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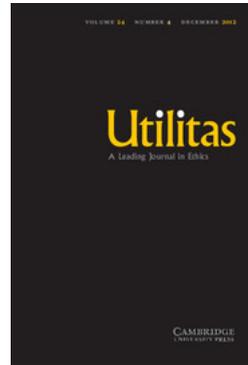
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What Is the Point of Justice?

ANDREW MASON

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University of Warwick

Conflicting answers to the question of what principles of justice are for may generate very different ways of theorizing about justice. Indeed divergent answers to it are at the heart of G. A. Cohen's disagreement with John Rawls. Cohen thinks that the roots of this disagreement lie in the constructivist method that Rawls employs, which mistakenly treats the principles that emerge from a procedure that involves factual assumptions as ultimate principles of justice. But I argue that even if Rawls were to abandon his constructivism, and to accept Cohen's argument that ultimate principles of justice are not grounded directly in any facts, their divergent views concerning the proper role of principles of justice would lead them to different conclusions. I contend that even if ultimate principles of justice are not directly grounded in any facts, the role that principles of justice are needed to play may mean that their justification depends upon facts about what is feasible and facts about what is burdensome to people. Contrary to what Cohen maintains, being dependent on the facts in this manner does not preclude a principle from being ultimate; nor do principles which have this sort of dependence on the facts necessarily combine justice with other values in a way that must lead to conflation.

I. INTRODUCTION

What are principles of justice *for*? Competing answers to this question motivate very different ways of theorizing about justice and generate different conceptions of the relationship between political philosophy and disciplines such as sociology, psychology, political science and history. For those who think that the main point of principles of justice is to govern a society's institutions and practices, facts about what human beings are like and what political and economic institutions are feasible will be relevant for theorizing about justice, perhaps even at the most fundamental level. For those who deny that principles of justice have a point, or who think that their point consists simply in enabling us to evaluate any conceivable states of affairs in terms of the degree of justice they contain, questions about what institutions are feasible, or whether, given what human beings are like, it would be unreasonably demanding for them to have to comply with the requirements imposed by these institutions, will be at best secondary. According to this conception, political philosophy can legitimately be conducted in a way that is independent of empirical inquiry.

The issue of whether principles of justice are subject to feasibility constraints has come to be discussed at a highly abstract level, in terms of whether ultimate normative principles are 'fact-insensitive', and in terms of whether the dictum that 'ought' implies 'can' entails that adequate normative principles must be constrained by facts about

what is possible. But in my view the latter is something of a red
herring since principles of justice might enable us to evaluate states
of affairs without being prescriptive,[1] whereas the former (I shall
argue) is not as crucial to the issue as it might seem, at least when
different versions of the claim that ultimate normative principles are
fact-insensitive are distinguished. It is the question of what principles
of justice are for that is pivotal. Indeed it seems to me that conflicting
answers to this question are at the heart of G. A. Cohen's disagreement
with John Rawls in *Rescuing Justice and Equality*, even though that
disagreement is not framed in these terms. By showing how their
different conceptions of the purpose of principles of justice divide
them in crucial ways, I hope to underline the importance of this
issue for theorizing about justice whilst at the same time defending
the coherence of a conception of political philosophy that is primarily
practical in its orientation against Cohen's critique of it. Although I do
not offer any *direct* defence of the proposition that the point of principles
of justice is to govern social practices and institutions, I try to mount
an indirect defence of it by showing that it is not vulnerable to the
criticisms that Cohen's position might be thought to motivate.

Cohen thinks that the roots of his disagreement with Rawls lie
in the constructivist method that Rawls employs, which in his view
mistakenly treats the principles which emerge from a procedure
that involves factual assumptions as ultimate principles of justice.
According to Cohen, the principles which emerge from that procedure
are not ultimate because they are grounded in facts and they are not
principles *of justice* because they involve a commitment to values that
are logically independent of justice.[2] But I shall argue that even if
Rawls were to abandon his constructivism, and to accept the idea that
ultimate principles of justice are not grounded directly in any facts,
his views about the proper role of principles of justice would lead to

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[1] In other words, principles of justice might not always entail ought statements. See P.
Gilabert, 'Feasibility and Socialism', *Journal of Political Philosophy* 19 (2011), pp. 52–63,
at 56. More generally, it is simply not plausible to argue that *all* normative statements
are prescriptive: see G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, Mass.,
2008), pp. 251–2.

[2] Cohen, *Rescuing Justice and Equality*, ch. 7. Cohen does not define ultimate
principles of justice as principles that are fact-insensitive. Rather, that is an additional
substantive claim that he makes: see *Rescuing Justice and Equality*, pp. 280–1 and
ch. 6. For relevant discussion of the claim that ultimate principles of justice are not
grounded in facts, see D. Miller, 'Political Philosophy for Earthlings', *Political Theory:
Methods and Approaches*, ed. D. Leopold and M. Stears (Oxford, 2008), pp. 29–48; T.
Pogge, 'Cohen to the Rescue!', *Ratio* 21 (2008), pp. 454–75; A. Faik Kurtulmus, 'Rawls
and Cohen on Facts and Principles', *Utilitas* 21 (2009), pp. 489–505; R. Jubb, 'Logical and
Epistemic Foundationalism about Grounding: The Triviality of Facts and Principles', *Res
Publica* 15 (2009), pp. 337–53; L. Ypi, 'Facts, Principles, and the Third Man', *Socialist
Studies/Etudes Socialistes* 8 (2012), pp. 196–215.

differences between him and Cohen in terms of the character of the principles they endorse. Focusing on the role that Rawls believes that principles of justice should play in governing a society, I argue that even if ultimate principles of justice are not grounded directly in any facts, they may be subject to constraints which mean that their justification depends upon facts about what is feasible and facts about what is burdensome to people.[3] Contrary to what Cohen maintains, being dependent on the facts *in this way* does not preclude a principle from being ultimate; nor do principles which have this sort of dependence on the facts necessarily combine justice with other values in a way that must lead to confusion between them.

II. ADEQUATE PRINCIPLES AND SOCIAL PURPOSES

For Rawls, theorizing about justice is a deeply practical activity. He believes that principles of justice can be assessed in part in terms of whether they are well-adapted to serving a social purpose, that is, to governing a society.[4] What does it mean for a principle to be well-adapted to governing a society? I shall not attempt to give a precise answer to this question: if a principle can be applied directly to determine the design of major institutions, or if it can be used

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[3] Cohen sometimes expresses his thesis that ultimate principles are not grounded in any facts by saying that these principles are *fact-insensitive*, but it is important to recognize that when he does so he is using the expressions 'fact-insensitive' and 'fact-sensitive' in a specific sense. In his sense, a fact-sensitive principle is simply one that is (partly or wholly) grounded in or justified by facts, whereas a fact-insensitive principle is one that is not (partly or wholly) grounded in or justified by facts (Cohen, *Rescuing Justice and Equality*, p. 231). So, for example, he would not regard a principle whose *applicability* depends on the facts as fact-sensitive in his sense: see Cohen, *Rescuing Justice and Equality*, pp. 335–6. (Both Miller and Pogge seem to misunderstand Cohen's thesis in this respect: see Miller, 'Political Philosophy for Earthlings', pp. 34–8; Pogge, 'Cohen to the Rescue!', especially pp. 466–7. Contrary to what Pogge claims, the search for fact-insensitive principles, in Cohen's sense, is not necessarily a search for principles that would be applicable in all possible worlds.)

