

Cohen on Rawls: Personal Choice and the Ideal of Justice¹

Abstract

G.A. Cohen is well known within contemporary political philosophy for claiming that the scope of principles of justice extends beyond the design of institutions to citizens' personal choices. More recently, he's also received attention for claiming that principles of justice are normatively ultimate, i.e., that they're necessary for the justification of action guiding principles (regulatory rules) but are unsuitable to guide political practice themselves. The purpose of this paper is to explore the relationship between these claims as they're applied in criticism of John Rawls. It argues that ascribing normative ultimacy to justice entails its application to personal choice. However, it also argues that if Cohen's right about Rawls's difference principle being regulatory rather than ultimate, then his earlier claim that Rawls must extend it to personal choice on pain of inconsistency is refuted.

I. Introduction

In his recent book *Rescuing Justice and Equality*, G.A. Cohen makes two allegedly independent criticisms of John Rawls.² The first is comprised of his famous thesis that Rawls can't consistently restrict the scope of distributive justice to the design of institutions. The second is his more recent claim that Rawls and other constructivists mistakenly identify ideal justice with practice guiding political principles. The purpose of this paper is to argue the second thesis has important consequences for the first. More specifically, I will argue that though the second thesis implies distributive justice has application to personal choice; it also suggests the difference principle doesn't. In making the latter point, special attention is paid to Cohen's discussion of a personal prerogative and its consequences for the ethos of a just society.

II. The First Critique: Justice Extends to Personal Choice

Cohen's objection to the exclusion of personal choice from the scope of distributive justice emerges from his critique of Rawls's use of economic incentives. As most readers of Rawls are aware, the theory of justice he proposes, though largely egalitarian, permits inequalities necessary to facilitate the development and exercise of economically productive talents. Such inequalities are consistent with justice, he claims, when they satisfy the difference principle, i.e., when they're necessary to maximally improve the position of the worst off group in society.³ As Cohen points out, though, the word "necessary" can be interpreted in more than one way. On an intention independent reading of it, inequalities are only necessary if the talented are literally unable to exercise and develop their talents without them, e.g., if those undergoing particularly stressful training required more costly forms of leisure in order to be capable of completing it. Interpreted this way, the word "necessary" leaves very little room for inequality. On an intention relative reading, however, it allows for a great deal more, as

inequalities created by incentives are now also acceptable.⁴ As Cohen indicates, it is the talented themselves who make inequalities of this sort necessary, for it is only necessary to offer incentives if the talented would refuse to raise their economic productivity without them.⁵ If this is the case, though, then in what sense can it be said that the talented members of a just society personally affirm its principles? If, as Rawls claims, the citizens of a just society affirm the difference principle and the arguments in favor of it,⁶ then how can they consistently make their productivity contingent upon receiving greater benefits? Citizens who believe in the injustice of unnecessary inequalities presumably wouldn't choose to make them necessary by demanding incentives. As such, Cohen maintains that Rawls's endorsement of economic incentives is inconsistent with the ethos his conception of justice incorporates.⁷

In response to the above argument, Cohen contemplates a potential objection which Rawls's supporters might press. According to Rawls, "the primary subject of justice is the basic structure of society", i.e., its "political constitution and...principal economic and social arrangements".⁸ As such, his principles of justice are specifically intended for the assessment of institutional structures. If this is so, then there would appear to be nothing inconsistent about affirming the difference principle while also demanding incentive payments. Since its scope is restricted, citizens who affirm it needn't apply it to their personal choices.⁹ Cohen's reply to this line of argument is as follows: First off, he points out that though Rawls at times seems to have only a society's coercively enforced institutions in mind when discussing the basic structure, there are other times where he includes informal, non-coercive institutions as well, e.g., the family.¹⁰ Unlike the laws associated with coercive institutions, though, informal institutions and their behavioral norms are "constituted" by personal choices: they're created by individuals repeatedly choosing to behave a certain way and would vanish if those choices ceased to be

made.¹¹ Applying principles of justice to informal institutions thus ostensibly requires applying them to personal choices as well. Unfortunately for Rawls, back-peddalling to explicitly exclude non-coercive institutions is not a costless option. His main reason for making the basic structure the subject of justice is the profound impact its distributive effects have on one's starting point in society, and thus on what one can reasonably expect out of life.¹² This criterion fails to exclusively pick out coercive arrangements, however, as informal institutions also have a profound effect on the life chances of those within them (just think of how unequal the distribution of resources and opportunities is within the households of certain families, and the effect this has on those born into them). Cohen thus suggests that Rawls faces a dilemma. On the one hand, he could include informal institutions in the basic structure, thereby conceding the inclusion of personal choice. Alternatively, he could exclude informal institutions, but that would mean ignoring the demands of his own criterion.¹³

