

## Facts and Principles in Political Constructivism

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**Abstract:** This paper develops a unique exposition about the relationship between facts and principles in political constructivism. It claims that facts form part of the ground for affirming principles insofar as reasons relating facts to the public sphere help generate criteria for assessing principles. One key element of political constructivism is that it focuses on specific political subjects. By offering reasons for why a particular subject falls within the political domain, the constructivist inevitably expresses concerns with respect to practical action. These concerns can be developed into criteria against which principles are assessed. Principles meeting these criteria are justified and, as a result, relate to facts. While I do not argue it here, this exposition helps provide a response to G.A. Cohen's critique of constructivism the ground for viewing constructivism's justification as teleological, which departs radically from current views.

Constructivists believe, along with most political theorist, that judgments about normative political principles reflect or respond to truths about matters of facts. For example, principles of justice are said to respond to the factual circumstances of moderate scarcity and conflicting human interests. This is a claim about the relationship between principles and facts; it says that facts form part of the ground for accepting principles and principles provide directives for dealing with those facts. In this paper, I offer an account of the fact-principle link within constructivist argument, where it is usually taken as evident and perhaps for this reason has gone largely unexamined.

Since much of my argument arises from G.A. Cohen's attack on constructivism and the fact-principle link, I will follow him in taking normative "principles" to be any general directive telling agents what they ought to do, and "facts" as any truth other than a normative principle. *My thesis is that, within constructivist arguments, facts form part of the ground for affirming principles insofar as facts generate criteria for assessing principles.* I do not argue that facts determine principles or principles are reducible to

facts. Instead, I defend the weaker claim that facts function within constructivist arguments to both exclude certain principles and provide support for accepting others. This contrasts with Cohen's view that all principles responding to facts are ultimately grounded on fact-insensitive principles. On his view, "principles that reflect facts must, in order to reflect facts, reflect principles that don't reflect facts."<sup>1</sup> For example, someone might affirm the principle *we should keep our promises* (call that *P*) because only when promises are kept can promisees successfully pursue their projects (call that *F*). In this case, a fact provides a reason for why we hold a principle. Cohen argues that if *F* is the reason for affirming *P*, then the person offering *F* as a reason must affirm "another principle, such as *we should help people to pursue their projects* (call it *PI*)." It is *PI* that makes *F* matter, that makes *F* support *P*. But the person's "affirmation of *PI*, as opposed to whether or not the affirmation induces her to affirm *P* itself, has nothing to do, essentially, with whether or not she believes that *F*." *PI* is not sensitive to *F*. *PI* may be sensitive to another fact, but Cohen argues that the fact (call it *FI*) supporting *PI* only in light of a more fundamental principle, call it *P2*. The process, Cohen argues, proceed until it rests on a fact-insensitive principle, call it *Pn*.

Cohen's argument is about the logical priority of fact-insensitive principles to principles supported by facts. It says "if any facts support any principle, then there are fact-insensitive principles that count for that relationship of support." My thesis denies this and provides what Cohen says cannot be provided: an explanation for why facts support principles that does not depend on citing further normative principles. More importantly, my thesis defends a fact-principle link that entails an alternative justificatory

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<sup>1</sup> G.A Cohen, "Facts and Principles," *Philosophy and Public Affairs*, 31, no. 3 (2003), pp. 211-245.

strategy for constructivist arguments than typically provided—namely, a deduction from a hypothetical procedure or reflective equilibrium—one overlooked by Cohen when considering constructivism. Since an argument against Cohen and in favor of an alternative justificatory strategy would exceed the time constraints of this presentation, I limit this paper to an exposition of the fact-principle link in constructivist arguments.

I begin by noting an often-overlooked element of constructivism, namely, its subject-specific nature. Constructivists do not assume in advance that a single set of principles is appropriate for all subjects. Instead, it is necessary to view each political subject as calling for a separate investigation in light of its unique features. This makes constructivism unique among political theories in that its principles do not serve as “first principles” from which all others are derived. Instead, constructivism proceeds piecemeal, from one subject to another. It is subject-specific, and several sets of principles may be required to govern different subjects, such as domestic justice, global relations, environmental justice, etc.

