G. A. Cohen : Justice vs. Constructivism

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Abstract

According to the constructivist approach to social justice, an approach that is most notably illustrated by John Rawls's Theory of Justice, the principles of social justice are those rules of social regulation that would be chosen by specially designed selectors who occupy a relevantly optimal choosing situation: in the case of Rawlsian constructivism, that situation is the "original position", in which selectors know everything there is to know about the nature of human nature and human society and nothing that distinguishes any selector from any other selector. I argue, against the constructivist approach to social justice, that rules of social regulation cannot be identified with principles of justice because the former are sensitive, and the latter not, both to practical constraints that affect the implementation of principles and to values other than justice itself.

Outline

0. In its most general description, constructivism is the view that a principle gains its normative credentials through being the product of a sound selection procedure. The constructivist approach to social justice is constructivism, understood as characterized above, but with respect to fundamental principles of social justice in particular, <u>and</u> which proceeds by putting and answering the question "What rules of governance are to be adopted for our common social life?".

1. Two distinctions:

    (a) Fundamental normative principles (which we do not adopt, or institute).
    (b) Rules of regulation, which we adopt or institute.

    The question "What are the rules of regulation that govern society?" is a sociological question, whereas the question "What rules of regulation ought to govern society?" is a philosophical question, or, if you prefer, a question in political theory, because the answer to that second question depends strongly on general social facts. The question "What is justice?" is a philosophical question, and there is no coherent question of the form "What ought justice, or the principles of justice, to be?" The incoherence of that question reflects the status of justice as something that transcends rules of regulation.

    (c) Principles that express or rules that serve the value of justice.
    (d) Principles that express or rules that serve values in general.

2. Thesis: because it identifies justice with optimal rules of regulation, Rawlsian constructivism violates both the (a)/(b) and the (c)/(d) distinctions:

	(a)fundamental principles	(b)rules of regulation
(c) justice	(1)fundamental principles of justice	(3) that serve justice in particular
(d) values in general	(2) fundamental principles generally	(4) that serve fundamental principles generally

According to constructivism, fundamental principles of justice are the outcome of an idealized legislative procedure, whose task is to elect principles that regulate our common life. <u>But</u> in any enterprise whose purpose is to select such principles of regulation, <u>attention must be paid, either expressly or in effect, to considerations that do not reflect the content of justice itself</u>. It follows that any procedure that generates the right principles to regulate society fails thereby identify fundamental principles of justice. That is my major, and generative, complaint against constructivism as a meta-theory of fundamental justice.

If an institution is capable of more than one virtue, then one may properly have regard to each of those virtues in designing it. But the answer to the question, what is the right design of the institution?, could not, therefore, by itself, tell one the content in general of any one of the virtues, or even the particular distinctive contribution that that virtue makes to the design. You have to understand the content of any given virtue independently of knowing what the rules of the design are in order to identify the subset of rules that reflect <u>that</u> particular virtue.

3.   Illustration: Property taxation.

4.   Rawls: "Justice is the first virtue of social institutions, as truth is of systems of thought".

Reply: Truth may be the first virtue of systems of <u>thought</u> (which are abstract objects), and it may also be the first virtue of the events or states which are people's thoughts, but it is not also the (sole) first virtue of utterances, and it is utterances, acts of speech, that, so I would claim, are relevantly analogous to social institutions, or, at any rate, the relationship between social institutions and justice is more analogous to the relationship between utterances and truth than it is to the relationship between systems of thought, or people's thoughts, and truth. The stated claim follows from the coherence of the distinction that governs the present paper: between justice and the right rules of regulation.

5.   What <u>if</u> the Rawlsian question, "what rules of regulation should we adopt?" takes us away from justice? What's in a name?

(a) Justice is the elusive virtue discussed by philosophers for a couple of thousand years.

(b) Part of the allure of <u>A Theory of Justice</u> is that it promised to say what <u>justice</u>, in particular, is.

(c) If "justice" were, for Rawls 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.

(d) Rawls says that each "person possesses an inviolability founded on justice". That inviolability is not <u>founded</u> on the first principles of public policy.