III. The Second Critique: Justice is a Fundamental Value

Cohen's more recent critique of Rawls targets the method he uses to justify principles of justice, rather than their scope. He claims that constructivists ask the wrong sort of question in their efforts to discern the content of justice. Justice, according to Cohen, is a fundamental value, not optimal rules of institutional design. If he's right, then any constructivist conception of justice is necessarily flawed, not by virtue of the argumentative moves made to demonstrate the normative merit of the principles selected, but by virtue of misunderstanding the project. Cohen's claim is that constructivists are wrong about the *concept* of justice: about the feature or features which make competing conceptions of justice conceptions of the same thing.¹⁴ For a conception to specifically be a conception of justice requires, on Cohen's view, that it be an attempt to analyze the contours of a particular value.

Understanding Cohen's claim requires a bit of background. First, Cohen's a moral pluralist. For him, there are numerous values which must be taken into consideration when engaging in moral deliberation, many of which are irreducible to one another. As a result, normative reasoning is an extremely messy business as far as he's concerned, for values can, of course, conflict with each other.¹⁵ Second, Cohen takes considerations of moral *desirability* to be independent of *feasibility*. Though he admits action guiding normative claims are subject to feasibility constraints, he denies that claims about moral desirability are similarly confined.¹⁶ Evidence for this view is supplied by one's recognition of what's regrettable about compromises made in light of practical limitations. Thus, for instance, while it may be the case that a country with little in the way of resources ought not to implement an expensive public education system, the necessity of accepting a more modest system is nonetheless unfortunate because quality public education is valuable regardless of how feasible it may or may not be.¹⁷

By virtue of both his moral pluralism and the sharp line drawn between desirability and feasibility, fundamental values are, for Cohen, only indirectly normative. Any particular value is by itself incapable of guiding action, as answering the question "what should be done, all-things-considered?" requires determining (a) the extent to which satisfying the demands of the value in question is feasible in the context to which its being applied, and (b) the extent to which its demands do or don't compete with the demands of other values.¹⁸ Rather than being action guiding, it would be more accurate to say that a fundamental value provides a *prima facie* reason for action. Or, more specifically, that an agent ought to respect the requirements of a fundamental value to the extent that it's both possible and desirable to do so.¹⁹

In light of the above, any principle expressing a fundamental value, i.e., anything Cohen would call an "ultimate principle", is primarily evaluative. In the context of political philosophy

in particular, an ultimate principle tells us what to *think* about a society with respect to one of the moral elements in light of which it is or isn't morally desirable, but can't by itself tell a legislator what to *do*.²⁰ To identify justice as a fundamental value, then, is to identify it as a tool directly useful for evaluating the fairness or unfairness of a society, but only indirectly useful for telling us how a society ought to be run. Getting from an assessment of the extent to which a society's fair to prescriptions regarding how to change it requires formulating what Cohen calls "rules of regulation", i.e., formulating derivative principles the content of which reflect considerations of feasibility and values other than justice.²¹ With respect to considerations of desirability, values to be considered alongside fairness when adopting regulatory rules would likely include, for instance, efficiency and community. With respect to feasibility, regulatory rules must take into account considerations of *accessibility*, i.e., considerations pertaining to the possibility of implementing a regulatory scheme, as well as considerations of *stability*, i.e., considerations pertaining to the sustainability of the regulatory scheme being proposed for implementation.²²

In light of the distinction between ultimate principles and derivative, fact supported regulatory rules, Cohen claims that Rawls's and other constructivists' efforts to discern the content of justice are misguided. By identifying justice with principles for the regulation of society hypothetically agreed to under optimally fair bargaining conditions, constructivists conflate the aforementioned distinction. Justice, according to Cohen, is a fundamental value. As a result, the constructivist approach to justice commits two mistakes: it allows the content of justice itself to be shaped by (a) considerations of feasibility, and (b) considerations pertaining to external values.²³ Consider Rawls's principles. It's important, according to Rawls, for a conception of justice to be realistically utopian. As such, he's interested in principles embodied by "a just democratic society...under reasonably favourable but still possible historical

