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How Pure Should Justice Be? Reflections on G. A. Cohen's Rhetorical Rescue

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ABSTRACT

In this article I argue for two closely related conclusions: one concerned more narrowly with the internal consistency of G. A. Cohen's theorizing about justice and the unique rhetoric in which it is couched, the other connected to a more sweeping set of recommendations about how theorizing on justice is most promisingly undertaken. First, drawing on a famous insight of G. E. Moore, I argue that although the (Platonic) purity of Cohenian justice provides Cohen a platform from which to put some extremely challenging criticisms to Rawls and Rawlsian liberals, at the same time it generates a sort of self-referential paradox for many of the theses about the concept of justice to which Cohen himself is committed. I go on to conclude, using Rawls's theory of justice as a model, that it would serve political philosophy well to conceive of justice with less purity than Cohen conceives of it.

KEYWORDS: theories of Justice, G. A. Cohen, John Rawls, intuitionism, rhetoric of Anglo-American political philosophy

Nothing in mortal life is worthy of great concern

—Plato, *Republic*

The word “justice” is habitually used in at least two different ways. Sometimes it stands for a *Grenzbegriff* (a limit concept), an Idea of Pure Reason, a *focus imaginarius*. Justice in this uniquely philosophical sense refers to a moral horizon against which we evaluate (among other things) institutions, laws, policies, and practices. Like Plato's Forms, however,

the pure concept of justice—the fundamental and essential nature of “the just”—is notoriously elusive. Justice in this sense is a deeply contested concept. It is the sort of thing we can never be absolutely certain we have understood correctly or completely.¹ What would it even be like to discover that the question about the *very concept* of justice had been settled in a final, non-question-begging way? That our intellectual energy was no longer needed here and could be safely redirected to other matters? That the only task left was to implement in the world the perfect justice we had discovered in philosophical theory?²

Yet the term “justice” is also routinely used to refer to something more everyday and worldly. Justice in this more ordinary sense is something that can be struggled for and, from time to time, partially achieved. It is in the name and hope of justice in this more ordinary sense that societies erect ministries, governmental departments, courts, and tribunals. It is the sort of thing in whose name men and women from all walks of life assemble, organize, deliberate, petition, and mobilize; the sort of thing at which we expect laws and institutions to take aim and, equally, the ideal to which we expect them to be answerable.

The distinction I am trying to bring into focus here is between justice and *the concept of justice*. For readers who find themselves reluctant to allow any such distinction—perhaps on the basis of the admittedly reasonable belief that justice “just is” justice, end of story—consider that there has never been a social movement that mobilized around the *concept* of justice, though there are and have been countless movements mobilized in one way or another for justice.³ And analogously, while men and women from all walks of life are concerned to see justice brought about, to see the world made less unjust in this way or that, it is pretty much only philosophers and political theorists who seek clarity on the concept of justice and, a fortiori, only they who construct theories of justice to that end. (Let me add parenthetically that the word “justice” is not unique in having both an ordinary and philosophical use. Many other terms are similarly equivocal. Think of the difference between truth in the ordinary, nonphilosophical sense—the sense of truth at issue in a court of law or a police report or around a kitchen table—and the idea of truth itself, as philosophers like Alfred Tarski or Donald Davidson or Simon Blackburn, say, are wont to discuss it. Some philosophers like to use capital letters to distinguish between ordinary and philosophical usages, viz., truth/Truth; reality/Reality; justice/Justice, and so on.)⁴

I

In what sadly turned out to be his final major work, G. A. Cohen proposed a “rescue” of justice and equality from Rawlsian liberal thought. Yet as Thomas Pogge correctly points out, “what gets rescued here is not justice, really, but the concept of justice.” “Cohen’s mission,” Pogge says, “is not to overcome actual injustices or to get them recognized for what they are, but to ensure that in debating such issues we properly understand when we are discussing justice and when something else” (2008, 454).⁵ It is a reoccurring theme (and plea) in Cohen’s work that questions about the concept of justice be carefully separated from other sorts of (perhaps closely related, but nevertheless different) questions. Again and again we find Cohen insisting on the explicitly philosophical and conceptual dimension of the question “What is justice?” We find him carefully partitioning that question from other questions; keeping it safe from contamination; ensuring that in contemplating an answer to the question “What is justice?” we are focusing on *justice itself*—the pure concept, the naked idea—and not allowing anything impure like facts, constructivist procedures, questions of feasibility or coercion, or related but different questions about justice to obfuscate our enquiry.

I argue—paradoxically, given how much he has taught us about the idea of justice—that there is a certain pointlessness in arguing about justice with G.A. Cohen. More particularly, I argue in what follows for two closely related conclusions: one concerned more narrowly with the internal consistency of Cohen’s thinking about justice and the unique rhetoric in which it is communicated, the other connected to a more sweeping set of recommendations about how theorizing on justice is most promisingly undertaken. First, drawing on a famous insight of G. E. Moore, I argue that although the (Platonic) purity of Cohenian justice provides Cohen a platform from which to put some extremely challenging criticisms to Rawls and Rawlsian liberals, at the same time it generates a sort of self-referential paradox for many of the theses about the concept of justice to which Cohen himself is committed. The basic problem is this: if Cohen is permitted to “retreat to justice in its purity” (2008, 291) when telling us, pace his opponents, what justice is not— a tendency that is revealed, I argue, by calling attention to a certain way of arguing about justice, a certain dialectical pattern, endemic in Cohen’s texts—then he can be challenged on the very same grounds when he affirmatively tells us what he thinks justice is.