[4] See J. Rawls, 'Kantian Constructivism in Moral Theory', *John Rawls: Collected Papers*, ed. S. Freeman (Cambridge, Mass., 1999), pp. 303–58, at 306. What this practical task involves may depend in part on the nature of the society for which these principles are intended: J. Rawls, 'The Idea of an Overlapping Consensus', *John Rawls: Collected Papers*, ed. S. Freeman (Cambridge, Mass., 1999), pp. 421–48, at 421. In modern democracies, they must enable those who are profoundly divided by different religious, philosophical and moral doctrines to live together over time as free and equal citizens: see J. Rawls, *Political Liberalism* (New York, 1996), p. 4; see also p. xxxix. Andrew Williams is one of the few theorists who in the context of the debate between Cohen and Rawls has emphasized the point that Rawls believes that principles of justice must play a particular social role: see A. Williams, 'Justice, Incentives and Constructivism', *Ratio* 21 (2008), pp. 476–93, at 485. See also Z. Stemplowska and A. Swift, 'Ideal and Nonideal Theory', *Oxford Handbook of Political Philosophy*, ed. D. Estlund (Oxford, 2012), section entitled 'Is Ideal Theory Too Realistic?'.

in a relatively straightforward manner to identify rules that can be employed in this way, then I shall suppose that it is well-adapted to that purpose, whereas if a principle cannot be used to determine the design of institutions at all, or not without a wealth of additional information that is very hard to obtain, then I shall suppose that it is not well-adapted to that purpose. Indeed the notion that the purpose or point of principles of justice is to govern a society lends support to the idea that the *primary subject* of justice is the basic structure of society,[5] where that is understood as comprised of the institutions that have a profound and pervasive effects on people's life chances.[6]

Cohen, in contrast, does not believe that principles of justice must serve a practical social purpose. What he calls 'ultimate principles of justice' can be adequate or justified despite being ill-suited to governing a society;[7] they simply express what justice is or what 'justice' means.[8] By an 'ultimate principle', Cohen means a principle

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[5] J. Rawls, *A Theory of Justice* (Cambridge, Mass., 1971), p. 7; J. Rawls, *A Theory of Justice*, rev. edn. (Oxford, 1999), p. 6. (In the citations that follow, references will be given in the form 'p. x/y', where 'x' denotes the page number in the 1971 edition and 'y' denotes the page number in the 1999 edition.) Rawls's claim that the primary subject of justice is the basic structure of society has been taken by many to imply that Rawls thinks that it is the only subject of justice: see e.g. A. Abizadeh, 'Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice', *Philosophy and Public Affairs* 35 (2007), pp. 318–58, at 323. Whether that follows and, if it does, whether the restriction of principles of justice to the basic structure of society could be justified, will be considered further in section IV.

[6] In fact, as Arash Abizadeh points out, the basic structure might be understood in at least three different ways, as comprising '(1) the institutions that determine and regulate the fundamental terms of social cooperation; (2) the institutions that have profound and pervasive impact upon persons' life chances; or (3) the institutions that subject people to coercion' (Abizadeh, 'Cooperation, Pervasive Impact, and Coercion', p. 319). The differences between these interpretations do not matter for my purposes.

[7] See Cohen, *Rescuing Justice and Equality*, pp. 21, 267–8, 278. This leads Cohen to endorse what Adam Swift calls an epistemological conception of political philosophy: 'the question for political philosophy is not what we should do but what we should think, even when what we should think makes no practical difference' (Cohen, *Rescuing Justice and Equality*, p. 268; A. Swift, 'The Value of Philosophy in Nonideal Circumstances', *Social Theory and Practice* 34 (2008), pp. 363–87, at 366–8). Contrast this conception of political philosophy with the one endorsed by Robert Goodin and Philip Pettit when they maintain that the concern of political philosophy is 'to identify the sort of political institutions that we should have' (*A Companion to Contemporary Political Philosophy*, ed. R. E. Goodin and P. Pettit (Oxford, 1993), p. 1).

[8] As Andrew Williams observes, Cohen does not provide us with anything more than a rudimentary answer to the question of what justice is (Williams, 'Justice, Incentives and Constructivism', p. 491). Cohen does in fact offer a general characterization of what he understands by justice: 'if, as some of my critics insist, I simply *must* say what I think justice is, in general terms, then I offer, for those who will be content with it, the ancient dictum that justice is giving each person her due' (Cohen, *Rescuing Justice and Equality*, p. 7). Williams regards this as inadequate, however (Williams, 'Justice, Incentives and Constructivism', p. 491, n. 39). We should at least question whether there is a useful concept of justice *sans phrase*, as opposed to concepts of (say) distributive, retributive and reparative justice, perhaps with family resemblances between them.

that is not derived from any other principle.[9] He distinguishes ultimate normative principles from rules of regulation: rules of regulation are derived from ultimate principles in the light of empirical facts, for the specific purpose of governing institutions.[10] Ultimate principles of justice can be employed for various ends, for example, when combined with the facts they can be used to judge the justice of states of affairs or personal behaviour, and they may help in selecting rules of regulation for the design of institutions, but there are no practical social purposes which these principles must serve that determine, even in part, the adequacy of a proposed principle.[11] It would be going too far to say that, for Rawls, it is a *conceptual* truth that principles of justice must be well-adapted to the role of governing a society, since Rawls denies that anything substantive can be established through conceptual analysis

[9] We might also say that a principle P1 is *more* ultimate than P2 if P2 can be derived from P1, perhaps in conjunction with various other premises, factual or otherwise. Somewhat confusingly, Cohen also speaks of *fundamental principles of justice*, which he defines as principles of justice that are not applied principles of justice, where an applied principle of justice is 'a principle of justice that is derived from . . . a principle of justice together with something other than a principle of justice, such as a set of empirical facts, or a value other than justice, or a principle that is not a principle of justice' (Cohen, *Rescuing Justice and Equality*, p. 279). As Cohen points out, this allows that a fundamental principle of justice might be derived from another principle of justice (*Rescuing Justice and Equality*, p. 280). So, paradoxically, a fundamental principle of justice in this sense need not be an ultimate principle. Even more confusingly, Cohen sometimes seems to use the term 'fundamental' to mean 'ultimate': for example, he says 'I argued . . . that fundamental principles, *that is, principles that are not derived from other principles*, do not rest on factual grounds' (*Rescuing Justice and Equality*, p. 278, emphasis added). In what follows, to avoid confusion I shall use 'ultimate principle' to refer to a principle that is not derived from any other principle but I shall refrain from using the expression 'fundamental principle of justice'.