conditions, conditions allowed by the laws and tendencies of the social world...²⁴ In other words, it's important for Rawls that it be possible for the principles chosen in his hypothetical contract situation (the original position) to eventually be realized and maintained. As a result, Rawls takes a number of practical matters into account when discerning his principles, not the least of which is the measurability of the dimension to which they apply; a consideration which suggests that the principles selected should target the distribution of social primary goods such as income, rather than less tangible possibilities like pleasure or preference satisfaction.²⁵ With regards to (b), the most obvious case of external values being admitted into Rawls's conception of justice is with respect to his difference principle. As previously mentioned, Rawls's difference principle requires deviations from an otherwise equal distribution insofar as they're needed to benefit the worst off in society. Said requirement would be agreed to in the original position in part because it avoids the levelling down problem, thereby leaving everyone better off than they would be under conditions of strict equality.²⁶ By allowing this consideration to influence the content of justice, however, Cohen maintains that Rawls fails to properly distinguish separate values. Levelling down is problematic because it's inefficient, not because it's unfair. Though efficiency is an important consideration when deciding upon rules of regulation, it isn't something which belongs to the content of justice.²⁷

An issue worth flagging with respect to Cohen's distinction between ultimate principles and regulatory rules is the defensibility of invoking the former to justify the latter. After all, shouldn't normative theory avoid controversial substantive commitments at the level of fundamental justification? Though this concern is certainly a fair one, it should be noted that Cohen doesn't simply assert ultimate principles and expect political philosophers to take him seriously. Instead, he backs them up with a novel bit of meta-ethics concerning the relationship

between normative principles and empirical facts. Put very concisely, Cohen's position is that any principle grounded in fact can only be justified with reference to another principle which is not itself grounded in fact.²⁸ What this means, essentially, is that facts can't serve as fundamental normative reasons. For a fact to serve as a reason for or against an action or policy, it's necessary that one be committed to a principle which connects the fact in question to that which it supports. Let's consider an example Cohen himself offers. Suppose one were to endorse the principle that people ought to keep their promises. Furthermore, suppose that one endorses this principle by virtue of the fact that keeping promises is necessary for "promisees" to pursue their personal projects. Why does this fact serve as a reason to keep promises? Cohen's view is that one must believe something about personal projects in order for the fact concerning promises to support a promise keeping requirement. One must be committed to a principle which connects the fact that keeping promises is necessary for the pursuit of personal projects to the principle that people ought to keep their promises. A likely candidate might be a principle stating that people should help others pursue their projects. The endorsement of this second principle, in turn, may or may not itself depend on a fact. If it does, however, Cohen would point out that explaining the justificatory force of this fact requires commitment to yet another principle.²⁹ In any such case, whether it's about promise keeping, assisting those in need, etc., one will have to stop one's chain of reasoning at an ultimate principle which does not depend on any fact for justification.³⁰

Cohen's view of the relationship between facts and normative principles has been criticized by various authors. David Miller, for instance, has argued that not all instances of factual grounding depend on a more ultimate principle. More specifically, Miller acknowledges that any fact logically entailing a normative principle requires some further principle to serve as

a premise in the relationship of entailment.³¹ With respect to the promise keeping example, then, Miller would concede that a factual premise such as “keeping promises is necessary for promisees to pursue their projects” can only entail the normative conclusion that “people ought to keep their promises” when combined with a normative premise such as “people ought to help others pursue their projects.” What Miller denies, however, is that a fact which “presuppositionally grounds” a principle also requires reference to a more ultimate principle. In cases of presuppositional grounding, a fact serves as a necessary condition for the justification of a principle, rather than as a premise in a relationship of entailment. Thus, for instance, a necessary condition for the justification of a principle requiring the promotion of autonomy might be the general fact that human beings, unlike ants, are constituted such that they have the capacity to perform autonomous acts.³²

If Miller’s correct to say that not all instances of factual grounding presuppose a more ultimate principle, then we have a powerful argument against the claim that our most ultimate normative principles are necessarily justified independently of facts. My purpose here is not, however, to criticize Cohen’s view on facts and principles. My goal has primarily been to explain the meta-ethical reasoning which backs Cohen’s assertion of ultimate normative principles, and to provide background necessary for my discussion in the next section.³³

IV. The Relationship between Scope and Status

Having discussed Cohen’s two critiques, it’s important now to determine whether they’re related, and if so, how. Is the claim that Rawlsians mistakenly restrict distributive justice to a society’s basic structure entirely distinct from the claim that they’ve mistaken it for regulatory rules?³⁴ Answering this question will require an investigation of the relationship between a principle’s scope of application and its normative status.