The second conclusion is that what Cohen calls “retreating to justice in its purity” in the end amounts to little more than receiving reports of Cohen’s intuitions about the concept of justice. Cohen’s intuitions can be accepted or rejected, of course, but the point is that these kinds of intuitions are not typically the sorts of things about which fruitful philosophical argument is to be had.⁶ When deep intuitions about justice clash, as they invariably do, there is often nothing more for disputants to do but turn their spades and accept that disagreement about justice is intractable. In fact, as I try to demonstrate toward the end of the paper, this is precisely the sort of thing that tends to occur in disputes about the nature of justice in which Cohen is a participant. I conclude the essay with a brief discussion of John Rawls’s theory of justice and try to explain why it would serve political philosophy well to permit reflection about justice in the philosophical sense to be influenced, at least to some significant extent, by justice in the more ordinary sense.

Let me say a few things about the significance of this undertaking. First, it is not an embellishment to say that Cohen is a towering figure in the contemporary philosophical literature on justice. Anyone familiar with the current landscape of Anglophone political philosophy will recognize that Cohen’s writings are now vital touchstones in many of the central debates about justice and equality. And yet, despite scholars’ frequent engagement with his ideas and thousands of citations to his books and essays, the uniquely *rhetorical* aspects of Cohen’s thought have not been explored in any great depth. Cohen’s arguments have received a huge amount of scholarly attention, but very little attention has been paid to *the way he argues*. That is, while much has been written on what Cohen thinks justice is (and is not), the unique rhetoric within which such claims are advanced has not received the same attention. Political philosophers in the so-called analytic mode do not tend to think much about the rhetorical dimensions of their work. They pride themselves on clear, transparent argument, exhibiting a corresponding enthusiasm about what Bernard Williams has called “the old Socratic ideal that mere rhetoric and the power of words will not prevail.” (2014, 214) But I think that there is much to be learned from studying this rhetorical terrain. One broader ambition of this article is to make that terrain more navigable.

These issues are also worth exploring because they brightly mark one of the major fault lines in Anglophone political philosophy on the subject of justice. For if I am right, many of the political-philosophical disputes about the nature of justice are really, at bottom, disputes about the differing degrees of “purity” with which justice can or should be conceived. Part of what it means to have a *pure* conception of justice (à la Plato or Cohen) is to think mainly (or only) about the concept of justice and not to let justice in the more everyday sense

guide those thoughts. There are many possible stops along this continuum. Michael Walzer's (1983) theory of "spherical justice" is almost entirely grounded in the "social meanings" of different goods and is about as empirical and non-Cohenian a treatment of justice as one is likely to find. John Rawls understands justice in a way that is more philosophically pure than Walzer's, though nowhere near as pure as Cohen's idea of justice. It is not my argument here that we ought to think of justice with this or that specific level or intensity of purity, only that justice at its maximally pure—namely, the pure concept of justice itself—is not regularly the most fruitful way to think about it.

It is not an exaggeration to say that Cohen's justice is the purest on offer among contemporary Anglophone political philosophers. Careful examination of Cohen's view is justified, then, not only because he represents one extreme on this important continuum. It is also justified because—and this is my central argument in what follows—conceiving of justice with Cohenian purity has important implications for the rhetoric of justice, for the way that advocates of different theses about what justice is are entitled to endorse and repudiate those theses.

To be clear, I do not argue that Cohen is in fact incorrect about what he takes justice to be. He may well be correct, and nothing in this article will challenge that possibility. The broader register of my argument concerns not the substantive claims about justice that Cohen affirms and rejects but rather the rhetoric he uses to advance his claims. My argument targets the rhetoric of justice—the manner in which justice is theorized and debated—not the truth of any specific claims about what it is. So, even if Cohen were correct about what justice is and what it requires, my argument about the rhetoric he employs in the service of his view would still stand.

2

A self-ascribed "Platonic" purity both about how political philosophy is properly done and, correspondingly, about what justice is fundamentally taken to be underwrites Cohen's rescue of justice. Cohen's approach to philosophical reflection is akin to the Greek *bios theoreticus*: rationalist to the core, proudly indifferent to practical matters, and resolutely nonhistoricist about the meaning of fundamental concepts. Cohen's metaphilosophical Platonism is perhaps most apparent in his announcement to his readers in the preface of *Rescuing Justice and Equality* that he has "found it necessary to reach up to the pure concept of justice" (2008, xvi). I confess that I do not know what the pure concept of justice is supposed to be exactly nor what the activity of "reaching up for it" consists in, but one would be forgiven for thinking that on Cohen's view, the

correct method with which to answer the question “What is justice?” is to use one’s rational intuition to reach into Plato’s heaven to grasp the Form of the Just—or, for those with less extravagant metaphysical preferences, to simply close one’s eyes tightly and meditate.⁷

Cohen imbues the concept of justice with an analoguous Platonic purity. Correct principles of justice are not, he thinks, the outcome of any procedure or exercise in thought. The true content of justice is not constructed or emergent and does not depend on what anyone *thinks* justice is. The fundamental nature of justice is, like other Platonic Ideas, independently existing, timeless—“the self-same thing across, and independently of, history” (Cohen 2008, 291). On the extreme moral realism shared by Plato and Cohen, justice is unresponsive to and wholly untouched by everything in this world. It is, as Diotima said to Socrates, “pure and clear and unalloyed, not clogged with the pollutions of mortality and all the colours and vanities of human life” (Plato 1953, 582).