[10] See G. A. Cohen, 'Facts and Principles', *Philosophy and Public Affairs* 31 (2003), pp. 211–45, at 241.

[11] Cohen and Rawls are sometimes regarded as providing us with different conceptions of ideal theory. But in so far as ideal theory is characterized as theory which aims to formulate the principles of justice for governing a perfectly just society in which there is full compliance with those principles, this misunderstands the role that Cohen assigns to ultimate principles of justice. Ultimate principles (including those of justice) are what justify the rules that ought to govern the institutions, practices or behaviour in a society, depending on (amongst other things) the nature of that society, the options available within it, and the degree of non-compliance that is likely to result from the adoption of different rules. See Stemplowska and Swift, 'Ideal and Nonideal Theory', section entitled 'Is Ideal Theory Too Realistic?' For other recent discussions of ideal theory, see C. Farrelly, 'Justice in Ideal Theory: A Refutation', *Political Studies* 55 (2007), pp. 844–64; A. Sen, 'What Do We Want from a Theory of Justice?', *Journal of Philosophy* 103 (2006), pp. 215–38; I. Robeyns, 'Ideal Theory in Theory and Practice', *Social Theory and Practice* 34 (2008), pp. 341–62; L. Valentini, 'On the Apparent Paradox of Ideal Theory', *Journal of Political Philosophy* 17 (2009), pp. 332–55; A. J. Simmons, 'Ideal and Nonideal Theory', *Philosophy and Public Affairs* 38 (2010), pp. 5–36; A. Mason, 'Rawlsian Theory and the Circumstances of Politics', *Political Theory* 38 (2010), pp. 658–83; A. Hamlin and Z. Stemplowska, 'Theory, Ideal Theory and the Theory of Ideals', *Political Studies Review* 10 (2012), pp. 48–62.

alone.[12] But, in contrast to Cohen, he does believe that the adequacy of any principle of justice can be judged in part in terms of how well-suited it is to such a role.

How would Cohen argue against the idea that the adequacy of principles of justice is to be determined in part by how well-adapted they are to governing a society? It seems to me that he would argue against it in the same way he argues against Rawlsian constructivism, namely, he would maintain that to suppose that any adequate principle of justice must be well-adapted to serving a social purpose is to *confuse* ultimate principles of justice with rules of regulation. Moreover, in Cohen's view adequate rules of regulation must give weight to evaluative considerations other than justice: they need to give appropriate weight not only to justice but also to Pareto efficiency, stability and publicity, for example. Therefore, he believes that to confuse ultimate principles of justice with rules of regulation is in part to confuse justice with other values. In sections III and IV I explore whether the idea that principles of justice can be assessed (in part) in terms of how well-adapted they are to governing a society involves mistaking rules of regulation for ultimate principles of justice, whereas in section V I examine whether it involves conflating justice with other values.

III. ULTIMATE PRINCIPLES AND FEASIBILITY

The idea that principles of justice are adequate (or justifiable) only if they are well-adapted to governing a society also serves as a ground for the Rawlsian idea that principles of justice must be *realistic* in the sense that they must be such that they could be realized by some set of institutions under the best of foreseeable conditions.[13] This

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[12] See Rawls, *A Theory of Justice*, pp. 130/112–13, 579/507.

[13] See Rawls, *Political Liberalism*, p. xix. In Rawls's view, even ideal theory is subject to this feasibility constraint. Indeed he sometimes characterizes the form of ideal theory he defends as 'realistically utopian': see, for example, J. Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass., 2001), p. 4; J. Rawls, *The Law of Peoples* (Cambridge, Mass., 1999), pp. 4–6, 11–12. Rawls's feasibility constraint would be regarded by some as insufficiently realistic. John Dunn and Raymond Geuss, for example, argue that political theorizing needs to start from an analysis of our concrete historical circumstances (see J. Dunn, *Interpreting Political Responsibility* (Cambridge, 1990), ch. 12), including the way in which our actual institutions operate and what actually motivates us (see R. Geuss, *Philosophy and Real Politics* (Princeton, 2008), p. 9). A feasibility constraint may take a variety of different forms. Although the Rawlsian version will be my focus, nothing in my argument turns on its particular form. David Miller distinguishes between technical and political feasibility, where technical feasibility concerns whether 'a proposal contravenes physical laws or rock bottom social or psychological laws', whereas political feasibility concerns 'whether it can command sufficient political support to be adopted' (Miller, 'Political Philosophy for Earthlings', p. 46). He then claims that any defensible feasibility constraint must fall somewhere between the two. For further relevant discussion, see J.

feasibility constraint rules out as inadequate any principle of justice that it would be impossible to institutionalize because, even in the best of foreseeable conditions, we would lack the power or knowledge required to do so. From Cohen's perspective, the question Rawlsians must address is whether principles which are, in part, a product of applying this feasibility constraint can be ultimate, or whether in his terminology they must be merely rules of regulation.

Let us grant for the sake of argument that Cohen is right that ultimate principles of justice are not grounded in any facts. Does the idea that the justification of a principle is *constrained* by facts (for example, facts about what is feasible) imply that when it is justified it is *grounded* in those facts? Cohen might seem to be denying that it does when he remarks that 'excluding a principle (because the facts mean it can't be complied with) isn't grounding any principle'.[14] But his remark does not directly address my question since he is making an observation about rejecting a normative principle because it cannot feasibly be implemented rather than an observation about accepting a principle (in part) because it is feasible to implement it. If it is a constraint on a principle that it must be realizable in the best of foreseeable conditions, doesn't the fact that a principle meets that constraint then count as part of the full justification or grounding of it? If so, the thesis that ultimate principles of justice are not grounded in any facts would be incompatible with feasibility constraints on the adequacy of such principles.

But even if requiring that a principle complies with a feasibility constraint amounts to grounding it, in part, in facts about what is feasible, the role that these facts play in indirectly grounding the principle is very different from the role that a fact might be thought to play in grounding it directly.[15] Indeed, as Cohen acknowledges, the arguments to which he appeals in defending the thesis that ultimate normative principles are not grounded in any facts cannot be deployed

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Raikka, 'The Feasibility Condition in Political Theory', *Journal of Political Philosophy* 6 (1998), pp. 27–40; A. Swift and S. White, 'Political Theory, Social Science, and Real Politics', *Political Theory: Methods and Approaches*, ed. Leopold and Stears, pp. 49–69.

[14] Cohen, *Rescuing Justice and Equality*, p. 251.