Two senses of a principle's scope should be distinguished from each other. In the first sense, a principle is either broad or narrow with respect to its range of justified application. To say of a principle that it's broad in this sense is to say that one can *justifiably* apply it in a wide variety of contexts; much the way act utilitarians believe the principle of utility to be the right moral principle for any and all circumstances. In the second sense, a principle is either broad or narrow merely with respect to its range of possible application. To say of a principle that it's broad in this sense is to say that one can *intelligibly* apply it in a wide variety of contexts, irrespective of whether or not one is justified in doing so. Thus, for instance, a critic of act utilitarianism might readily admit that attempting to maximize utility is perfectly intelligible so long as there are beings around with preferences to satisfy. What she would deny, however, is that doing so is always justified. Sacrificing an individual's rights for the good of the many is something most anti-utilitarians find objectionable. Similarly, requiring that citizens apply the difference principle to their personal choices, though intelligible, is something Rawlsians nonetheless protest for various reasons, some of which are discussed in the next section.

Keeping the above distinction in mind, then, what is the relationship between a principle's normative status and its scope of application in either sense? Though Cohen never provides an explicit answer, it's nonetheless possible to discern an implicit one from his response to David Miller. Consider once more a principle stating that we must promote the autonomy of others. Even if this principle is an ultimate principle, Miller would say that its justification depends on the fact that human beings are capable of autonomous acts. More specifically, he would say the fact that autonomous acts are possible is a necessary condition for justifying a principle of autonomy. Cohen's reply distinguishes between cases where a fact is part of the justification for a principle and cases where a fact is necessary for the possibility of a principle's

application. Though an ultimate principle of autonomy is certainly inapplicable in a world where people aren't capable of autonomous action; Cohen maintains this is different from saying its justification relies on the fact that people are capable of autonomous action. An ultimate principle is justified, it would seem, even if it has no role to play in justifying regulatory rules suitable for beings such as us.³⁵

Regardless of whether Cohen's right or wrong, the interest of his reply for the present paper lies in his distinction between facts which provide reason to adopt a principle and facts presupposed by the possibility of applying a principle. As previously mentioned, the content of ultimate principles is ostensibly insensitive to facts which serve as justificatory reasons. It would seem, however, that ultimate principles are at least reliant on certain general facts for the possibility of their application, regardless of whether those facts are also necessary conditions for justification (if they aren't necessary for justification, then this would entail that an ultimate principle is justified even in contexts where its application is impossible). From this we can infer that ultimate principles have a very wide, though not unlimited scope. They rely on the truth of certain facts for the intelligibility of their application, and thus don't apply to all possible worlds, but they can nonetheless be expected to extensively apply throughout the world we actually inhabit. Furthermore, since the only facts their justification may be sensitive to (depending on whether or not Miller's right) are those presupposed by the intelligibility of applying them, it's also the case that any context to which an ultimate principle can intelligibly be applied is a context in which its application is justified. To say that an ultimate principle is justified in all contexts to which it intelligibly applies is, however, merely to say that it must be given some weight when adopting appropriate derivative principles. After all, an ultimate principle specifically serves as an input when deliberating about which action guiding principles to adopt.

Saying that its application is justified thus leaves open the extent to which it ought to be implemented in any particular context. As explained in the previous section, the implementation of an ultimate principle via the construction of regulatory rules must take into account various factors which limit the extent to which it can and should be realized, i.e., considerations of feasibility and the demands of competing values. Given this sensitivity to contextual variables, one can expect the scope of a regulatory rule's justified application to be much narrower than the scope of an ultimate principle.

With respect to distributive justice, then, the claim that justice is a fundamental value entails that it justifiably applies to a wide variety of contexts, the context of personal choice included. Difficulties specific to the personal domain will influence the extent to which distributive justice should be expressed in the content of regulatory rules suitable for that context, rather than restricting either senses of its scope.

Interpreted in the above manner, the claim that justice extends to personal choice is itself an extension of Cohen's critique of Rawls's constructivism. It's tantamount to the claim that Rawls has confused a normative ideal for regulatory rules by mistaking constraints on the implementation of justice for restrictions on its scope of justified application. It's clear, however, that this isn't what Cohen had in mind. After all, his critique of the basic structure restriction predates his critique of constructivism. When first claiming that distributive justice extends to personal choice, Cohen hadn't yet formulated the distinction between ultimate norms and rules of regulation.³⁶ Furthermore, when using the term "distributive justice" in the context of his first critique, it's clear that Cohen's referring to Rawls's conception of it. As such, when he claims that distributive justice extends to personal choice, he specifically has the difference principle in mind. This isn't to say that Cohen thinks the ideal of justice doesn't apply, though.