Both the concept and content of justice is specified, Cohen has it, by correct principles of justice. Correct principles of justice, in turn, are those (“fact-insensitive”) fundamental principles that convey what each person is due.⁸ Fundamental principles do not depend on facts or other (nonfundamental) principles. They are the foundational bedrock of our normative world. “Plato thinks, and I agree,” Cohen says, “that . . . justice transcends the facts of the world” (2008, 291). The concept of justice on this view is both primitive and fundamental: it is neither explainable in terms of another idea or concept, nor derivable from or reducible to something else. Philosophers with the correct intuitive vision might be able to grasp what justice fundamentally is. They might also try to assist others in developing this special wisdom—they might, like Socrates for instance, patiently show how an interlocutor’s definition of justice has unforeseen consequences or applies awkwardly to other cases and so on, until the sequence of interrogation culminates in a settled intuition—yet what justice itself is does not depend on what philosophers (or anyone else) might do or say. Cohen seems to believe in good Platonist fashion that the pure idea of justice has been out there all along (on some understanding of “out there”), waiting patiently for the right philosopher to come along and “reach up for it” in the right way.

3

The distinction between the concept of justice and justice corresponds loosely to the distinction between a *philosophical* sense of justice in respect

to which something like Moore's "open question argument" arises and an *ordinary* sense in respect to which it does not. Like Moore's famous arguments about "good," the concept of justice cannot be pinned down, cannot be given any clear, final definition. I do not mean to endorse here the familiarly Moorean claim according to which "just" does not pick out a natural property, although that might very well be the case. My claim is more modest and is neutral about that deeper metaethical question. It is that for any theory of justice, for any set of conditions under which something might be said to be just, it is always possible that a given action, policy, or institution can satisfy the conditions of the theory but still be unjust. Like other fundamental normative ideas, justice is, as Moore suggests, "one of those innumerable objects of thought which are themselves incapable of definition, because they are the ultimate terms by reference to which whatever is capable of definition must be defined" (1960, 10). It will always be an open question whether the conditions one might come up with in response to the question "What are the necessary and sufficient conditions for something's representing an injustice?" have anything to do with injustice.

Let us consider some illustrative examples. Despite the important and subtle connections that J. S. Mill draws between utility and justice in chapter 5 of *Utilitarianism*, he saw clearly and correctly that justice and utility should not be *equated* with one another.⁹ After all, such equation would make it unintelligible to ask a very intelligible kind of question, namely, "I am aware that policy *P* is optimal from the standpoint of utility or expediency, but is *P* just?" And some liberal and libertarian philosophers define justice in terms of the limits of legitimate coercion. "Justice," writes Jan Narveson, is "the rather narrow part of morality" according to which "we are *required*, at threat of enforcement by coercive means, to do or refrain from various things" (Narveson and Sterba 2010, 262–63). And yet the sentence form "It would be impermissible to use coercion to rectify *X*, but *X* is unjust nonetheless" is neither a contradiction, nor, indeed, a confused or trivial kind of thing to say. Analogously, when John Rawls tells us that correct principles of justice are those that would be unanimously selected by rational persons under appropriate conditions of knowledge and ignorance, it is not unintelligible or contradictory to pose the question (a question which is at the heart of Cohen's own repudiation of Rawlsian constructivism, incidentally) whether the principles thus chosen would in fact be correct principles of justice as opposed to principles of some other kind. Such examples illustrate that there is a gulf between justice and any definition of justice that can never be conclusively sealed. For it is impossible

to imagine identifying justice with some set of necessary and sufficient features ($x, y, z \dots$) in a way that would render unintelligible a question of the form “Policy P clearly satisfies features $x, y, z \dots$ but is P just?”¹⁰

My argument is that the positive theses that Cohen endorses about what justice is are no less vulnerable to the very same Moorean point that he makes rhetorical use of when he performs the activity he calls “retreating to justice in its purity,” claiming that justice is impossible to define.

We can begin by considering seven prominent examples from Cohen’s pages concerning what justice is not. (As you read through them, it will be helpful to keep in mind the logic of Moore’s formula according to which fundamental normative terms like “good” or “just” cannot be given necessary and sufficient conditions).

First, Rawlsian constructivism is hopelessly off the mark, Cohen argues, because it conflates the outcome of an idealized procedure—the “Original Position”—with the different and independent question of what justice is. Cohen is prepared to admit that principles chosen by way of some constructivist procedure may be efficient or sensible or humane, or, indeed, “the *all-things-considered* best principles to live by” (2008, 275). What he rejects is the idea that such principles are properly regarded as principles of justice *simply in virtue of the decision procedure of which they are the result*.

Second, Cohen rejects Elizabeth Anderson’s (1999) critique of the “luck egalitarian” view of justice on the grounds that it mistakenly runs together practical questions of bringing about justice in the world with the philosophical question about justice’s real nature. That is, Anderson’s critique fails to properly distinguish between luck egalitarianism as a policy proposal on the one hand, and luck egalitarianism as a conception of distributive justice on the other. As Cohen writes, “Difficulties of implementation, just as such, do not defeat luck egalitarianism as a conception of justice, since it is not a constraint on a sound conception of justice that it should always be sensible to implement it” (2008, 271).

Third, Cohen rejects the view according to which feasibility or possibility places limits on justice. “If justice is, as Justinian said, each person getting her due, then justice is her due irrespective of the constraints that might make it possible to give it to her” (2008, 252–53). Otherwise put: tasty grapes are not made any less tasty simply by being out of reach (1995, 253–257).