[15] David Miller distinguishes a number of different ways in which a principle might be grounded in the facts: it might be entailed by some further principle in conjunction with facts; the facts might provide evidence for the principle; or various facts might be presuppositions of the principle, for example, the fact of human self-consciousness might be a presupposition of a principle that everyone should have an equal right to liberty, in the sense that it would not apply if human beings lacked self-consciousness in the way that non-human animals arguably do: see Miller, 'Political Philosophy for Earthlings', sect. 2. (For Cohen's response to the very idea of a principle's being presuppositionally grounded, see *Rescuing Justice and Equality*, pp. 335–6.) If we think of principles as being grounded in facts in virtue of satisfying constraints that are sensitive to the facts, such as a feasibility constraint, then this would provide us with a further 'indirect' way in which principles might be grounded in facts.

to show that these principles are not subject to any constraints the satisfaction of which depends upon the facts.[16] For the claim that an adequate principle of justice has to satisfy the constraint that it be realizable under the best of foreseeable conditions would not invite a chain of questions the answers to which would push us towards some deeper principle of justice that was entirely independent of the facts. Cohen motivates his thesis that ultimate normative principles are not grounded in any facts by arguing that if we believe in a principle P1 because of some fact F1, we can ask 'why does F1 support P1?', and that will elicit some further principle P2. If P2 is based on some further fact F2, we can ask again, 'why does F2 support P2?', which will elicit some further principle P3. (And so on, until we reach some principle that is not grounded in any fact.)[17] But there is no strictly analogous chain of questions which can be asked of principles that are endorsed, in part, because they satisfy a feasibility constraint. For when we ask 'why does F support P?', where P is a principle of justice and F is the fact that it is feasible to implement P, we do not elicit a further normative principle; instead we invoke the constraint that any adequate principle of justice must be feasible to implement, with that constraint being justified by reference to the social purposes served by such principles. In consequence, it seems to me that Cohen's *main* thesis about facts and principles, which is supposed to be established by showing how such a chain of questioning leads us towards ultimate normative principles, is best expressed in terms of the idea that ultimate principles are not grounded *directly* in any facts. It has no relevance to normative principles that are endorsed in part because they meet a constraint the satisfaction of which depends on facts about what is feasible.

Cohen, however, has other reasons for denying that ultimate principles of justice are constrained by considerations of feasibility and thinks that a different kind of chain of questions leads us to principles that are unfettered by such considerations. He maintains that whenever a principle of justice is rejected solely on grounds of unfeasibility (for example, because it is not realizable under the best of foreseeable conditions), we can ask questions such as: 'if it were possible to realize this principle, would there be a reason of justice to do so?, or 'if it were possible to implement this principle, would some injustice be involved in failing to do so?' If the answer to questions such as these is 'yes', then in his view we have identified a more ultimate principle of justice.[18]

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[16] See Cohen, *Rescuing Justice and Equality*, pp. 236–7.
[17] See Cohen, *Rescuing Justice and Equality*, pp. 233–6.
[18] Cohen, *Rescuing Justice and Equality*, pp. 251–2.

In response it might be argued that even if questions such as these enable us to identify more ultimate normative principles, there is no reason to think that they are principles *of justice*. According to this view, it is not merely that adequate principles of justice are constrained by what is feasible; rather, a principle cannot be one of justice unless it is formulated in the light of what is feasible. Any so-called theory of justice that merely provided us with reasons for evaluating conceivable states of affairs and which had as one of its implications that perfect justice was unattainable both now and in the future (as a result of human nature or the limits of institutional design) would not be a genuine theory of justice. On the surface, however, this response looks implausible, for it does seem intelligible to say 'This is what justice requires but it is impossible to achieve it or even to come closer to it'. (Indeed it does not seem conceptually incoherent to suppose that principles of justice are evaluative without necessarily being prescriptive.) In reply it might be argued that there are nevertheless grounds for using the term 'justice' in a way that would make a claim of this sort unintelligible and for supposing that any *genuine* conception of justice must state at least possible reasons for action. After all, as Zofia Stemplowska and Adam Swift point out, unless we tie conceptions of justice to reasons for action, we are left with the conceptual possibility of an unjust society in which no one is behaving unjustly – and, we might add, in which in practice no one could ever have a reason of justice to act to change that society.[19] I shall not pursue this issue any further, however. An inquiry into how we distinguish genuine conceptions of justice from other evaluative concerns will not settle the question of whether the abstract principles we arrive at by bracketing considerations of feasibility altogether are more *ultimate* than those we arrive at through complying with feasibility constraints. It might be thought that they are, on the grounds that the latter must be derived from some other normative principle or principles in conjunction with various facts about what is feasible. Indeed this is Cohen's position. Let me return to it.

Some of the principles that are devised to meet feasibility constraints may be rules of regulation or what Cohen calls applied principles.[20] They may be rules which specify the best means of promoting a deeper principle – one that is formulated without regard to what is feasible or to the costs of realizing it – in circumstances where it would be unfeasible or too costly to implement that deeper principle fully. For

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[19] See Stemplowska and Swift, 'Ideal and Nonideal Theory', sect. 'Is Ideal Theory Too Realistic?'.

[20] Cohen, *Rescuing Justice and Equality*, p. 279.

example, a luck egalitarian might favour the rule that resources should
be distributed equally because of the practical difficulties involved in
distributing them in a way that is sensitive to the genuine choices
people have made. But even when we would regard it as a matter of
justice to implement some particular principle were it possible to do so,
we might not suppose that the rules or principles which best promote
justice under the circumstances (or which specify what justice requires
under these circumstances) must be derived from that principle in the
light of what is feasible. For example, it may be the case that when
resources are plentiful, justice requires that everyone's needs should
be met in order to ensure that each person is in a position to lead
a decent life – let us call this 'the needs principle'. In circumstances
where the needs principle cannot be fully satisfied, it may be that
justice requires us to meet the needs of those who are the neediest,
irrespective of how many or how few people we can thereby bring up
to the level at which they can lead a decent life, or it may be that
justice requires us to aim to bring as many people as possible up to
the level at which they can lead a decent life, even if that involves not
helping the neediest people. We could not justifiably regard the needs
principle as more ultimate. It is simply a principle that is adequate in
circumstances in which it is possible to meet it; different principles
are required when it is impossible to satisfy everyone's needs. In
other words, we do not necessarily move to more ultimate principles
by bracketing the issue of what is feasible; we may move instead to
principles that are adequate in circumstances that are different from
our own.

   One response here would be to argue that the needs principle is not
ultimate, even though it is a requirement of justice to meet everyone's
needs whenever it is possible to do so. The ultimate principle, it might
be said, would tell us how, from the point of view of justice, to balance
possible benefits to those with the greatest needs against possible
benefits to a larger number of people with less serious needs. It might
then be argued that the needs principle can be derived from this deeper
principle. This would be the reverse of Cohen's proposal: in this case we
would identify the more ultimate principle not by asking ourselves 'If it
were possible to realize this principle, would there be a reason of justice
for doing so?', but rather by asking ourselves the question, 'What do
we have a reason of justice to do when it is impossible to realize this
principle?' But in any case we are not forced to conclude that the needs
principle is justified by some further principle that specifies how to
balance benefits to a small number of people with the greatest needs
against benefits to a larger number of people with less serious needs.
Someone who 'has a clear grasp both of what her principles are and of

why she holds them'[21] might reasonably deny that the needs principle is derived from any more ultimate principle. We might then conclude that, for her, there are different ultimate principles that apply in different circumstances: the needs principle is ultimate in circumstances where it can be met, whereas a different principle is ultimate when it cannot be met.