The difference principle, as an all things considered distributive regulatory rule, also presupposes it. Thus if the difference principle applies to personal choice, so does the ideal, albeit indirectly. By committing himself to the extension of the difference principle, however, Cohen takes on a heftier burden than if he merely stuck to the implications of his critique of constructivism. For his view to hold, it is necessary for him to successfully argue that the contextual differences present with respect to personal choice fail to exclude the difference principle as a justifiably applied regulatory rule. As I will now proceed to argue, however, Cohen can't manage this without doing the very same thing he accuses Rawls of: namely confusing the distinction between regulatory rules and ultimate principles.

V. Demandingness and Cohen's Personal Prerogative

An important difference between the contexts of institutional design and personal choice is that people, unlike institutions, have personal lives. In light of this, the requirement that citizens embody the difference principle in their everyday lives appears rather demanding. Such a requirement seems to entail that in any set of circumstances where a potential choice is likely to benefit the least well off more than its alternatives, members of society will be required to consistently make that choice in spite of their personal preferences.³⁷ To fully appreciate this worry, it's helpful to consider the kinds of behaviour Cohen's ethos would motivate. On the one hand, an ethos can contribute to the justness of a distribution by supplementing institutional measures. Supplementation, according to Cohen, occurs when ethos motivated actions are pursued independently of public justice seeking measures, e.g., making personal donations or volunteering during one's spare time. Enhancement, in contrast, is ethos motivated action that's conjoined with public justice seeking measures. Such would include, for instance, continuing to work just as hard under a radical tax regime as one would under a less radical one, or choosing to

take on an economically productive profession for which one's talents are well suited in spite of the fact that said tax regime disallows incentives.³⁸ Examples like these highlight just how pervasive Cohen's ethos would be if realized. It would ostensibly require one to prioritize the worst off whenever distributive considerations are relevant, and there are a great many situations where they are.

Cohen's reply to the above worry is not dismissive. He attempts to accommodate it by qualifying his ethos with a personal prerogative to pursue other interests.³⁹ As such, an individual who finds him/herself in possession of extra cash might legitimately choose to keep a portion of it for some purpose other than benefitting the worst off, and someone who'd make an exceptional engineer might justifiably choose a different career, so long as these choices don't exceed the bounds of a reasonable (and unspecified) limit on the extent to which deviating from the difference principle is permissible. By conceding this, Cohen makes extending the difference principle far more palatable, but he does so at the cost of treating it in an inconsistent manner. As previously mentioned, his second critique identifies the difference principle as a regulatory rule informed by but distinct from justice itself. By conceding a personal prerogative, however, Cohen first critique treats it as if it's an ultimate principle. To see this, consider again his discussion of feasibility and efficiency. Rawls's mistake, Cohen claims, is allowing these considerations to influence the content of justice. Since justice is properly conceived of as normatively ultimate, they really just constrain its realization by influencing the content of relevant regulatory rules. If this is the way constraints operate, however, then it makes little sense to call the difference principle a regulatory rule and yet also claim it's constrained by a personal prerogative. Constraints, both those related to desirability and feasibility, dictate content at the regulatory level, and for good reason. The purpose of a regulatory rule, after all, is to

connect ultimate principles to practice by telling us in a more or less specific fashion how we ought to behave or how we ought to shape our institutions. As such, if the difference principle is indeed to be regarded as a rule of regulation, acknowledging the significance of a personal prerogative would presumably require modifying its content; otherwise we'd be giving up its action guiding quality by having to balance it against other interests in much the same manner that we balance fundamental values.⁴⁰ The result of this, however, is that it's no longer coherent to claim that Rawls inappropriately restricts the application of the difference principle to society's basic structure. Though regulatory rules informed by the ideal of justice will of course be needed for personal choice, their content will be different from those appropriate for the design of institutions.