Fourth, Cohen immunizes the question “What is justice?” from David Hume’s famous ruminations on the “circumstances of justice.” Cohen’s argument is that identifying the circumstances under which questions

about the *achievement* of justice arise does not shed light on the different question concerning what justice is.

Fifth, in response to Andrew Williams's (1998) "publicity argument," according to which it should be possible to tell whether or not a principle of justice is being followed, an argument informed by the idea that it is necessary both that justice be done and *be seen to be done*, Cohen declares, "Whether or not publicity is a *constraint* on, or, differently, a *desideratum* of, *social rules of regulation* . . . it is not a constraint on what *justice is*" (2008, 344).

Sixth, against a strong current of political-philosophical thought, Cohen maintains that justice does not imply the possibility of coercion, state or otherwise. "We don't learn what justice fundamentally is by focusing on what it is permissible to coerce" (2008, 148). We do not learn what justice fundamentally is, moreover, by focusing on what the state may or must do: "The very *concept* of justice is not the concept of what the state should do," Cohen says. "Conversely, not all justice is to be achieved by the state" (2011, 227). And again, in the course of an exchange with Ronald Dworkin: "The sentence form 'x represents an injustice' . . . [does] not mean 'x represents an injustice that ought to be rectified by the state.'" Rather, it means "more elementarily, that the world is less than fully just by virtue of the presence of x in it" (2011, 83).

Seventh, Cohen challenges the connection that might be thought to obtain between injustice and someone's right to legitimately complain about it. As Cohen writes, it "need not, in my view, be a contradiction . . . to say: 'This outcome is unjust, but nobody can complain about it.' That need not be a contradiction because 'unjust' need not mean 'susceptible to legitimate complaint'" (2011, 128–29).

4

These seven examples of what justice is not according to Cohen share in common a certain dialectical shape and, taken together, are revealing about both the purity of Cohenian justice and the nature of Cohen's unique rhetorical practice. In each case we begin with Cohen entertaining a thesis about justice— a thesis about one of justice's features, or about the circumstances under which it is identified, or about what justice itself is, or something —and we end with Cohen replying to the following effect, summoning a more pure idea of justice: "Yes, but the answer to the question about the entertained thesis, important and interesting as it may be, doesn't shed light on the different and independent question of what justice

is.” Sometimes this sort of reply is directed toward a named interlocutor (Elizabeth Anderson, Ronald Dworkin, Andrew Williams, etc.), and sometimes it is more amorphously sent in the direction of anyone who might be committed to the thesis about justice under inspection. Cohen rejects the entertained thesis about justice in each case by appealing to a higher, more pure idea of justice, by retreating to what justice, in its fact-insensitive perfection, is fundamentally thought to be. Loyal readers of Cohen’s work will recognize this type of argument as quintessentially Cohenian: his pages are crammed with appeals to a maximally pure idea of justice. It is not coincidental, moreover, that his most central criticism of Rawls’s “difference principle” (and with it, the main theme of *Rescuing Justice and Equality*) appeared in his mind in an argument of this precise form.¹¹

I argue that Cohen’s portion of this reoccurring dialectical pattern bears a close similarity to, and makes implicit use of, the Moorean idea about the impossibility of defining justice that we examined earlier. Indeed, Moore’s point about the impossibility of defining justice carves out the needed philosophical space within which the Cohen-type reply can be coherently and successfully deployed. One might even say that the Cohen-type reply is merely Moore’s “open question”—“but is it just?”—grammatically repackaged in a different, declaratory form. The purity of the concept of justice and the impossibility of defining justice turn out to be different sides of the same Platonic coin.¹²

5

The main problem is that the Cohen-type reply, that is, “Yes, but that doesn’t tell us about what justice fundamentally is,” is available as a rejoinder to anything that might be said about what justice fundamentally is. *There is no thesis about what justice necessarily is that cannot be validly denied by appeal to a more pure justice.* One would be right to wonder, then, how the theses about justice that Cohen endorses would not be vulnerable to dismissal in the same manner that Cohen dismisses the seven theses I have outlined.

Let us consider five positive claims about the nature of justice that Cohen is committed to. First, Cohen is an advocate of the so-called luck egalitarian conception of distributive justice. “My root belief is that there is injustice in distribution when inequality of goods reflects not such things as differences in the arduousness of different people’s labors, or people’s different preferences and choices with respect to income and

leisure, but myriad forms of lucky and unlucky circumstance" (2000, 130). Second, Cohen believes that principles of distributive justice apply both to what Rawls famously called "the basic structure of society" and to the legally unrestrained choices of private individuals. Otherwise put, Cohen seeks to defend the feminist slogan "the personal is political". "Principles of distributive justice," he writes, "principles, that is, about the just distribution of benefits and burdens in society, apply, wherever else they do, to people's legally unrestrained choices. Those principles, so I claim, apply to the choices that people make within the legally coercive structures to which, so everyone would agree, principles of justice (also) apply" (2008, 116). Third, Cohen defends an answer to Amartya Sen's question, "Equality of what?" Setting many finicky details aside, Cohen argues that egalitarian justice requires that people be made equal in what he calls "access to advantage." Fourth, Cohen admits to having been "persuaded that distributive justice, roughly speaking, *is* equality" (1995, 25112). And fifth, in rejecting the "leveling down" argument against equality, Cohen maintains that "equality, as such, is in one way better than its absence: something of value is lost, because there is an *unfairness*, and therefore a kind of injustice, when some have more than others through no relevant fault or choice of anyone." (2011, 231). Pace Cohen (and Larry Temkin) many critics will counter that "something that benefits no one is in no way good" (2011, 233).¹³