IV. PRINCIPLES OF JUSTICE, THE BASIC STRUCTURE AND PERSONAL BEHAVIOUR

Rawls claims that the primary subject of principles of justice is the basic structure of society. But even if principles of justice must be well-adapted to social purposes for them to be adequate or justified, there is no reason to restrict the site of their application to the basic structure. If the main purpose of principles of justice is to govern a just society, then principles of justice should apply not only to the basic structure of society but also to personal behaviour that takes place in the context of that structure, for the latter is also important for realizing a just society. This provides us with a Rawlsian argument for a conclusion that some would regard as un-Rawlsian in character. Although it resonates in an obvious way with Cohen's seminal arguments for why personal economic behaviour needs to be governed by considerations of justice, I shall develop it in a manner that again cuts against the idea that ultimate normative principles do not depend in any way upon the facts (but without denying the claim that ultimate normative principles are not grounded directly in facts).

Rawls's claim that the primary or first subject of justice is the basic structure of society does not entail that principles of justice apply only to that structure, for it is consistent with the idea that there are also secondary subjects of justice, such as personal behaviour.[22] Indeed Rawls devotes a whole chapter of *A Theory of Justice* to discussing the principles of natural duty and obligation that apply to individuals.[23] He affirms their secondary status by arguing that they must cohere with the principles of justice that have already been selected to apply to institutions.[24] Rawls, however, does seem to have an argument for the conclusion that the application of the main principles of justice he defends, such as the difference principle and the principle of fair

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[21] Cohen, *Rescuing Justice and Equality*, p. 233. Cohen refers to this as 'the clarity of mind requirement'.

[22] See S. Scheffler, 'Is the Basic Structure Basic?', *The Egalitarian Conscience: Essays in Honour of G. A. Cohen*, ed. C. Sypnowich (Oxford, 2006), pp. 102–29, esp. 102–9.

[23] Rawls, *A Theory of Justice*, ch. 6.

[24] Rawls, *A Theory of Justice*, p. 334/294.

equality of opportunity, is restricted to the basic structure. Liam Murphy describes it as 'the division of labour argument' and it runs as follows:[25] the institutions that determine and regulate the fundamental terms of social cooperation play an indispensable role in securing background justice; even though the conditions for background justice can be undermined despite no one acting unfairly, there are no rules which it would be reasonable to require individuals to follow which can prevent or counteract these undesirable consequences;[26] if we want to maximize justice, the best way of doing so is to design institutions to secure background justice in so far as possible, and then allow individuals to make whatever choices they want within the structure provided by these institutions.

Many, including Cohen, have not been persuaded by this argument. It is not clear that principles of justice that apply to the basic structure would always make excessive demands on individuals if they were to apply to personal behaviour as well. For example, the principle that institutions should treat those subject to them as equals would not appear to make excessive demands on individuals if it were held to place them under a duty to treat each other as equals in their daily lives.[27] Even if in general requiring individuals to act in such a way that they do not undermine background justice, or requiring them to act so as to compensate for the way that the actions of others have undermined background justice, would make excessive demands on them, it may be possible to formulate appropriate principles of justice that do not do so because, for example, they allow individuals to pursue their own self-interest (or the interests of those to whom they have some special connection) in circumstances where seeking to promote just outcomes or to maximize justice would place unreasonable burdens on them.

This is in effect Cohen's main response to the division of labour argument in the context of principles of justice to govern personal economic behaviour. He endorses a range of 'personal prerogatives' which allow an individual to depart from what the principles of justice

[25] See L. Murphy, 'Institutions and the Demands of Justice', *Philosophy and Public Affairs* 27 (1999), pp. 251–91, at 257; Abizadeh, 'Cooperation, Pervasive Impact, and Coercion', p. 328. It is striking that when Rawls contemplates the issue of how to ensure that the principles of justice which apply to individual behaviour cohere with the principles of justice which govern institutions he does not even entertain the idea that the same principles might apply to both: 'The simplest thing to do ... is to use the principles of justice as part of the conception of right for individuals. We can define the natural duty of justice as that to support and further the arrangements that satisfy these principles; in this way we arrive at a principle that coheres with the criteria for institutions' (Rawls, *A Theory of Justice*, p. 335/295).

[26] Rawls, *Political Liberalism*, p. 266.

[27] For further discussion, see A. Mason, *Living Together as Equals: The Demands of Citizenship* (Oxford, 2012), pp. 57–62.

that govern basic institutions would require of her if they were applied directly to her personal economic choices in cases when following these principles would unreasonably constrain her pursuit of her own projects, or would unreasonably prevent her from acting on the special concern she has for particular individuals or groups.[28] But the Rawlsian idea that principles of justice have a practical role to play, that their primary purpose is to govern a just society, suggests a somewhat different response to the institutional division of labour argument, one that involves placing a further constraint on what can count as an adequate principle of justice: if principles of justice that apply to individual behaviour are to be adequate, then they must be such that they do not make unreasonable or excessive demands on people.

This draws attention to two different ways in which personal prerogatives might be construed when they are understood as an attempt to integrate or accommodate what Thomas Nagel refers to as personal and impersonal standpoints. First, we might think of personal prerogatives as providing a compromise between personal and impersonal standpoints in such a way that a person *acts justly* when she exercises these prerogatives.[29] (The fact that a principle would place unreasonable demands on an individual if it were to govern their behaviour might be thought of as silencing or cancelling the reason a person would otherwise have for acting upon it.[30]) Second, we might think of personal prerogatives as permitting agents to *act unjustly*, so that in effect they are morally justified in acting unjustly when they exercise these prerogatives. It seems to me that the literature on egalitarian justice and personal prerogatives is not always clear on precisely how it conceptualizes the role of the latter. In his seminal book *Equality and Partiality*, Nagel tends to avoid using the term 'justice' in this context, preferring the language of legitimacy, but he appears to think that adequate principles of justice have to be justifiable from both standpoints, which suggests that he would regard personal prerogatives in the first way I have

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[28] See Cohen, *Rescuing Justice and Equality*, p. 61. Michael Otsuka expresses scepticism about the existence of such prerogatives in his 'Prerogatives to Depart from Equality', *Political Philosophy*, ed. A. O'Hear (Cambridge, 2006), pp. 95–112.

[29] This could provide a basis for justifying the conclusion that different principles of justice apply to personal behaviour than apply to the basic structure of society: if the principles of justice that apply to the basic structure would place unreasonable demands on citizens were they to be applied to personal behaviour then they need to be adjusted. See Murphy, 'Institutions and the Demands of Justice'. For different grounds for rejecting the idea that the same principles of justice must apply to both sites, see S. Shiffrin, 'Incentives, Motives, and Talents', *Philosophy and Public Affairs* 38 (2010), pp. 111–42.