The subject-specific nature of political constructivism is connected with a conception of practical reason as the capacity to judge certain facts as requiring political attention, and to discern principles of practical action in light of those facts. The single most important feature of constructivism is not the use of a hypothetical procedure, but rather the view that objective principles are discernable by practical reason.<sup>2</sup> Indeed, rather than view constructivism as a proceduralist doctrine insisting upon the machinery of an original position or some other procedural device, it is better to view it as an approach focusing on practical reason’s ability to defend objectively valid principles.

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<sup>2</sup> Onora O’Neill, “Constructivism in Rawls and Kant,” in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003).

This does not mean that principles are demanded by practical reason independent of certain conceptual constructions and contingent features of individuals and their social relations; nor does it mean that practical reason can discern principles from a moral reality independent of a conception of persons, society and the role of principles in society. It simply means that humans can discern principles of justice appropriate to a particular subject in light of that subject's salient facts and coupled with certain conceptions of persons and society. As such, there are facts for which we have reasons to find certain conceptions and their corresponding principles justified, and practical reason discerns principles in light of these facts.

Unfortunately, constructivists have emphasized practical reason's ability to generate principles in light of certain conception of persons at the expense of its ability to isolate relevant facts about a subject. This, I think, has been a notable oversight, and tied to constructivism's metaphysical agnosticism. My argument reverses this tendency by explaining the role of facts in constructivist justification. On my view, which I don't have time to defend fully here, justification obtains when the facts of a subject are connected with principles via a set of conditions related to those facts. Notice how this differs from the typical view of constructivism, which attempts to connect conceptions of persons and society with a set of principles via a procedural device for choosing principles.<sup>3</sup> The latter focuses on the conceptual constructions of philosophers and raises questions about justification and objectivity. By contrast, the former allows practical

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<sup>3</sup> Rawls writes "The leading idea [in constructivism] is to establish a suitable connection between a particular conception of the person and first principles of justice, by means of a procedure of construction [hypothetical choice procedure]." See Rawls, *Kantian Constructivism in Moral Theory*," in *John Rawls, Collected Papers*, ed. Samuel Freeman (Cambridge: Harvard University Press, 1999), pp. 303-358 at p. 304.

reason to function in a determinate manner, and enables constructed principles to refer to the real world without either purporting the existence of an independent moral order or reducing moral facts to non-moral facts.

A proper understanding of the fact-principle link within political constructivism begins by fixing upon constructivism's subject-specific nature and its account of practical reason. Since constructivist theories aim to generate and defend normative principles for particular political subjects (healthcare systems, the basic structure of society, global wealth distribution, etc), the question of justification is naturally tied to the question of whether the subject under investigation is in fact political. A key responsibility of any constructivist argument is to relate the particular subject to the political domain by way of reasons supporting that judgment. This is a critical move within constructivist arguments and is all too often overlooked. But it is here where the fact-principle link is exposed and an alternative account of justification takes root.

Here I simply assume a conceptual distinction between the public and private domains, a distinction along the following lines: the political domain includes those institutions to be organized according to "public" interest, while the private domain marks the social space at which public interest considerations lose their force and private interests are privileged. The formulation is purposely abstract so as to accommodate theoretical frameworks generating different understandings of public and private, and to avoid a demarcation that begs any question about whether a subject is in fact political.<sup>4</sup>

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<sup>4</sup> For example, it can accommodate the liberal-economic models, civic republican traditions, social and historical accounts and trends in feminist thought. See Maurizio Passerin d'Entrèves and Ursula Vogel, *Public and Private: Legal, Political and Philosophical Perspectives*, (Routledge, 2000).

Instead, it is up to the constructivist to provide reasons for why the subject belongs to the political domain, reasons supporting the judgment: *X belongs to the political domain*.

Reasons relating a subject to the political domain will inevitably cite facts peculiar to that subject. As such, reasons function so as to support a judgment about how we should understand a subject. For example, one might think the distribution of the broadcast spectrum is a subject falling within the political domain because the broadcast spectrum is a ubiquitous, readily available yet limited resource (i.e., able to support fewer people than would like to use it), capable of serving as a mass media outlet. These reasons identify facts for which we have cause to think the subject of public importance. These facts single out individuals' interest in using a free, readily available, ubiquitous resource with defined limitations and characteristics capable of serving as a mass media vehicle. Key among these facts is that if everyone who wished to broadcast did so, no one would be able to broadcast because of interference. Moreover, the value of the spectrum extends beyond the particular broadcaster's interests insofar as the spectrum can be a mass media vehicle appealing to consumers. Additionally, there is no startup cost associated with creating the vehicle of communication; it already exists ubiquitously as resource accessible to all. These are facts about the broadcast spectrum supported by empirical evidence.