Whatever readers are inclined to think of Cohen's positive claims about justice, the main problem for him should be clear. It is that the theses about justice to which he is committed are no less vulnerable to the very same Moore-type rejoinders—the very same retreats to a more pure idea of justice—that Cohen habitually uses against his interlocutors. So, then, when Cohen reports that his "own animating conviction in political philosophy . . . is that an unequal distribution whose inequality cannot be vindicated by some choice or fault or desert on the part of . . . the relevant affected agents is unfair, and therefore, *pro tanto*, unjust" (2008, 7), it would not be incoherent for someone to reply that the (luck) egalitarianism he gives voice to, while perhaps shedding useful light on an interesting moral principle, does not in fact provide any insight on the concept or content of justice.¹⁴ Analogously, a reply of the form "Whatever else might be said for the sort of equality Cohen favors, it is not instructive on the different and independent question concerning what justice is" is no less plausible and valid when used *here* against Cohen than when used by Cohen against others.

6

It is easy to imagine Cohen responding by accepting that he is no more entitled to “retreat to justice in its purity” than anyone else is while remaining unswerving about what he takes justice fundamentally to be. That is certainly one sort of response. Yet the prospect of Cohen and his philosophical opponents digging in their heels about what they intuitively take the correct interpretation of the concept of justice to be brings into sharper relief the second main conclusion for which I want to argue. If political philosophers came to agree with Cohen about the need to retreat to justice in its purity, political-philosophical reflection about justice would devolve into little more than the practice of trading deep (perhaps unarguable) intuitions about justice. In fact, this is just the sort of thing that frequently occurs in debates about justice in which Cohen is involved.

To illustrate, let us look again at the claim that there is something to be said from the standpoint of justice for the equality that is achieved by leveling down, even if leveled-down equality would be ruled out by other (nonjustice) considerations. In an argument that might have easily been directed against Cohen, Roger Crisp has us consider a case involving two sisters, Andrea and Becky. The original example belongs to Larry Temkin, and Andrea and Becky are represented as his daughters. Temkin tells us that “both are extremely intelligent and attractive, have deep friendships, a stable home, high self-esteem, rewarding projects, fantastic careers, and a long, healthy future.” (2003, 773) Andrea is slightly better off than Becky in all of these various dimensions, and in particular, she is luckier. “Whenever she takes her weekly walk, she finds a \$20 bill. Becky never does” (2003, 122). Crisp goes on to construct the following scenario.

One afternoon, out walking with his daughters, Temkin spots a \$20 bill lying in the path ahead. Given their positions, he knows he has no chance of engineering matters so that Becky finds the bill, and he has back problems such that he would be unable to bend down to pick up the bill himself. What he can do is kick the bill into a fast-flowing stream, where it will disappear almost immediately. . . . On Temkin’s view [as on Cohen’s], there is something to be said for kicking the bill into the stream. *That is something that I find myself unable to accept, and I suspect I am far from alone.* (2003, 122–23)¹⁵

The italicized words convey the sense that his spade is turned. They express the resignation that there is no viable way to oppose the Temkin-Cohen intuition about justice save for claiming that other people are more likely to see things Crisp's way—"I suspect I am far from alone"—and not theirs. When we encounter conflicting intuitions about justice and fairness that are this fundamental, that run this deep, it is difficult to imagine what either party might do apart from proclaiming something like Martin Luther's "Here I stand. I can do no other."¹⁶

Consider another example, Cohen's view that distributive justice, roughly speaking, *is* equality. About this view Richard Arneson, for one, has written, "I simply report that I don't find in my own convictions any trace of this supposed ideal of distributive justice; nor do I see that it is derivable from more basic common-sense convictions we should be loathe to relinquish." "Cohen might wish to argue in a revisionary spirit that we ought to accept his distributive ideal," Arneson continues, "but it would be misleading to claim any entitlement much less exclusive entitlement to the word 'justice' with its powerful connotations" (2008, 379–80). As with the Crisp case, it looks as if the only plausible way to reply to Cohen's claim about justice is to report that it is at odds with one's intuitions. It is certainly not that Crisp and Arneson do not know how to argue convincingly for their preferred conceptions of justice. It is rather that the justice that Cohen appeals to is so pure, perfect, and timeless, so abstract and uncontaminated, so removed from all earthly considerations that the only vantage point from which to appraise and critique it is one that assumes a comparable purity. At that level of purity, however, one cannot *argue* with Cohen that justice is not what he takes it to be (what would such an argument even look like?). One can only *assert* that justice is not what he takes it to be.

7

In the course of his attempt to rescue justice from Rawlsian constructivism Cohen explains that, "Rawlsians believe that the correct answer to the question 'What is justice?' is identical to the answer that specially designed choosers . . . would give to the question 'What general rules of regulation for society would you choose, in your particular condition of knowledge and ignorance?' (Cohen 2008, 277) Proceeding in this way, Cohen argues, breaches the important distinction between principles of social regulation, on the one hand, and principles of justice, on the other. There can be no

doubt that Rawls intended to formulate a theory of justice—not a theory of something *like* or something *in the neighborhood of* justice—not a theory of (merely) optimal rules for social policy, for instance. Cohen is also correct to argue that if, on Rawls's view, "justice" is understood as "merely the name of whatever are the right principles, all things considered, for social regulation, then the statement that 'justice is the first virtue of social institutions' would lose the significance that Rawls assigns to it, when he compares justice to truth" (2008, 305).