[30] It can be regarded as a disabler in Jonathan Dancy's sense: see J. Dancy, *Ethics without Principles* (Oxford, 2004), pp. 38–43.

distinguished.[31] Cohen acknowledges his debt to Nagel,[32] but seems to regard personal prerogatives in the second way I have distinguished, as morally permitting departures from what justice requires rather than as limiting what justice itself demands.[33]

There is evidence that Rawls accepts the constraint that adequate principles of justice must not make unreasonable demands on people: for example, when he specifies our natural duty to support and to further just institutions, he does so in a way that is consistent with, and encourages, the idea that principles of justice should not place unreasonable burdens on citizens:

first, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, *at least when this can be done with little cost to ourselves*.[34]

Our duty to support and further just institutions is not a duty to do everything in our power to bring just institutions into existence, nor is it a duty to do everything in our power to counter threats to just institutions.[35] The idea that principles of justice should not place unreasonable burdens on individuals also seems to be implicit in the passage where Rawls presents the institutional division of labour argument.[36] If he accepts this constraint, however, then it provides a potential answer to that argument, namely, that principles of justice may nevertheless govern personal behaviour provided they do not impose unreasonable burdens on people.

In response, it might be argued (in the now familiar way) that when we regard it as a constraint on any adequate principle of justice that it should not make unreasonable or excessive demands on individuals, we confuse ultimate principles of justice with rules of regulation. That claim would be hard to justify, however. Applying the constraint that an

[31] See, for example, T. Nagel, *Equality and Partiality* (New York, 1991) pp. 178–9.

[32] See, for example, Cohen, *Rescuing Justice and Equality*, pp. 8–11.

[33] See Cohen, *Rescuing Justice and Equality*, pp. 10–11, 71, 391. (But contrast Cohen, *Rescuing Justice and Equality*, p. 389, where Cohen seems to endorse the idea that justice itself is a compromise between personal and impersonal standpoints.)

[34] Rawls, *A Theory of Justice*, p. 334, italics added.

[35] Similarly, when Rawls discusses the duty of mutual aid he says that it is a duty to help others when they are in need 'provided that one can do so without excessive risk or loss to oneself' (Rawls, *A Theory of Justice*, p. 114) and he observes more generally that 'while we have a natural duty to bring about a great good, say, if we can do so relatively easily, we are released from this duty when the cost to ourselves is considerable' (*A Theory of Justice*, p. 117).

[36] In that passage Rawls maintains that 'the attempt to forestall … [the undesirable consequences of economic choices permitted by a just basic structure] by restrictive rules that apply to individuals would be an excessive if not impossible burden' (Rawls, *Political Liberalism*, p. 266).

adequate principle of justice must not make unreasonable demands on individuals will surely involve factual assumptions, for what counts as an unreasonable demand must depend in part on what human beings are like.[37] But again this need not be regarded as falling foul of Cohen's main thesis about facts and principles, namely, that ultimate normative principles are not grounded *directly* in any facts. Once again the method of interrogation that Cohen expects to lead us to ultimate normative principles does not do so when they are indirectly grounded in facts in virtue of satisfying the constraint that they must not make unreasonable or excessive demands on individuals. When we ask 'why does F support P?', where P is a principle of justice and F is the fact that it would not be unreasonably or excessively demanding to require a person to follow P, we do not elicit a further normative principle; instead we invoke the constraint. We might of course ask of any unreasonably demanding principle of justice: if this principle were not unreasonably demanding, because, say, human beings were psychologically different, would it be an adequate principle for governing personal behaviour? Even if the answer to that question was 'yes', however, that might simply give us grounds for thinking that we had identified a principle of justice *for a different kind of being* rather than a more ultimate principle of justice. For example, even if we would be under a perfect duty to promote just institutions were it not the case that this would be too demanding (since it would require a person to devote all her energy to bringing them into existence, leaving her no space to pursue her own projects, that is, the projects that from her perspective give coherence and meaning to her life), it does not follow that this perfect duty is more ultimate than an imperfect one to promote just institutions, nor that this imperfect duty is derived from the perfect duty in conjunction with a view about what would be excessively demanding for human beings given their natures. It is a duty justified in the light of the kind

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[37] I am not here claiming that there is a straightforward inference from facts about what human beings are like to conclusions about what it would be unreasonably or excessively demanding to require them to do. For a critique of that idea, see D. Estlund, 'Human Nature and the Limits (If Any) of Political Philosophy', *Philosophy and Public Affairs* 39 (2011), pp. 207–37, at 223–4. But I am claiming that in some cases facts about what human beings are like are relevant for determining what it would be unreasonably or excessively demanding to require them to do. In reaching a view about whether a feature of human nature is relevant in determining what it would be unreasonably demanding to require them to do, we have to make a judgement about 'whether the feature's moral value or significance suits it to have this kind of weight' (Estlund, 'Human Nature and the Limits (If Any) of Political Philosophy', p. 228). The fact that a person (or human beings in general) has projects that give coherence and meaning to her life but which she would have no time or energy left to pursue were she to fulfil the requirements of a principle seems to me have the kind of significance that makes it relevant to determining the acceptability of that principle.

of beings we are, rather than one that would be justified if we had
different natures.

In short, a Cohen-style distinction between ultimate principles of
justice and rules of regulation can be preserved whilst supposing that
adequate principles of justice must take into account the personal
standpoint by not making unreasonable demands on individuals. This
can be done without supposing that a proper appreciation of the
personal standpoint, and of the weight of the considerations that derive
from it, requires us to endorse personal prerogatives *to depart* from
what justice requires. But if principles of justice must themselves be
formulated in the light of what can reasonably be demanded of people,
then we are led to a further way in which ultimate principles of justice
may be sensitive to the facts without being directly grounded in them.[38]

V. AVOIDING THE CONFLATION OF JUSTICE
WITH OTHER VALUES

Even if the idea that the adequacy of principles of justice is determined
in part by how well they serve practical social purposes need not involve
confusing ultimate principles of justice with rules of regulation, it might
be thought that it results in confusing justice with other values. Must
it do so, however? Someone who defends the idea that the adequacy of
principles of justice can be assessed in part in terms of how well they
serve a social purpose can still insist that we need to identify carefully
the role that the realization of other values such as stability, publicity
and Pareto efficiency may play in securing or promoting justice, and
that we need to be clear about any independent value these may possess
which should be weighed against justice if, or when, they come into
conflict with it. Let me consider this issue further.

