alleged existence of independent moral facts) follows from P3. And P2 is the direct justificatory ground for constructivism: if no given moral truths are available, constructivist procedures of some kind seem to be the only viable alternative. Pursuing this alternative line of objection, Cohen would have to jump from the descriptive level at which his thesis is pitched into an extremely controversial ontological field. In other words, he would have to take issue with the insidious and by now familiar 'realism/anti-realism/quasi-realism/a-little-bit-of-realism-here-not-so-much-realism-there controversy'.⁴⁹

If Cohen adopted this strategy, the additional arguments he would need to offer for his thesis to have the desired disrupting impact on constructivism would have to address ontological questions, that is, questions he explicitly wishes to avoid. Unless Cohen, or anyone else, is prepared to defend the view that there exist true first principles – a view he claims to hold, but which is also said to play no role in his argument – the constructivist contention that moral principles 'gain their validity through being the output of a privileged selection procedure' – i.e., through methodological principles alone – remains unchallenged.

Conclusion

To conclude, let us once again clarify the nature and aim of this paper. We neither mean (1) to claim that Cohen's thesis is of no value to meta-ethical debates, nor (2) to conclude that constructivism is the appropriate methodology in normative ethics. With regard to (1), on the contrary, we think that Cohen has made a valuable contribution to this discipline. The mere fact that we have been relying on his thesis in our articulation of the constructivist model shows that we are persuaded that reflections on the relationship between facts and principles

are crucial to gaining a deeper understanding of the structure of ethical and meta-ethical theories. With regard to (2), this paper is not meant to be a defense of constructivism, but rather an endeavor to show that a full refutation of it would require taking a stand on a wider range of meta-ethical issues than those Cohen confines himself to. That is, we do not claim to have offered a defense of constructivism against other methodologies; we do think, however, that the fact-insensitivity thesis does not properly engage with the animating concern of constructivism – i.e., ontological agnosticism – and that its attempt to sidestep such a direct confrontation does not deliver the results Cohen hopes for.

Our argument, therefore, is not a refutation of the fact-insensitivity thesis, but rather an invitation for critics to take issue with the concerns underlying the constructivist approach. These concerns could be expressed by the following puzzle: given people's deep disagreement about what they regard as the correct ultimate principles, and in the absence of an argument showing that there exists a set of true ultimate principles, what reasons do we have to abandon the procedural justificatory approach constructivists advocate?

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¹ John Rawls, A Theory of Justice (Oxford: Oxford University Press, 1999).

² John Rawls, 'The Independence of Moral Theory', Proceedings and Addresses of the American Philosophical Association, 48 (1974-75): 5-22.

³ John Rawls, 'Kantian Constructivism in Moral Theory', in Collected Papers, edited by Samuel Freeman (London/Cambridge, Mass: Harvard University Press, 1999): 303-358; for an account of how Rawls's work may be construed as betraying those very constructivist assumptions that he has become so well-known for, see Onora O'Neill, 'Constructivism in Rawls and Kant', in The Cambridge Companion to Rawls, edited by Samuel Freeman (Cambridge: Cambridge University Press, 2002): 347-367.

⁴ See, e.g., Onora O'Neill, Constructions of Reason: Exploration of Kant's Practical Philosophy (Cambridge: Cambridge University Press, 1989); Christine M. Korsgaard, The Sources of Normativity (Cambridge: Cambridge University Press, 1996); Thomas J. Scanlon, What We Owe to Each Other (London/Cambridge, Mass: Belknap Press of Harvard University Press, 1998).

⁵ Gerald A. Cohen, 'Facts and Principles', Philosophy and Public Affairs, 31 (2003): 211-245.

⁶ *Ibid.*, p. 213, emphasis in original.

⁷ Gerald A. Cohen, 'Where the Action Is: On the Site of Distributive Justice', Philosophy and Public Affairs, 26 (1997): 3-30; 'Justice, Incentives, and Selfishness', in G.A. Cohen, If You're an Egalitarian, How come You're So Rich? (London/Cambridge, Mass: Harvard University Press, 2000): 117-133. The main outlines of Cohen's

view are already sketched in ‘Incentives, Inequality, and Community’, in The Tanner Lectures on Human Values, Vol. 13, edited by Grethe B. Peterson (Salt Lake City: University of Utah Press, 1992): 263-329.

⁸ Cohen, ‘Facts and Principles’, p. 221.