Yet unlike Cohen, Rawls can be read as providing an answer to the question "What is justice?" that carefully and artfully straddles the two senses of the term "justice"—the philosophical and the ordinary, roughly speaking—that I delineated at the beginning of this article. That, after all, is the only way Rawls's theory could be "the most reasonable doctrine for us," as if what justice itself is depends on the society to which it is addressed.¹⁷ It is also the only way that Rawls's theory can make use of messy, impure, worldly materials such as "considered judgments," "reflective equilibrium," "the burdens of judgment," or "certain fundamental ideas seen as implicit in the public political culture of a democratic society" in its construction. (Rawls 1993, 13–14) Rawls develops a theory of justice according to which justice is transcendent, which is to say that he never confuses justice with current practice or expectation. And yet, for Rawls, the requirements of justice must be understood as real possibilities, and that expectation in turn suggests that what justice is will depend to some extent on certain facts about us, about the sorts of creatures we happen to be. As Rawls says, "First principles of justice depend upon those general beliefs about human nature and how society works." In particular, they depend "on the rather specific features and limitations of human life that give rise to the circumstances of justice" (1999a, 351).

Unlike Cohen, Rawls seems to think that there is little point calling something unjust if it not possible, at least in principle, to remedy it. Rawlsian justice thus simultaneously seeks some sort of touch with the world as it is and with how it might be. A conception of justice of this sort is grounded in various norms, beliefs, traditions, and practices and at the same time provides a platform from which to critique and improve them. This is part of what it means to conceive of justice, as Rawls does, in terms of a "realistic utopia" (1999b, 7). As Thomas Pogge explains, in a beautiful passage:

Is it possible to envision a social world in which the collective life of human beings would be worthwhile? One can imagine all sorts of wonderful things, of course. But the question is to be understood

in a realistic sense, asking us to envision the best social world within the context of the empirical conditions of this planet and of our human nature. The question is then whether we can envision a *realistic* utopia, an ideal social world that is reachable from the present on a plausible path of transition and, once reached, could sustain itself in its real context. By constructing such a realistic utopia, Rawls has sought to show that the world is good at least in this respect of making a worthwhile collective life of human beings possible. (2007, 26–27)

Ronald Dworkin expresses a similar idea when he writes in a reply to Cohen that

it is theoretically misleading, as well as pointless, to say that justice demands what even people with the best and most selfless will cannot do: that it is unjust that people who are born horribly crippled are not cured, for example, when there is no cure. Justice is relational: it is a matter of how people should treat one another, not of how the world should otherwise be That relational view of justice encourages even those political philosophers who write at the most abstract level to focus their attention on what can actually be done, and political philosophy is most interesting as well as most valuable when that focus is secure [When that focus is secure] we show how justice is feasible and therefore why it is all but imperative. (2004, 344)

It is easy to imagine these passages eliciting from Cohen further appeals to a more pure idea of justice. Cohen's rejoinder to Pogge's comment might go something like this: "Focusing on what is morally and politically possible is an important sort of undertaking. But moral and political possibility is not a constraint on what justice is." And similarly, in response to Dworkin: "Political philosophy might be most interesting and valuable when it focuses on what can actually be done, but the question about what makes political philosophy valuable and interesting is not the same as the question about what justice is."

These are, once again, valid replies. But taking them seriously distracts us from the important thought that a theory of justice must touch down on solid ground somewhere— or at least must be the sort of thing that is *capable* of so touching down. This thought helps explain why having a

sound theory of justice is something we would be grateful for, why justice is something it would be worthwhile to have true beliefs about—why, to ask a Nietzschean sort of question, it would be better to be correct about what justice is rather than in error. It will always be possible to summon a perfectly pure and abstract idea of justice. But theorizing about justice both with an eye to how things are in the world and with an eye to what might actually be done helps reinforce the value and elucidate the purpose of formulating a theory of justice in the first place. Rawls was right to think that when we proceed in this way, “We can find no better basic charter for our social world” (1999a, 307).

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NOTES

1. Just as many of the beliefs we take to be true may turn out to be false, many of the actions, laws, and institutions we take to be acceptable from the point of view of justice may turn out to contain or result in hidden, previously undetected injustices. In both cases, a healthy, straightforward commitment to fallibilism ensures that such possibilities can never be finally ruled out.

2. It might be thought that our not being able to imagine what a final answer to the question would be like merely marks the question as one properly deserving of the adjective “philosophical.” Surely it would be no less bewildering to learn that the free will/determinism controversy, or the so-called hard problem of consciousness, or the question “What is art?” say, had been resolved in a final, non-question-begging way. For my part, I think John Dewey’s sage reminder is on point here (to paraphrase): we don’t solve philosophical problems. We get over them.

3. It is true, as G. A. Cohen notes, that “being interested in what justice is standardly goes with caring about it . . . with caring about whether practice is appropriately responsive to it” (2008, 307). That the connection is “standard” does not make it necessary, of course, which is to say that someone can be moved by one these projects without thereby being moved by the other. It was not necessary for Martin Luther King or Ghandi, say, to have been interested in philosophical debates about the nature of justice in order for them to have served justice as they did, just as it wasn’t necessary for John Rawls or Robert Nozick, say, to have been socially and politically engaged for them to have formulated the theories of justice that they did.