A concern with stability or publicity may be, at root, a concern with
justice and, for the purposes of a theory of justice, stability and publicity
may be treated as valuable in so far as they promote justice, now or
in the long run, rather than for their own sake. When principles of
justice give weight to, say, publicity or stability because of the role that
publicity or stability plays in promoting justice, this does not involve
confusing justice with other values; it simply involves acknowledging

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[38] In principle it would be coherent to think that a proper integration of the personal
and impersonal standpoints requires us both to accept the constraint that adequate
principles of justice cannot be unreasonably demanding *and* to accept the idea that even
when justice is not unreasonably demanding, there are moral prerogatives that entitle
us to depart from what it requires – to act in a way that is unjust but nevertheless
morally justified. I do not rule out the possibility of combining these ideas. But it is not
clear that this position would be particularly compelling, for we might plausibly hold
that if a principle doesn't place unreasonable demands on individuals, then there is no
prerogative to depart from what it requires.

the role that other values play in promoting justice, either now or in the longer term. Consider, for example, publicity and its value. According to Andrew Williams, Rawls holds that principles of justice are public only if everyone knows they apply, and they are sufficiently clear and unambiguous that it is possible for everyone to know what they entail in particular cases, and to know the extent to which individuals comply with them.[39] Williams thinks that publicity, so understood, is important for social unity when that is conceived as well-ordered social cooperation.[40] Social unity is valuable for a number of reasons. Not least, it is instrumentally valuable because it increases 'the long term probability of a society conforming with its conception of justice'.[41] Presumably part of what Williams has in mind here is that when a person accepts a principle of justice, and knows that others not only accept it but also comply with it, he has additional reasons to act in accordance with it himself. For under these circumstances he knows that if he complies with the principle he will not thereby place himself in a position where he is being exploited by non-compliers, and he knows that if he does not comply with the principle, he will be free-riding on the benefits that widespread compliance with it brings. In this way, publicity serves to promote justice. If principles of justice involve a commitment to publicity only in so far as it promotes justice, they do not involve any commitment to publicity as an independent value.

It might be claimed that stability, publicity and Pareto efficiency, properly understood, are *conceptual requirements* of justice, not merely conducive to promoting justice. If that were so, when a principle of justice incorporated a commitment to these values, it need not as a result be confusing justice with them; it could simply be acknowledging their role as conceptual conditions of justice. Cohen argues that this is implausible, however.[42] He believes that on any plausible way of understanding these values, it will at least be *intelligible* to say: 'These arrangements would be unstable, but they would be just',[43] or 'These principles would not satisfy the requirements of publicity but they nevertheless express what justice is or requires', or 'These

    [39] A. Williams, 'Incentives, Inequality, and Publicity', *Philosophy and Public Affairs* 27 (1998), pp. 225–47, at 233.

    [40] Williams, 'Incentives, Inequality, and Publicity', pp. 243ff.

    [41] Williams, 'Incentives, Inequality, and Publicity', p. 244. Williams also thinks that social unity may be non-instrumentally valuable because it is necessary for the achievement of personal autonomy and for the realization of a particular form of community ('Incentives, Inequality, and Publicity', p. 244).

    [42] Cohen, *Rescuing Justice and Equality*, ch. 8.

    [43] As David Copp argues, 'justice may … be fragile even in the best of circumstances' (D. Copp, Pluralism and Stability in Liberal Theory', *Journal of Political Philosophy* 4 (1996), pp. 191–206, at 204).

arrangements would not be Pareto efficient but they would be just'. In the cases of publicity and stability at least, his argument here is powerful: it is implausible to suppose that the very idea of justice conceptually requires a commitment to them.[44]

Might it be held instead that publicity and stability are *desiderata* of justice rather than requirements of it? Indeed Williams has now suggested that this may be the best way of understanding the relationship between justice and publicity. Cohen interprets the desideratum thesis in this context as the proposition 'that it counts (albeit overrideably) against a principle's *being* one of justice that it fails his [i.e., Williams's] publicity requirement'[45] and then dismisses it as incoherent. But even if that were Williams's understanding of the desideratum thesis, it does not have to be interpreted in this way, that is, as an implausible *conceptual* claim about the relationship between justice and values such as publicity. It could mean instead that, other things being equal, a principle of justice is better, *qua principle of justice*, when it gives full and proper weight to the value of these other things. Or it could mean that, other things being equal, a principle of justice is better, *qua principle of justice*, when it gives the weight to the value of these other things that is required in due recognition of the role they play in promoting justice, for example, by making it more sustainable across time. The first interpretation potentially confuses principles of justice with principles that serve justice together with other values, for the value of, say, publicity or stability may not be exhausted by the way in which it promotes or otherwise serves justice, but the second formulation avoids any potential confusion between justice and other values and is independently plausible. (If the value of publicity or stability is not exhausted by the way in which they serve justice, then assessing principles of justice even in part by whether they give *full and proper* weight to these values seems to involve introducing extraneous considerations that have no bearing on the adequacy of these principles qua principles of justice.)

When Rawls argues that first principles of justice must not 'be so complex that they cannot be generally understood and followed in the more important cases' and hence that 'knowing whether these principles are satisfied, at least with reference to fundamental liberties

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[44] It is perhaps less clear in the case of Pareto efficiency: see P. Tomlin, 'Survey Article: Internal Doubts about Cohen's Rescue of Justice', *Journal of Political Philosophy* 18 (2010), pp. 228–47, at 240–6. In the case of publicity, one might think that one type of publicity is conceptually connected to justice, viz. the idea that any adequate principle of justice must be publicly justifiable, that is, justifiable in terms that any reasonable person could accept. This idea has been central to liberal political theory; indeed some have regarded it as constitutive of liberalism.

[45] Cohen, *Rescuing Justice and Equality*, p. 365, n. 36.

and institutions, should not depend on information difficult to obtain and hard to evaluate', he may merely be supposing that simplicity (or simplicity in so far as it is required by or promotes publicity) is a desideratum of justice in the second sense I have distinguished.[46] Indeed he adds that '[t]he gain in compliance and willing acceptance by citizens more than makes up for the rough and ready nature of the guiding framework that results and its neglect of certain distinctions and differences'. But when he says that we should look at the wider role of principles of justice in relation to other values, and that 'other things equal, one conception of justice is preferable to another when its broader consequences are more desirable',[47] it looks as if he may also be endorsing the claim that values such as publicity and stability are desiderata of justice in the first sense. That claim seems to me to be vulnerable to the response that it potentially confuses justice with other values: if we are looking for principles of *justice* to govern a society, we should give weight to other values apart from justice *only in so far as* they promote justice over time. If Rawls does make that confusion, however, it is not essential to his more fundamental claim that principles of justice have a practical social purpose: that notion is consistent with recognizing that justice is not the only value, and indeed that it needs to be weighed against other values such as publicity and stability when it comes into conflict with them.

It might be thought that the reason Rawls incorporates a commitment to other values such as publicity and stability into his principles of justice stems from his account of justice as the first virtue of social institutions. We might think he is simply *defining* considerations of justice as considerations that are sufficiently weighty to override other considerations when determining the basic structure of society. In that case, whenever considerations of publicity and stability are sufficiently weighty that they would override other considerations (such as the general welfare) when determining the basic structure of society, they *count* as considerations of justice. To devise principles of justice which allowed publicity and stability to count as considerations of justice when they had this kind of weight would not then involve any confusion between justice and other values.

Williams, for example, supposes that in claiming that justice is the first virtue of institutions, Rawls is making 'a conceptual claim about standards of justice, comparable to the claim that sound moral

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[46] J. Rawls, 'Kantian Constructivism in Moral Theory', p. 347.