The inconsistency of Cohen's move becomes clearer if one considers the kinds of motivations covered under a personal prerogative. While his initial discussion highlighted the importance of being able to legitimately exercise a certain degree of self-interest, he later acknowledges in his reply to David Estlund that various other reasons are, of course, permissible as well. One such additional reason is supplied by affection. It would be permissible in some cases to, say, spend one's extra cash on a gift for a friend instead of donating it. Other legitimate reasons also include competing moral considerations, e.g., loyalty, desert, etc. As Estlund points out, and Cohen himself admits, denying the permissibility of affection or morality based deviations from the difference principle would be rather strange if one is willing to countenance those motivated by self-interest.⁴¹ In fact, Cohen points out that morally motivated deviations go beyond one's prerogative in cases where they're morally required, as the word "prerogative" pertains to that which is permissible.⁴²

By allowing competing moral considerations to weigh in on personal choices, Cohen makes room for a variety of values which block the demands of the difference principle in various circumstances. In doing so, however, he treats it as if it's an ultimate principle that must be traded off against other normative considerations in practice. Though acknowledging the significance of competing values would of course be important when considering the extent to which ideal justice should be realized in the content of action guiding moral rules, the difference principle is not, according to Cohen's second critique, a principle of ideal justice. Giving weight to competing moral concerns thus requires modifying its content, i.e., requires adopting something other than the difference principle for the regulation of personal choice.

Cohen's inconsistent treatment of the difference principle is most prominently displayed in his discussion of a personal prerogative, but it's visible in other places as well. Consider, for instance, his discussion of institutions' causal influence. According to some, Rawls's focus on institutions is justified (at least in part) by virtue of their powerful effect on the character of a society's ethos. Though a conception of justice certainly shouldn't be indifferent to what citizens care about or aspire to, a focus on institutions is allegedly appropriate because securing just institutions ensures the kind of ethos necessary for a just society.⁴³ Cohen's main reply to this point is that the criterion in light of which a society is just or unjust is distinct from that which causes a society to be just or unjust. Even it's true that a just basic structure is causally sufficient for a just society, the question at hand, according to Cohen, is whether the criterion we employ to evaluate the justice of a society need only be applied to an assessment of its institutions. In fact, he points out that championing the basic structure's causal impact on that which lies beyond it only strengthens the assertion that other things matter for justice. In other words, if the basic structure's effect on social ethos is part of what makes it so important for

distributive justice, then clearly the character of that ethos is part of what constitutes a just society.⁴⁴

As sharp as Cohen's reply is, its plausibility diminishes when one keeps in mind that he's responding to those who would deny the claim made in his first critique, i.e., the claim that Rawls must extend the difference principle to personal choice on pain of inconsistency. As we've noted, the difference principle, according to Cohen's second critique, is actually a regulatory rule. What's more, regulatory rules are selected for the purpose of realizing the requirements of fundamental principles in practice, and thus "we adopt them in light of what we expect the effect of adopting them to be."⁴⁵ Though Cohen's distinction between what constitutes and what causes a just society would successfully defend the extension of an ultimate principle to personal choice, it has no bearing on the scope of a regulatory rule intended as a tool for realizing an all-things-considered optimal society. In fact, Cohen's original focus on Rawls's discussion of the basic structure's "profound effect" seems to recognize this. As noted in my exegesis of his first critique, Cohen argues that Rawls faces a dilemma: either include informal institutions in the basic structure, thereby applying the difference principle to personal choice, or ignore the requirement that the difference principle be applied to that which profoundly affects citizens' life prospects. However, if causal efficacy is what primarily determines the difference principle's scope of application, and the basic structure really is the primary causal mechanism through which the justice of a society is achieved (in part through its effect on social ethos), then applying the difference principle specifically to institutions would be a sound strategy consistent with both Rawls's reasoning and Cohen's assertion that it's really a regulatory rule.

VI. Conclusion

In conclusion, this paper has argued that Cohen's critique of the basic structure restriction and his critique of Rawls's constructivism are, in fact, related to each other. By considering the former in light of the latter, one comes to the conclusion that though ideal justice (understood as a fundamental value) would justifiably apply to personal choice, the difference principle (understood as a regulatory rule) would not. Though my claim has the effect of lessening the apparent distance between Cohen and Rawls regarding the regulation of personal choice, it's worth noting that it also highlights a disagreement over the concept of justice. For Rawls, distributive justice is equivalent to contextually specific principles which everyone would hypothetically agree to under optimally fair bargaining conditions. Cohen, in contrast, denies this, and identifies it as a fundamental value. That Cohen's right to do so is not entirely obvious, however. Identifying Rawls's principles as regulatory rules doesn't necessarily preclude one from identifying them with distributive justice as well. In fact, in so far as the concept of justice is related to fairness, it would seem that both Rawls's and Cohen's identifications are good candidates. Considering this, what should be done? Should we be talking about the ideal of justice and its relationship with Rawlsian regulatory rules, or the ideal of fairness and its relationship with principles of justice? Is justice the output of fairness, or are the two identical? Does it even matter what we give the name "justice" to? Exploring these questions in the future would be a worthwhile endeavour.