⁹ Ibid., p. 214, emphasis in original. As to what principles and facts are, we rely on Cohen’s definition: ‘A normative principle, here, is a general directive that tells agents what (they ought, or ought not) to do, and a fact is, or corresponds to, any truth, other than (if any principles are truths) a principle, of a kind that someone might reasonably think supports a principle’. Ibid., p. 211, emphasis in original.

¹⁰ Ibid., pp. 227-228, emphasis in original.

¹¹ Ibid., p. 218.

¹² Ibid., p. 215.

¹³ Ibid., p. 218.

¹⁴ Ibid., p. 216.

¹⁵ Ibid., emphasis added.

¹⁶ Ibid., p. 231.

¹⁷ Ibid., p. 212.

¹⁸ Ibid., p. 211.

¹⁹ Ibid., p. 213 n.2.

²⁰ Ibid., p. 213, emphasis in original.

²¹ Rawls, A Theory of Justice, p. 138, quoted by Cohen in ‘Facts and Principles’, p. 238.

²² O’Neill, Constructions of Reason, p. 213.

²³ Ibid., emphasis in original.

²⁴ Rawls, A Theory of Justice, p. 4.

²⁵ O’Neill, Constructions of Reason, p. 212, emphasis added.

²⁶ Cohen, ‘Facts and Principles’, pp. 221-222.

²⁷ Ibid., p. 221.

²⁸ Ibid., p. 222.

²⁹ Ibid., p. 219.

³⁰ Ibid., p. 221, emphasis in original.

³¹ Ibid., p. 219.

³² In this specific case, a theory which is meant to deliver substantive normative principles, but the same would be true for methodological principles in other, non-normative, theoretical fields. Thus, methodological principles that set up, say, the methodology of a theory about the nature of consciousness, are also normative principles about how philosophy of mind ought to be carried out.

³³ Cohen, 'Facts and Principles', p. 221.

³⁴ *Ibid.*, p. 222.

³⁵ *Ibid.*, emphasis in original.

³⁶ *Ibid.*

³⁷ See Rawls, 'Kantian Constructivism in Moral Theory'.

³⁸ We are grateful to Andrea Sangiovanni for suggesting this example to us.

³⁹ O'Neill, Constructions of Reason, p. 16, emphasis added.

⁴⁰ *Ibid.*, p. 20.

⁴¹ See Scanlon, What We Owe to Each Other, p. 153.

⁴² We thank Nicholas Southwood for raising this point.

⁴³ Cf. Gerald F. Gaus, 'The Demands of Impartiality and the Evolution of Morality' (unpublished manuscript).

⁴⁴ We are grateful to an anonymous reviewer for expressing this concern.

⁴⁵ This need not entail that constructivists necessarily reject the notion of moral truth altogether. One might endorse a conception of truth according to which, for a principle to be true, it has to be the correct outcome of a constructive procedure. Ronald Milo, for instance, defines 'contractarian constructivism' as a position which 'holds that moral truths are most plausibly construed as truths about an ideal social order [...]. It is true (or it is a fact) that a certain kind of act is wrong, for example, just in case a social order prohibiting such acts would be chosen by rational contractors under suitably idealized conditions', Ronald Milo, 'Contractarian Constructivism', The Journal of Philosophy, 92 (1995): 181-204, p. 184. The moral truth of a principle consists in being the outcome of a constructive procedure, rather than in tracking an independent order of moral facts. We wish to remain non-committal as to whether constructivist principles are true in this way. An account of moral truth like the one put forward by Milo seems to entail that this is the only way a normative principle can be true, and to exclude the possibility of a more classically realist, mind-independent notion of moral truth. However, such a stance implies more than agnosticism from an ontological viewpoint, in that it seems to positively rule out the existence of independent moral facts. We believe, therefore, that it is more adequate and neutral to talk about the validity, rather than the truth, of constructivist principles, for the purposes of this paper.

⁴⁶ It is not unreasonable, for instance, to admit that an argument in favor of the existence of God is not compelling, and still find it persuasive enough to carry on believing that it is somehow on the right track. Indeed, even in philosophy this is often the case. If, however, we wish to act morally, we cannot be justified in imposing the consequences of such argument on those who reasonably find it unpersuasive.

⁴⁷ We thank an anonymous reviewer for raising this issue.

⁴⁸ O'Neill, 'Constructivism in Rawls and Kant', p. 358.

⁴⁹ Cohen, 'Facts and Principles', p. 212.