[47] Rawls, *A Theory of Justice*, p. 6/6; see also J. Rawls, 'Reply to Alexander and Musgrave', *John Rawls: Collected Papers*, ed. S. Freeman (Cambridge, Mass., 1999), pp. 232–53, at 237.

standards necessarily override non-moral standards'.[48] He thinks this attribution is supported by the analogy Rawls draws between the ideas of truth and justice early on in *A Theory of Justice*:

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust ... The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one; analogously, an injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising.[49]

Williams maintains that the relationship between thought and truth is constitutive, and suggests that we should view Rawls's claims about the primacy of justice in this light.

But Williams's interpretation here is debateable. Rawls seems to be making a substantive normative claim about what we ought to do when we find that an institution is unjust, based on an analogy with what we ought to do when we find that a theory is untrue, rather than a conceptual claim about what we can intelligibly say or claim in such cases. Though for conceptual reasons we cannot make sense of what is being claimed when someone says 'I believe falsely that the world is flat', we can make sense of the idea that sometimes what matters in relation to whether we employ a particular theory is whether or not it works, that is, whether it serves our purposes, rather than whether it is true.[50] When engineers build a bridge, there is nothing incoherent in the supposition that what they care about is whether the scientific theories which they are applying will enable them to construct something that will not collapse under the strains to which it is likely to be subject over time, rather than about whether those theories are true. Now we might doubt whether engineers who care only about whether a theory serves their practical purposes genuinely believe it, for to say that they believe it would imply that they believe it to be true. But Rawls's analogy is between what we should do when we discover that a theory (or system of thought) is untrue on the one hand, and what we should do when we discover that a law or institution is unjust on the other. The claim that a 'system of thought' or theory should be rejected or revised if it is untrue, unless we lack a better

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[48] Williams, 'Justice, Incentives and Constructivism', p. 489.

[49] Rawls, *A Theory of Justice*, pp. 3–4/3–4.

[50] See L. Wittgenstein, *Philosophical Investigations*, trans. G. E. M. Anscombe (Oxford, 1953), part II, sect. x: 'If there were a verb meaning "to believe falsely", it would not have any significant first person present indicative'. Statements of the kind 'Regardless of whether p is true, I believe that p because it is useful to do so' would also seem to violate a norm that is constitutive of having the attitude of belief.

one, is certainly not a conceptual truth. There is nothing *conceptually* confused about the notion that we should carry on using a theory because it works or is adequate to our purposes, even if we belief that it is false (or at least, do not believe that it is true), any more than there is something conceptually confused or incoherent in the idea that we should not revise a law or institution even though we judge it to be unjust, because we believe that considerations of publicity or stability sometimes matter more than justice. I do not believe that Rawls would have denied any of this: he does not suppose that it is a conceptual truth that considerations of justice are always sufficiently weighty to override other considerations when we are determining the correct principles for regulating the basic structure of society, in effect defining considerations of justice as considerations that possess such weight. He is instead making a substantive claim about the weight of considerations of justice relative to other considerations. (Indeed he goes on to concede that his initial formulation of that substantive claim may overstate the case.[51])

VI. CONCLUDING REMARKS

Cohen's focus on constructivism results in the relative neglect of a major difference between him and Rawls concerning what principles of justice are for, which is independent of the issue of whether constructivism can yield ultimate principles of justice, and of the issue of whether ultimate principles may be grounded directly in facts.[52] Rawls's idea that principles of justice are adequate only if they are well-adapted to serving a practical social purpose is at least partially independent of his constructivist method. One can reject that method yet retain a commitment to the idea that principles of justice can be judged, in part, in terms of their ability to serve such a purpose.[53] To do so does not

[51] See Rawls, *A Theory of Justice*, p. 4/4.
[52] I say 'relative neglect' because Cohen does implicitly give the issue of whether principles of justice must serve social purposes some partial attention in discussing the question of whether normative principles must guide practice: see *Rescuing Justice and Equality*, pp. 267–8. But here he is discussing ultimate normative principles in general rather than ultimate principles of justice in particular, and he simply reiterates the point that to suppose that ultimate normative principles, by their nature, must guide is to confuse them with rules of regulation.
[53] For all I have argued, it would also be possible to retain Rawls's constructivist methodology and accept that ultimate principles of justice are not grounded in any facts in the relevant sense, but then deny that Rawls is offering a constructivist theory of ultimate principles of justice. (Indeed this is essentially Williams's proposal in his 'Justice, Incentives and Constructivism'.) But I would resist the idea that ultimate principles of justice must be entirely independent of the facts since in my view they can be constrained by facts, such as facts about what is feasible. That is consistent,

involve any necessary confusion between justice and other values, nor between ultimate principles and rules of regulation. If theorizing about justice is to respect this purpose, it must recognize various constraints, such as the constraint that adequate principles of justice must be realizable in the best of foreseeable circumstances. Even if ultimate principles of justice are not directly grounded in any facts, they may be responding to constraints which require taking account of some facts.

I have not offered any direct defence of the idea that the adequacy of principles of justice can be assessed, in part, in terms of how well-adapted they are to serving a practical social purpose. I have merely tried to show that this idea provides the basis for a coherent conception of how justice should be theorized that can be defended against a Cohen-style critique. If judgements about what is feasible and what human beings are like are relevant for determining the adequacy of principles of justice, then political philosophy must have a central concern with inquiries in political science, social psychology, sociology, economics and history. This is not to deny the possibility of any autonomous role for political philosophy, however. According to the conception I am outlining, counterfactual forms of reflection which do not observe these constraints might nevertheless be regarded as worthwhile, because they tell us something about what justice would be under different circumstances or for creatures different from us.[54] For example, we may legitimately ask: what principles of justice would be adequate or justified if it were within our power to distribute this good, or our natures were not such that following this rule would be unreasonably demanding? These forms of reflection are illuminating even if they do not provide us with adequate principles given our natures and abilities: to know that if it were possible to implement some principle in a way that was costless, then justice would require us to do so, tells us something about the character of justice.[55] Indeed reflection of this kind may sometimes reveal more ultimate principles – ones that are nevertheless inadequate as principles of justice because they are ill-suited to governing a society. But we should resist the conclusion that by

however, with supposing that ultimate principles of justice are not directly grounded in facts of any sort.

[54] On this issue I have not changed my view substantially from the one I defended in 'Just Constraints', *British Journal of Political Science* 34 (2004), pp. 251–68.

[55] This does, however, raise again the issue I put to one side on p. 533, viz., whether what can count as a conception of justice depends upon facts about what is feasible. I am implicitly denying that this is so. Here the distinction that Hamlin and Stemplowska draw between the theory of ideals (or theorizing about ideals) and ideal theory is relevant: theorizing about an ideal such as justice is concerned with the nature of that ideal and need not be subject to any feasibility constraints at all and (unlike both ideal and non-ideal theory) is not concerned with issues of institutional design: see Hamlin and Stemplowska, 'Theory, Ideal Theory and the Theory of Ideals', pp. 52–3, 60.

progressively relaxing feasibility constraints, or bracketing the issue of what people are like, we are *necessarily* led to more ultimate principles of justice and that only when we abstract from them altogether are we able to identify the most ultimate principles of justice.[56]

a.mason@warwick.ac.uk