Notes

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² G.A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008). Though Cohen has written various pieces pertaining to the topics this paper discusses, his most central views and work appear in *Rescuing Justice and Equality*. As a result, my citations of Cohen will mostly be confined to this book.

³ John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press, 1971), 75-83.

⁴ Cohen, *Rescuing Justice and Equality*, 68-69.

⁵ *Ibid.*, 48-54.

⁶ Rawls, *A Theory of Justice*, 453-454.

⁷ Cohen, *Rescuing Justice and Equality*, 121-122.

⁸ Rawls, *A Theory of Justice*, 7.

⁹ Cohen, *Rescuing Justice and Equality*, 124-125.

¹⁰ *Ibid.*, 133-134. For an instance where Rawls explicitly includes the family in the basic structure, see Rawls, *A Theory of Justice*, 7.

¹¹ Cohen, *Rescuing Justice and Equality*, 134-135.

¹² Rawls, *A Theory of Justice*, 7.

¹³ Cohen, *Rescuing Justice and Equality*, 136-137. For recent discussions of Cohen's critique of incentives and the basic structure restriction, see David Estlund, "Liberalism, Equality, and Fraternity in Cohen's Critique of Rawls," *The Journal of Political Philosophy* 6 (1998): 99-112; Andrew Williams, "Incentives, Inequality, and Publicity,"

Philosophy and Public Affairs 27 (1998): 225-247; Liam B. Murphy, "Institutions and the Demands of Justice," *Philosophy and Public Affairs* 27 (1999): 251-291; Thomas Pogge, "On the Site of Distributive Justice: Reflections on Cohen and Murphy," *Philosophy and Public Affairs* 29 (2000): 137-169; Joshua Cohen, "Taking People As They Are?" *Philosophy and Public Affairs* 30 (2002): 363-386; A.J. Julius, "Basic Structure and the Value of Equality," *Philosophy and Public Affairs* 31 (2003): 321-355; Kok-Chor Tan, "Justice and Personal Pursuits," *The Journal of Philosophy* 101 (2004): 331-362; Michael G. Titelbaum, "What Would a Rawlsian Ethos of Justice Look Like?" *Philosophy and Public Affairs* 36 (2008): 289-322; Seanna V. Shiffrin, "Incentives, Motives, and Talents," *Philosophy and Public Affairs* 38 (2010): 111-142; and Alistair M. Macleod, "G.A. Cohen on the Rawlsian Doctrine of the Basic Structure as Subject," *Social Philosophy Today* 26 (2011): 153-163.

¹⁴ Cohen, *Rescuing Justice and Equality*, 269 and 274-279. For Rawls's comments on the difference between the concept of justice and conceptions of justice, see Rawls, *A Theory of Justice*, 5-6.

¹⁵ Cohen, *Rescuing Justice and Equality*, 3-6.

¹⁶ G.A. Cohen, *Why Not Socialism?* (Princeton: Princeton University Press, 2009), 46-52.

¹⁷ This would hold true even if it were impossible for good education to ever become feasible, as proponents of desirability's independence from feasibility maintain that desirability claims have a conditional structure, i.e., that to assert the desirability of X is equivalent to asserting, "If X is feasible, then X ought to be brought about." For comments on the conditional structure of desirability claims, see Pablo Gilabert, "Debate: Feasibility and Socialism," *The Journal of Political Philosophy* 19 (2011): 52-63 at 56; and Cohen, *Rescuing Justice and Equality*, 250-254.

¹⁸ See Cohen, *Rescuing Justice and Equality*, 276-286, esp. 283.

¹⁹ Gilabert, "Feasibility and Socialism," 55-59. See also Cohen, *Rescuing Justice and Equality*, 302.

²⁰ Cohen, *Rescuing Justice and Equality*, 268 and 306-307. For discussions of the distinction between evaluative claims and normative claims, see Holly Lawford-Smith, "Debate: Ideal Theory – A Reply to Valentini," *The Journal of Political Philosophy* 18 (2010): 357-368 at 357-361; Gilabert, "Feasibility and Socialism," 55-59; Patrick Tomlin, "Can I be a Luck-Egalitarian and a Rawlsian?" *Ethical Perspectives* 19 (2012): 371-397 at 377-378 and 383-385; and Laura Valentini, "Ideal vs. Non-ideal Theory: A Conceptual Map," *Philosophy Compass* 7 (2012): 654-664 at 657-658.