4. As is well known, a distinction between the ordinary and the philosophical (“metaphysical”) use of certain terms was at the heart of the later Wittgenstein’s “therapeutic” enterprise. “What we do is to bring words back from their metaphysical to their ordinary

use" (1998, 48). I am not claiming that philosophers need to jettison the philosophical sense of the word "justice" in favor of its ordinary use. It will suffice for present purposes merely to call attention to the difference between the philosophical and the ordinary senses with respect to the word "justice."

5. Indeed, Cohen plainly admits that his book "attempts a rescue of the concept of justice" not a rescue of justice *per se* (2008, 2).

6. I am not suggesting that moral and political intuitions cannot be weighed against each other in various ways, nor that summoning such intuitions is always and everywhere a bad thing to do. While I cannot defend it here, my view is that our best chance of making headway in this area involves trying to bring general principles and particular intuitive judgments about individual cases into what Rawls called "reflective equilibrium." In my view, that is the most we can hope to get in the way of moral and political justification. Clearly, reflective equilibrium is representative of an approach to normative justification with which (Platonist) foundationalists like Cohen will have very little sympathy.

7. Accusations of "Platonism" are sometimes intended hyperbolically. But I think that the "Platonism" in Cohen's view about justice should be understood in a fairly literal way and that Cohen himself would not have been embarrassed to concede this. This conclusion is supported by a brief anecdote. In the course of a discussion of his work at the University of Toronto's Centre for Ethics in 2008, one of Cohen's former students offered the following story (which I paraphrase): "Jerry used to say that if you want to know what Justice is, just close your eyes together and think hard about what it means to you. And then open your eyes. There you go. That's all you can say about justice." I am obviously not suggesting that Cohen failed to offer arguments for his various claims about justice or that he regarded his "eyes closed" reflections about justice as substitutes for those arguments. But the larger point is that every theory of justice must incorporate a set of deep assumptions, a collection of basic intuitive materials, on which the plausibility of overall theory ultimately depends. My claim is that Cohen—rather uniquely among Anglophone political philosophers of his generation—regularly appealed to these basic intuitive materials as axiomatic premises in the course of arguing about justice with interlocutors. I take it that this is what Cohen means when he speaks of "reaching up for the pure concept of justice." Thanks are due to Alex Livingston for reminding me about this anecdote.

8. Cohen endorses with minor qualification the "Justinian edict" according to which "It is just to render to each his due." The qualification has to do with the fact that the edict is consistent with two opposed views about the relationship between justice and what people are due. "According to one of these views, a conception of justice is fashioned *out of* beliefs about what people are due; according to the other, beliefs about what people are due lie *downstream from* (independently identifiable) convictions about justice." "I am not sure," Cohen tells us, "which view is more sound." (2008, 7). One might reply that "rendering to each his due" has no more explanatory power for the concept of justice than Aristotle's "to say of what is that it is, and of what is not that it is not, is true" has for the concept of truth (Aristotle 1941, 749). It is not clear that such tautologies teach us much about justice or truth, respectively.

9. “Is, then, the difference between the Just and the Expedient a merely imaginary distinction? . . . By no means. The exposition we have given . . . recognizes a real distinction; and no one of those who profess the most sublime contempt for the consequences of actions as an element in their morality, attaches more importance to the distinction than I do” (Mill 1987, 332).

10. This does not mean that there is nothing revealing to be said about justice. It only means that one can only do so by relating justice to other concepts—fairness, freedom, equality, reciprocity, evenhandedness, impartiality, and so on—and not by producing a stand-alone definition. In an essay about the concept of truth, Donald Davidson puts the point this way: “However feeble or faulty our attempts to relate . . . various basic concepts to each other, these attempts fare better, and teach us more, than our efforts to produce correct and revealing definitions of basic concepts in terms of clearer or even more fundamental concepts.” Davidson is also right to suggest that the impossibility of defining a concept like justice shouldn’t lead anyone to think that “the concept is mysterious, ambiguous, or untrustworthy” (1996, 264–65).

11. In 1975, “amid the glorious snow of the Princeton University campus, in the company of Tim Scanlon,” Cohen reports having made the following (“naïve”) comment to Scanlon about an often discussed aspect of Rawls’s theory of justice: “While I could see that it might be sensible for all concerned to offer unequalizing incentives to the more productive when the condition of the worst off would be improved as a result, I could not see why that would make the resulting inequality *just*, as opposed to sensible” (2008, xv).

12. Perhaps Cohen would object that this way of putting the point puts the carriage before the horse. It is not the impossibility of defining justice (Moore’s point) that creates the needed philosophical space for affirming its Platonic purity (Cohen’s point). It is rather the “fact-insensitive” Platonic purity of justice that renders it impossible to define. While it is true that the immaterial purity of Platonic concepts makes them notoriously difficult to define—trivial things like triangles and “mud” (earth and water) are examples of the very few successful definitions to be found Plato’s corpus. No adequate definitions emerge in the dialogues for beauty, courage, virtue, friendship, love, temperance, and many other key concepts—I do not see that much hangs on which of the two (the purity of justice or the impossibility of defining it) is assigned the role of prime mover here. The main conclusions for which I argue in this article are not as far as I can tell affected.

13. Temkin writes, “I . . . believe that inequality is bad. But do I *really* think there is some respect in which a world where only some are blind is worse than one where all are? Yes. Does this mean I think it would be better if we blinded everybody? No. Equality is not all that matters” (1993, 282).