The reasons offered above (which are not meant to be exhaustive) fix upon facts supporting the following judgment: the broadcast spectrum requires an institutional structure governing its use if it is to be effective at all. This follows from the fact that the spectrum is accessible to more people interested and capable of using it than can comfortably fit on it without causing interference. But the above reasons also support the

judgment that the ordering of the institution matters to the public. This follows from the fact that the spectrum is a vehicle of mass communication serving as an outlet by which the public can receive information and satisfy its interests. The facts, therefore, help support the judgment that control over the spectrum is of public relevance; it belongs to those institutions to be organized according to public interest. Notice the judgment is not a normative principle directing the distribution of the spectrum; it simply is a judgment about whether the distribution of the spectrum is a subject falling within the public sphere.

Constructivists successfully locate subjects within the political domain when their reasons relate the facts of the subject to public interests. This is possible when among the facts is one about the public's historical interest in a resource, or about outcomes borne by the public, or about how resources bring widely dispersed benefits when organized in particular ways. Notice that although involving interests, these are still facts. Notice also that if there is disagreement at this stage in the argument, there is disagreement on facts. We might, for example, agree on the fact that a particular culture has demonstrated an historical interest in using the spectrum as a vehicle of communication, but disagree about the spectrum's limits given digital technologies. If this were the case, we may think it a subject unworthy of public attention because we find key supportive reasons wanting. But this is a disagreement on the facts, and should it turn out that we accept the reasons for finding a subject to fall within the political domain, it will also be the case that we accept certain facts as having public relevance. To put the same point differently, in locating through one's reasons certain salient facts supporting judgments about the

public relevance of a particular institution, one articulates why that institution matters to the public and why it requires public attention.

I will call an articulation of what matters or requires public attention a *concern*. Concerns are not the same as reasons. Reasons cite facts in support of judgments; concerns are expressions about what matters. While different from reasons, concerns underlie reasons and can be identified from reasons that successfully relate a subject to the political domain. This is because, as concluded in the previous paragraph, reasons articulate why a particular institution matters to the public. As such, concerns have a determinate relationship with reasons, they underlie reasons. They also have a normative dimension insofar as they help direct arguments supporting practical action. But, as I explain below, they are not normative in the same sense as normative principles, since they do not tell us what we ought to do.

In the above example about the broadcast spectrum, the reasons relating the subject to the political domain express a concern with the effective management of the broadcast spectrum. Since the reasons identify a potential problem with congestion (interference) should everyone be able to use a resource for which all have free access, they express an underlying concern over the degeneration of a resource that could potentially serve as a mass media vehicle of communication.<sup>5</sup> This problem is a matter relevant to the public, since the public loses should the resource be degraded. Therefore, the issue is of public concern.

Reasons determine a particular concern because they specify how facts relate to public interest considerations; they identify how a particular fact matters to the public.

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<sup>5</sup> In economics this is known as the “Tragedy of the Commons.”

Take as another example the reasons Rawls offers for focusing on the basic structure of society as the primary subject of domestic justice. He notes that depending upon the arrangement of basic institutions, those living under them will experience different life prospects.<sup>6</sup> This is a descriptive claim about the distributional impact of social institutions; it points to matters of fact and not values. For example, given democratic institutions all citizens have an equal opportunity to participate in the political process. Conversely, hierarchical political arrangements confine members to fixed social positions and, consequently, disproportionately allocate political influence. This fact is singled out as especially important to social justice because it helps identify the basic structure's role in distributing social benefits and burdens. As such, it provides an instance for thinking the basic structure a topic falling within the political domain, since social benefits and burdens are borne by society's members, i.e., the public.

The distributional impact of the basic structure can be refined by two further factual considerations. First, social relations among individuals might be altered from one generation to the next depending upon the arrangement of background institutions. A materially egalitarian society might become increasingly stratified over time depending upon legally recognized forms of property. Second, social arrangements provide incentives for practical action and, as a result, help determine the aims members might pursue. As Rawls notes, an economic regime “is not only an institutional scheme for satisfying existing desires and aspirations but a way of fashioning desires and aspirations in the future.”<sup>7</sup> In this sense, the basic structure affects individual decision processes and thought patterns. Depending upon how basic institutions are arranged, people will have

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<sup>6</sup> Rawls, *Political Liberalism*, pp. 257-285.