²¹ Cohen, *Rescuing Justice and Equality*, 253, 263-268, and 276-286.

²² Cohen, *Why Not Socialism?*, 56-57.

²³ Cohen, *Rescuing Justice and Equality*, 279.

²⁴ John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Belnap Press, 2001), 4.

²⁵ Rawls, *A Theory of Justice*, 95.

²⁶ *Ibid.*, 150-151.

²⁷ Cohen, *Rescuing Justice and Equality*, 319-320.

²⁸ *Ibid.*, 232.

²⁹ *Ibid.*, 234-235.

³⁰ *Ibid.*, 237.

³¹ David Miller, "Political Philosophy for Earthlings," in *Political Theory: Methods and Approaches*, ed. David Leopold and Marc Stears (Oxford: Oxford University Press, 2008), 29-48 at 33-34.

³² Miller, "Political Philosophy for Earthlings," 35-38.

³³ For additional discussion of Cohen's work on fundamental principles and fact insensitivity, see Thomas Pogge, "Cohen to the Rescue!" *Ratio* 21 (2008): 454-475; Miriam Ronzoni and Laura Valentini, "On the Meta-Ethical Status of Constructivism: Reflections on G.A. Cohen's 'Facts and Principles'," *Politics, Philosophy, and Economics* 7 (2008): 403-422; A. Faik Kurtulmus, "Rawls and Cohen on Facts and Principles," *Utilitas* 21 (2009): 211-245; Daniel Kofman, "How Insensitive: Principles, Facts, and Normative Grounds in Cohen's Critique of Rawls," *Socialist Studies* 8 (2012): 246-266; Kai Nielsen, "Rescuing Political Theory from Fact-Insensitivity," *Socialist Studies* 8 (2012): 216-245; and Lea Ypi, "Facts, Principles and the Third Man," *Socialist Studies* 8 (2012): 196-215.

³⁴ Cohen claims that his two critiques are, in fact, quite distinct. His main reason for thinking so is that his critique of constructivism suggests constructivists are wrong about the concept of justice regardless of whether they permit the principles their procedures select to apply to personal choices. Though Cohen's right to point this out, sections 4 and 5 of my paper demonstrate that his critiques are nonetheless intimately related. For Cohen's comments on the matter, see G.A. Cohen, "Rescuing Justice from Constructivism and Equality from the Basic Structure Restriction," in *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy*, by G.A. Cohen, ed. Michael Otsuka (Princeton: Princeton University Press, 2011), 236-254 at 238 and 252-253.

³⁵ Cohen, *Rescuing Justice and Equality*, 335-336.

³⁶ For Cohen's critique of the basic structure restriction, see G.A. Cohen, "Where the Action Is: On the Site of Distributive Justice," *Philosophy and Public Affairs* 26 (1997): 3-30. This paper appears with minor revisions as chapter 3 in *Rescuing Justice and Equality*. For work pertaining to constructivism, see G.A. Cohen, "Facts and Principles," *Philosophy and Public Affairs* 31 (2003): 211-245. This paper appears with revisions as chapter 6 in *Rescuing Justice and Equality*.

³⁷ For discussions of this worry, see Philippe Van Parijs, "Rawlsians, Christians and Patriots," *European Journal of Philosophy* 1 (1993): 309-342; Tan, "Justice and Personal Pursuits"; and Titelbaum, "What Would a Rawlsian Ethos of Justice Look Like?"

³⁸ Cohen, *Rescuing Justice and Equality*, 375.

³⁹ *Ibid.*, 70-72.

⁴⁰ I express an embryonic version of this thought in my review of Michael Otsuka's 2011 collection of Cohen essays. See Kyle Johannsen, Review of *On the Currency of Egalitarian Justice and Other Essays in Political Philosophy*, by G.A. Cohen, ed. Michael Otsuka, *Dialogue: Canadian Philosophical Review* 50 (2011): 783-785 at 784-785.

⁴¹ Estlund, "Liberalism, Equality, and Fraternity in Cohen's Critique of Rawls," 101-102; and Cohen, *Rescuing Justice and Equality*, 390-391.

⁴² Cohen, *Rescuing Justice and Equality*, 391.

⁴³ See, for instance, Joshua Cohen, "Taking People as They Are?" 375-380. See also Rawls, *A Theory of Justice*, 259-260; and Rawls, *Justice as Fairness*, 55-57.

⁴⁴ Cohen, *Rescuing Justice and Equality*, 377-378.

⁴⁵ *Ibid.*, 276.