14. Namely, that “post-medieval principle that none should fare worse than others through no fault of their own” (Cohen 2008, 156).

15. The phrase “there is something to be said for” is vague, but for Cohen it means that kicking the bill into the stream contributes in one way to justice and should for that reason and to that extent be commended. Cohen’s own scenario about manna from heaven

is instructive on this point. "Imagine a peaceful anarchy . . . in which manna falls from heaven and gets shared equally because the sharers think that's the right way to deal with manna from heaven. Now suppose that an extra piece of irremovable and unredistributable but destructible manna falls on Jane's plot. Jane says: 'Like, I don't want this extra manna, I'm going to make a big bonfire with it to which you're all invited, because it's not fair . . . for me to have more than you guys do.' If you think Jane is being *merely* foolish, then you might well claim that the leveling down objection applies not only against the proposal that the state should *enforce* equality but also against the claim that *justice* favors equality. But I for one would not think that Jane is being foolish. I would think that she is simply a remarkably just person, and I think we should commend her for being one" (2011, 229).

16. This tendency to resignation can also be spotted, albeit with more subtlety, in Brennan 2014, Dworkin 2004, Kymlicka 2006, Nagel 2002, Quong 2010, and Tomlin 2010.

17. "What justifies a conception of justice is not its being true to an order antecedent to and given to us, but its congruence with our deeper understanding of ourselves and our aspirations, and our realization that, given our history and the traditions embedded in our public life, it is the most reasonable doctrine for us" (Rawls 1999a, 307). Also recall Rawls's profoundly anti-Cohenian claim that "the aims of political philosophy depend on the society it addresses" (1987, 1).



WORKS CITED

- Anderson, Elizabeth. 1999. "What Is the Point of Equality?" *Ethics* 109 (2): 287–337.
- Aristotle. 1941. *The Basic Works of Aristotle*. Ed. Richard McKeon. New York: Random House.
- Arneson, Richard. 2008. "Justice Is Not Equality." *Ratio* 21 (4): 371–91.
- Brennan, Jason. 2014. *Why Not Capitalism?* New York: Routledge.
- Cohen, G. A. 1995. *Self-Ownership, Freedom, and Equality*. Cambridge, MA: Cambridge University Press.
- . 2000. *If You're An Egalitarian, How Come You're So Rich?* Cambridge, MA: Harvard University Press.
- . 2008. *Rescuing Justice and Equality*. Cambridge, MA: Harvard University Press.
- . 2011. *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy*. Ed. Michael Otsuka. Princeton, NJ: Princeton University Press.
- Crisp, Roger. 2003. "Egalitarianism and Compassion." *Ethics* 114 (1): 119–26.
- Davidson, Donald. 1996. "On The Folly of Trying to Define Truth." *Journal of Philosophy* 93 (6): 263–78.
- Dworkin, Ronald. 2004. "Reply to G.A. Cohen." In *Dworkin and His Critics*, ed. Justine Burley, 339–50. Oxford, UK: Blackwell.
- Kymlicka, Will. 2006. "Left-Liberalism Revisited." In *The Egalitarian Conscience: Essays in Honour of G. A. Cohen*, ed. Christine Sypnowich, 9–35. New York: Oxford University Press.
- Mill, J. S. 1987. *Utilitarianism and Other Essays*. Ed. Alan Ryan. London: Penguin.

- Moore, G. E. 1960. *Principia Ethica*. Cambridge: Cambridge University Press.
- Nagel, Thomas. 2002. *Concealment and Exposure*. New York: Oxford University Press.
- Narveson, Jan, and James Sterba. 2010. *Are Liberty and Equality Compatible?* Cambridge: Cambridge University Press.
- Plato. 1953. *The Dialogues of Plato*. Trans. Benjamin Jowett. Oxford: Oxford University Press.
- Pogge, Thomas. 2007. *John Rawls: His Life and Theory of Justice*. Trans. Michelle Kosch. New York: Oxford University Press.
- . 2008. “Cohen to the Rescue!” *Ratio* 21 (4): 454–75.
- Quong, Jonathan. 2010. “Justice Beyond Equality.” *Social Theory and Practice* 36 (2): 315–40.
- Rawls, John. 1987. “The Idea of an Overlapping Consensus.” *Oxford Journal of Legal Studies* 7 (1): 1–25.
- . 1993. *Political Liberalism*. New York: Columbia University Press.
- . 1999a. *Collected Papers*. Ed. Samuel Freeman. Cambridge, MA: Harvard University Press.
- . 1999b. *The Law of Peoples*. Cambridge, MA: Harvard University Press.
- Temkin, Larry. 1993. *Inequality*. New York: Oxford University Press.
- . 2003. “Egalitarianism Defended.” *Ethics* 113 (4): 764–82.
- Tomlin, Patrick. 2010. “Internal Doubts About Cohen’s Rescue of Justice.” *Journal of Political Philosophy* 18 (2): 228–47.
- Walzer, Michael 1983. *Spheres of Justice*. New York: Basic Books.
- Williams, Andrew. 1998. “Incentives, Inequality, and Publicity.” *Philosophy and Public Affairs* 27 (3): 225–47.
- Williams, Bernard. 2014. *Essays and Reviews*. Princeton, NJ: Princeton University Press.
- Wittgenstein, Ludwig. 1998. *Philosophical Investigations*. Translated by G. E. M. Anscombe. Oxford, UK: Blackwell.