<sup>7</sup> *Political Liberalism*, p. 269.

incentives to act one way rather than another, to develop this talent as opposed to that, and to see their social relations against a backdrop of expectations colored by the opportunities institutions afford them.

The force of these considerations is perhaps better expressed by relating them to a pair of linked observations. First, we are born into a society already containing a rather sophisticated network of political, social and economic institutions, and it is quite likely we will die in that same society. Second, the preservation of these institutions requires the use of power backed by the state's machinery for enforcing its laws. From these facts a philosophical problem begins to crystallize: how to formulate the rules governing the background institutions profoundly affecting the life prospect of a society's members in a manner that legitimates the use of power required to maintain those rules?

We see in both examples that the reasons relating a subject to the political domain focus on facts and contain within them underlying articulations of what matters, or requires our attention. A constructivist taking the basic structure of society as the subject of investigation might offer reasons expressing a concern over how that structure distributes benefits and burdens. Likewise, reasons supporting the public nature of the broadcast spectrum highlight its usefulness if effectively managed.

Reasons identify how subjects relate to the public domain; and in doing so they inevitably express underlying concerns. When reasons convince people that a particular subject belongs to the political domain, they simultaneously establish agreement on political concerns. This does not yet result in agreement on principles, nor is it a justification of principles. But it does move the constructivist closer to justification by

generating aims against which principles and their supporting reasons can be judged and perhaps found wanting.

Normative principles are general directives telling us what we ought to do or how we ought to order an institution. As such, normative principles provide governing standards of action. Justification requires an explanation for why a set of principles appropriately governs a particular action or practice. Constructivist justifications have typically focused on hypothetical procedures and reflective equilibrium when providing such explanations. I think an alternative approach emerges from the fact-principle link within constructivist arguments. That link has its origin in the reasons given for finding a subject to fall within the political domain. These reasons both fix upon the subject's salient facts and, in virtue of relating those facts to the political domain, express underlying concerns with respect to practical action. The underlying concerns help articulate the philosophical problem and shape its ultimate solution by establishing general aims. For example, the above reasons for finding the broadcast spectrum to fall within the political domain highlight the spectrum's usefulness if effectively managed. These reasons articulate a matter of concern over effective management, which in turn helps specify the principles' proper function and provides the necessary content for assessing the acceptability of normative principles. If principles fail to respond to these aims, they fail to properly address an essential element of the subject to which they are applied, thus failing to serve as appropriate directives.

Such aims serve as evaluative conditions and represent the last link in the chain connecting facts with principles, a link including the following elements: 1) reasons for finding a subject to fall within the political domain, 2) the facts reasons cite, 3) the

concerns underlying those reasons 4) the conditions resulting from these concerns and 5) the principles meeting those conditions. With these elements in place, the structure of justification within constructivist arguments takes shape. Practical reason isolates the salient facts of a subject and, in virtue of relating these facts to the political domain, identifies underlying matters of concern. Concerns are expressed as aims with reference to which normative principles can be assessed. Principles satisfying these aims provide general directives for bringing a justified order to the topic under consideration, be it healthcare, the tax system, the broadcast spectrum, environmental resource use, etc.

This concludes my remarks about the fact-principle link in constructivism. I conclude by noting that once this link is identified and explained, arguments supporting these other claims can be made:

- Constructed principles are justified in virtue of meeting some internally established criteria, giving constructivism a teleological form.
- The criteria, which are the result of factual considerations, help ground principles in facts and thus help constructivism overcome enduring charges of question begging (including charges of circularity, conservatism and relativism).
- The role of the hypothetical choice procedure is reduced to a simplifying device, rather than a methodological process determining the justification of principles.
- Reflective equilibrium is no longer thought to be a justificatory approach, but can instead be viewed as a conceptual movement each constructivists (perhaps each moralists) experiences in time and through his or her attempt to understand the logic of the argument (including its factual and conceptual elements).
  - For this reason, many of the criticisms against reflective equilibrium are answered by this interpretation.